

Tuesday, 17 November 2020

(10.00 am)

LADY SMITH: Good morning and welcome to the next phase of hearings in the Scottish Child Abuse Inquiry. Today we begin the hearings looking into steps taken by the Government in Scotland in relation to past abuse of children in care broadly between 2002 and 2014.

Before I turn to what is going to happen today in terms of opening submissions and evidence, there is something I want to say about the procedures that we have been taking since September and are taking at present. The impact of COVID-19 means that there have been changes in the way we operate in relation to hearings. I remain mindful of my duty under the Inquiries legislation to do all that I reasonably can to enable the public to attend Inquiry hearings but also of my responsibilities in relation to public health and protection prompted by the COVID outbreak. It was, in these circumstances, only after having taken expert advice and very careful consideration, that I decided in September that we should resume holding hearings in public.

We implemented changes when the evidential hearings in our child migration case study began again and we review them on a regular basis. Those changes have all

1 been designed so as to do the best we can to keep
2 everybody safe, having regard to whatever are the
3 up-to-date guidelines and regulations. There is a video
4 on our website which you may have already seen but
5 please have a look at it if you haven't. It outlines
6 the changes and you will experience some of them
7 directly yourselves.

8 For example, those of you who have been here before
9 will have noticed changes in signage, the hand
10 sanitisers we ask you to use, the withdrawal of
11 the drinks machine, the limitation of seating in this
12 room, and you will see that between each witness I will
13 rise so as to allow for appropriate cleaning to take
14 place. There are changes you won't see. For example,
15 the COVID-compliant cleaning that occurs outwith every
16 sitting day, and the considerable reduction in the
17 number of Inquiry staff working here in Rosebery House.

18 Please be assured that your safety is very important
19 to us, and don't hesitate to ask if you are uncertain
20 about any of the changes that we have made.

21 Turning to today's business, Mr Peoples, can I check
22 that the plan is that we will start with opening
23 submissions, obviously with you. Remind me of the
24 running order after that.

25 MR PEOPLES: The running order will be Mr Scott on behalf of

1 INCAS, Mr Gale on behalf of FBGA, Ms Donald on behalf of
2 Lord McConnell, who has leave to appear for this
3 particular hearing, and Ms O'Neill on behalf of
4 Scottish Government. And that will remain the order at
5 the end of the day when we get around to closing
6 submissions too.

7 LADY SMITH: That is very helpful. Are there any other
8 preliminaries you would like me to deal with before
9 I turn to opening submissions?

10 MR PEOPLES: I don't think so.

11 LADY SMITH: I know we have two witnesses today.

12 MR PEOPLES: Yes, after this.

13 LADY SMITH: I will rise after opening submissions, and we
14 will carry out whatever reorganisation or cleaning is
15 needed at that stage. Very well.

16 When you are ready, Mr Peoples, I am ready to hear
17 you. Thank you.

18 Opening submissions by MR PEOPLES

19 MR PEOPLES: Good morning, my Lady. Before those with leave
20 to appear make their opening statements, I wish to make
21 some very brief remarks about this hearing, simply to
22 set the scene and explain what is planned over the next
23 three weeks.

24 The purpose of this short hearing is to examine the
25 actions of Central Government between August 2002

1 and December 2014 in response to issues arising out of
2 non-recent abuse of children in institutional care.

3 In August 2002, as followers of the Inquiry will by
4 now know, Chris Daly submitted a petition to the Public
5 Petitions Committee of the Scottish Parliament calling
6 for apologies from a number of organisations and
7 an Inquiry into historical abuse of children and
8 institutional care. The hearing will explore reasons
9 why calls for a Public Inquiry throughout the period
10 from August 2002 until December 2014 were resisted by
11 the Scottish Government.

12 I will probably, at times, slip between Scottish
13 Executive and Scottish Government but one can take it
14 that I am using the terms interchangeably.

15 LADY SMITH: Of course, yes. The original 1998 legislation
16 named the devolved administration Scottish Executive,
17 and subsequently --

18 MR PEOPLES: Yes, and Central Government is perhaps a more
19 general description.

20 LADY SMITH: For that I am to hear Central Government in
21 Scotland.

22 MR PEOPLES: In Scotland, yes.

23 So the intention is to hear evidence over the next
24 two weeks with closing submissions the following week.
25 This week there will be evidence focusing on the period

1 from August 2002 up to the Scottish Parliamentary
2 election in May 2007 when there was a change of
3 administration. Oral evidence this week will be given
4 by a former Convener of the Petitions Committee followed
5 by evidence given by former ministers who had direct
6 responsibility for matters connected to the petition.
7 There will also be evidence from a now retired senior
8 civil servant who supported those ministers and also
9 from the First Minister of Scotland between 2001 and
10 2007, and the intention is also to have some witness
11 statements read in.

12 Next week we will focus on the period from May 2007
13 until the announcement of a Public Inquiry
14 in December 2014. Again there will be oral evidence
15 about that period, including evidence from individuals
16 who were directly involved as ministers in responding to
17 issues relating to historical abuse of children in care
18 and from a senior civil servant supporting those
19 ministers.

20 The intention is to hear closing submissions, if
21 things go to plan, on Friday, 4 December, to have
22 a short break between the completion of evidence and the
23 giving of closing submissions. So that is really all
24 I think I need to say at this stage.

25 LADY SMITH: That is very helpful. Thank you, Mr Peoples.

1 Mr Scott, when you are ready.

2 Opening submissions by MR SCOTT

3 MR SCOTT: Thank you, my Lady.

4 "Shortly I shall be meeting a number of former child
5 migrants and, as Prime Minister, I will be apologising
6 on behalf of our nation. To all those former child
7 migrants and their families, to those here with us today
8 and those across the world, to each and every one I say
9 today that we are truly sorry they were let down. We
10 are sorry that they were allowed to be sent away at the
11 time they were most vulnerable. We are sorry that,
12 instead of caring for them, this country turned its back
13 and we are sorry that the voices of these children were
14 not always heard and their cries for help not always
15 heeded. We are sorry that it has taken so long for this
16 important day to come and for the full and unconditional
17 apology that is justly deserved to be given."

18 That is obviously, my Lady, a quote from the
19 Prime Minister, Gordon Brown, on 24 February 2010 in
20 relation to the subject of child migrants.

21 Next:

22 "On behalf of the State and all its citizens, the
23 Government wishes to make a sincere and long overdue
24 apology to the victims of childhood abuse for our
25 collective failure to intervene, to detect their pain,

1 to come to their rescue ..."

2 That is from 11 May 1995, the then Taoiseach in
3 Ireland, Bertie Ahern, in the unreserved apology on
4 behalf of the Irish State to the victims of child abuse.

5 Next:

6 "What we discuss today is your story. What we
7 address today is how you took this country's terrible
8 'secret' and made it your own ...

9 "But from this moment on you need carry it no more.
10 Because today we take it back. Today we acknowledge the
11 role of the State in your ordeal ...

12 "Therefore I, as Taoiseach, on behalf of the State,
13 the Government and our citizens deeply regret and
14 apologise unreservedly to all those women for the hurt
15 that was done to them, and for any stigma they suffered,
16 as a result of the time they spent in a Magdalene
17 laundry."

18 That was from 19 February 2013, the then Taoiseach,
19 Enda Kenny, and the apology to the Magdalene survivors
20 on behalf of the State.

21 "It would be a mistake for us to try to fit all that
22 happened in the past into the framework of our own
23 knowledge and experience but some things are and always
24 have been wrong. Now that we know what has happened, it
25 falls to us as representatives of the Scottish people to

1 acknowledge it. It is for this generation of the people
2 of Scotland to say quite clearly that it was
3 unacceptable that young people were abused and that it
4 was appalling that they were abused by those entrusted
5 with their welfare. That is why today I offer a sincere
6 and full apology on behalf of the people of Scotland to
7 those who were subject to such abuse and neglect and who
8 did not receive the level of love, care and support that
9 they deserved and who have coped with that burden all
10 their lives."

11 1 December 2004, First Minister Jack McConnell.

12 In view of my comments today, it is appropriate for
13 me to acknowledge that at the time of the
14 First Minister's apology, INCAS contacted the Government
15 to say that they were very pleased with the apology, and
16 I have given the reference, although in the same letter
17 they stated a preferred option for a Public Inquiry by
18 way of additional acknowledgement and accountability.

19 It should have been clear that delivering an apology
20 was not the final action required of Government. Indeed
21 it was clear. Over time, Government came to realise
22 that no investigation was not a realistic option.
23 I have given the reference for that. Unfortunately, on
24 looking at the papers, more effort seems to have gone
25 into justifying not having a Public Inquiry than looking

1 at the possibility with an open mind as to what was best
2 for most survivors as reflected in what INCAS and others
3 were actually saying and saying repeatedly.

4 The Scottish Government's overall response to the
5 time taken to deliver a Public Inquiry and evidence seen
6 subsequently have all led to a re-evaluation of the
7 First Minister's apology by survivors. Government
8 recognised that some of its own actions might call into
9 question the sincerity of the apology, and there is
10 a reference there, it's in relation to the Government's
11 position in court proceedings. Indeed, the impact of
12 the apology seems to have been re-evaluated even by
13 Lord McConnell himself.

14 It fell short in a number of ways, in my submission,
15 my Lady. Leaving aside the narrow wording, it was
16 undermined in particular by the failure to establish a
17 Public Inquiry soon after.

18 I quote now from the report, "Apologies and
19 Institutional Child Abuse", part of work on
20 an ESRC-funded project on "Apologies, Abuses and Dealing
21 with the Past", and I have sent the Inquiry team the
22 full report:

23 "Within the broad academic literature and apologies,
24 five elements emerge as important for a meaningful
25 apology. First, an apology should include an explicit

1 acknowledgement of the wrongs and their consequences
2 which serves to establish common moral ground between
3 offenders and victims.

4 "Second, an apology should clearly accept
5 responsibility for the offence. By offering a direct
6 connection between the harm and the offender, it is this
7 element that distinguishes an apology from mere
8 expressions of sympathy or regret. However, this is
9 also the most difficult element for offenders as it may
10 imply guilt or a duty to make amends.

11 "Third, an apology should express regret that the
12 wrong occurred. Through this an offender demonstrates
13 recognition of the extent of the harm and its impact on
14 victims/survivors. However, this affective dimension is
15 attributed less importance for collective apologies
16 delivered by a representative, as they are often not
17 personally responsible for harm.

18 "Fourth, apologies should provide an assurance of
19 non-repetition which serves to restore trust through
20 reaffirming adherence to the moral norm.

21 "Finally, for serious wrongdoing, an apology must
22 also include an offer of repair or corrective action.
23 This element increases the sincerity of the apology by
24 backing up the sentiment with concrete actions.
25 However, it is not only the content or language of

1 an apology that contributes to its perceived sincerity,
2 the performance or choreography of an apology, such as
3 the speaker, setting, form and timing, also matters.
4 Specifically meaningful apologies are those delivered by
5 the right person at the right time in a setting and form
6 that emphasises the seriousness of the occasion.
7 Importantly, apologies are likely to be more meaningful
8 when they are delivered within a broader context that
9 reaffirms the sentiment they express, such as clear
10 accountability, reform and the provision of redress.

11 "While public apologies have been cited as one of
12 the highest priorities of survivors of institutional
13 abuse, many have fallen short of the criteria outlined
14 above. Fears of legal or financial liability or
15 reputational damage can prevent offenders from accepting
16 full responsibility for wrongdoing. Moreover, for
17 collective apologies, a lack of consensus among
18 leadership on the decision to apologise, as well as
19 decisions regarding language, what is said and
20 performance, how, when, where and by whom the apology is
21 delivered, can prevent meaningful apologies from taking
22 place. State apologies have an additional concern in
23 that they often require broad public support as the
24 public tends to assume the cost of redress.

25 "While each obstacle presents a challenge, none are

1 insurmountable. When meaningful apologies are achieved,
2 scholars emphasise the restorative benefits for
3 victims/survivors. Apologies can also help broader
4 society to deal with the past, as it is only through
5 countenancing the past and recognising injustice that
6 attention can be paid to ensuring that such injustice
7 cannot recur. However, it is crucial that the sentiment
8 of an apology is followed through in more tangible
9 responses such as redress, reform and accountability."

10 And that ends the quote.

11 I suggest the Scottish apology was deficient in
12 respect of the second and fifth criteria, and in the
13 ten-year delay in establishing this Inquiry it lost some
14 of the meaning from the broader context of
15 acknowledgement and accountability.

16 LADY SMITH: So you say, Mr Scott, it was deficient in
17 relation to the second criteria which was that
18 an apology should clearly accept responsibility for the
19 offence. In that way it offers a direct connection
20 between harm and offender, that was the second criteria.
21 And the fifth criteria was that where there has been
22 serious wrongdoing the apology must also, at the time of
23 the apology, include an offer of repair or corrective
24 action. Those are the essentials of those two criteria.

25 MR SCOTT: Indeed so.

1 LADY SMITH: And you say INCAS' position is that they were
2 absent.

3 MR SCOTT: Yes, my Lady.

4 LADY SMITH: Thank you. I'm sorry, I interrupted you.

5 MR SCOTT: Not at all.

6 In Scotland, on the evidence, some of the obstacles
7 to meaningful apologies referred to in this academic
8 report may be relevant to explanation, perhaps
9 especially possible legal and financial liability. And
10 before the apology, the First Minister made reference to
11 litigation in the courts and how it was not his purpose
12 to cut across anything there, so that was specifically
13 referenced and clearly features heavily in some of the
14 records.

15 We look forward to hearing and understanding the
16 full extent of obstacles and explanations for delay. We
17 look forward to hearing and understanding why "regret"
18 and "the State" disappeared during the development and
19 the drafting of statements and this apology.

20 It is clear that, while other options were discussed
21 and some other action was taken, INCAS wanted an apology
22 from the State and other institutions. What happened to
23 these institutions? Why was it considered adequate to
24 leave important matters of accountability to individual
25 court cases? Were ministers too easily persuaded to

1 follow advice, even where they felt that it was right to
2 take another course? And there is a suggestion of that
3 within statements. In preparing advice for ministers,
4 did officials properly hear and understand the voice of
5 survivors? At times even then survivors felt ignored
6 and certainly now, in hindsight, they feel that their
7 views were misrepresented in what was being put forward
8 to ministers as their view.

9 By contrast, it appears that ministers and officials
10 may perhaps have listened too well to some within
11 institutions. There is one example; Quarriers'
12 chief executive's description of an inquiry as
13 "unrealistic" because of gaps in their records is hard
14 to credit. Mr Peoples has explained that there may be
15 a more narrow context for that than the perhaps wider
16 implications that the evidence suggests, and I look
17 forward to that being explored. But that, on the face
18 of it, is an example going beyond those we have seen
19 where institutions seek to make the most favourable
20 assumption from an absence of records.

21 What else did Government hear from institutions
22 which have been and will be the subject of case studies?
23 INCAS are surprised by the paucity of reference to the
24 Catholic Church and religious institutions in the
25 records, they having been an important part of the

1 campaigning. Were there discussions between those
2 religious institutions and Government? Were other
3 voices working for their own purposes and reputations
4 whispering against the idea of an inquiry?

5 In addition, some discussions with survivors about
6 what an inquiry would be like, and obviously accepting
7 that it pre-dates the 2005 legislation, but whether
8 intentional or not, these may have been misleading and
9 off-putting. Another way to look at this issue is to
10 ask: if survivors had been told over ten years ago that
11 the inquiry would operate as your Ladyship's Inquiry has
12 been operating, would there have been any hesitation to
13 accept it in addition to the other measures? And what
14 I'm told by Helen and colleagues in INCAS is there would
15 have been no hesitation at all, but that is not how the
16 inquiry was explained to them.

17 Especially given what we know now of the true value
18 of this Inquiry, survivors look forward to hearing
19 an explanation for the oft-repeated assertion in the
20 evidence in the records that the nature and scale of the
21 issue of child abuse "appears to be different in
22 Scotland". This is despite what we have learned in the
23 last three and a half years and more, and
24 acknowledgement within Government evidence that "you
25 don't know what you don't know". To that can be added

1 the obvious question, "If you know you don't know and
2 refuse to look, how can you say anything with the
3 apparent certainty that some statements were made within
4 the evidence?" While it is clear now, I suggest, that
5 Government apologies now can be accepted as sincere and
6 will no doubt be repeated, perhaps not in as narrow
7 a form as the First Minister's apology in 2004,
8 survivors want to understand fully the circumstances in
9 operation at a much earlier time that were allowed to
10 obstruct the full range of measures now available, in
11 particular this Inquiry. Especially when reading the
12 papers now suggests an inevitable progression, or a near
13 inevitable progression, to where we are, why does it
14 seem that the obstacles and obstructions were
15 prioritised over doing the right thing, or what now can
16 be seen, I suggest, as the right thing at a time when it
17 would have impacted directly on survivors who have died
18 before this Inquiry could hear from them and allow some
19 of the acknowledgement and accountability which has been
20 afforded to those who have been heard.

21 Thank you, my Lady.

22 LADY SMITH: Thank you very much, Mr Scott. I would now
23 like to turn to the representation for FBGA. Mr Gale,
24 whenever you are ready, I am ready to hear you.
25

1 Opening submissions by MR GALE

2 MR GALE: Good morning, my Lady. Thank you. On behalf of
3 David Whelan and the Former Boys and Girls Abused in
4 Quarriers we are again grateful for the opportunity to
5 participate with leave to appear in these hearings.

6 We regard these hearing as of particular importance
7 in that they exposed a critical consideration, the
8 conduct of ministers and officials of the
9 Scottish Government in the period between 2002 and 2014,
10 and that insofar as it relates to the political and
11 policy reasons for developing Government action and
12 initiatives concerning the response to the fact that
13 within living memory there has been appalling levels of
14 abuse of children within residential institutions in
15 Scotland.

16 While we have considered all the written evidence in
17 the form of witness statements and contemporaneous
18 documents thus far made available, we will reserve any
19 comments until we have heard the evidence developed in
20 the forthcoming hearings. That said, there are a number
21 of matters in which we do have particular interest.

22 Before noting these matters, my Lady, we do
23 recognise the achievements of Government in this field
24 during the period. We particularly note the eventual
25 establishment of this Inquiry was an achievement and its

1 work thus far has more than justified the decision to
2 proceed with its creation.

3 The reform of the law relating to limitation of
4 actions was a very welcome move and went a long way to
5 removing an impediment to achieving justice for
6 survivors of abuse.

7 Our position on other matters, such as the then
8 First Minister's apology on 1 December 2004, the
9 National Strategy for Survivors of Childhood Sexual
10 Abuse, the In Care Survivors Service Scotland, the
11 Scottish Human Rights Commission's framework and
12 interaction process, the Shaw Report, Time to be Heard,
13 and the National Confidential Forum, our position
14 remains as stated by David Whelan in his evidence. All
15 is contained in his witness statement, which is
16 WIT.001.001.1588 and expanded upon in his oral evidence
17 on 5 July 2017, which is Day 18.

18 A recurring issue at various levels and in various
19 contexts as expressed in this Inquiry is the lack of
20 trust that survivors have in those in positions of
21 authority. Initially this found expression in the
22 evidence of Helen Holland, David Whelan and Chris Daly
23 and arose out of their dealings with officials and the
24 language used and the attitudes displayed. We note that
25 the Scottish Government fully accepts that such conduct

1 should not have occurred and that the Scottish Ministers
2 are extremely sorry that it did. I refer, my Lady, to
3 the document SGV-56, taking out the various zeroes, at
4 paragraph 1.7 and 1.8.

5 It is our position that the conduct of officials as
6 disclosed in the evidence of Helen, Chris, and David and
7 as summarised in SGV-56 at paragraph 1.7 was appalling.
8 To say that it was "not always as it should have been"
9 and that it "fell far short of what they were entitled
10 to expect" smacks, with respect, of Civil Service speak.
11 The acknowledgement this should not have occurred does
12 not carry with it any attempt to explain why it did
13 occur. We wonder indeed if at the heart of this conduct
14 was a feeling of intellectual or social superiority
15 and/or an ignorance of the effects contemptuous
16 attitudes were likely to have on the survivors abuse.

17 If this was reflective of a culture in Government at
18 the time, then it is deeply worrying, we say, and it
19 should be condemned in the hope that it does not happen
20 to other campaigning groups or individuals in the
21 future.

22 It is our position that the apology by the then
23 First Minister should have been accompanied by
24 a commitment to hold a Public Inquiry such as this
25 Inquiry. If that had been done at or around that time,

1 it would have avoided the need for organisations such as
2 INCAS and FBGA and indeed other individuals to continue
3 to fight for ten years for such an inquiry. An inquiry
4 would have brought to light, as this Inquiry has done,
5 the nature and extent of the abuse and, while the
6 numbers can only be speculative, one can reasonably
7 assume that a number of survivors would have received
8 while in life authoritative confirmation of what had
9 happened to them.

10 We can paraphrase what David Whelan said to us in
11 a recent email. He said: the years lost between 2002
12 and 2014 have caused an unnecessary delay in the process
13 of resolution and reconciliation.

14 We have read what is said in chapter 2 of SGV-56 but
15 we wonder to what extent the reasons referred to in
16 paragraph 2.20 of that document became ingrained in
17 Government thinking. If two years after that briefing
18 note, which was dated 8 November 2002, there was
19 available to the Executive sufficient information to
20 allow a public apology to be made by the then
21 First Minister, then it would seem to us that there was
22 sufficient available information and pertinent questions
23 to be addressed for the appropriate course to have been
24 the establishment of a Public Inquiry, with all its
25 powers to investigate.

1 We, therefore, do not agree with what was said in
2 the briefing note subsequently dated 12 January 2005
3 which is referred to in paragraph 2.123 of SGV-56
4 containing "lines to take on historical abuse", and it
5 then says:

6 "The Minister for Education and Young People has
7 made his position on this issue ..."

8 Which was the establishment of a Public Inquiry:

9 "... very clear and concluded that a Public Inquiry
10 would not add to our current actions and
11 considerations."

12 That is a conclusion with which FBGA disagreed then
13 and continues to disagree with now. We also wonder to
14 what extent (a) the financial implications of a Public
15 Inquiry and (b) the possibility of legal action being
16 taken against the Executive, a matter on which legal
17 advice was in fact taken, acted as disincentives.

18 My Lady, this is just a brief indication of some of
19 the issues with which we are particularly interested.
20 We await what is said in these hearings with interest in
21 order to fully inform our eventual submission to
22 my Lady.

23 Thank you.

24 LADY SMITH: Thank you very much, Mr Gale. Now could I turn
25 to the representation for Lord McConnell. Ms Donald?

1 Opening submissions by MS DONALD

2 MS DONALD: Good morning, my Lady. I am obviously here on
3 behalf of Lord McConnell and I am grateful for the
4 opportunity make this opening statement on his behalf.

5 I am firstly instructed to state that Lord McConnell
6 wishes to acknowledge the bravery of the survivors who
7 have come forward and campaigned to keep the issue of
8 abuse of children, whether in care or not, a live issue.
9 The accounts of survivors have stayed with
10 Lord McConnell since he first met with some of them in
11 his own constituency many years ago. He welcomes this
12 Inquiry and the extensive work already carried out.

13 In opening I propose only to set out the broad
14 thrust of Lord McConnell's interest given the positions
15 he held in Government.

16 I pause, my Lady. Is that okay?

17 LADY SMITH: Absolutely.

18 MS DONALD: Given the positions he held and some of the
19 initiatives that came forward under his leadership.

20 Jack McConnell was elected to the
21 Scottish Parliament in 1999. He became Minister for
22 Finance in the new cabinet. He was subsequently
23 appointed as Minister for Education, Europe and External
24 Affairs, which I shall refer to as "Minister for
25 Education". That was between October 2000

1 and November 2001, at which point he became
2 First Minister of Scotland, a post he held until May
3 2007.

4 Prior to becoming an MSP, Lord McConnell's
5 professional background was in teaching. He was aware
6 of the issue of child abuse being an increasing concern
7 and he became involved in politics originally to provide
8 a voice for those who felt disadvantaged and
9 disempowered. During his time as Minister for Education
10 Lord McConnell had policy responsibility for children's
11 services, including social work services and child
12 protection. The work included publishing the report
13 "For Scotland's Children" in 2001, which focused on
14 providing a more structured and combined approach to
15 education, care and services. Whilst not solely focused
16 on looked-after children, this was his first step in
17 ensuring all children in Scotland had access to the same
18 opportunities.

19 The primary focus at that time was on the regulation
20 and inspection of the social work system following
21 a number of serious incidents of violence and neglect.
22 Lord McConnell himself examined provisions for young
23 people in secure and non-secure accommodation, visiting
24 several residential homes for young people during this
25 time to learn the situation first-hand, and this

1 experience subsequently informed his views on policy
2 change. A programme of reforms was put in place,
3 including legislation to establish the Care Commission
4 and the Scottish Social Services Council, independent
5 regulators set up to oversee delivery of care services,
6 including care homes for children and young people.

7 The programme of reform continued into his time as
8 First Minister, with the Care Commission in place by
9 April 2002. Following an audit and review of child
10 protection launched in 2001, the report "It's everyone's
11 job to make sure I'm alright" was published
12 in November 2002 coinciding with the first Child
13 Protection Summit. At that time Lord McConnell
14 announced a three-year programme of the work to address
15 the issues identified.

16 As we will hear in evidence, following his election
17 as First Minister Lord McConnell had determined that the
18 new Minister for Education should have a broader role,
19 internally and externally signalling that the work of
20 the department with young people outside of schools was
21 to be given a higher priority than it had in the past.
22 He appointed Cathy Jamieson as the first Minister for
23 Education and Young People, given her professional
24 experience and close involvement with young people in
25 care prior to being elected as an MSP. On

1 Lord McConnell's re-election as First Minister in 2003,
2 Ms Jamieson moved to become Minister for Justice and
3 Peter Peacock replaced her as Minister for Education and
4 Young People.

5 Thereafter, my Lady, following on from the 2002
6 Child Protection Summit, in March 2003 the Protection of
7 Children (Scotland) Act 2003 became law aimed at
8 improving safeguards of children by listing those
9 unsuitable to work with children.

10 In August 2002 Mr Daly lodged his petition calling
11 for the Scottish Parliament to urge
12 the Scottish Executive to make enquiries, as we have
13 heard a great deal about. The petition was sent to the
14 Public Petitions Committee, the PPC, and in October of
15 2002 the PPC asked the Scottish Executive for a response
16 to that petition. Although a First Minister rarely has
17 any involvement, direct involvement, in ministerial
18 responses to Parliamentary petitions, a petition of this
19 nature required input from ministers of various offices
20 as well as the First Minister's office. It was
21 a particularly complex and important subject matter and
22 seen as such. Several departments, officials and
23 advisers were involved in this matter throughout the
24 currency, which may come on to explain some of the
25 difficulties which we will hear about in evidence.

1 Despite advice from officials to Ms Jamieson
2 in November 2002 to reject the petition,
3 Lord McConnell and Ms Jamieson, with engagement from
4 special advisers, ultimately agreed that they would work
5 towards a positive response. Time was required to
6 investigate, so a holding reply was sent to the PPC. It
7 was always Lord McConnell's view and intention that
8 an apology should be made. However, he wanted this to
9 be a genuine and meaningful apology made to all
10 survivors at the right time.

11 Following the interruption of the May 2003 election
12 and the establishment of the new PPC in the summer of
13 2003 ministers and advisers met in September of 2003 to
14 discuss the formal response. Recommendations of that
15 meeting were presented to Lord McConnell in December by
16 way of a written minute. The ministers had agreed at
17 that time that a full Public Inquiry was not necessary
18 but that a package of support measures was the
19 appropriate response, notably health services access for
20 survivors and an access to the Scottish Executive's
21 historic records.

22 Lord McConnell recognised ministers felt
23 a Public Inquiry was unhelpful at that stage but he was
24 mindful of the need to do something more, and he was
25 aware of the feeling of rejection that was felt as

1 a result of both the original abuse and the subsequent
2 lack of action or empathy when survivors reported that
3 abuse. He suggested another route of investigation;
4 that was the appointing of the independent expert to
5 review the issues and produce recommendations. He asked
6 that this be considered.

7 Thereafter in March 2004 the Scottish Executive
8 convened their second Child Protection Summit at which
9 Charter for Children, produced alongside Save The
10 Children, was unveiled. That contained pledges from the
11 Executive, including a new multidisciplinary inspection
12 system, money towards training additional social workers
13 and a framework of standards for protecting children and
14 young people. The formal response to the petition was
15 subject to a number of delays and in June 2004
16 Mr Peacock apologised for those delays, and was asked as
17 the then responsible minister to give evidence to the
18 PPC on 29 September 2004. During that evidence he
19 provided a further apology or apologies for the delays,
20 and it was made clear at that time there would be no
21 Public Inquiry in the meantime but various measures were
22 set out.

23 It was determined by the PPC that the matter should
24 be debated in the Scottish Parliament on 1 December.

25 In the period between the PPC hearing and the debate

1 it was agreed that Peter Peacock would announce that all
2 relevant executive files would be open for public
3 inspection and that the Executive would take all
4 reasonable steps to trace and open these files.

5 A short-life working group on child sex abuse, including
6 the issue of institutional abuse, would be established
7 and the Executive would fund approved counselling
8 services. Further, an independent expert was to be
9 appointed to examine the issue of systemic abuse.

10 Previous Ms Jamieson, as Minister for Justice, had
11 invited the Scottish Law Commission to review the law in
12 Scotland on limitation, a move Lord McConnell was
13 supportive of. It was agreed that on the day of the
14 debate prior to it beginning Lord McConnell would speak
15 to address the desire for a public apology. That
16 apology was delivered by the then First Minister, now
17 Lord McConnell. It has been referenced several times
18 before your Ladyship, including of course today.
19 I don't intend to address you further on the apology.
20 That will come in evidence.

21 It is sufficient to say at this stage that
22 the apology was in draft until the very morning of
23 1 December 2004 when it was delivered. Last minute
24 interventions had been made by the then Lord Advocate,
25 as well as by a number of various officials and

1 advisers, legal and otherwise, on which we will hear
2 evidence this week.

3 After that debate and apology the independent
4 expert, Mr Shaw, was appointed and he carried out his
5 review, eventually reporting in 2007, which came after
6 the election at which Lord McConnell's party lost the
7 majority and it was left to the SNP administration to
8 follow up on the recommendations and to follow building
9 the work of Lord McConnell's administration. In the
10 interim period between the debate and leaving office,
11 Lord McConnell's Government continued to work on child
12 protection in its broadest sense. A National Strategy
13 for Survivors of Child Abuse was launched in 2005 and
14 "Getting it Right for Every Child" was launched in 2006,
15 a policy to make sure all children received all the help
16 they needed from family, alongside education, health and
17 social work services in particular.

18 In conclusion, my Lady, Lord McConnell has
19 maintained his interest in this particular subject and
20 has followed the work of the Scottish Ministers and this
21 Inquiry as matters have progressed. He welcomes the
22 opportunity to give evidence in person this week and to
23 be permitted the opportunity to have closing submissions
24 made on his behalf.

25 LADY SMITH: Thank you very much, Ms Donald. That is very

1 helpful.

2 Finally could I turn to the representation for
3 Scottish Government, and that is Ms O'Neill.

4 Opening submissions by MS O'NEILL

5 MS O'NEILL: My Lady, the Scottish Ministers' interest in
6 this phase of the Inquiry's work is clear. The Inquiry
7 intends to examine the action of Central Government in
8 relation to issues arising out of non-recent abuse of
9 children in institutional care and specifically the
10 response of the Scottish Government to survivors of
11 abuse in the period from 2002 until the end of 2014 when
12 the decision to establish this Inquiry was taken. The
13 Inquiry particularly intends to explore reasons why
14 calls for a Public Inquiry in the period between
15 August 2002 and December 2014 were turned down by the
16 Scottish Government.

17 It is appropriate that the Scottish Government
18 contributes to this part of the Inquiry's work. It is
19 appropriate and necessary for the Scottish Government to
20 respond to the evidence that has already been given by
21 survivors of abuse, about their experience of engaging
22 with the Scottish Government, and to respond to the
23 evidence that is about to be given by those witnesses
24 who are to appear in person or have their statements
25 read-in in the next several weeks.

1 I do not intend to pre-empt the evidence about to be
2 given or, in this opening statement, to respond to
3 earlier evidence. That is more properly for closing
4 submissions. I do, however, wish to make some short
5 submissions about the Scottish Government's position in
6 relation to this aspect of the Inquiry's work.

7 The first of these concerns the approach that
8 Scottish Government has adopted and will adopt in
9 relation to this phase, including in closing
10 submissions.

11 On the first day of the Inquiry's hearings on
12 31 May 2017, I said in my opening submissions that the
13 Scottish Ministers take their responsibilities to the
14 Inquiry seriously, and that they would engage fully with
15 the Inquiry to assist it in fulfilling its terms of
16 reference and in producing a comprehensive public record
17 and commentary on past abuse of children in care in
18 Scotland. I also said that the Scottish Ministers would
19 continue to listen to survivors and that they remained
20 determined to take steps to support those who
21 experienced abuse in care and to protect children in
22 care in Scotland in future.

23 That remains the commitment of the
24 Scottish Government and, that being so, the Government
25 does not regard its role in this phase of the Inquiry's

1 work as being to defend the Scottish Government's record
2 during the period 2002 to 2014 in the sense that one
3 might defend a client in the context of contested legal
4 proceedings.

5 I am instructed to draw the Inquiry's attention to
6 material that helps to explain the Scottish Government's
7 actions during this period, but I am not instructed to
8 minimise the criticisms that have been levelled at
9 Government by survivors or to suggest that the response
10 of Government was in all respects satisfactory. Rather,
11 the Scottish Government considers that its principal
12 role in relation to this phase of the Inquiry is to
13 ensure that the Inquiry is provided with sufficient
14 information to enable it to reach factual findings that
15 are as accurate as possible and to put before the
16 Inquiry material that may be relevant to the Inquiry's
17 judgment on the adequacy or inadequacy, as the case may
18 be, of the Government's response at different points in
19 the period 2002 to 2014.

20 The Scottish Government has already attempted to
21 assist the Inquiry in that task through the production
22 of both the original and updated reports on the 2002 to
23 2014 period which have been released to those with leave
24 to appear in these hearings.

25 The Scottish Government has also provided to the

1 Inquiry a substantial volume of documentation going
2 beyond those referred to in the reports themselves and
3 beyond the individual documents that have been released
4 for these hearings. Those documents are all available
5 to the Inquiry and form part of the record of the events
6 of 2002 to 2014.

7 At the conclusion of these hearings, the closing
8 submissions for the Scottish Government will address the
9 2002 to 2014 reports, other documents that have been
10 produced and the evidence of survivors and other
11 witnesses. Those submissions will aim to present the
12 material in a measured and balanced way.

13 The second matter I want to address is that of the
14 distinction between the Scottish Government as
15 an institution and the Scottish Government as
16 a political administration. The Inquiry will hear
17 evidence over the next several weeks from former and
18 serving ministers in the Scottish Government as well as
19 from former and serving civil servants. I represent the
20 Scottish Government in respect of the whole period
21 between 2002 and 2014 being considered by the Inquiry at
22 this time. The Scottish Government is institutionally
23 and legally responsible for actions taken on its behalf
24 and for liabilities incurred by it throughout that
25 period. However, a distinction is to be drawn between

1 institutional and legal responsibility on the one hand
2 and political responsibility on the other.

3 Later political administrations are not generally
4 bound by or responsible for policy decisions taken by
5 earlier administrations. The break in political
6 responsibility that occurs on a change of administration
7 is recognised in various conventions and in the Scottish
8 Ministerial Code. The principle of collective
9 responsibility for Government decisions applies to
10 ministers in respect of decisions taken while they were
11 in Government and not to decisions of previous
12 administration.

13 I make reference to this distinction to explain,
14 first, why it is open to ministers and former ministers
15 to comment on and disagree with the decisions taken by
16 administrations of which they were not part. That they
17 may do so does not affect the legal or institutional
18 responsibility of Scottish Government for the decisions
19 of each such administration.

20 I also make reference to this distinction to explain
21 why I will, in due course, make submissions about the
22 material that is before the Inquiry and what can be
23 concluded from that material about what was done on
24 behalf of Scottish Government at various times. Those
25 submissions will include comments on aspects of

1 Civil Service conduct that have been raised by
2 survivors. However, I will seek to avoid making
3 judgments on the policy decisions that have been taken
4 by ministers in earlier administrations. It is not the
5 intention of those instructing me to use the
6 Scottish Government's representation before the Inquiry
7 to make partisan political points.

8 Equally, while the approach of civil servants to
9 issues raised by survivors and their advice to ministers
10 will be of importance to the Inquiry, the decisions that
11 were ultimately taken about what action to take or not
12 to take were decisions of the Scottish Government and
13 not of individual civil servants. The Scottish
14 Government will not seek to attribute institutional
15 responsibility for those decisions to civil servants.
16 To do so would not properly reflect the role of the
17 Civil Service or the relationship between civil servants
18 and ministers, and it is of course for the Inquiry to
19 make its own judgments on the decisions taken by
20 different administrations that were in office during the
21 period 2002 to 2014.

22 The last matter I wish to address in these opening
23 submissions, my Lady, is of that apology. In earlier
24 hearings of the Inquiry I have referred to apologies to
25 survivors of abuse that have been given by ministers in

1 the Scottish Government in other forums. I have also,
2 on behalf of the Scottish Government, conveyed apologies
3 directly as I did in my submissions in relation to child
4 migration.

5 In relation to these hearings, the Inquiry will be
6 aware that the Government's 2002 to 2014 report contains
7 a written apology for the experiences that survivors had
8 when engaging with Scottish Government, and we have
9 already heard reference to those this morning.

10 The Inquiry will also during these hearings hear
11 directly from the Deputy First Minister, including on
12 the question of apology. I would not therefore intend
13 to say anything further myself on that issue in these
14 opening submissions.

15 My Lady, those are the opening submissions for the
16 Scottish Government.

17 LADY SMITH: Thank you very much, Ms O'Neill.

18 As I mentioned earlier, I am going to rise at this
19 stage briefly before we get to the start of the
20 evidence. We could take the morning break now in any
21 event because it's coming up to 11 o'clock.

22 MR PEOPLES: Yes, I think that would be a sensible thing to
23 do, and we can organise for the witness.

24 LADY SMITH: Thank you.

25 (10.53 am)

1 (A short break)

2 (11.10 am)

3 LADY SMITH: Mr Peoples.

4 MR PEOPLES: My Lady, the first witness this morning is
5 Michael McMahon.

6 LADY SMITH: Good morning, Mr McMahon. Would you raise your
7 right hand and repeat after me ...

8 MR MICHAEL MCMAHON (sworn)

9 LADY SMITH: Please do sit down and make yourself
10 comfortable. Help me first of all with this. How would
11 you like me to address you? Michael or Mr McMahon?

12 A. Michael is fine.

13 LADY SMITH: Thank you. Michael, you know you have a copy
14 of your statement ready to use but Mr Peoples will
15 explain to you what happens next. If you are ready,
16 I am ready for him to start.

17 A. That is absolutely fine.

18 Questions from MR PEOPLES

19 MR PEOPLES: Good morning. Do you wish me to call you
20 Michael?

21 A. That is absolutely fine, yes. Thank you.

22 Q. You have in front of you a red folder. That contains
23 a copy of a witness statement that you have already
24 provided to the Inquiry. Your statement will also
25 appear on a screen that is in front of you and I think

1 you can probably see it already before you. Can you see
2 it?

3 A. I can, yes.

4 Q. Feel free to both refer to the statement, the paper
5 statement or the electronic statement, at any point, and
6 if you want to take time to look at something, if I ask
7 a question, just take the time that you need.

8 Can I just first of all, for the record, say that
9 the statement you have provided is WIT-1-000000413, that
10 is just the Inquiry's reference for the statement.

11 LADY SMITH: I am sure you understand, Michael, don't worry
12 about the numbers. They go into the transcript. It
13 helps us if we have it there, thank you.

14 MR PEOPLES: You tell us you are Michael McMahon and that
15 you have provided a statement to the Inquiry as we have
16 just discussed.

17 Can I just ask you, at the very beginning, to go to
18 the final page of your statement at paragraph 51 on
19 page 11. I think you confirm you have no objection to
20 your statement being published as part of the evidence
21 to the Inquiry and that you believe the facts stated in
22 your witness statement to be true?

23 A. Yes.

24 Q. Can you confirm for us that you have signed your
25 statement?

1 A. I did it electronically, yes.

2 Q. Can I ask you to have the statement in front of you.

3 The reason you are here today, I think as you will
4 appreciate, is that you were Convener of the Public
5 Petitions Committee of the Scottish Parliament on two
6 occasions, and I think the one we are really interested
7 in today is the period when you were Convener between
8 11 June 2003 and 2 April 2007, is that correct?

9 A. That's correct, yes.

10 Q. You are a member of the Scottish Labour Party, as you
11 tell us in your statement, and I think you were an MSP
12 for quite a long time, is that correct?

13 A. 17 years.

14 Q. And that is from 1999 until 2016?

15 A. Yes.

16 Q. In your statement at paragraphs 4 through I think to 15
17 you tell us a bit of background about the Public
18 Petitions Committee, and I wonder if you could today
19 tell us a little bit about what the Committee was about,
20 how it operated, and some of the things that you
21 initiated which you have told us about in your written
22 statement?

23 A. Prior to the establishment of the Scottish Parliament,
24 the constitutional convention had looked at different
25 aspects of Parliamentary operation throughout the world,

1 primarily Westminster, but to look and see where
2 improvements could be made on the Westminster system.
3 One of the things that was stipulated in the
4 constitutional convention, and ultimately the
5 legislation that brought about the Scottish Parliament,
6 was that there should be a Public Petitions Committee.

7 There has always been a petitions system at
8 Westminster, going back to the Magna Carta, as far as
9 I understand, where representations could be made on
10 behalf of people by their elected representatives. But
11 the difference that was stipulated and established in
12 a Public Petitions Committee in the Scottish Parliament
13 is this would be a committee at which members of the
14 public themselves could petition the elected
15 representatives in that new Parliament.

16 So it started off with very strong principles but it
17 didn't have any structure, and it wasn't a criticism
18 because initially a lot of the committees had to find
19 their own feet, find their own way of operating. There
20 were certain rules and established principles at the
21 outset, but in terms of the Petitions Committee, it was
22 very much in the first session of the Parliament doing
23 things almost ad hoc, trying to find the best way to do
24 it, looking at petitions as they came forward and
25 finding ways to deal with them.

1 Q. When you talk about the first session of Parliament, I
2 think we are talking about a period from 1999 through to
3 about 2003?

4 A. Yes. We always think about these things in terms of the
5 session, but, yes, it was the first four years of the
6 Parliament when the new building didn't exist, the
7 committee system was first being tested and put into
8 operation, and there were a lot of things that were
9 happening at the outset where things were being tried
10 and, if they didn't work, looking at new ways to try and
11 do that.

12 So at the start of the second session, when I was
13 given the privilege of being the Convener of the
14 Committee, one of the first things that I asked the
15 clerks was is there anything glaringly obvious that
16 needed to be addressed, outstanding from the first
17 Parliamentary session, that would help the work of the
18 Committee in taking it forward. One of the things that
19 we quickly established was that there had to be some
20 structures put in place which would possibly tighten up
21 and reduce the amount of vexatious petitions that were
22 coming forward, unnecessary petitions, things that right
23 from the outset could be established weren't in the
24 remit of the Committee to look at. For example, there
25 are decisions made by local authorities, health boards

1 and what have you, that are purely for those
2 organisations to make, and the Scottish Parliament has
3 no locus in those decisions. But when someone was
4 dissatisfied with something that happened at the Local
5 Authority level or Health Board level or wherever the
6 authority lay, they thought the next stage was just to
7 take it to the Public Petitions Committee and ask them
8 to intervene.

9 Q. So did you, in effect, really lay down some broad rules
10 and procedures --

11 A. That was something we set out to try and do at the
12 outset, not to reduce the number of petitions, because
13 we also at the same time were trying to find new ways of
14 attracting petitions, but to try and ensure that they
15 had some merit before they actually arrived at the point
16 they came to the Committee.

17 Q. One thing I think you maybe said in your statement is
18 that you wanted it to be a Public Petitions Committee
19 not a committee to which MSPs could go with their
20 problems or the problems on behalf of constituents?

21 A. That was one thing that had particularly concerned me
22 even as an outsider in the first session, when you would
23 see issues being raised at a local level, it could have
24 been a campaign by local people about a bus service or
25 something like that, and local politicians would get

1 involved in that campaign and they would bring the
2 petition to the Petitions Committee and use it as
3 a campaigning tool and put out press releases, leaflets
4 at election time, various mechanisms that politicians
5 will use to publicise what they have done in their job.
6 And I felt that was detracting from what the purpose of
7 the Committee was, and the purpose of the Committee was
8 to allow members of the public to raise issues with the
9 parliamentarians and not for the parliamentarians to hog
10 the limelight using the petition system.

11 Q. Obviously the type of matters that could be raised could
12 involve matters that affected Central Government. The
13 public could raise issues that were of concern or the
14 responsibility of Central Government, is that correct?

15 A. Yes, they had to have some locus with the Scottish --
16 well, initially the Scottish Executive and then the
17 Scottish Government.

18 Q. Don't worry, we've already established that we will
19 treat those two terms as one and the same. So don't
20 worry which one you slip into, we'll know what you mean.

21 You have a section in your report, and maybe again
22 I could just ask you to maybe summarise what you are
23 saying there, which is headed up at paragraph 11 and
24 following, "The Powers of the Committee". I think you
25 there try to say essentially what the committee can do.

1 Can you maybe summarise for us in your own words what
2 the broad powers of the Committee were at that time?

3 A. The broad powers were to take on board issues which the
4 Committee felt the Scottish Government should be made
5 aware of to try and address concerns that had arisen out
6 of either personal or community issues for which there
7 was no resolution at the local level. So if someone was
8 unhappy with a decision -- I'll use the bus service,
9 because they are less controversial than some of the
10 other ones we have. If a decision was made to curtail
11 a bus service and the local community felt that
12 something was awry in doing that, it is for -- there is
13 an authority that deals with that issue. But if in the
14 manner in which that decision was made there had been
15 something that could have been taken into consideration
16 and prevented that decision from being made, that would
17 be the issue that could be brought to the Parliament.
18 So it was about governance rather than individual
19 decisions.

20 So someone couldn't say "Well, I was unhappy that my
21 bus service was taken away", and come and ask for the
22 Parliament to re-establish that bus service. But what
23 they could say is "We weren't advised this was going to
24 happen, we weren't provided with an opportunity to get
25 engaged in a consultation around this decision", and

1 therefore come to the Parliament and ask the Parliament
2 to look at the processes by which that decision had been
3 made. So we had to establish that it was not about
4 people coming and saying, you know, I am not happy with
5 a particular decision.

6 There were also, as I said, not necessarily
7 vexatious but problematic petitions. Just to give you
8 an example, there was one gentleman who submitted around
9 50 petitions, and it dawned on us how and why he was
10 doing that. He was virtually watching the news of an
11 evening, seeing something that he didn't like, and
12 petitioning the Scottish Parliament to change that
13 particular issue. The thing that struck us most, when
14 one particular petition arrived on our desk, was that he
15 had been watching the news, and the item he had been
16 watching on the evening news was actually a report of
17 a petition that was in front of the Petitions Committee,
18 and he picked up on it and he wrote to the Petitions
19 Committee asking the Petitions Committee to address this
20 issue that he had seen on the news.

21 We had to address those types of issues. It wasn't
22 to try and stop people from coming to the Committee, but
23 to try and get some focus behind what they were bringing
24 to the Committee.

25 LADY SMITH: Michael, just to pick up on one thing you have,

1 with respect, made very clear. It sounds as though the
2 Committee recognised that if what the individual wanted
3 was to try and undo the decision that they were unhappy
4 with, going to you was not the place to go because that
5 might be an avenue for judicial review. But what you
6 could look at is whether the procedures that had
7 produced the decision that the person was unhappy about
8 ought to be looked at by the Scottish Parliament and
9 considered to see if there was anything they could do
10 about altering procedures so that people weren't unhappy
11 with the way in which decisions were being made. Have
12 I picked you up correctly?

13 A. That is absolutely correct, my Lady.

14 MR PEOPLES: If we turn more directly to why we are perhaps
15 here today, about a particular petition, PE535. And
16 I might just generally call that the Daly petition, so
17 if I use that expression, rather than keep mentioning
18 PE535, perhaps we can just agree that that is what we
19 are talking about.

20 In relation to that petition, that I think concerned
21 a matter where an individual submitted the petition to
22 your committee in August of 2002, and it was really
23 seeking the Parliament's assistance to achieve certain
24 aims on a matter which the petitioner considered was
25 a matter of national importance and considerable public

1 interest. Would that be a fair description of the type
2 of petition that you were presented with?

3 A. Yes, absolutely.

4 Q. I am going to come back to the debate that ultimately
5 was held in relation to this petition, but you do tell
6 us in your introductory section of your statement, when
7 dealing with your procedures, that the debate that was
8 held in relation to the Daly petition was a first for
9 the Petitions Committee, is that correct?

10 A. It was. It was the first time the Petitions Committee
11 had asked for time in the Parliament to discuss
12 a petition that was actually before it.

13 Q. I will come back to the petition and why you chose to do
14 that in due course, but that was a first, so that was --

15 A. There had been discussions in the Parliament of issues
16 that had arisen at the Petitions Committee, either
17 individual MSPs had asked for time or used members'
18 debates where they request time to discuss a particular
19 issue. But this was the first time the Petitions
20 Committee as a committee itself had asked for time in
21 Parliament to raise an issue.

22 Q. So the difference was the Committee wanted the matter
23 debated in Parliament. It wasn't an MSP who perhaps had
24 some degree of support from a committee that wanted the
25 matter raised, it was the Committee itself --

1 A. Yes, committees were allocated and are still allocated
2 a certain amount of time in each session collectively,
3 and when an issue is in front of a committee they can
4 speak to the Parliamentary Bureau and request one of
5 those time slots to debate something that either they
6 have concluded or they want to raise in the Parliament
7 to try and take an issue forward. As I said, the
8 Petitions Committee would have had time to debate issues
9 that had been before it, almost like an annual report or
10 at the conclusion of something to raise what had taken
11 place. There have been some debates in which the
12 Petitions Committee had had some locus, but this was the
13 first time the Petitions Committee, in order to achieve
14 an outcome, had sought --

15 Q. So that is one route to achieving an outcome that
16 perhaps the Committee supports, for example, or simply
17 wants to get an outcome upon, that is one route.

18 Just before I go this particular petition, again on
19 the generalities, in terms of the powers of the
20 Committee in relation to actions of Government, what
21 powers does the Committee have? They can bring
22 ministers to appear before them as we will discover.
23 That is one thing to, ask them questions. What can they
24 do, apart from ask for a debate, if they perhaps feel
25 that that route is not achieving satisfaction?

1 A. That was why I called the debate the nuclear option,
2 because normally the process that is followed is
3 communication between the Committee and the minister
4 responsible for that area, and at some point a decision
5 had to be made by the Committee as to whether they had
6 arrived at the end of the process, that they couldn't
7 get any further, that the response they had received
8 from the minister had been their definitive answer and
9 couldn't be taken any further. At that point you have
10 to do what was called closing the petition, and you
11 advised the petitioner that you have sought every avenue
12 that you can but the outcome that they were looking for
13 has either not been fully achieved, partially achieved
14 or fully achieved, and at that point you then close the
15 petition. This petition wasn't closed at the time we
16 asked for the debate and the purpose of holding the
17 debate was to try and progress the petition.

18 Q. I will come back to the issue of the closure of this
19 petition, because you have some thoughts on that in your
20 statement, but I will come back to that in due course.

21 Can we maybe just put up at this stage the petition
22 itself which is PAR.001.001.0001. Hopefully it will
23 appear on a screen shortly. I think you can see that in
24 front of you. That was the petition that was presented
25 to the Committee that you were Convener of in August of

1 2002 and the petitioner was Christopher Daly?

2 A. Yes. Just for clarity, and this is only in case it
3 matters in any other discussions, every petition comes
4 forward in the name of one individual. It may have the
5 support of thousands of people, but every petition was
6 brought forward in the name of an individual, and one of
7 the things I changed was that that person shouldn't be
8 an MSP, it had to be a member of the public.

9 LADY SMITH: You say it shouldn't be an MSP?

10 A. No, we changed the rules and they weren't MSPs after
11 a while. Because there was no rule to say that they
12 couldn't. They were exploiting a loophole and, as
13 I said earlier, using it for campaigning purposes. One
14 of the decisions which I put forward and the Committee
15 endorsed, and it was then endorsed by Parliament itself,
16 was that MSPs would not be the named petitioner.

17 MR PEOPLES: In this case the principal petitioner,
18 according to the procedures, was Christopher Daly.

19 A. That is correct.

20 Q. I think you later learned that he was a member of a
21 group called INCAS?

22 A. Yes.

23 Q. Which was a survivors group which supported the aims of
24 the petition?

25 A. Yes.

1 Q. I think that is uncontroversial.

2 Just looking at the petition, do we see what is
3 being sought, that the petitioner is asking the
4 Scottish Parliament, your Committee in particular, to
5 urge the Scottish Executive to commence an Inquiry into
6 past institutional child abuse, so that is one of the
7 aims?

8 A. Yes.

9 Q. The second principal aim, I think, as we see from the
10 petition itself, is that the petitioner is also asking
11 the Parliament to make an unreserved apology for certain
12 State bodies that were involved in the care of children
13 in institutions, or had responsibility for them --

14 A. Yes.

15 Q. -- perhaps that is a more accurate word. Indeed, there
16 was a particular interest in those who had been in the
17 care of the State under what is described as the
18 supervision of religious orders?

19 A. Yes.

20 Q. Effectively in homes run by religious orders?

21 A. Yes.

22 Q. We then see, and I think we remarked on this in phase 1,
23 you weren't here, but the terms of reference bear some
24 similarity to this Inquiry's terms of reference that
25 Mr Daly put together at that time. He told us a little

1 bit about the background to that. But essentially he is
2 wanting an Inquiry, he is wanting an apology from
3 certain bodies, not simply State bodies but also the
4 religious orders who were caring for children, and he is
5 saying that, as proposed terms of reference, he wants
6 victims of institutional child abuse in Scotland to be
7 given an opportunity to tell of the abuse they suffered
8 to a sympathetic, experienced forum. So that was one of
9 the things he wanted to happen, that some form of
10 sympathetic, experienced forum would be established to
11 hear the accounts of people who had suffered abuse?

12 A. Absolutely, yes.

13 Q. But he was also wanting some form of investigation to
14 establish a picture, as he puts it, of the causes,
15 nature and extent of physical, sexual and emotional
16 abuse of children in institutions from 1940 or
17 thereabouts to the time of the petition. And he wanted
18 a report to be prepared and made public which would set
19 out findings of that investigation and also contain any
20 recommendations considered appropriate to address any
21 continuing effects of the abuse which had been examined
22 by the Inquiry he was seeking, is that --

23 A. Yes, that was very clear.

24 Q. He suggested I think that as part of that exercise,
25 special advisers might be appointed to supply

1 information on areas of relevance to the investigation
2 and indeed to conduct investigations, hold hearings and
3 so forth in public and private. So he was looking for
4 a broad range of things --

5 A. Yes.

6 Q. -- as part of this petition.

7 On receipt of the petition I think -- am I right in
8 thinking, and we can maybe take this relatively short
9 because I think it is fairly familiar to this Inquiry,
10 that your response was to ask the Scottish Executive to
11 respond to the petition?

12 A. That was already set in train. I wasn't the Convener
13 when the petition --

14 Q. Sorry, when I say "you" --

15 A. The committee, yes.

16 Q. My apologies, you are perfectly right. I think what we
17 know is that there was an initial communication with the
18 Scottish Government, Scottish Executive on
19 9 October 2002 asking it to respond --

20 A. Yes.

21 Q. -- to the Committee. And just so that we are clear,
22 I think there is an issue about certain delays that may
23 have been caused by where communications were sent, and
24 I think, just to take this short at this stage, I think
25 some of the letters that went from the Committee from

1 then until you received a substantive response
2 in June 2004 had gone to the Health Department of
3 the Scottish Executive, but the Education Department was
4 the department which took responsibility for making the
5 response, is that correct?

6 A. That was my understanding, yes.

7 Q. Yes. To some extent that may have caused some periods
8 of delay in responding, what the Committee was seeking
9 in response.

10 A. I think that is the case. And my recollection is that
11 the Committee understood this type of miscommunication
12 can happen when you have directorates who have
13 crossover, or they may have -- the crossover had taken
14 place and that there was a new directorate who had taken
15 responsibility for a particular issue, correspondence --
16 there may have been an overlap or some form of
17 miscommunication. I don't think anyone -- certainly it
18 didn't bog down the Committee to any great extent, it
19 was just -- there was an acceptance that there was
20 a delay, that there had been miscommunication, but
21 I think people accepted there were a genuine set of
22 circumstances that had --

23 Q. I am not suggesting otherwise, I am just trying to get
24 a picture.

25 LADY SMITH: Michael, can you remember why it was decided

1 that Health was the appropriate department to send it to
2 in the first place?

3 A. My Lady, I wasn't involved in that discussion. As
4 I said, the clerks may have felt that care issues were
5 the responsibility of Health under one of
6 the directorates, but directorates change from time to
7 time, and the minister who has responsibility for that
8 could have something taken from one directorate and
9 given to them as a responsibility which would make it
10 move from Education to Health or vice versa, or to
11 Justice or wherever. So those types of changes do occur
12 from time to time and the directorates change from time
13 to time.

14 LADY SMITH: But it was still nearly two years before
15 a response emerged.

16 A. Yes.

17 MR PEOPLES: Perhaps I will just explore this with you.
18 I think we will find out that within Government, the
19 issues raised by the petition were considered to be ones
20 which affected a number of departments, if I can put it
21 that way, such as Health, Education and Justice, and
22 I think that ultimately all three of these departments
23 had some input into responses to the Committee and
24 advice to ministers.

25 A. Yes.

1 Q. You may not know that. I don't know if you do or not?

2 A. I am certainly aware of that difficulty arising, I am
3 still dealing with that in my current job. You think
4 a certain minister has responsibility for the area you
5 are interested in and discover it is under a different
6 directorate or you have to deal with two or three
7 ministers.

8 Q. For those who are not familiar with what happened here,
9 and I think I can take this short, but while it went to
10 Health in August, once it was received and picked up,
11 there was a discussion of which department would lead on
12 the response to your committee, and that it was decided
13 that Education would take the lead role in arranging for
14 a response to your Committee's communication, first
15 communication, and indeed the matter was being
16 considered by Education in November or thereabouts of
17 2002.

18 However, I think the first -- the initial response
19 you got from Government arrived on 17 February 2003, and
20 perhaps we can just put that one up at the moment. It's
21 SGV-46947.

22 We can see that what was sent to I think the clerk
23 of the Committee, Mr Farrell, is that right, from the
24 Private Secretary to the Minister for Education, who was
25 then Cathy Jamieson, was a letter of 17 February

1 attaching a memorandum in response to the Committee's
2 letter seeking executive views on the Daly petition.

3 If we just look at the memorandum itself just for
4 the moment. I appreciate you weren't Convener yet but
5 just to get the history of it. This is the initial
6 response, and do we see there is set out towards the
7 foot of the second page --

8 A. That is still just the cover page.

9 Q. If we can go to the next page and scroll down towards --
10 there is a section headed "Scottish Executive Response",
11 and do we see there is a response set out there? And
12 paragraph 1 reads:

13 "Any case of child abuse is unacceptable. Abuse of
14 vulnerable children in institutions which should provide
15 them with safety is particularly deplorable."

16 So that is the first response.

17 In paragraph 2, the response is:

18 "The Scottish Executive is considering whether
19 an Inquiry of the sort requested ... [by Mr Daly] or
20 some other forum, should be established to look into
21 cases of abuse in institutions in Scotland, having
22 regard to cases that have come to light in recent years,
23 and what other role the Executive might take in
24 addressing these cases. The Scottish Executive will
25 also consider the experiences of institutional child

1 abuse in other countries."

2 And then paragraph 3, the third response is:

3 "The Scottish Executive is committed to ensuring
4 that appropriate systems are in place to protect
5 vulnerable children from abuse. Much has been done to
6 improve child protection in recent years and further
7 measures are planned, including ..."

8 And I am not going to read all of these out, but
9 there is a list of various things that are going on at
10 that time to, if I can put it this way, improve child
11 protection for children currently in care. Would that
12 be fair to say?

13 A. Yes.

14 Q. It's not really looking at adult survivors of past
15 abuse, but that is what that list really amounts to, is
16 that correct?

17 A. That is correct.

18 Q. So that is the initial response. You weren't Convener
19 then but clearly you became Convener in 2003, and at the
20 time you became Convener there was still no further
21 response from the Executive, is that correct?

22 A. That is correct.

23 Q. So you would have had a look at this, presumably --

24 A. Yes, every ...

25 Q. Every time you met to discuss the petition, you would

1 have --

2 A. Yes, all the paperwork and supporting evidence and
3 comments from people who had supported the petition.

4 Q. Yes. Just on that matter, reading paragraph 2, which is
5 concerned with issue of an Inquiry, what did you take
6 from that response about the position on an Inquiry? It
7 says it is considering whether an Inquiry of the sort
8 requested or some other forum should be established.
9 What did you read into that, if anything?

10 A. The Scottish Executive has its mechanisms for Inquiries,
11 different levels of Inquiries. The severity of
12 the issue would determine whether a full Inquiry, a
13 Public Inquiry, there are different levels at which
14 Inquiries can be held, and that to me just suggested
15 that they were taking advice on what level of Inquiry
16 would be sufficient to address the concerns raised in
17 the petition.

18 Q. Did you think at the time that you would eventually
19 receive a response saying "We're not going to have
20 an Inquiry of any kind"?

21 A. That was a disappointing response because you --

22 Q. I appreciate it is disappointing, but I am just trying
23 to get back to your thoughts. Were you reading into
24 that that, well, they are considering what type of
25 Inquiry rather than whether to have an Inquiry at all?

1 A. Yes.

2 Q. Was that the way you read it?

3 A. That was the Committee's view and essentially the view
4 we were advised to take. Because it hadn't been
5 closed -- we hadn't been told there wouldn't be
6 an Inquiry, so you have to presume that when they say
7 they are giving it consideration, that that is exactly
8 what they are doing, and take it at face value.

9 Q. I think in response to that, as you know, and I am not
10 going to take you to the meetings, there was a meeting
11 in March of 2003 where this response was considered and
12 I think it was decided to seek a bit more information
13 about when you might get a more detailed timetable about
14 what was happening and what would be happening on the
15 matter, is that --

16 A. Yes, again that is standard practice for the Petitions
17 Committee, that after a given period of time a further
18 communication would be sent from the Committee to ask
19 for an update on any progress that had been made.
20 Because we were keen to always try and progress,
21 petitions are not just -- let them lie on shelves.

22 Q. Apart from responding in that way, saying, well, we want
23 a bit more information and when you are going to give us
24 what I might call a more substantive response, did you
25 take other action? Did you ask for the views of any

1 other body at that time?

2 A. Not as far as I am aware.

3 Q. Because I think there may be something in your meeting
4 that said you had perhaps sought to establish the views
5 of the cross-party group on childhood sexual abuse?

6 A. Again, this was still prior to me becoming the Convener.

7 Q. You are not aware --

8 A. I'm not entirely aware, but again that is the
9 standard --

10 Q. It would be quite standard.

11 A. Yes.

12 Q. We can look at the report to see if that was done and
13 what the response was.

14 Then we have this letter going out in March of 2003,
15 as we know, and broadly speaking, until May of 2004, the
16 picture, broadly speaking, is from the Petitions
17 Committee's point of view that you are sending out from
18 time to time various reminders and letters chasing up
19 a substantive response to see if you can get something
20 back on the matter, is that right?

21 A. That is correct.

22 Q. Some of them went to the Health Department but
23 ultimately there were a number of communications?

24 A. Yes, as far as I am aware.

25 Q. We know I think from other records, and I'm not going to

1 trouble you with this, I can ask other people, that
2 the Executive did consider the petition internally in
3 2003, and I am not going to go through that with you, we
4 will hear other evidence about that. So there were
5 things happening, but you weren't get any substantive
6 response?

7 A. No.

8 Q. Would I be right in thinking that by the time you got to
9 your meeting on 12 May 2004, the Committee had pretty
10 much lost patience with the Executive and there was
11 perhaps a mood of anger and frustration that all these
12 reminders were producing no response?

13 A. Yes, and we didn't just ask for a response, we asked if
14 the minister could come in front of us and tell us.

15 Q. I will come to that. But just taking it up to 12 May,
16 which I think -- you had been chasing up, and then
17 I think, without again going to that meeting because we
18 can read it for ourselves, there was a certain mood of
19 annoyance, anger, that the Committee was maybe not being
20 treated with the respect it should be by the Executive
21 and that you were really looking to move matters on?

22 A. Absolutely.

23 Q. The action you took at that stage was to write directly
24 to Peter Peacock, the Minister for Education and Young
25 People at the time, and also the First Minister,

1 Jack McConnell, and I think you wrote letters to try and
2 do something?

3 A. Amongst other things.

4 Q. Can I just ask you about that. These are formal
5 letters --

6 A. Yes.

7 Q. -- expressing, no doubt, disappointment and looking for
8 a response. How unusual was that course of action at
9 that time for the Committee in dealings with
10 Scottish Executive?

11 A. Not particularly extraordinary. As I said, the
12 Committee would often have to send reminders or ask for
13 updates, trying to progress things that had taken a bit
14 of time to get a response.

15 Q. I follow that, and I will come back to what you said
16 about other things that you maybe did to do this. But
17 it that usual to write directly to the First Minister on
18 an important issue?

19 A. No, not common, no.

20 Q. You didn't just write to the minister, you wrote to --

21 A. I wrote to the First Minister.

22 Q. So that was quite an unusual step?

23 A. I can't say it was unprecedented but certainly not
24 common.

25 Q. That would probably reflect the seriousness with which

1 you were treating the absence of a response?

2 A. Yes, and the petition itself. The Committee was very
3 clear that they wanted to see progress on this, but
4 without formalising its opinion, there was a -- I
5 certainly was never under any illusion that there was
6 any doubt in the minds of my colleagues on the Committee
7 that we felt this request was reasonable and was
8 something we wanted to see pursued to the conclusion
9 that Mr Daly had sought.

10 Q. In other words, to see the outcome he wanted came to
11 pass?

12 A. Yes, or as close to it as we could make it.

13 Q. You were at that time, as I think you tell us in your
14 statement, a Parliamentary aide to the First Minister as
15 well as being Convener of the Petitions Committee. Was
16 this matter raised by you in that capacity with him?

17 A. Yes.

18 Q. Was this before you had to write to him? I know it is
19 maybe difficult to remember.

20 A. It's difficult to remember but I am sure I would have
21 had conversations with the First Minister about our
22 concerns. He would have been aware -- because part of
23 the role of the Parliamentary aide is to flag up to the
24 First Minister where there might be difficulties so that
25 he is not blindsided on any given issue and, given that

1 I was central to an issue that I felt was getting to
2 that point, I am sure that I had conversations with the
3 First Minister to tell him that there was unrest about
4 this particular situation.

5 Q. Ultimately, can you remember what his response was?

6 A. His response was that he too wished to see a positive
7 outcome and hoped that the time could be given to allow
8 that to happen.

9 Q. What did you take from that?

10 A. I took it as a positive, that they were trying their
11 best to achieve some positive outcome.

12 Q. Apart from in your capacity as Parliamentary aide
13 speaking to the First Minister, did you speak to the
14 minister, Peter Peacock, on the matter? I think there
15 was a suggestion you may have had an informal
16 discussion?

17 A. Informal, because you bump into people in the Parliament
18 building and you have lunch with people and there were
19 opportunities to say, you know, are we going to get
20 a response? What is the hold up? And you could raise
21 that.

22 Q. What kind of reply were you getting about what the
23 problem was?

24 A. From my recollection, without giving me any specific
25 details, general responses around, you know, "Language

1 is important, Michael. Precedents are important. There
2 are ways of doing things that have to be looked at.
3 It's not as straightforward as you might hope it would
4 be". Those types of general -- without saying
5 specifically what a particular concern was that he may
6 have had, but I do know that he was taking advice from
7 lawyers and civil servants around the issue.

8 Q. I will come back to that, if I may, because you do deal
9 with in your statement.

10 Just carrying on with what is happening here, we
11 have got to 12 May, it's quite a long time since the
12 petition was submitted in August 2002, we are
13 in May 2004, and you are still waiting for the next
14 substantive response. You have written to the
15 First Minister, you have written to the minister, and
16 your next meeting after 12 May was on 29 June 2004, just
17 before the Parliamentary recess?

18 A. Yes.

19 Q. Another deadline missed, is that right?

20 A. Yes. The normal practice would be to try to get
21 a petition moved forward in a three-monthly cycle. We
22 wouldn't want to see something going beyond three months
23 without having made some progress, or brought it back to
24 the Committee to update, progress further, have
25 a discussion about next steps or what have you. So,

1 yes, a three-monthly cycle was a rule of thumb to try
2 and keep making progress with an issue.

3 Q. I suppose patience had worn completely away on the
4 matter. What action did you take when you had still not
5 received any substantive response from the
6 Scottish Executive?

7 A. I think the Committee instructed the clerks to write
8 again.

9 Q. Did you also take the step of asking the minister to
10 come before the Committee and give evidence?

11 A. Yes, I was just about to say I think that was at the
12 point at which we said: don't just respond to us, please
13 come in front of us and explain why we are having this
14 delay and what your current position is.

15 Q. So in the absence of a response, you said let's have the
16 minister appear, which he did, and we will come to that
17 in due course, on -- I think he appeared on
18 29 September 2004 after the recess.

19 So that was decided at that meeting. I think
20 shortly after that, and I don't know whether -- you
21 would have been made aware of this, I assume, that you
22 did receive a letter from the Scottish Executive, from
23 Mr Peacock, dated 30 June 2004 which for the first time
24 gave a substantive response to the issues that were
25 raised by the Daly petition, is that right?

1 A. As far as I recall, yes.

2 Q. Maybe I can take you to that to refresh your memory.

3 SGV-46961. You have got that in front of you, have you?

4 We see that is a letter to you, it's June 2004. You can

5 take it that the actual letter -- this is the text of

6 what was sent to you, but the letter was dated

7 30 June 2004. I think it was issued on or around that

8 time, probably 1 July I think from the records we have

9 seen. But this was the response. They missed the

10 meeting on the 29th, you had already decided the

11 minister is going to come and give evidence and be asked

12 questions on the matter, but then you get this as the

13 reply.

14 I am not going to ask you to go through all of this

15 letter, we are going to hear from the person who wrote

16 it or who signed it on behalf of the Executive, but we

17 see, do we not, that this is firstly a reply to the two

18 letters that the Committee sent in May to Mr Peacock and

19 Jack McConnell, letters of 17 and 19 May, is that right?

20 A. Yes.

21 Q. So it's a reply, but it is also replying substantively

22 to the issues raised by the petition?

23 A. Yes, he apologises --

24 Q. For the unacceptable delay, that is the starting point,

25 so there is an apology there for unacceptable delay. Is

1 that the only apology in that letter in terms of -- that
2 was all he apologised for in that letter?

3 A. As far as I am aware, yes.

4 Q. I think you know the point I am making?

5 A. Yes --

6 Q. There was no apology for past abuse in that letter?

7 A. Yes. And I come back to the point I made earlier about
8 the generalisation. I recall Peter Peacock saying to me
9 once when I did raise it with him, and as I say, it
10 wasn't a specific point but it was a general point,
11 where he said the advice he had been given by lawyers is
12 that certain words in terms of an apology have greater
13 standing in a legal environment than they might do in
14 general conversation and the appropriateness of words is
15 vitally important in the consideration of this. So to
16 use the word "apology" or "sorry", or what have you, has
17 a different connotation in a legal context than it might
18 otherwise do in everyday language.

19 Q. But the broad message you were getting was that, based
20 on some sort of advice in the background, don't mention
21 the word "apology" in context of past abuse, is that in
22 broad --

23 A. That was my understanding of it, yes.

24 Q. Or anything similar, like "express regret", because that
25 might be seen as much the same thing?

1 A. Yes, there are certain words that have implications in
2 legal terms.

3 Q. Did you know, at that time when these conversations were
4 taking place, did you know there were actions that had
5 been brought by people who wanted compensation for
6 institutional abuse? Did you know there were actions
7 against the Government at that time?

8 A. I was aware of one. I was representing a constituent
9 who had an issue and had been time-barred.

10 Q. So --

11 A. I was aware people were taking cases and trying to get
12 matters into court and were being --

13 Q. And they were against the Executive?

14 A. Yes.

15 Q. Among other people?

16 A. Local Authorities and Executive, yes.

17 Q. And you were aware also, as you have just said, that one
18 of the difficulties that you were getting from your
19 constituent, and I think you weren't alone in this, was
20 that these actions were having difficulties due to
21 arguments on time bar, and also they didn't bring the
22 action on time in accordance with the legal rules?

23 A. Yes.

24 Q. So that was a live issue and you were aware of that?

25 A. I was aware of it, yes.

1 Q. Looking at the letter again, I am not going to, as
2 I say, go through the reasons set out in the letter, but
3 what you are told there is there is not going to be
4 a Public Inquiry.

5 A. That is right.

6 Q. That is the gist of it, and these are the reasons why we
7 don't think an Inquiry is appropriate. There is no
8 apology for past abuse?

9 A. No.

10 Q. There is no suggestion that we are not going to have
11 an Inquiry in the meantime?

12 A. That is right, yes. This was --

13 Q. No Inquiry. Okay. Is there anything said there about
14 considering steps to compensate people who might have
15 difficulties going down the legal route?

16 A. No.

17 Q. No.

18 A. Again, in my understanding, the general principle was
19 retrograde changes in legislation, or what have you,
20 have only implications for moving forward, not
21 retrospectively.

22 Q. I appreciate your Committee I don't think met again
23 between 29 June 2004 and the time that Mr Peacock
24 appeared --

25 A. I think it was the first Committee back, yes.

1 Q. That he gave evidence?

2 A. Yes.

3 Q. Before we get to that point, I don't know if you are
4 able to help me. Can you recall, did you have any
5 informal discussion with your Committee about this
6 letter and what your reaction was?

7 A. Oh, yes. All this would have been provided --

8 Q. Circulated --

9 A. Yes. We get a briefing about maybe a week in advance.
10 It was certainly always intended to have -- if our
11 Committee met on the Tuesday, everybody should have had
12 their papers on the Friday, and those papers would be
13 everything that had been compiled from the outset of the
14 petition until that, and a cover briefing as well as
15 an aide memoire for members.

16 Q. Just so I am clear, once this reply came in, even
17 although you weren't having a meeting until after the
18 recess, it would have been circulated to your members,
19 would it?

20 A. It wouldn't have --

21 Q. No?

22 A. -- at the time, no, it would have been in the papers
23 just --

24 Q. For the agenda for the meeting with Peter Peacock?

25 A. Yes.

1 Q. I see. Did you, again going back to my original
2 question, did you in June 2004 or early July when this
3 letter came to the Committee, did you consider it --

4 A. No, I didn't see it either.

5 Q. I see.

6 A. In that respect, unless something was flagged up that
7 the clerks needed advice to help them in terms of
8 dealing with something, everything would have been
9 treated as a matter of routine, and I don't mean that to
10 sound flippant, but they would have processed everything
11 equally.

12 Q. I suppose had the deadline of 29 June been met, you
13 would have been able to consider it before the recess
14 and consider what action was appropriate in light of --
15 if this letter had been sent in time for your pre-recess
16 meeting on the 29th, which it wasn't --

17 A. It wasn't.

18 Q. -- you would have been able to consider it at that
19 meeting, surely?

20 A. I am trying to remember back, whether there was
21 a discussion around there, because there may have been
22 a good reason to wait until after the recess. So
23 I can't remember when that --

24 Q. We can look at the meetings. I get the impression from
25 having looked at the various meetings, on the 12th you

1 were expecting a reply, 12 May, and indeed not having
2 received it you write to the First Minister and the
3 minister on 12 May, and your next meeting is at the end
4 of June and you are going to consider the petition at
5 that point again. So presumably, if you had received
6 a letter between 12 May and 29 June, it's likely that
7 the petition and the response would have been considered
8 by you at that meeting. Is that not fair?

9 A. It would have normally been the case, but I am trying to
10 remember -- unlike previous ministers I'm not able to go
11 back and check with clerks that type of detail. I am
12 trying to remember as honestly as I can and as well as
13 I can whether there might have been a discussion to wait
14 until after the recess to allow for some time for
15 consideration of --

16 Q. Can I put it another way. The Committee really wanted
17 a substantive response, having fired off a letter
18 in March 2003. Now, had they received a substantive
19 response along the lines we have just looked at after
20 the first letter or even the second reminder at that
21 time, you would have considered the response well before
22 the summer of 2004, would you not?

23 A. Except if we were trying to do it concurrently with the
24 minister being -- and if the minister wasn't available
25 for the meeting on the 29th we may have delayed --

1 Q. I think we are at cross-purposes here. 2003, you get
2 the first response, the initial response, in March --
3 in February. You have a meeting in March, you say:
4 I want a bit more information, we want a substantive
5 response, timetable, this and that. You keep chasing up
6 for such a response. It doesn't appear until 30 June of
7 the following year. But had it appeared much earlier
8 you would have considered it, surely?

9 A. Oh, yes, yes. But at the time you are talking about
10 now, and given that we were asking for the minister to
11 come in front of us -- I am trying to remember as
12 closely as I can, but there may have been a discussion
13 to delay consideration by the Committee until we had the
14 minister in front of us, and if the minister hadn't been
15 available prior to the recess we might have waited until
16 after the recess.

17 Q. I follow that. But if you'd already called the minister
18 you would have to, no doubt, take account of any
19 commitments or whether everybody could get together for
20 that purpose?

21 A. Yes.

22 Q. But that had only happened because you hadn't had
23 a reply. That was why you decided to call the minister?

24 A. Yes.

25 Q. And then you got the reply?

1 A. Then we got the reply, yes.

2 Q. Can we move on to 29 September 2004. That was a meeting
3 of the Committee to take evidence from Mr Peacock as the
4 Minister for Education, and to no doubt ask questions
5 related to the letter that the Committee had received
6 about why there would not be an Inquiry, is that right?

7 A. Yes.

8 Q. Can I just ask -- maybe we can bring that up. It has
9 already been brought up. SGV.001.001.7531. That is
10 the official report of the proceedings on
11 29 September 2004 in relation to the Daly petition. And
12 as you have said, the members of the Committee had
13 already received papers for that meeting, including the
14 letter of 30 June that we have just looked at. I think
15 what we get initially is a statement from Mr Peacock and
16 then questions from members of the Committee, and that
17 would be the usual way --

18 A. That was the normal process.

19 Q. I'm not wanting to take you through the whole of this,
20 we can all read it for ourselves, but there are a couple
21 of things I would like just to pick up on. First of
22 all, you have called the minister to the meeting. The
23 minister sees it as his function, I think, and if we
24 look at the first page, this is 7531, which is the first
25 page of this document, we see towards the bottom of

1 that, the minister saying, just about six lines down,
2 under "Minister for Education and Young People" in bold,
3 that he is there to set out the thinking behind
4 the Executive's decision not to have an Inquiry, do you
5 see that?

6 A. Yes.

7 Q. And give members an opportunity to ask questions. Then
8 he does take some time after that to set out his
9 thinking and to expand or explain the decision as part
10 of his evidence. If I could just move forward to
11 page 7533 of the report, it starts at column 1047 on the
12 left-hand side. If we can go to the second paragraph
13 there, below column 1457, it reads:

14 "It falls to this generation of ministers [this is
15 Mr Peacock] to acknowledge that where wrongs occurred in
16 the past they were unacceptable."

17 That is very similar to what was said in the initial
18 memorandum?

19 A. Yes.

20 Q. Then he says:

21 "We share with others profound sorrow for the damage
22 that has been experienced by individuals. Abuse will
23 always be unacceptable and those who perpetrate abuse
24 will be subject to the full rigour of the law. We are
25 determined to ensure that inspection, regulation and

1 standards are in place to prevent, detect and deal with
2 abuse. Those who report abuse should be able to feel
3 confident that they will be listened to and that proper
4 action will be taken. We want no one who raises
5 concerns to feel anything other than that they have had
6 an absolute right to do so."

7 So there is an expression of "profound sorrow" for
8 the damage that was caused. That was not an apology for
9 past abuse, is that right?

10 A. That was my understanding, it was considered that way by
11 the Committee.

12 Q. If we move on in the report to page 7536, just above
13 column 1051, towards the foot of that page, do we see
14 there that there is a paragraph that reads, and I think
15 this was something that the minister introduced about
16 the Scottish Law Commission becoming involved, do you
17 remember that?

18 A. Yes.

19 Q. What he says is:

20 "Particular concerns have been expressed about the
21 time bar that can operate to bar claims relating to
22 child abuse that occurred many years ago. As was shown
23 in the recent [Kelly] case, I advise the Committee that
24 we have asked the Scottish Law Commission to review and
25 report on the law of limitation in relation to personal

1 injury claims and in due course we will consider any
2 recommendations arising from that review."

3 He goes on, and I'm not going to read much further
4 on this page:

5 "I have an open mind on what more we can do."

6 So he is -- I don't know if these are politicians'
7 words, but he is certainly saying he has an open mind,
8 that he is prepared to consider other things, but not
9 an Inquiry?

10 A. Not an Inquiry, yes.

11 Q. Then if we go on in the same report to page 7539,
12 two-thirds of way down there is a question from
13 Helen Eadie, who was a member of the Committee, and she
14 says to the minister:

15 "You said that the compensation time bar is under
16 review, that issue is causing concern right across
17 Scotland; I believe that the cross-party group on
18 survivors of sexual abuse discussed it at one of its
19 meetings. When do you expect that review to be
20 completed and what impact will it have?"

21 I will not read everything that is said, but
22 Peter Peacock starts by saying, perhaps wisely:

23 "You will appreciate that I am not a lawyer, as
24 a result I must qualify the following remarks by saying
25 that we will have to double-check their legal accuracy."

1 He then goes on:

2 "The review that we seek centres not on compensation
3 as such but on the ability to seek a legal remedy.
4 Compensation might be one of several such outcomes,
5 however, the current time bar limits people even in
6 seeking to make an application to pursue their cases.
7 My colleague Cathy Jamieson [who had by then become the
8 Minister for Justice] has just referred the matter to
9 the Scottish Law Commission ..."

10 So your Committee is being told by the minister on
11 behalf of the Executive that the Minister for Justice
12 has made a reference to the Scottish Law Commission, is
13 that right?

14 A. Yes.

15 Q. Then in relation to the time this review would take by
16 the Commission, if we go to the next page, 7540, first
17 paragraph at the top, about halfway down that paragraph,
18 he says in relation to timing:

19 "I cannot honestly predict how long that will take
20 [that is the review]. The important point is that
21 the Commission is examining these limitations ..."

22 So what sort of assurance was that statement to you?

23 A. It wasn't necessarily an assurance, because had the
24 Law Commission come back and said that this is something
25 we don't recommend you do, minister, then that would

1 have changed the direction of travel in respect of that.
2 But I think the minister was indicating that they
3 thought this was something that should be looked at and
4 advice taken on.

5 Q. We have already seen that the minister mentioned
6 a particular case called Kelly. Did you understand his
7 statement to be saying that the Law Commission was going
8 to look at the issues that arose in the Kelly case among
9 other issues of limitation --

10 A. I thought it was in the wider issue because along with
11 this petition there was an ongoing campaign, and
12 a number of people who either were directly involved in
13 INCAS or who were acting through other organisations
14 were testing cases to see if they -- as I said, I had
15 a constituent who came to me asking for support to
16 challenge I think it was North Lanarkshire Council. It
17 wouldn't have been the authority at the time when she
18 was abused, but North Lanarkshire Council were the
19 successor authority.

20 Q. So am I right in thinking that you, and I don't know if
21 you can speak for your Committee, were under the
22 impression from what Mr Peacock was saying that
23 the Law Commission, Scottish Law Commission, was going
24 to look broadly at the sort of time bar problems that
25 were facing people who were wanting to bring claims to

1 court?

2 A. Yes.

3 Q. Including the problems that people in the Kelly case
4 encountered?

5 A. Yes.

6 Q. Just for the benefit of those who don't know anything
7 about Kelly, Kelly was a case that I think started or at
8 least was decided at first instance in May 2002 before
9 the Daly petition was submitted and that concerned
10 a claim for what I would -- if we can just call it
11 loosely pre-1964 abuse. You will know that that has
12 a significance, I suspect, or maybe you don't, but it
13 has a significance because the reason the Kelly case
14 faltered was that the decision in 2002 was that the
15 claim that was being made in Kelly had been extinguished
16 by what is called prescription.

17 A. I don't remember the technicalities but I do remember
18 there were legal explanations as to why that was
19 important.

20 Q. We will no doubt come to whether it's a technicality or
21 not, but that is what happened. In the Kelly case --
22 my Lady, I'm sorry ...

23 (Mobile phone rings)

24 LADY SMITH: Just while Mr Peoples relieves himself of his
25 embarrassment. Put shortly in lay language, did you

1 understand that the problem of pre-1964 cases was that
2 the law says the right that the person had before 1964
3 has gone?

4 A. Yes.

5 LADY SMITH: It has dissolved, it no longer exists. As
6 compared to time bar which doesn't say the right has
7 gone, but it says the problem is your ability to
8 litigate the right is limited. The default rule is you
9 can't do it after a three-year period, but later in the
10 1980s that was a relaxed a little bit to give the court
11 the power to relax the time bar and say, well, you in
12 particular have good reasons for being allowed to do it
13 after the three-year limit and because of the particular
14 circumstances of your case, which put them in
15 a different position from the people who didn't have
16 a right they could bring along to say: I have got this
17 right. I am being barred. There is a barrier, a big
18 hurdle, I can't get over at the moment to be able to
19 assert this right.

20 A. I was aware there was a significant difference because
21 of that date, because a lot of local authorities, and
22 I think again because of my knowledge of the particular
23 case I was dealing with, that some local authorities
24 began to take the view that they were not going to
25 recognise the time bar issue and were starting to allow

1 cases to go forward, but couldn't do it outwith --
2 I think 20 years was the rough guide.

3 LADY SMITH: Yes, that is right, because the defender
4 doesn't have to plead time bar.

5 MR PEOPLES: Can I just -- just for the benefit of those,
6 this is a public hearing. Kelly involved -- we will
7 hear more about this, Kelly was involved with the law of
8 prescription, not the law of limitation. The claim is
9 extinguished by prescription, it doesn't exhibit. In
10 limitation, as her Ladyship has said, a defender can
11 waive a limitation and agree not to take the point and
12 the case had been heard on its merits.

13 The alternative is if they take the point, the court
14 has a discretion under the limitation provisions to
15 allow the case to proceed out of time, and that I think
16 was a position that claimants had to take to ask for
17 cases to be heard out of time because the Government was
18 taking a limitation defence, as were other defenders.
19 That is the broad background to the litigation.

20 A. Yes. As I said, my knowledge of it is very generalist.
21 I knew there was a distinction. What that distinction
22 was was a legal matter and I wasn't aware of -- I said
23 "technicalities", maybe I should have said "legalities".

24 Q. The reason I am pressing, and you may think this is
25 being rather pedantic, but one of the points that is

1 made -- has been made already in opening these
2 statements is perhaps the use of language and what
3 people understand by "time bar", for example. It is
4 a very colloquial expression which some people might
5 think covers a multitude of situations, so that's just
6 why I've raised it.

7 Can I make a further point about Kelly, that the
8 pursuer in Kelly had raised a claim based on abuse
9 before 1964 and was founding on a conviction, I think.
10 So it wasn't a case of saying: I have yet to establish
11 that I was abused to the satisfaction of a court. They
12 had a conviction to rely on as well, but that didn't
13 help them because the law said, sorry, your claim has
14 gone. It doesn't exist. It hasn't existed for many,
15 many years.

16 So that is the background. And Mr Peacock has
17 mentioned Kelly, he has mentioned the review by the
18 Commission, and I think the Committee took it that what
19 the Commission was going to look at were all the issues
20 including the Kelly problem.

21 A. That was our understanding. I can't think of any time
22 that I was not under that impression. Once it had been
23 conceded the Law Commission should look at this, we
24 thought it was in its entirety, and I was never left
25 with any other view than that.

1 Q. Okay. And then if I can just go back to the report, if
2 I may, just to go further into the report at 7543, just
3 picking up on one other thing which echoes something
4 that was previously said by the minister. At 7543, the
5 first full paragraph there, he kind of reiterates his
6 "I've got an open mind", and he says:

7 "I have said that I have an open mind about how we
8 should work further with people to satisfy their need to
9 have such matters explored more fully."

10 This is the sort of things that might be done to
11 help them.

12 "We do not think an Inquiry is the right way to
13 proceed for the reasons I have given but there are many
14 other possibilities beyond an Inquiry."

15 Did you read that as ruling out an Inquiry then or
16 at any future time?

17 A. My recollection is that we considered that to be ruling
18 out an Inquiry which is why we took the action that we
19 did.

20 Q. If I just go towards the end of this report, 7554,
21 towards the foot of that page, column 1070, Karen Gillon
22 has two questions for the minister, the first being:

23 "What is the timescale for the Scottish
24 Law Commission Inquiry?"

25 The answer is:

1 "My experience of the Commission is that it takes
2 rather a long time to come to a conclusion. Obviously
3 people are struggling with some of these issues and are
4 debarred from taking legal action at this point in
5 time."

6 Then:

7 "Secondly, acknowledging something is not
8 apologising for it. Are you formally apologising for
9 the actions of the state in respect of child abuse?"

10 So he was put on the spot, is that right?

11 A. Yes.

12 Q. And his answer was in relation to the second point, as
13 record here at 7554 and the following page 7555, I will
14 just read out:

15 "On the second point, as I have tried to make clear,
16 we are in the midst of legal proceedings, and particular
17 words have particular connotations in terms of those
18 proceedings. I have tried go as far as I can today in
19 making it clear where the Executive stands, what we
20 believe and how we empathise with people's feelings and
21 recognise the consequences of what happened. I have
22 expressed our profound sorrow in concert with others
23 about the things that happened. That is as far as I can
24 go on the matter today."

25 And on the second point, he says:

1 "I will have to come back to the Committee on the
2 timescale of the Inquiry. I am not clear about
3 the exact terms of the correspondence with the Scottish
4 Law Commission. Members will appreciate that any
5 Inquiry the Scottish Law Commission carries out on
6 matters of law take some time as these are complex
7 matters. The important point is that the Executive has
8 triggered the Commission's consideration of the issues
9 to ensure that they are bottomed out for the future."

10 So he seems to think that the Commission is going to
11 be looking at the issue in the round?

12 A. Yes, I think so.

13 Q. If we go to 7558, I think we see what the Committee and
14 you perhaps felt about what you were being told and the
15 explanations you were being given. In the second full
16 paragraph we see that you say:

17 "I suggest that we decide now about what we
18 positively want to do with the petition. As I have
19 mentioned before, the Conveners Group has discussed the
20 time that is allocated to committees to hold debates on
21 issues that come before them. I have always said that
22 we would not take anything to the Conveners Group unless
23 the Committee felt it should use that nuclear option."

24 So that is the expression used then.

25 "I wonder whether this petition might be one such

1 matter and whether we could ask the Conveners Group to
2 find time for us to debate the petition in the
3 Parliament in our Committee time. I throw that into the
4 discussion but I would be more than happy to hear any
5 other suggestions from members."

6 I think you got unanimous support for that
7 suggestion, did you not?

8 A. Yes, it was totally unanimous.

9 LADY SMITH: Michael, can you briefly explain the Conveners
10 Group?

11 A. The Conveners Group was again an informal meeting. It
12 was something that was never set out at the outset of
13 the Parliament but became practice, because Conveners
14 were learning things as they were going and we felt it
15 would be a good idea to come together periodically to
16 discuss anything new that had been coming up, trends
17 that were taking place, things that we might learn from
18 one another's committee so that the committee system
19 would operate better. Some clerks from the
20 Parliamentary team sat on that group, as did one of
21 the deputy presiding officers of the Parliament.

22 It didn't have a formal standing but the Conveners
23 Group would discuss -- the purpose of the clerks being
24 there was to say there are X amounts of slots for
25 committees outstanding in the upcoming period, the

1 Government is going to be debating certain things in
2 week such and such. The Tuesday afternoon slot would be
3 available if a committee had any pressing issue they
4 wanted to discuss.

5 So Conveners could go to that group and bid for
6 a time slot, if you like, and then it would go and
7 formally be agreed by the Bureau which is where all of
8 those decisions were formalised. That was the formal
9 structure. The informal way was to try and prevent one
10 committee hogging all the time or to allow all the
11 Conveners to understand the importance of a particular
12 issue so that it got prominence in terms of the
13 allocation of timing.

14 LADY SMITH: That is very helpful. Thank you, Michael.

15 MR PEOPLES: Can I now move forward to 1 December 2004 and
16 the day of the debate and the First Minister's apology.
17 You deal with that in your witness statement at
18 paragraphs 30 to 33 I think. You say at paragraph 30
19 you had no indication that the stance of
20 the Scottish Executive would change, until a day before
21 the debate when you received a call from the
22 First Minister and he asked for 15 minutes of the PPC's
23 debate time. When you say "no indication the stance
24 would change", can you just tell me what you had in mind
25 about -- what was it that --

1 A. It was not uncommon -- if someone was responsible for
2 a debate, and we were in this instance. We had been
3 allocated that time slot, it was our time, it was our
4 Committee's opportunity to discuss this issue, that time
5 belonged to the Petitions Committee. It had been
6 allocated by the Parliament to us, it was for us to use
7 that time as we saw fit. If a ministerial statement was
8 required, if it was an urgent matter, not even relating
9 particularly to that issue, but if something had
10 happened that morning and a minister needed to make
11 a statement to Parliament, agreement had to be sought
12 from the Committee, or the Convener of the Committee, to
13 reduce the time that they would use for their debate to
14 allow the minister to make a statement or answer
15 an emergency question, or whatever the Parliamentary
16 requirement was, but it couldn't be done without
17 speaking to the Convener and saying "Something has come
18 up. Can we get 15 minutes of your debating time,
19 because I have got a statement that I need to make".

20 Q. Were you still the Parliamentary aide to the
21 First Minister at that point?

22 A. I think so, yes.

23 Q. I take then, because you say in your statement you
24 didn't really know why he wanted 15 minutes --

25 A. He literally is not allowed to tell you.

1 Q. So you didn't have any forewarning that an apology was
2 going to be made?

3 A. No.

4 Q. Did you have any indication of any of the -- what were
5 described as the package of measures that the Minister
6 for Education --

7 A. Not at all. The First Minister -- it was a very short
8 conversation. He phoned me and said "I am phoning to
9 ask if we can get some time from your debate tomorrow
10 afternoon". He didn't say that it related to the actual
11 debate, he just said "I need to speak to the
12 Parliament", which is what he is required to do. But
13 there had been precedents where ministers had told the
14 press, the media, that they were going to make
15 a statement and what the content of that statement was
16 going to be and the presiding officer had taken action
17 against the minister for having done so. I think in one
18 instance he issued a reprimand to the minister and
19 warned that that was not appropriate behaviour and
20 wouldn't be tolerated. Another minister that I recall
21 did go to the media and say "I am making a statement,
22 here is what is going to be in it", and the presiding
23 officer said to that minister, "I am not going to allow
24 you to make the statement, because you have already told
25 the media what is in your statement, but I will allow

1 Members of Parliament to question you on the statement".

2 So the First Minister was very, very careful. He
3 said to me "I'm not allowed to tell you what my
4 statement is about". The only indication that he gave
5 me was he said "I think you might like it", I think were
6 his words. But given I probably had about ten issues
7 with the First Minister at that time, it could have been
8 on anything that he might have been responding to. It
9 could have been on a number of issues. So I said to him
10 "If you are asking for the time it must be important,
11 therefore, yes, you can have the time".

12 Q. Can I ask more generally, and this is something I was
13 asked to raise with you, were you aware of the
14 First Minister having a keen interest in this particular
15 petition before 1 December?

16 A. Yes, I had made him aware of it.

17 Q. But he did convey --

18 A. He had said to me he had a lot of sympathies, but again
19 he said things that were similar to Peter Peacock, you
20 know, "It's not as straightforward as it looks, Michael.
21 You know where my sympathies lie in this, but we have
22 taken advice, we are being told what we can say and what
23 we can't say, we are speaking to people", so he was
24 empathetic.

25 Q. So he was taking an active interest in the matter, or he

1 was empathetic, you say, but you still felt he was
2 receiving certain advice that may have -- well, I think
3 one term that has been used by some of the people here
4 is "constrained" by the advice he was getting from
5 others?

6 A. I think, yes, absolutely.

7 Q. You said I think you felt the same of Peter Peacock when
8 you had conversations, or indeed you heard him --

9 A. I had no doubt whatsoever where their sympathies lay,
10 but I also know they recognised what their ministerial
11 duties and responsibilities were in terms of the law and
12 Civil Service advice. They didn't go to court to try
13 and protect their position, but they certainly
14 maintained the Civil Service and legal opinion that they
15 had been given.

16 Q. This might be a good time to ask you another question
17 I have been asked to raise. I think we have established
18 that Mr Peacock did not make an apology for past abuse
19 when he appeared before your Committee on
20 29 September 2004, but I am asked to ask you to confirm
21 that the making of an apology was not ruled out at that
22 meeting?

23 A. No.

24 Q. That was something he didn't rule out?

25 A. He didn't rule it out.

1 Q. Indeed we have seen the passage where you said he had
2 gone as far as he could?

3 A. I think he tried to use as careful language as he could
4 to convey that empathy and sympathy that he had for the
5 situation, but he couldn't take that step beyond the
6 advice he had been given I assume by the Government
7 lawyers.

8 Q. We will no doubt hear from them in due course as to what
9 the advice was and what the reaction to it was.

10 A. We are never allowed to know.

11 Q. I think you may find out on this occasion.

12 Can I just carry on with the debate and the apology
13 at this stage. You introduced the debate I think,
14 because it was your debate, and you listened to the
15 debate, and we've got a report of it. Again, I'm not
16 wanting to spend time going through the detail of it
17 with you. But so far as that debate is concerned,
18 would I be right in thinking that on the question of
19 an Inquiry, a Public Inquiry particularly, there was
20 a range of views expressed on that day from various MSPs
21 who contributed to the debate, is that correct?

22 A. Yes.

23 Q. So there was no consensus that there should be
24 an Inquiry or indeed no consensus there should not be
25 an Inquiry?

1 A. There was definitely not a consensus on that because
2 people have different -- you know, some people have
3 experience of working in social work or the law and take
4 different views, and that is the purpose of having the
5 debate, so that they are given the opportunity, but
6 there was certainly a consensus in the membership of the
7 Committee.

8 Q. That there should be a debate?

9 A. Not just a debate but that there should be an Inquiry.

10 Q. My apologies, an Inquiry. So that consensus existed.
11 And amongst survivors, did you get any flavour of what
12 the view was?

13 A. Of those who supported the petition there was wide
14 consensus. But we were always advised by individuals
15 and some groups that pushing for an Inquiry wasn't the
16 panacea for everyone. Some people said it was opening
17 old wounds and they would rather not, and that they felt
18 pressurised to come forward when they would rather not.
19 There were people who had found difficulty in dealing
20 with what had happened to them and were --

21 Q. Sorry, was it not the minister that was saying that --

22 A. No, I was told by people --

23 Q. It would open old wounds?

24 A. I heard that from people. People wrote to the Committee
25 to say "This is not what would be beneficial to me as

1 an individual, please don't support this petition". You
2 have to take a judgment view and the overwhelming
3 majority of opinion from those who expressed an opinion
4 to the Committee, and there were lots -- as I said,
5 although we tried to restrict the terms under which
6 a petition could come forward, I initiated the petition
7 system whereby people could electronically communicate
8 with the Committee.

9 So a petition would be put on the internet and we
10 could take opinions from across the world, anyone could
11 make a contribution, and very often they would give good
12 advice to say, "What you are looking at is important.
13 Here, in our country, this is what we did". Or "Here is
14 a difficulty that we encountered in our country". So
15 you could learn from information that people gave. But
16 people also took the opportunity to say "Please don't
17 support this petition, this is not the right thing".

18 So I was aware that not everybody involved -- well,
19 everyone involved in INCAS certainly, but not everyone
20 involved in the issue was supportive of an Inquiry.

21 Q. But you weren't aware of any general consultation,
22 either with survivors or anyone else, about the matter
23 before the debate, were you?

24 A. I know INCAS and other individuals who had been pursuing
25 the issue had been speaking to civil servants and --

1 Q. Sorry, I didn't -- that was a bad question. What I was
2 really saying was: you are not aware of the Executive
3 carrying out any consultation exercise with survivors or
4 any wider group about the question of an Inquiry into
5 past abuse in institutional care?

6 A. No, not that I am aware of.

7 Q. Just on the terms of what happened on 1 December, it
8 would have been open, would it not, to MSPs to table
9 some form of amendment to force a vote on the matter?
10 That was one possibility?

11 A. It is a possibility, but not something that was common
12 practice or encouraged.

13 Q. No, but --

14 A. The purpose of that is when a vote is forced, if forces
15 people into positions they might not otherwise take
16 because they have to support their political party line,
17 or what have you, if there was one. Having a committee
18 debate, it's a "take note" debate, as it's called --

19 Q. You say it's called a "take note" debate, but all I am
20 trying to establish at this stage is it was
21 a possibility that someone, if they were minded and
22 didn't like what was happening, to say "I am going to
23 force -- I am going to ask for a vote to be taken on
24 this matter". That didn't happen?

25 A. It didn't happen --

1 Q. So there was no vote on this occasion?

2 A. That is --

3 Q. And it was similarly a to note motion, and everybody
4 went away to reflect?

5 A. That is the purpose, to allow people who might not
6 otherwise have had an opportunity to put forward
7 a perspective that they had picked up. And as you said,
8 there wasn't a consensus. Some people have experienced
9 from their own lives, their own working practices, that
10 Inquiries can be a good thing or a bad thing, so they
11 expressed their opinions, and that is the whole point of
12 having that type of debate. But I think overwhelmingly
13 those who spoke supported the idea of the Inquiry.

14 Q. At the debate?

15 A. At the debate.

16 Q. You still think that overwhelmingly there was a mood for
17 an Inquiry of some sort?

18 A. Yes.

19 Q. Okay. One thing that was announced at the debate by
20 the minister was the appointment of an independent
21 expert, and he set out his intention to do that and gave
22 some indication of the scope of any review or remit that
23 would be given to that person although I think the
24 detail hadn't yet been announced or worked out. There
25 was no suggestion of that in the letter you received on

1 30 June of 2004?

2 A. No.

3 Q. And there was no suggestion of that specific idea when
4 Mr Peacock gave evidence to the Committee on
5 29 September?

6 A. No.

7 Q. So was that news to you?

8 A. It was. Something changed between September
9 and December.

10 Q. You have a section in your report, if I can move to --
11 I have already asked you about whether you were aware of
12 any consultation exercise prior to the debate to get
13 some views, whether from a specific class, like
14 survivors or care providers for that matter, or more
15 generally the public, on the issue of an Inquiry. But
16 you have a section dealing with engagement with the
17 Catholic Church --

18 A. Yes.

19 Q. -- which we see at 34 to 40 of your witness statement.
20 Can you just tell me what your position on that is? You
21 had a certain position at the time, and you still have,
22 about that matter. Can you --

23 A. Yes.

24 Q. -- explain for us what it is?

25 A. I spoke -- I had a very good relationship with the

1 Bishops' Conference and the spokesperson on behalf of
2 the Bishops' Conference at that time. I am practising
3 Catholic, and I engaged with their representative, the
4 Parliamentary representative, on an ongoing basis over
5 issues that the Catholic Church were taking in relation
6 to a variety of issues that the Parliament was engaged
7 in. And I took the opportunity in one conversation to
8 say to the Parliamentary spokesperson that I felt the
9 Catholic Church could be doing much more to show empathy
10 and sympathy to the survivors. Because I was being told
11 by abuse survivors, who were themselves Catholics or had
12 previously been members of the Catholic Church, how
13 disappointed they were at the way they felt they were
14 being treated by the Church.

15 As a practising Catholic I understand the
16 hierarchical order, and I completely accept that the
17 Bishops' Conference have no direct authority towards the
18 individual orders who ran care homes, whether that is
19 nuns or Brothers or whatever order. They take their
20 authority from Rome, it's as simple as that, and anyone
21 who is a practising Catholic understands that. But
22 equally, as Catholics, I believe that we have
23 a responsibility to our fellow human beings, and I could
24 not see a Christian attitude coming from the Bishops'
25 Conference towards those survivors. And I said that

1 publicly at the time, I said it to the Bishops'
2 Conference directly, I had a meeting with them. But
3 they stuck rigidly to their position that they could not
4 go to any individual order, and order them to act in any
5 particular way.

6 Q. Were they even taking responsibility in the broad
7 sense --

8 A. No.

9 Q. -- for what had happened?

10 A. No.

11 Q. There were basically saying it was the orders?

12 A. Yes.

13 Q. And they weren't wanting to accept any form of
14 responsibility as members of the wider church?

15 A. Categorically.

16 Q. You say at paragraph 34 just on this matter that the
17 Daly petition was asking for an apology, it says from
18 the Catholic Church. I think they were certainly
19 wanting an apology from the religious orders, as such.
20 But just looking at that matter, do you say the
21 Committee wrote to the Church or the Hierarchy and
22 didn't get any response?

23 A. Yes, that is how -- I have a great deal of sympathy for
24 the abuse survivors. Because if they were prepared to
25 treat the Parliament in that manner, I can imagine how

1 they were treating individual abuse survivors who were
2 trying to approach them and get support. I spoke to one
3 bishop directly about particular cases that were brought
4 to my attention, they weren't necessarily constituents
5 but they were people who lived in the same diocese as me
6 and who came to me hoping that I could make
7 representations on their behalf to the local bishop.
8 I did so, and was met with the same response from him as
9 the general response had been.

10 While I understood, and I made that clear to the
11 bishops, that I understood the structures under which
12 they were operating, I could not understand as
13 a practising Catholic how they could pass by on the
14 other side. It's as simple as that. Everything about
15 what I believe was being undermined by their action or
16 inaction, their just point blank refusal to take any
17 moral responsibility.

18 Q. Did you get any sense from either your Committee
19 meetings prior to the debate or any other discussions
20 you maybe had at the time about the extent to which
21 the Executive was having conversations with the Catholic
22 Church and religious orders about these matters?

23 A. Not sense of that at all. I had no sense of that at
24 all.

25 Q. So you weren't given any information to say "We are

1 doing our best to speak to the Catholic Church and the
2 providers on these issues"?

3 A. I had no sense of that engagement taking place at all.

4 Q. You have a couple of paragraphs about the Shaw Review.
5 We know about it, so you can take it we have an idea of
6 what was going on. This was the independent expert
7 whose appointment was announced, or who was appointed to
8 the independent expert position.

9 I just want to ask you one thing about that. You
10 say that by the time you left your post as Convener:

11 "... the Shaw Review was already underway, but we
12 knew it fell short, as did some of my colleagues."

13 What did you mean by "it fell short"?

14 A. I was made aware -- Chris Daly and others approached me
15 to say they had not been given information which
16 reassured them that what had been promised or indicated
17 by the First Minister and Peter Peacock had been taken
18 forward. They were very disappointed at the lack of
19 progress that had taken place. And ultimately, when he
20 published his report, they made it clear to me -- and
21 I wasn't the Convener of the Committee by this time, but
22 they came to me because of my involvement in the ongoing
23 process and asked if I could make representations to the
24 new minister about what their intentions were, the new
25 Government's intentions were, in taking forward the

1 Inquiry, because there was already an indication that it
2 was falling far short of the expectations that had been
3 raised amongst INCAS and the abuse survivors.

4 Q. So it wasn't a substitute for an Inquiry, they were
5 still wanting the Inquiry, and they were wanting you to
6 help persuade the new ministers to go down that route?

7 A. Yes. I remember walking from St Giles down to the
8 Parliament at the head of a protest march in wind and
9 rain to offer my support for their ongoing campaign
10 because they clearly had not met their expectations.

11 Q. You have a section about the closing of the petition,
12 I think you deal with that at 43 to 45. You weren't
13 there when that happened. Am I right in thinking that
14 it's your view that it was premature at that point to
15 close the petition in April 2008?

16 A. I felt personally there was still mileage in it. I can
17 give examples of petitions that ran for years after what
18 appeared to be a conclusion had been reached. I don't
19 want to just express opinions, I would rather just talk
20 about facts, but I do have opinions about the change
21 that took place in the Petitions Committee. If I can
22 say this: I was new to politics in 1999, I had never
23 been an elected representative before becoming a Member
24 of the Scottish Parliament, and I remember in one of our
25 early meetings of the new Parliament with colleagues in

1 the Labour group that I was a member of, when
2 Donald Dewar said, "You have a responsibility as
3 an elected representative to ask the questions that are
4 required of this Parliament and of this Government". He
5 said "I would rather, as a Labour First Minister, that
6 it was you that was holding me to account, because you
7 will be doing it honestly and openly and doing it for
8 the right reasons. So don't be afraid to challenge us
9 as an Executive, to challenge us as individual
10 ministers, because that is your responsibility. Your
11 responsibility is to hold the Executive to account".

12 I genuinely believe that that changed in 2007, that
13 there are too many Members of the Scottish Parliament
14 now who see it as their role to protect the Executive.
15 As I say, that is not a fact, it's an opinion, but it is
16 a very strong opinion that I hold, and I think some
17 petitions were left open because it suited the
18 Government for them to be left open and some were closed
19 because it suited the Government for them to be closed.

20 Q. You have a section at the end headed "Reflections". Can
21 you just summarise what you are saying there? Because
22 I think you are trying to raise the issue of why
23 an Inquiry was important to survivors, even if it was
24 not considered the right thing to do by politicians for
25 a long period of time. Can you just say what point you

1 are making there?

2 A. The point I am making was I heard individual cases both
3 privately and publicly, people who were strong enough
4 and able enough to give us information which horrified
5 me. To believe that people who were taken into care at
6 the behest of the authorities, who should have been
7 safer because they were taken into care, who should have
8 been protected and had the responsibility of officials
9 to ensure that they were safe, were failed. In those
10 circumstances my personal view was I don't want to hear
11 the Government making excuses for why they can't do
12 anything to support those people now. They were failed
13 in the past, they should not be failed now. That what
14 they are saying is important, what we are hearing has to
15 be addressed, and that the Scottish Government has
16 a duty and a responsibility to make sure that every
17 voice that wants to be heard is heard, and that in some
18 way those people can say, "Yes, it has happened, I have
19 had to deal with it, but it has been dealt with".

20 And I just think the Government and anyone with any
21 authority in relation to this situation has to deal with
22 what happened.

23 Q. You say at paragraph 46, and I just want to be clear,
24 are you saying that over the long period before we did
25 have an Inquiry, when people were asking for it,

1 survivors and others, you say the Scottish Executive,
2 Scottish Government, has to understand the reasons for
3 people needing an Inquiry. Are you saying you don't
4 think they really did understand the reasons which
5 prompted those who wanted an Inquiry to press for it?

6 A. I think there may have been individuals in the
7 Government. I genuinely believe the First Minister
8 and Peter Peacock understood it, but I think they were
9 guided by those who didn't want to have that Inquiry for
10 whatever reason, legal reasons or governmental
11 precedents or whatever structures that the Government
12 has. There will be set criteria under which Inquiries
13 can be held and what form or shape those Inquiries
14 should take.

15 Those rules are there for a reason, I get that, but
16 sometimes you have to go beyond that and say that
17 doesn't work in these circumstances.

18 Q. You make a point, and I'll just read out what you say,
19 paragraph 48, towards the end of your statement:

20 "I think from Chris Daly's point of view [he is the
21 petitioner, obviously] and for many others,
22 a Public Inquiry is independent and outwith the control
23 of civil servants. I do not think the Inquiry will
24 satisfy everyone, but just having an Inquiry allows some
25 people to move on with their lives and that to me is an

1 achievement. In the end, if the Inquiry does disappoint
2 a few, it is better to have the Inquiry than not to have
3 it at all."

4 Does that really sum up your position?

5 A. It does. Err on that side, in my opinion.

6 LADY SMITH: Michael, why there did you think it was so
7 important to mention that a Public Inquiry is
8 "independent and outwith the control of civil servants".

9 A. Because they had controlled the process up to the point
10 of trying to stop it from happening. I genuinely
11 believe that they were probably acting as Government
12 officials in the way that they are trained or expected
13 to behave. As I said, there are rules for a reason.

14 I have given a couple of examples of where the
15 Scottish Parliament developed new ways of working
16 because precedents had been set, things had been
17 learned, and what had previously gone before wasn't
18 appropriate any longer. There were better ways of doing
19 things. So a lot of the way that the Civil Service
20 operates is because they have learned from experience,
21 and I get that and I understand that, and if people know
22 the structures in which they work it creates
23 a continuity, it can create an environment in which
24 people know where they stand, and that is not a bad
25 thing, but if it also allows a culture in which they

1 control how things move, then that is not necessarily
2 a good thing.

3 Too often in my experience, and I am still
4 experiencing it now in the job I have, because I am
5 engaging with civil servants, I'm asking for
6 an evaluation of a process which has been ongoing for
7 the past ten years and being told exactly the same
8 things "That is not how we do things, Michael". I am
9 sorry, but when you've got people who have suffered
10 abuse when they were supposed to be protected and cared
11 for, I really don't care what your structures and your
12 culture tells you, you should be pursuing it. You need
13 to listen to those people and you need to give those
14 people the outcome that they expect.

15 This was something I experienced, and it was
16 provable because we asked for an independent scrutiny of
17 the petition system, where we got an academic from --
18 I think it was Strathclyde University, from memory, who
19 went to people who had gone through the petitions
20 process and he asked them about the process, how it felt
21 to engage in that process, and one of the things he
22 asked them was "You didn't get what you were looking
23 for. Did you feel you had wasted your time going to
24 that Petitions Committee?" And universally, almost
25 without exception, people said "Just engaging with the

1 process was satisfactory enough. I didn't get what
2 I wanted to get out of it, but I was listened to, I was
3 heard, my voice was heard, and there was somewhere that
4 I could go where people heard what I had to say".

5 That guides me in a lot of things. I learned a lot
6 through that. And a lot of people weren't happy, a lot
7 of people said "What was the point of going to the
8 Public Petitions Committee? I asked them for something,
9 they went away, they said they checked it, they said
10 they looked into it, and then they came back and said
11 'We can't help you'", and they were left disappointed.
12 And I accept that sometimes you have to say no to
13 people. Sometimes you just have to say to people "We
14 have tried every avenue and we just can't get the
15 outcome you were looking for". But if you don't even
16 try, I think that is the disappointment that people get.

17 That situation that I found myself in, along with my
18 colleagues on the Committee, and others who took
19 an interest in it, it wasn't just us, there was
20 a perception that the civil servants weren't even trying
21 to get to that point, they were trying to stop it from
22 happening. And that is not acceptable, not to me
23 anyway, and I know it wasn't acceptable to the abuse
24 victims.

25 LADY SMITH: Thank you very much.

1 Mr Peoples.

2 MR PEOPLES: I think I am pretty much finished with Mr
3 McMahon. I think I have covered questions that I was
4 asked to raise. I hope so, unless I get any indication
5 to the contrary.

6 LADY SMITH: Let me check. Are there any outstanding
7 applications for questions? (Pause). No. No further
8 questions.

9 MR PEOPLES: It just remains for me to thank you very for
10 putting up with my questions today and coming along
11 today in a difficult situation for us all.

12 LADY SMITH: Michael, can I echo those thanks, but also
13 thanks for your engagement with us leading up to you
14 coming today and producing your statement. I know it
15 involves a lot of hard work and application and we are
16 really grateful to you for helping us in the way you
17 have done. Thank you.

18 A. Thank you very much, my Lady. I don't miss politics but
19 this is one issue I really wanted to continue with.

20 LADY SMITH: Good. I am now able to let you go. Thank you
21 very much.

22 (The witness withdrew)

23 LADY SMITH: It's after 1 o'clock, so I will stop now for
24 the lunch break and sit again at 2 o'clock. Thank you.

25 (1.01 pm)

1 (The short adjournment)

2 (2.00 pm)

3 LADY SMITH: Good afternoon. I think we have another
4 witness now?

5 MR PEOPLES: Yes, my Lady. Good afternoon. The next
6 witness is Catherine Jamieson.

7 LADY SMITH: Good afternoon. Could I ask you to raise your
8 right hand and repeat after me ...

9 MS CATHERINE JAMIESON (affirmed)

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

11 I don't know if that is a copy of your statement you
12 have brought with you, but we have a copy there, and you
13 will see it on screen, but if you want to use your own
14 copy do feel free.

15 Before we start, what would you like me to call you?
16 Cathy or Ms Jamieson?

17 A. I am happy with Cathy, that is what everyone else calls.

18 LADY SMITH: That is fine, Cathy. If you are ready, I will
19 hand over to Mr Peoples.

20 Mr Peoples.

21 Questions from MR PEOPLES

22 MR PEOPLES: Good afternoon, Cathy. You have, as the Chair
23 has said, a copy in the red folder of the statement that
24 you have already provided to the Inquiry, and you will
25 also see a copy of that statement on the screen in front

1 of you. If I happen to ask you to look at other
2 documents that we have available, they will come up on
3 the screen in front of you, but feel free to use the
4 statement that you have in the course of today either on
5 screen or in the file.

6 Can I just take a few preliminaries from you. You
7 are Catherine Mary Jamieson?

8 A. That is correct.

9 Q. And you have provided a statement in the Inquiry. Maybe
10 I can just ask you briefly to turn to the final page of
11 that statement, and you can confirm that you have signed
12 the statement?

13 A. Yes, I can.

14 Q. And also that you have no objection to your statement
15 being published as part of the evidence to the Inquiry
16 and that you believe the facts stated in your statement
17 are true?

18 A. That is all correct.

19 Q. I don't plan to go through every aspect of your
20 statement. You can take it your whole statement is
21 evidence to the Inquiry, and we have read it and
22 no doubt we will read it again, as will others, but
23 I will concentrate on some matters more than others,
24 clearly because we have a certain amount of time and
25 I would like to deal with some of the main issues that

1 maybe this Inquiry is most interested in.

2 Before I do that, can I just take some basic
3 information. I think you tell us that you were an MSP
4 for some time?

5 A. I was. I was elected to the first Scottish Parliament
6 in 1999, and carried right through until 2012.

7 Q. I think you also had a spell as a Member of Parliament
8 in the Westminster Parliament, is that right?

9 A. I did indeed. I left there in 2015. 2010 to 2015.

10 Q. I am not in any way trying to minimise your background
11 experience but I will take this short, if I may.

12 I think you tell us at paragraphs 6 and 7 of your
13 witness statement that you have a background in social
14 work, you are a qualified social worker?

15 A. That's correct.

16 Q. And indeed you did work in that field before you became
17 a politician?

18 A. I did. I had some considerable number of years working
19 in the social work sector.

20 Q. I think the other thing that you tell us at paragraph 8
21 is that you were also, for about seven years before you
22 first became an MSP, you were the principal officer with
23 Who Cares? Scotland, is that right?

24 A. That is correct. I was involved in helping set up the
25 Scotland-wide Who Cares? Scotland organisation from its

1 early appearance.

2 Q. The other thing I was going to ask you about at this
3 stage, which you deal with in a number of paragraphs,
4 starting at paragraph 10, is that you were a panel
5 member of the Edinburgh Inquiry with Kathleen Marshall
6 and Alan Finlayson?

7 A. That's correct, I was asked by Edinburgh City Council at
8 the time to be involved in my role with Who Cares?
9 Scotland.

10 Q. You tell us a bit about that Inquiry and obviously, to
11 some extent, we are more focused on subsequent events.
12 All I can perhaps ask you at this stage is that that
13 Inquiry was about a particular number of residential
14 homes in Edinburgh, run by Edinburgh Council, I think,
15 is that right, and perhaps a private provider?

16 A. Yes, the Inquiry followed prosecutions and convictions
17 of a number of people who had been residential staff and
18 initially focused on some council children's homes but
19 also when that was in the voluntary independent sector.
20 However, as the Inquiry went on, there were a number of
21 issues which came up which, as a panel, we felt had
22 relevance beyond simply Edinburgh City Council,
23 and therefore that, I think it would be fair to say,
24 influenced some of the recommendations that we made.

25 Q. I was asked to raise this with you, and I am conscious

1 of the time available, so I can perhaps take that short.
2 The report has been published, and it's a long report,
3 I have a copy in front of me. But can I say this; you
4 do say, I think, in the forward to the report, that the
5 issues you had to address were by no means restricted to
6 the city of Edinburgh. Perhaps you identified a number
7 of failings to some extent, if I could call it that,
8 that were present in the places you looked at but you
9 felt might well be identifiable across the board?

10 A. I think there were a number of areas where we felt
11 lessons could be learned, I think I do mention this in
12 my statement later, in relation to the whole way that
13 young people could raise concerns, how whistle-blowing
14 was dealt with, how staff training was dealt with, what
15 happened to people if there was a -- staff, if there
16 were issues around them perhaps not being fit to work
17 with children and young people. There were issues more
18 broadly in terms of policy in relation to, for example,
19 having a Children's Commissioner for corporate
20 parenting, which is now kind of very much in the
21 parlance of childcare, but that was really one of
22 the first times that that whole concept had been raised
23 in a report.

24 Q. Yes, because I think your approach was to identify
25 lessons to be learned and recommendations as to how

1 these matters might be better addressed in future?

2 A. Indeed, I think that would be fair, because obviously
3 there has been prosecutions so therefore the legal
4 system had taken care of that side, so we weren't tasked
5 with anything in relation to deciding whether people
6 were guilty or innocent or things had happened or not
7 happened, but it was very much on the basis of how the
8 City Council, at that time, how could they improve their
9 childcare provision. But as I said, we also took a view
10 that much of that had wider implications across the
11 piece and we felt it was our duty to report on that.

12 Q. Would it be right to say, without trying to generalise
13 too much, because I think you do make the point in the
14 report that there was evidence of good practice and good
15 habits that you found in certain places, so you couldn't
16 simply say this was a global problem. But you did find,
17 apart from whistle-blowing issues, what you, I take it,
18 would describe as systemic failures that the system
19 needed changed and improved?

20 A. Indeed, I think -- and we may go on later to discuss the
21 difference between systematic and systemic which seem to
22 come up a fair bit. But what we found is that while
23 there were individuals who obviously had to shoulder
24 their share of responsibility for abusing children, and
25 it was right that the courts and indeed the prison

1 system subsequently dealt with them, there were things
2 in the way that practice was done, and it was about the
3 finding the correct checks and balances to ensure that
4 safeguarding became the responsibility for everybody as
5 part of that.

6 There was also a very clear, in my mind, issue that
7 arose which was about how was the voice of children and
8 young people heard. And one thing that sticks -- again
9 it's in the report -- sticks very closely in my mind was
10 the example of a young child putting a note under the
11 door of the staff room to try and say to members of
12 staff in a children's home what has been happening and
13 that note simply was dismissed. And for us, that really
14 was not appropriate. There had to be a way of taking
15 young people seriously.

16 Kathleen Marshall's I suppose exhortation to us at
17 the outset was that, as panel members, we had to suspend
18 the disbelief, she called it, and that's something that
19 stuck with me all the way through my working with
20 children and young people.

21 Q. Can I move on from that, if I may, to the next bit of
22 your report, your statement, where you discuss the
23 period when you were Minister for Education and Young
24 People, which was in particular between November 2002
25 and May 2003. I think you were appointed minister

1 before then, in 2001, is that right, in succession to
2 Jack McConnell?

3 A. That is correct, yes.

4 Q. And I think he tells us, and perhaps you tell us as
5 well, that your social work background was certainly
6 a factor in his choice of appointment?

7 A. I think it would be fair to say that. Obviously
8 Jack McConnell had known about the work that I had done
9 previously, had known about my involvement in social
10 work and that I had a passion for trying to improve
11 things for children in care. I think also he was very
12 conscious that social work perhaps, and social care,
13 children services generally, hadn't had the level of --
14 not scrutiny so much, but maybe hadn't had the level of
15 push within the Executive, as it was then, as was
16 required, and he was very clear that we had to do
17 something in relation to social work, particularly child
18 protection.

19 Q. And I think, because I think this is a point that he
20 makes, and indeed you make it, that there was before
21 what I call the Daly petition, PE535, in August 2002,
22 which we have heard about already, there was already
23 action being taken, as you have just described, in
24 relation to improve the child protection system for all
25 children and young people in Scotland, not just children

1 in care. Would that be a fair summary of the broad
2 situation?

3 A. Yes, I think that is a fair summary. And I think when
4 Jack McConnell came in as First Minister, he came with
5 a very strong commitment to children and young people,
6 partly from experience that -- from his own life and
7 from working in the education sector, and he I think
8 particularly had been affected by some of the cases
9 where children had been neglected and there had been
10 tragic circumstances, and he was determined to do what
11 he could to try and resolve that.

12 So there was a specific child protection programme
13 in place and, as you say, it was generally about
14 protection more widely, recognising that abuse of
15 children didn't simply happen in institutions, it
16 actually happened in family homes, in other community
17 settings, and that we also had to give a focus of
18 attention to that.

19 Q. So we have this background, before the petition, of
20 a specific programme. I think it was described as
21 a three-year programme with various initiatives and
22 actions as part of that programme, would that be right?

23 A. That would be correct. Again, when we went through
24 consideration of a number of things in relation to child
25 protection, we did give thought to: should we have

1 a complete change in the child protection system?
2 Should we take it out of local authorities' hands?
3 Should we set up a different agency? So there was
4 really quite a lot of thinking done at that stage about
5 what was the best way, actually, to give children the
6 protection they needed. And we ultimately came down on
7 the side of putting in place this programme which would
8 ensure that local authorities, and everyone who had the
9 responsibility for looking after children, knew they had
10 a responsibility.

11 Q. I think, without trying to list all of the things that
12 happened, one thing that happened was that there was the
13 establishment of the Care Commission and the Scottish
14 Social Services Council to regulate the social care
15 workforce. That was under the 2001 Act. You have
16 also -- I think there was legislation in 2003, as you
17 tell us, about effectively identify and weed out
18 unsuitable people from working with children, is that
19 ...

20 A. Yes. And I think certainly when I came into politics,
21 or into elected politics, there had been quite a strong
22 movement amongst childcare and other social work
23 professions to ensure that we did have something like
24 the Care Commission, and also that we had, for example,
25 a look at having a Children's Commissioner in Scotland

1 and the regulation of the workforce. And partly around
2 the regulation of the workforce was also to ensure that
3 social work was properly seen as a profession that was
4 accountable and had a code of conduct and standards that
5 people had to adhere to. So it was very much a package
6 of measures and changes that needed to be taken through
7 at that point, and of course the list of people who were
8 unsuitable to work with children was a key part of that.

9 Q. Can I turn more specifically to the Daly petition,
10 PE535, which is something that you again deal with in
11 your witness statement. You can take it we already have
12 some information about the chronology and so forth.

13 Perhaps I can start with you received what I call
14 initial advice from officials on 13 November 2002, and
15 I could perhaps put that up in front of you, if I may,
16 briefly. SGV-17844. Hopefully that will come on screen
17 shortly. (Pause).

18 Maybe I can just read out for you something. It was
19 addressed to you from an official, although it
20 represented I think collective advice after taking
21 soundings from various people with an interest in the
22 matter. The recommendation was that you were invited to
23 agree a draft memorandum to respond to the Public
24 Petitions Committee in relation to the petition, and
25 in effect it was that you were to tell them there were

1 no plans to undertake a Public Inquiry into
2 institutional child abuse, so that was the
3 recommendation you received. And indeed in terms of the
4 draft response at that stage, if I could just read out
5 what the response was, or the suggested --

6 LADY SMITH: Just before you do that, did you give
7 SGV-000017844?

8 MR PEOPLES: Did I give the wrong reference?

9 LADY SMITH: It has come up in the transcript as missing
10 a letter, SGV-000017844.

11 MR PEOPLES: I have 17844.

12 LADY SMITH: 178844? No?

13 MR PEOPLES: Well, no matter. Maybe I can just read to you
14 what the response was, the initial response:

15 "The Scottish Executive has no plans to hold an
16 Inquiry into allegations of institutional child abuse at
17 present. The Scottish Executive is aware of the recent
18 court cases and of a number of representations from
19 victims of child abuse which have been made to the
20 Executive."

21 That was the first part of the response.

22 The second part was:

23 "The Scottish Executive has given careful
24 consideration to the requests but are not convinced that
25 sufficient evidence of past widespread systematic child

1 abuse in residential institutions exists at present to
2 warrant an Inquiry. The Scottish Executive also
3 considers that a general apology on behalf of public
4 institutions to victims of child abuse would not be
5 justified at this time."

6 Then it goes on to deal with the commitment to
7 improve systems and it lists the sort of measures that
8 were being taken or had been taken since the events with
9 which the petition was concerned.

10 So that was the initial response you were confronted
11 with: no Inquiry, no apology, and these were two of the
12 big aims of the petition that had been submitted to the
13 Petitions Committee.

14 Can you just tell us, what was your response and
15 reaction to that?

16 A. I did not accept it. I think I responded pretty quickly
17 to officials, really in terms which I think my Private
18 Secretary at the time probably captured very politely.
19 I think I would have been fairly robust in saying this
20 was not the answer which I would be comfortable giving,
21 and indeed I wouldn't be giving that answer, because
22 I felt it was important that we recognised that abuse
23 has happened, does happen, and that we have
24 a responsibility to try and understand why and also to
25 put in place as many safeguards as we possibly could.

1 Q. Did you need any convincing that abuse of children in
2 residential care was not confined to, for example, a few
3 isolated occurrences? Did that seem to be the thrust of
4 the advice you were receiving around that time?

5 A. I think it would be fair to say that given my experience
6 and background as a social worker, and also through the
7 Edinburgh Inquiry, and indeed from constituent cases and
8 other pieces of information, I did not think it was
9 reasonable to rest on that these had been isolated cases
10 and that somehow Scotland was any different from other
11 countries who, at that stage, were kind of beginning to
12 look at the instances of historical abuse. When
13 I worked for Who Cares? Scotland I had had contact with
14 people in Australia, and I had had contact with people
15 in Wales, England, Ireland, and therefore I simply
16 didn't accept that there had been only a few isolated
17 cases and that we could leave it at that.

18 Q. Were you aware at that time -- I think it is one thing
19 I was asked to clarify with you -- whether some of the
20 orders that were the subject of scrutiny in Ireland were
21 also providing care in Scotland in the period that
22 the petition was concerned with?

23 A. I think that was probably not the main factor, but
24 I certainly was aware that the suggestions were that it
25 was not simply, for example, confined to Local Authority

1 homes. There would have been a number of different
2 voluntary providers, church providers and others. And
3 as we go on, which we will I assume pick up later, I was
4 also very concerned to ensure that people didn't think
5 that residential childcare was only what happened in
6 children's homes, because we also had residential
7 schools wherein resided a significant number of children
8 and young people as well.

9 LADY SMITH: Mr Peoples, the document you wanted I think is
10 now there if I am reading the small numbers correctly.

11 MR PEOPLES: Yes, I saw something appearing.

12 LADY SMITH: Which paragraph --

13 MR PEOPLES: If we can go back to -- if we have the
14 document, the recommendation that I read to you, Cathy,
15 was at paragraph 12 of the submission or briefing on
16 page 3. Then if we turn to the next page, which is
17 headed "Memorandum", which is the proposed draft
18 response, and we go two-thirds of the way down to
19 "Scottish Executive Response", we see the two paragraphs
20 that I read to you about no plans for an Inquiry and
21 a general apology on behalf of the public institutions
22 would not be justified at this time. Do you see that?

23 A. Yes.

24 Q. And the Executive is not convinced there is sufficient
25 evidence of, as they term it, widespread systematic

1 child abuse. I think you've already made a point about
2 that. Do you think there was some misuse of language
3 there or confusion of language?

4 A. I suppose, to be absolutely clear, those first two
5 recommendations, the Executive had no plans to hold
6 an Inquiry, I did not accept that because I wanted to
7 have the option open to look at this in more detail.
8 And the second thing was that I did not think it was
9 credible to say that we did not believe there was
10 sufficient evidence of past widespread systematic child
11 abuse.

12 Now, I don't know what was in the officials' minds
13 at that time and whether there was just loose language
14 around "systematic" or "systemic". I took it they were
15 perhaps taking systematic abuse involving potentially
16 paedophile rings or organised abuse, which obviously
17 a number of cases had been in the media over the years.
18 However, in any event, I didn't think that it was
19 credible to say that we would do nothing, and that there
20 was no evidence there, at a time when people were coming
21 forward and telling us that historical abuse had
22 happened and I also believed it did happen.

23 I was also concerned about the general apology of
24 public institutions to victims of abuse wouldn't be
25 justified and I felt that was something we had to look

1 at in more detail. I think there were subsequently
2 a lot of questions raised about who would be apologising
3 on behalf of whom, and that continued indeed for
4 a period of time.

5 But I thought that that response -- I suppose, if
6 I can put it simply, I thought it was cold, and
7 I thought it would give no comfort at all to victims if
8 that was the response that went to the Petitions
9 Committee and people saw that. I thought it would look
10 like we were brushing it off as if it hadn't happened
11 and we were giving victims no comfort.

12 Q. But you did appreciate that at least, so far as the
13 officials were concerned, they were saying they had
14 looked at the matter collectively and that was the
15 advice they were tendering to you?

16 A. I did indeed and I fundamentally disagreed with them.
17 That's why I was saying I think my Private Secretary
18 probably put it very politely.

19 Q. I suppose if the minister hadn't had your background,
20 of course, there may have been risk that that advice
21 would just have been accepted and acted upon?

22 A. I think it is possible. If someone who perhaps was
23 relying on the advice of officials and didn't have the
24 background, then perhaps they would have accepted it as
25 it stood.

1 Q. Yes. Can I just on that point refer you to something
2 you say in your own statement at paragraph 37, if we
3 could just have that up again, your statement at
4 paragraph 37.

5 A. Yes.

6 Q. I think you are making an important point about reliance
7 on advice, that ministers ultimately do have to, in
8 practice, rely on advice of officials. You say that one
9 of the dilemmas as a minister is you are relying on
10 advice that comes from officials, and then you say had
11 you not had that background you might have relied on it.
12 So is that making that very point?

13 A. I think it is making the point that I was using, at that
14 stage, what I felt was my professional social work
15 judgment in bringing that to bear, and the experience
16 I had had both from the Edinburgh Inquiry and working
17 for Who Cares? Scotland, and in a way I think in doing
18 that, I was actually doing what the then First Minister,
19 Jack McConnell, had probably anticipated that I would do
20 in bringing that experience to bear.

21 Q. I suppose you illustrated another point that we all have
22 to be aware of, that officials advise, ministers decide?

23 A. At the end of the day the ministers have to decide, and
24 sometimes it is one of these situations where sometimes
25 you might get it right and sometimes you might get it

1 wrong as a minister, but you have that responsibility.
2 I think that is why I probably responded so quickly to
3 that one, because I wanted it to be very clear from the
4 outset that, no, this was not the direction of travel we
5 should be going in, and I wanted to see something
6 different and to get the officials thinking differently.

7 Q. I understand what you are saying. In terms of getting
8 some information on the scale of the problem, you have
9 already said you didn't necessarily accept the premise
10 that there was no evidence of a widespread problem.
11 I think you did take steps to get some information about
12 the nature of the problem. But can I just ask you
13 this: you tried to ask various sources for some idea of
14 investigations, allegations. But am I right in thinking
15 ultimately at that point the evidence you had available
16 wasn't reliable for forming any final conclusion on the
17 scale or extent or nature of the problem?

18 A. I think it would be fair to say that the information
19 that was presented in documentation and so on wouldn't
20 necessarily have shown the scale of what essentially
21 were historical problems. I think that was another
22 distinction around what might be happening in the
23 childcare system at that point and what had happened
24 previously. And I think from my perspective, I was
25 looking at the fact that many people do not come forward

1 and report instances of abuse, particularly in
2 historical terms, there had been no way for them to do
3 that. But I was also not convinced that, as
4 an Executive, we had actually tried to pull together all
5 of that information, and that is why I asked
6 specifically for work to be done across the Executive in
7 the Police Division, looking as well at the Crown Office
8 and Prosecution Service, to try and pull together some
9 sense of how many cases there were outstanding and what
10 the extent of that problem had been.

11 Q. So there is the issue of under-reporting for a start, so
12 that may give a false impression of scale or prevalence,
13 but there is also the issue of getting proper
14 information about the problem from the records you have
15 or the sources you can approach.

16 The point I am trying to make to you at this stage
17 is that -- and I think another witness who is going to
18 give evidence this week, one of the officials, says one
19 of the difficulties may have been that the state of the
20 records, there was not really a very structured central
21 database that you could simply press a few buttons and
22 come up with a picture of either the current position or
23 the historical position on treatment of children in
24 residential institutions. Is that something you became
25 aware of?

1 A. I certainly think that is a factor. I think the way
2 the Scottish Executive departments were structured as
3 well, despite efforts to try and get crossover working
4 between the different departments it was sometimes
5 difficult, and bear in mind a lot of the previous
6 information had been paper based and wasn't on databases
7 and so on. And I can certainly say from my current
8 experience working in the care sector and going back
9 into that, and having to look at -- going back through
10 and archiving a considerable amount of documentation
11 from over the years in a safe way, so I can appreciate
12 that. However, at the same time I wasn't really
13 prepared to let that be a reason for not looking at
14 anything.

15 Q. Was that not all the more reason to look at something?
16 If you don't know, then find out or make the appropriate
17 actions to find out?

18 A. I think it is important to make the appropriate actions
19 to find out. I think it would also be fair to say that,
20 from my perspective, I felt that the people who had come
21 forward and reported abuse or had disclosed, or
22 whatever, were likely to be only part of the population
23 of people who had experienced abuse. Because I was
24 aware of people who have suffered abuse in the past who,
25 for whatever reasons, didn't want to bring anything

1 forward, didn't want to talk about it, and have gone on
2 to live their lives. That was not everyone but that was
3 certainly a factor. So if we were hearing only about
4 a number, then it was quite likely that there was more
5 had happened, that people may come forward if given the
6 opportunity, and indeed there would be still more that
7 perhaps wouldn't want to come forward for various
8 reasons.

9 Q. I am going to ask you about something specific to this
10 period because in your statement I think you deal with
11 the issue of why, when you got revised advice on
12 14 November of 2002, it took until 17 February 2003 for
13 a response to go to the Public Petitions Committee.

14 Before you say anything, can I just say that we have
15 had the benefit of getting more documentation since
16 I think you perhaps prepared your statement and
17 considered this matter and I would like you to look at
18 some documentation, because I think what you say in your
19 statement you may want to reconsider, having seen
20 further documents, that you did in fact have some
21 activity in that period I am discussing and it did lead
22 to some changes to the response that was given to the
23 Committee after 14 November 2002.

24 Do you get the point I am making?

25 A. Yes.

1 Q. Perhaps I can do that by reference to one or two
2 documents just in fairness to you. The first one is
3 SGV-63478. If we could start with that one, which ...

4 We have already looked at the initial briefing of
5 the 13th. You can take it from me that this is the
6 final version of the revised briefing of the 14th. And
7 before I look at it, can I say this. One of
8 the difficulties of looking at Government records and
9 files is that there are lots of drafts, there are lots
10 of versions. Some get signed although they don't get
11 delivered to the minister, and ultimately it is very
12 difficult sometimes to know what the final version is.
13 So that is me making a point based on seeing records
14 that we have been provided with, that it can be quite
15 difficult to know what the version was that went to the
16 minister.

17 But take from me that this is the version, having
18 now had a chance to look at a number of documents. If
19 I can take you to it, do you see it's dated 14 November,
20 2002? You have already -- as it records at paragraph 3
21 on the first page, there had been previous advice?

22 A. Yes.

23 Q. And basically it's saying you weren't happy about this
24 and that you weren't convinced that the Executive could
25 simply do nothing, or "resist doing something" as it is

1 put.

2 So what we get then is a revised advice, including
3 a revised response. And if we go to the memorandum or
4 the suggested response in the revised submission, we see
5 that paragraph 1 now reads -- if we can go further
6 along, it's at 8701. If we go down two-thirds of the
7 way, we see paragraph 1 now reads:

8 "Any case of child abuse is unacceptable. Abuse of
9 vulnerable children in institutions which should provide
10 them with safety is particularly deplorable."

11 And paragraph 2:

12 "The Scottish Executive will consider whether
13 a forum of Inquiry of the sort requested ..."

14 That is what Mr Daly was wanting.

15 "... should be established having regard to the
16 cases that have come to light in recent years."

17 I am saying this is the version, but I think "or
18 some other Inquiry" did come into the version you have
19 seen, so perhaps I stand corrected. But the gist of it
20 was that you were considering the request for an Inquiry
21 "or some other Inquiry".

22 The point I wanted to raise with you was that there
23 is no expression of regret I think in the version that
24 ultimately went to the Committee. I think you thought
25 there was and it had been taken out.

1 A. I did think that the version that I had seen still had
2 the expression of regret, and I wondered on reviewing
3 the documents again whether I had misunderstood that or
4 whether there had been a change at some other level.

5 Q. Can I help you with that, because it was really for that
6 reason I wanted to draw attention to paragraph 1.

7 In fact can I just say this. In relation to the version
8 that went on the 17th, before that, and before you
9 received the revised version on the 14th, the official
10 had asked the Office of the Solicitor to the
11 Scottish Executive, and this is -- we will just call it
12 OSSE, for comments on a draft revised submission. And
13 on 14th November, the date you got one, before you
14 received it, can I just read what advice was given to
15 the official by OSSE, by a solicitor in OSSE:

16 "I consider your wording could be construed as
17 an acceptance of liability by those currently pursuing
18 civil actions relating to abuse in List D schools in
19 which Scottish ministers are already involved as
20 defenders. It also appears to go beyond what the
21 minister requested. She simply states we should make it
22 clear that abuse is wrong. I think the first two
23 sentences in paragraph 1 are sufficient."

24 I think these were the two sentences that eventually
25 went to the Committee. So do we see there, and I think

1 it is normal practice to seek legal advice on important
2 matters and drafting, but the advice being given to the
3 official before he briefs you is: don't include an
4 expression of regret for the reasons stated, there is
5 ongoing litigation, and we should simply stop at what
6 appears on the screen at paragraph 1. Does that maybe
7 aid recollection that that is where the matter stood at
8 that point?

9 A. To be perfectly honest, if that is what the records show
10 then that is what the records show. I can only remember
11 that I was particularly keen that we made it clear that
12 abuse was not acceptable in any form, and I can remember
13 having considerable discussions around -- and we may
14 come to this -- the issue about apology, and whether
15 an expression of regret was in fact an apology.

16 Q. I will come to that in due course. But you can see the
17 line. The solicitors are nervous that anything that is
18 seen as either an apology or an expression of regret
19 might be linked to responsibility or admission of
20 liability in litigation that the Executive was
21 defending?

22 A. I think that is true. And I think also that that came
23 across on numerous occasions, that not only could it
24 leave the Executive liable for litigation that was
25 currently in place, but it also potentially would leave

1 the Scottish Executive liable for historical events.
2 I remember at the time having discussions around: that's
3 all well and good, and I think I refer to that later,
4 but the victims of abuse don't differentiate between the
5 Local Authority's responsibility, the
6 Scottish Executive's responsibility and the wider
7 Government's responsibility, or whether it had been
8 a voluntary provider or an independent sector provider.

9 Q. They are all the State.

10 A. As far as the people who had been looked after, to use
11 today's language, were concerned, the State in some form
12 or another was looking after them and was responsible
13 and they weren't interested in the subdivisions of that.

14 Q. Just to follow up on what you have just said, the State
15 was responsible, the State put children into the care of
16 providers like the religious orders, and the people of
17 Scotland are not State, that was their position?

18 A. I think that was the position. And again when we come
19 to the apology, that was the reason why I think some of
20 the people who had been victims at the time were not
21 content with the apology, although initially I think
22 they thought that this was really good, they were
23 getting an apology. But then, as people began to unpick
24 the wording, what they wanted was the State, the
25 establishment if you like --

1 Q. The Government and the --

2 A. -- to accept responsibility.

3 Q. And I think, I hope I have recalled this accurately, but

4 I think at phase 1, in giving her evidence,

5 Helen Holland did say that after a little reflection,

6 and having spoken to Frank Docherty, who you probably

7 are aware of, his reaction to the apology on behalf of

8 the people of Scotland, was "It wasn't the people of

9 Scotland who abused me and it wasn't the people of

10 Scotland that put me in care, it was the State", as he

11 saw it. Does that maybe --

12 A. I think that was a reflection of how people felt at the

13 time, and I think some of the discussions that went on

14 were around could the Scottish Executive essentially

15 accept responsibility for things which other individuals

16 and organisations had either perpetrated or had allowed

17 to happen. And I know that when it came to the apology

18 as well, one of the things that Jack McConnell, then

19 First Minister, was concerned to do was not to let

20 anyone off the hook, not to let any other organisation

21 off the hook. And he wanted, whether it was the

22 churches or the other providers, every one of them to

23 look into their own history and examine what they could

24 have done better and what they would do in the future,

25 if that was appropriate, to ensure that children weren't

1 being abused.

2 Q. I think indeed that is a point he has made and will make
3 in due course to this Inquiry.

4 But at the time that we are looking at here, so far
5 as apology is concerned, what was the Executive's
6 position? We saw in the earlier draft the idea, the
7 first draft, that there was not going to be an apology
8 for something that was -- was that because the Executive
9 at that time thought that they were not responsible for
10 past abuse in institutional care? Was that
11 the thinking?

12 A. I don't think it was as straightforward as that.
13 I think the response which went to the Committee I think
14 was very much that that was -- it is not a holding
15 position, but that was the position at that time, that
16 we wanted to keep our options open, we wanted to look in
17 a bit more depth at what might be the right thing to do
18 going forward, and it certainly hadn't been ruled out
19 that there would be an apology at some stage.
20 And I know that I felt, and the then First Minister
21 felt, I believe, that at some point someone was going to
22 have to make an apology because people would not be
23 satisfied otherwise. So we wanted to keep that as
24 a possibility, we weren't ruling it out.

25 Q. When you say "someone", do you mean someone within

1 Government?

2 A. I think we probably felt it would have to come from
3 Government. Because again you could have each
4 individual provider or religious order or organisation
5 apologising for what happened within their own homes,
6 but I think that, broadly speaking, the victims expected
7 at some stage that something would come from Government
8 and they were looking for that.

9 Q. Indeed Mr Scott reminded us this morning in his opening
10 statement that in other countries, earlier than 2004 or
11 indeed 2002, leaders of their State had made apologies
12 on behalf of the State. I think notably Bertie Ahern
13 was one, Enda Kenny I think was mentioned as well. So
14 these had happened elsewhere?

15 A. Yes. And that was one of the reasons why I think,
16 again, right at the outset, I was saying can we look at
17 what is happening in other countries and what can we
18 learn from that, because people have made apologies and
19 the earth has not fallen in.

20 Q. Can I, just to finish this little bit about the
21 response, maybe just take you briefly to the memorandum
22 that did go to the Committee. SGV-46947, please. This
23 was the memorandum that was finally sent to the
24 Committee. And you will see that if we go to the second
25 page of that document, the memorandum itself, two-thirds

1 of the way down the response of the Scottish Executive,
2 paragraph 1 reads:

3 "Any case of child abuse is unacceptable. Abuse of
4 vulnerable children in institutions which should provide
5 them with safety is particularly deplorable."

6 So that was the extent of the statement on that
7 matter.

8 And then:

9 "The Scottish Executive is considering whether
10 an Inquiry of the sort requested or some other
11 forum ..."

12 So these words were added.

13 "... should be established to look into cases ..."

14 We were told this morning by the Convener of the
15 Public Petitions Committee, Michael McMahon, that when
16 he read this, he wasn't Convener then, but when he read
17 it he considered that the issue was more what type of
18 Inquiry rather than whether the Executive was going to
19 have an Inquiry at all. But do you understand why he
20 might have thought that?

21 A. Absolutely. As I said, it had been certainly my
22 intention, and I believe with the First Minister's
23 approval it was our intention to keep options open so we
24 could look at what we needed to do, so we didn't want to
25 block that off.

1 Q. But I think he is saying that not just keeping the
2 option of an Inquiry of some kind open, Mr McMahon was
3 saying he was reading it as: we don't know quite what
4 Inquiry we are going to have but we will have something
5 but we want to think about it?

6 A. Yes.

7 Q. Do you see why he might have thought that?

8 A. Absolutely. And I think the fact it says "or some other
9 forum should be established" is also giving a clear
10 indication of what the intended direction of travel was,
11 that we were going to do something. It may not be the
12 full Public Inquiry in the way that the petitioners had
13 requested, but that we recognised there was an issue and
14 something that we should be looking at doing.

15 Q. Therefore can you understand his disappoint when
16 Mr Peacock sent a letter on 30 June 2004 saying there
17 was to be no Inquiry and not indicating there would be
18 any other form of investigation in that letter. I don't
19 know if you are familiar with it?

20 A. I am not familiar with that particular letter, but I can
21 understand, and also the fact of the delay between this
22 going and then by the time it took for something to get
23 to the next stage, almost, if you like, of the
24 Committee. And that is something -- I don't know why
25 that happened but --

1 Q. We will find out. I don't think --

2 A. I can understand why people were concerned about that.

3 Q. If I can just stick with this a little bit, because you
4 did give some evidence of this, and I think I want just
5 to be -- to make sure that you appreciated that there
6 was some documentation that might assist you also.

7 If we go to another document which SGV-63484. You
8 saw a revised briefing of 14 November, and if we look at
9 that page, you will see this is an email from the
10 First Minister's office on 19 November to Jeane Freeman,
11 who was then one of his special advisers, saying that
12 the First Minister would like Jeane Freeman to comment
13 on the submission on the Daly petition.

14 If we go to another document, this is 19 November.
15 Because remember, you have the revised submission by
16 now. If we go to another document, which is
17 SGV-000063483, and bring that up, you will see that what
18 happened then was that the revised response which you
19 were content with had been sent to the Public Petitions
20 Committee, but when the First Minister's email was
21 circulated, the Private Secretary in Education arranged
22 for the response to the Committee to be withdrawn.

23 A. Sorry, I am now slightly confused on the date of this.

24 Q. This is 19 November 2002.

25 A. Okay.

1 Q. What happened was you had got a revised response, you
2 were content with the response, and then the
3 First Minister's office says on the 19th, because you
4 were happy enough for the response to go off in the
5 revised terms, but the First Minister wants
6 Jeane Freeman's comments. So what happens is officials
7 in Education take steps -- you may not have been aware
8 of this.

9 A. I am not. This is new to me.

10 Q. Well, it may be new to you, but this is what seems to
11 have happened, that the response did go off to the
12 Committee but then it was withdrawn on the 19th so that
13 the First Minister's request for his adviser to look at
14 it could take place and then the matter could be
15 resubmitted to the Committee.

16 So do you see what is happening? You may not, as
17 I say, have been aware of this all going on. But just
18 following the thing through a little bit, you then --
19 you had a meeting in early January to discuss issues
20 widely on historical abuse. But also if I could ask you
21 to look at another document which is SGV-63481. We are
22 now into January 2003, the First Minister has asked for
23 comments from Jeane Freeman, and there is a fax here to
24 Karen Watson, who is in the First Minister's office,
25 from the Private Secretary. Your private secretary at

1 the time, was it?

2 A. It's not -- is that ... that would be from the First ...

3 Q. He is writing to Karen Watson is say:

4 "Please see attached letter for a response to
5 Petition 535 [the Daly petition] which you know is with
6 your office [the First Minister's] for clearance. I
7 would be grateful if you feel there will be a problem
8 with the 14 February deadline."

9 So the Committee is chasing up for a response?

10 A. They are looking to see --

11 Q. The First Minister wanted Jeane Freeman to look at it,
12 it's still sitting in the First Minister's office for
13 clearance at that time in January, and there is some
14 request to say: can we have something now? And that
15 generated this document.

16 If you go to the next page of this document, I think
17 you will maybe see the letter that was actually sent
18 from the Committee. As we discovered earlier, it was
19 unfortunately sent to the Health Department rather than
20 Education, and I'm not sure the date is -- quite which
21 date it was, but it's in January, and it's really
22 looking for a response, so it's chasing up a response
23 from the Executive. So the revised response was taken
24 back. The first Minister has it. His adviser is to
25 look it over.

1 The next thing I might ask you to look at is
2 SGV-63482, if we could just have that up also. This is
3 another briefing or submission to you on
4 13 February 2003, and its purpose is it get you to agree
5 an updated draft response to the petition that can be
6 sent to the Committee. You will see that in that
7 document under paragraph 3, "Background" it is explained
8 what had happened, that the reply wasn't sent out, the
9 one on the 14th, and you have had a meeting in January
10 indeed, and there has been discussions along those lines
11 and various actions.

12 Then you are invited to note the information given
13 there and to agree a wording of a revised response which
14 is sent to you at that stage. Do you see? I am not too
15 interested in the detail but you can see that you have
16 been involved?

17 A. Yes, and I was also involved in the January meetings,
18 trying to make sure that that was being progressed at
19 that stage and bringing people together because I felt
20 that we were always going to have to give further
21 information to the Committee. So it wasn't simply
22 a case of, well, that bit is done, and then we don't do
23 anything else. We are now having to bring a people
24 together to try and update to get things moving.

25 LADY SMITH: Sorry, which meetings are you talking about

1 when you say "January meetings"?

2 A. This was the January meeting of the different ministers.

3 LADY SMITH: Thank you.

4 A. Apologies, I don't have --

5 MR PEOPLES: I will come back to that, if I may. In
6 fairness to you, I think your statement thought that
7 perhaps something had gone to the Committee in November.

8 A. Yes.

9 Q. And that was end of your involvement, and you were
10 surprised by --

11 A. I thought something had gone to the Committee
12 in November and that there was subsequently further
13 information sent. And if that is my misrecollection,
14 I have to accept that, but I thought something had gone
15 and then we were moving on to the next stage.

16 LADY SMITH: Don't worry, it sounds as though you have good
17 grounds for remembering that something was at least on
18 its way to the Committee but the documents indicate it
19 didn't get there, it was withdrawn, so the
20 First Minister's advisers could advise the
21 First Minister.

22 MR PEOPLES: The reason I am dealing with this in a little
23 detail is that I had some questions arising out of your
24 statement about you thought it had gone to the Committee
25 and somehow there is a response. Did officials change

1 it? Did you not authorise the change? So I am just
2 pursuing it to be clear on this matter.

3 If I could just ask you to look, I think it is
4 within the same document there that we have. If we turn
5 to -- there is an email within that document, six pages
6 in, I think it is, six or seven, from an official on
7 13 February to you at 15:26, or to your private office.
8 Do you see? There should be a 15:26 ... Maybe try the
9 next page?

10 Yes. It has come up on the screen now. You will
11 see that the official has sent to your private office
12 a submission with an updated draft response
13 incorporating various amendments or comments from
14 various parties.

15 You will see that by that stage, if we turn the page
16 to the next page, and two-thirds of the way down, you
17 will see that the formulation that eventually went to
18 the Committee I think is contained in that draft. Do
19 you see paragraph 2:

20 "... considering whether an Inquiry ... or some
21 other forum ..."

22 So it has changed --

23 A. Yes, it has changed to include --

24 Q. Yes, "or some other forum".

25 If we go to the final page of that document, two

1 pages on, there should be an email of 13 February at
2 16:13 which records that:

3 "Ms Jamieson has seen your minute of today on the
4 above. She is content with the memorandum."

5 And it says:

6 "What she feels reflects the discussion she had with
7 Jeane."

8 That's Jeane Freeman.

9 "... grateful if Jeane could indicate whether she is
10 content."

11 I don't think we have anything that shows that Jeane
12 expressed her contentment, but that was the response
13 that went to the Committee, so we can infer I think that
14 she didn't have any issues?

15 A. I think if she had issues she would have said.

16 Q. Yes, okay, I think we can see that. So what has
17 happened is you have been involved in some discussions
18 with Jeane Freeman, it has resulted in some changes, you
19 are content with the changes, and the version that we
20 looked at earlier that went on 17 February is the one
21 that was the official first response. So are you ...?

22 A. I am happy to be corrected on that. Obviously if I had
23 perhaps seen those documents it might have triggered my
24 memory during the process. I was relying on my memory
25 rather than --

1 Q. Don't worry. I think we have had documents given to us
2 at various points and it is quite difficult to keep up
3 at times.

4 Your Ladyship did mention that you talked about
5 a meeting in January. For completeness, can I put to
6 you that we do have that meeting or a note of that
7 meeting in the bundle at SGV-63479.

8 I think this is the meeting -- you hadn't liked the
9 initial advice, you wanted a bit more information, you
10 wanted a discussion about the issues generally, and such
11 a discussion took place on 6 January 2003. And you were
12 present, Colin MacLean was present, he was the senior
13 civil servant in the children and young people group.
14 The Deputy Crown Agent was there, an official from the
15 Police Division of the Scottish Executive, and some
16 others, including a Mr Beaton from the Civil Justice and
17 International Division, and I think he had already
18 written on some of the issues here, including problems
19 with prescription. I don't know if you recall that?

20 A. Yes.

21 Q. I think he had already flagged up problems with
22 prescription and pre-1964 abuse claims. So you see this
23 was a meeting -- I think you had a wide-ranging
24 discussion, did you not, about the issues at that stage?

25 A. Yes --

1 Q. At your request?

2 A. -- I think the purpose of that was really to move on
3 from the initial Committee response to what can
4 the Executive do, what are the options for hearing
5 directly from victims, and what can we learn from
6 elsewhere? As it says in the document, I think the
7 important part there was it wasn't simply about
8 the Executive doing something, it was actually involving
9 the various other organisations as well, but what could
10 the Executive do to create a forum which would allow all
11 of those issues to be aired? Also compensation was
12 something that -- again, there were discussions around
13 redress, compensation, the differences between those,
14 and this one particularly refers to compensation.

15 I think that was running through people's minds
16 right from the outset, that at some stage there would
17 have to be some system for redress, perhaps financial
18 compensation.

19 LADY SMITH: Mr Peoples, it's just about 3 o'clock.

20 I usually have to take a break, Cathy, at about this
21 stage, to give the stenography service a breather.

22 Thank you.

23 (3.01 pm)

24 (A short break)

25 (3.14 pm)

1 LADY SMITH: Yes, Mr Peoples.

2 MR PEOPLES: Cathy, can I just perhaps finish this chapter
3 of the period up to 17 February. I hope we are clear
4 enough now about the events.

5 A. I think I now have a clear timeline that I perhaps
6 didn't have before, so that is helpful.

7 Q. Just dealing with that period, can you recall having
8 discussions with the First Minister in that period about
9 the petition?

10 A. I think there would have been informal discussions.
11 I don't recall having a formal minuted meeting. Again,
12 I am willing to be corrected if I have missed something
13 in my recollections from all those years ago, but
14 obviously we regularly discussed different issues about
15 the First Minister, and I know from that that his view
16 was that -- I am interpreting with the benefit of the
17 years in between, that his view was at the time that we
18 would have to do something for the victims ultimately.

19 Q. I think that was in line with -- you have said your
20 thinking at the time, although you didn't know what you
21 precisely would be doing, you thought something had to
22 be done. I don't think you had been persuaded that
23 a Public Inquiry, for example, was necessarily the
24 appropriate thing to do, and indeed that didn't happen
25 in your time as a minister.

1 A. Indeed, I had some concerns at the time about what
2 a Public Inquiry -- because it would have been under the
3 terms of the old inquiries legislation at that point --

4 Q. The Tribunals and Inquiries Act?

5 LADY SMITH: Yes, it would be before the 2005 Act.

6 A. Yes, and at that stage I thought perhaps that wasn't the
7 best route to take. And again with the benefit of the
8 experience of the Edinburgh Inquiry, where we had
9 a number of sessions in private where victims could come
10 and give their information without being exposed, if you
11 like, to the full public gaze, but we also held some
12 sessions in public, so I thought there might be
13 something around that. I also wanted to have a look at
14 what had happened in other countries. I think, as is
15 referred to here and was referred to in my statement,
16 the truth and reconciliation commission, which would
17 have been a different approach, or having some kind of
18 rapporteur where someone could be appointed to collect
19 the information and evidence from the victims and put
20 that into a report. So really at that stage it was very
21 much about trying to find a way forward.

22 I think there is another point here which I think is
23 worth mentioning as well, because I know this was
24 something that I can recall, I am sure, the
25 First Minister was keen on. I mentioned earlier that

1 other organisations didn't get off the hook by
2 the Executive taking this on, and that also meant in
3 terms of financial compensation, that perhaps there had
4 to be something where the organisations involved
5 contributed and it was not simply a draw on
6 the Executive and public purse.

7 LADY SMITH: Cathy, have you any recollection at that time
8 of there being any sense of urgency, any sense of those
9 who were calling for this Inquiry -- let me put it as
10 politely as I can -- not getting any younger?

11 A. Yes, I think that was something that was certainly in my
12 mind, because I knew I had at that stage constituents
13 who -- they weren't part of the formal group who were in
14 INCAS or the other groups of the Inquiry, but who had
15 come to see me privately, who didn't want to be public,
16 but who nonetheless were very keen to have something
17 taken forward, so I was very conscious of that.

18 You ask if there was a sense of urgency. I think
19 the timing in the electoral cycle of this was not
20 helpful in terms of trying to get something in the
21 lead-up to an election and potential change of
22 administration. And that is not an excuse, it is just
23 the way things were. So while I think I certainly had
24 a sense that we needed to do something, and I think
25 others had, events and the cycle of things perhaps got

1 in the way of that.

2 LADY SMITH: Thank you.

3 MR PEOPLES: You say in your statement at paragraph 80, if
4 I could ask you to look at that, and I am looking at the
5 issue of the apology, an apology:

6 "Jack McConnell was always going to make an apology.
7 I think at that stage people were much more focused
8 around the question of what was the apology for and on
9 whose behalf ..."

10 And so forth. It's the first sentence I'm
11 interested in. When you say he was always going to make
12 an apology, from what point had he decided on that?

13 A. I think from the outset, and I think that is where I go
14 back to some of those informal discussions. I think he
15 always wanted at some stage to make an apology, but it
16 was a question of when that would be and what else would
17 be in place, because it wasn't simply about standing up
18 in Parliament or elsewhere and apologising but without
19 having a series of things put in place. So in my mind
20 I think he was always going to do something, but the
21 time, the place, the context, and so on, was something
22 that --

23 Q. Are you now recalling perhaps a discussion along those
24 lines at the very outset in November, December 2002 or
25 that period?

1 A. I would be dishonest if I said I could recall exactly
2 when that was because there were lots of informal
3 discussions toing and froing. So I wouldn't want to say
4 exactly when, but certainly my view was that it was
5 something he took very seriously and he wanted to do
6 something.

7 Q. Because you will remember that the officials had said in
8 the initial briefing that there wasn't any basis for
9 an apology at that time. That didn't appear in the
10 initial response to the Committee at the end of the day,
11 as we have seen, but clearly they had addressed the
12 issue, had given advice on the issue: don't apologise.
13 We saw, or I told you that the OSSE were telling them
14 the reason why they shouldn't be saying anything. So
15 that was all going on at official level?

16 A. Yes.

17 Q. But yet you say the First Minister, although you can't
18 remember precise timescales, was minded that an apology
19 would have to be made at -- well, I think the expression
20 he uses in his written statement is "at an appropriate
21 time", or "at the appropriate time"?

22 A. Yes, and that is why I would say I would not want to put
23 a definite date on when that was the case. And I think
24 we had more and more information coming from officials,
25 coming from -- the legal advice from OSSE, and so on,

1 which continued to give many, many reasons why we should
2 not expose the Executive. And people would be given
3 this in good faith, we shouldn't expose the Executive to
4 potential claims, potential litigation, financial claims
5 et cetera, et cetera.

6 However, at the end of the day, certainly it was my
7 view that we had to say something or do something, and
8 the First Minister was of a view that at some stage he
9 would ... he would apologise, that is my belief.

10 Q. I will actually tell you what his recollection is,
11 because one of the difficulties for the Inquiry I think
12 is that there is not any written record of this thinking
13 or any discussion, informal, if it was, in the records
14 that we have been provided with. I don't think I have
15 found anything that confirms that there was
16 a conversation at the outset that we are going to have
17 an apology at some point.

18 A. And I don't think it would be as firm as that. I think
19 it was exactly why some of those discussions were
20 informal, because it was: how's the thinking developing?
21 Where do we think this might go? And again being
22 conscious of the kind of timing --

23 Q. The other thing you might help me with is this: it is
24 not apparent in the records I have seen that the
25 officials knew this was the thinking. Because one might

1 have expected, if they had been alerted to the
2 First Minister's general thinking, some of the briefings
3 would have been in different terms to -- because we
4 don't see any indication that, well, we know what the
5 position is on apology, it's just a case of timing, so
6 we will just keep that as a given, and now we will think
7 about all these other difficult issues.

8 I don't see anything that suggests that they knew
9 that the First Minister was thinking along these lines.
10 Can you tell me whether they did know?

11 A. I can't say what they knew. I can imagine they wouldn't
12 know, because the officials had their view, and I think
13 that was unlikely to change.

14 Q. It is maybe a bit unfortunate that there wasn't a debate
15 between the ministerial position and --

16 A. I think that did come later, obviously at the point at
17 which the First Minister decided: now is the time when
18 I am going to do this and I am going to say ... There
19 was a considerable amount of debate at that stage. So,
20 again, you would have to ask him what was in his mind
21 but I am assuming that there was a whole range of other
22 things going on and --

23 Q. You don't have a recollection -- it is not in your
24 statement, and obviously you don't have a clear
25 recollection that at the outset there was this

1 discussion?

2 A. I can't recall when it was -- I would say it was more
3 likely to have been, rather than a kind of sit-down
4 formal session, which it wasn't, because it isn't
5 minuted, it would be more when we were discussing future
6 policy and where we were going to take things, and that
7 was quite likely to have been done in an informal basis
8 and without officials.

9 Q. Can I just quote from what he did say in his witness
10 statement to maybe help you with what his recollection
11 is? He said in his statement that you alerted him to
12 the Daly petition, I think is the way he put it, and
13 your response to the initial advice from officials,
14 which we have discussed, and that you had some
15 discussions with his special adviser, Jeane Freeman.
16 I think we have seen there is a record of that?

17 A. Yes.

18 Q. He goes on to say:

19 "We agreed ..."

20 I think he means you and him?

21 A. Yes.

22 Q. "... that we would work towards an apology at the
23 appropriate time but that a holding reply would be sent
24 to the Committee to allow more time to consider the
25 question of an Inquiry and related issues."

1 That is how he puts it in his evidence to the
2 Inquiry. We will hear more from him later on.

3 So he is fixing that agreement, as he puts it, at
4 the time that the reply was to go to the Committee
5 around, and we know it went on 17 February 2003, so --

6 A. I would have no reason to doubt that was the case. I
7 think the question you asked was could I fix the point
8 in time? Was it the November discussion or the later
9 one? And I genuinely could not put a date on that, but
10 I know that we had the discussions over a period of
11 time, and again leading up to when the actual apology
12 was issued.

13 Q. I suppose the difficulty for those that hear that
14 evidence now, in 2020, about this informal
15 discussion/unminuted agreement, is that, well, he says
16 he would have apologised -- he was going to apologise
17 and he had that position at the outset. And yet if that
18 was the case, that he had that position some time around
19 early 2003 at latest, there was no public apology until
20 December 2004. Why was that? All the other issues had
21 already been discussed internally in 2003, you were at
22 a meeting in 2003 with other ministers, and there was
23 the letter to the Petitions Committee in June 2004. And
24 yet it is only on 1 December 2004, after the minister
25 had been asked by the Committee to give evidence, and

1 that perhaps something had to then be said, that we get
2 the apology.

3 Can you explain why it took so long to get to that
4 point?

5 A. I can't explain for anyone else's actions. I think from
6 the time that the first information went to the
7 Committee in 2003, we had an election, we had a new
8 administration. Obviously there was a period of time
9 elapsed in which information didn't go to the Committee,
10 and I wasn't leading on that at that time so I can't
11 answer for that. But I think the point would be also
12 that a number of other things would have been put
13 in place by that stage, because the First Minister was
14 looking at a package of things, looking at different
15 things that could be done. But I can't answer for why
16 it didn't happen --

17 Q. Is it a matter that was ever discussed before late 2004
18 at Cabinet? There doesn't seem to be any indication --

19 A. I can't recall that having come to Cabinet during 2004
20 until the point at which --

21 Q. Or before then?

22 A. No, until the point at which -- I don't think it came to
23 Cabinet, again I stand to be corrected if I am wrong on
24 this, but I don't think it came to Cabinet until the
25 point at which we were looking at: and here's going to

1 be the statement by the First Minister, and there was
2 going to be a debate in Parliament. Because obviously
3 in the intervening time the Petitions Committee had
4 pursued a range of thinking and deciding what to do.
5 And again I can't speak for the Petitions Committee, but
6 I can only assume that during that time they are
7 thinking was: if we don't get the answers we want then
8 we will put it to Parliament, as was their right to do.

9 Q. As Michael McMahon told us this morning, the debate was
10 a first for the Committee. They were clearly unhappy
11 about the time it took to get a response, and they were
12 unhappy with the response when it came in June 2004,
13 they were not very happy with Peter Peacock's
14 explanation before the Committee in September 2004, so
15 there was a lot of pressure to do something that might
16 appease them and others. And lo and behold, we then get
17 a public apology, but not the one that INCAS wanted or
18 some survivors wanted. It was on behalf of the people
19 of Scotland.

20 So it looks as if someone has been dragged to this
21 position, rather than saying: I am just waiting for the
22 right time, and the debate is the right time?

23 A. I am not -- well --

24 Q. I am just putting that to you, just to see --

25 A. I am just saying that is a value judgment, about whether

1 someone has been dragged or whether they are waiting for
2 the right time, and I can't answer for what the
3 First Minister was thinking at that stage, except that
4 I do know from the earlier discussions that that was the
5 direction of travel.

6 Q. He wouldn't have known that the Committee is so
7 frustrated by everything they'd heard that they'd ask
8 for a debate. It was unprecedented in their times. So
9 how was he thinking, well, let's just keep this under
10 wraps. And then ultimately in December 2004, many
11 months on from the petition: let's give them an apology.
12 I think that is just what people struggle with. Can you
13 help me?

14 A. I can understand that. But I think also it is maybe
15 just worth remembering as well that this was a kind of
16 new Parliamentary set-up, the Petitions Committee was
17 a new -- it was pretty much -- it was seen as one of
18 the jewels in the crown of the Scottish Parliament. The
19 Committee were learning the ropes, the Executive were
20 learning the ropes. And, yes, when the Committee
21 decided -- now it would be relatively common for
22 a committee to put something to Parliament for a debate,
23 but at that time it was quite a big thing and it was
24 quite an emotional event when it actually took place in
25 Parliament.

1 Q. It was in part a big thing, not because of what they
2 were being told by the Executive, they weren't happy
3 with what they were being told. They had been told
4 there is not going to be an Inquiry. They weren't
5 offered any kind of assurance that anything else that
6 the petitioner might want would be given. And so can
7 you understand why they might use what Michael McMahon
8 described as the nuclear option?

9 A. I can understand why they would bring that to
10 Parliament, as was their right to do. I think again,
11 and I can't answer for other ministers during the period
12 between 2003 and into 2004. I was not leading on it at
13 that point, I was still involved more tangentially,
14 partly because the youth justice system had come with me
15 as a responsibility into the Justice Department. But
16 also I was then looking at time bar and various other
17 things from a justice perspective.

18 So I can see the protracted length of time was not
19 good, and if we looked back, I am sure there may well
20 have been opportunities in retrospect, being an exact
21 science, to say actually we could have brought something
22 forward.

23 Q. So there may have been missed opportunities?

24 A. There could have been.

25 LADY SMITH: Cathy, can you help me with this?

1 Michael McMahon told us this morning that the Committee,
2 the PPC, had a consensus that in their view there should
3 be an Inquiry. Do you remember knowing that?

4 A. I don't remember knowing --

5 LADY SMITH: You wouldn't necessarily, I just wondered if
6 you had --

7 A. No, I don't remember knowing that. Again, I may be
8 reading into this with the benefit of hindsight, as
9 a kind of Parliamentary device, if you want to get
10 something crystallised and done, you might well bring
11 a debate forward. And I think it was interesting
12 because in terms of the Parliamentary debate, it
13 wasn't -- there was no division on it. There was
14 a motion to note.

15 LADY SMITH: Yes, he explained that clearly in his
16 recollection, it was a "to note" debate.

17 A. It was a "to note" debate, which I am looking from the
18 point of view that that is a kind of device to get the
19 issues raised. Everybody knows that then there's almost
20 like a bit of pressure that something has to happen from
21 then.

22 MR PEOPLES: I want to move on. You have already touched on
23 one matter which you had to deal with as Minister for
24 Justice, I am going to come to that in a moment. But
25 before I get to that, can we go back to the question of

1 an Inquiry. You were one of the ministers at quite
2 a large ministerial meeting on 25 September 2003 at
3 which, if I can put it just fairly simply, the option of
4 an Inquiry was ruled out after discussion, which was in
5 line with officials' recommendation, the option of
6 a truth and reconciliation commission was also ruled out
7 as another option that was put up for consideration.

8 The "do nothing" option was ruled out because
9 something had to be done, and what was chosen was
10 a package of measures, but not compensation because that
11 was to be held over for consideration after the
12 Law Commission had conducted its review and the test
13 cases had determined whether claimants could have their
14 day in court or not. Is that broadly what ...

15 A. I think broadly that was the discussion at that point.
16 People were still thinking in terms of would what was
17 described as the full Public Inquiry option be the
18 correct way to go? There were some concerns around that
19 still. However, it was recognised that there needed to
20 be some forum for people to come forward, to have their
21 views known. And my recollection at that point is that
22 that is when, again, at the intervention of the
23 First Minister, beyond that, he wanted to look at
24 different options. So that was where -- which
25 ultimately led to the Shaw Report which took place.

1 Q. If I sometimes call that the fifth option, the reason
2 I do that is there were four options at the meeting of
3 25 September 2003 for ministers to consider, but
4 in December the First Minister, having been told of what
5 ministers had decided or, as he put it, recommended, put
6 on the table a fifth option of a review by
7 an independent expert and he asked for that to be
8 considered, and eventually officials considered it and
9 said, no, we don't think that is a good idea either.
10 Then the Committee got a formal response in June 2004.
11 That is the broad sequence of events. There was a bit
12 of delay because the First Minister's option was
13 overlooked for a while but someone else can tell us
14 about that. So that was what was happening.

15 If we go back to this ministerial meeting of
16 25 September, do you want to see a note of the meeting?

17 A. It would be helpful, just to --

18 Q. I can put that up for you just so we see what was
19 recorded at least. SGV-46887.

20 This is a meeting -- if we just pause there, this
21 looks like a pretty high-powered meeting. Minister for
22 Education, Minister for Justice, that is you, Minister
23 for Education is Peter Peacock, Minister for Finance at
24 that time was Andy Kerr, or someone else?

25 A. Yes.

1 Q. Deputy Minister for Education, was that Euan Robson?

2 A. I think it would be at that time.

3 Q. Solicitor General, Elish Angiolini. There are officials
4 from Education that we see. The Deputy Crown Agent is
5 there, he was of course at your meeting on
6 6 January 2003. The legal secretary to the Law Officers
7 is there, and the Assistant Private Secretary to the
8 Deputy Minister for Education and Young People. So it's
9 a significant meeting.

10 A. It's a significant meeting. And it was interesting for
11 me seeing this because it says it's the note of the
12 meeting on List D schools.

13 Q. Yes.

14 A. I was trying to remember, did that set it in a context
15 because of some of the other information that was coming
16 to light in consideration at that time about abuse in
17 the List D schools rather than in relation to the
18 petition. That may not be material, but it was
19 interesting to me, when I saw that, that is how it was
20 headed.

21 Q. Yes. But you see, I think, that there was a briefing
22 for that, and I can take you to it if you want. The
23 briefing contained the four options, and I think it is
24 plain from a fair reading of that that what was being
25 discussed was how one responded more generally to issues

1 raised by the petition, not just maybe a specific issue
2 of about List D schools. So whatever the note said, I
3 think, would you accept, it was a bit more than simply
4 about List D, it was discussing whether there was to be
5 an Inquiry into institutional care?

6 A. I suppose the point I was really making is that perhaps
7 the timing of the meeting or the number of people
8 present had been prompted by some of the issues around
9 the List D sector at that time. As I say, I can't
10 genuinely recall that, but I think it was interesting
11 that it was listed as the List D schools.

12 LADY SMITH: Mr Peoples, what was that document an annex to?

13 I see it was headed --

14 MR PEOPLES: It was an annex to I think a later briefing,
15 just to show it was the note of the meeting. I don't
16 think it is significant --

17 LADY SMITH: No, it was a convenient place to find it.

18 MR PEOPLES: Well, it's the only note I think we have been
19 able to find of the meeting, which was prepared I think
20 at a later date, but it reflects what I think was
21 discussed.

22 I don't know if you want an opportunity to cast your
23 eye over it?

24 A. That is fine, I can --

25 Q. What we see, though, is that however -- I think you had

1 at one point during that year, the summer of 2003, been
2 quoted as pursuing or looking at the possibility of some
3 commission, truth and reconciliation or something.

4 I think the press got hold of something along those
5 lines. I don't know whether you can recall that. There
6 was a lot of discussion. There were convictions of
7 individuals.

8 A. That was to do I think with the List D school sector.

9 Q. Yes, Gartmore, St Ninian's?

10 A. Yes, and I think that is why it might have prompted some
11 of this at that stage.

12 Q. But at any rate, after discussion, and the ministers
13 unanimously ruled out a Public Inquiry and a truth and
14 reconciliation type forum, and went for a package of
15 measures. But on compensation they said, well, we want
16 to just park that or shelve it until the court cases and
17 the Law Commission may have looked at matters. Is that
18 in broad terms what was --

19 A. I think --

20 Q. Certainly until the test cases --

21 A. I think there was cases before the courts at that stage,
22 and I think it was felt at that stage it would be
23 required to see which way those fell before we would be
24 in a position to give a proper response on the
25 compensation.

1 LADY SMITH: Cathy, I see the note briefly records that the
2 downside of a Public Inquiry and a truth and
3 reconciliation would be cost. Was there a lot of
4 conversation about that, discussion about that?

5 A. There was certainly -- right through this process there
6 was always, I suppose, coming from officials, concern
7 about the cost. And from my perspective I can remember
8 at the early stages thinking if we were going to have to
9 look at compensation or redress, then it was better to
10 try and ensure that we had funding going to victims.
11 I don't think ultimately the cost was the final
12 decision.

13 MR PEOPLES: Was that a material consideration in the
14 ministerial decision on 25 September 2003?

15 A. Again, I can't remember the detailed discussion, but it
16 would have been a consideration, certainly from the
17 Finance Minister's perspective.

18 Q. I think Peter Peacock's recollection, and he may be
19 wrong, but it was that cost wasn't an act of
20 consideration. But that might seem rather unrealistic
21 because I think, in Government, cost is always
22 a consideration?

23 A. I think that's fair, it is always a consideration. But
24 whether it was the biggest consideration, I would say,
25 no, it wasn't, but it would have been discussed.

1 Q. Just about that meeting, the decision on an Inquiry was
2 unanimous. No one seems to have put forward -- well,
3 they ruled out a truth and reconciliation type forum.
4 No one seems to have said, well, okay, we have ruled
5 both of those out. Can we think of some other way
6 forward? That doesn't seem to have been discussed at
7 the meeting. I know the First Minister came up with the
8 idea later on but we don't see any discussion. Can
9 we take it there wasn't a discussion?

10 A. I think to be fair, if we look at what was discussed,
11 and the need to consider the points made, how other
12 organisations had handled claims, for example. There
13 were Quarriers I think, and Barnardo's at that stage
14 were already involved in supporting victims, so it was
15 felt that there could be something looked at there. And
16 I am --

17 Q. But not in the sense of some sort of Inquiry or
18 investigation into the past, that is the point I was
19 trying to ask. Do you remember the initial response was
20 a Public Inquiry or some other forum, either a listening
21 forum or a forum to investigate, or both, along the
22 Irish model. But there is nothing to say the minister
23 was saying, well, we don't want a conventional Public
24 Inquiry but let's think about something else. You had
25 thought of that, you said, at the beginning, so why are

1 we not getting that?

2 A. But if we look -- the point I was making about the need
3 to consider how other organisations had handled, and
4 I am not sure whether that was the meeting that also
5 talked about the experience -- yes, it was -- the
6 experience of other countries. Again it was noted what
7 had been happening in Ireland, Australia, and that
8 should be -- that looked to be more promising and should
9 be investigated further.

10 So it wasn't that people were saying nothing was to
11 happen, it was, look, can we have a look at what is
12 happening elsewhere and see whether there is anything we
13 can learn from that.

14 Q. Just on that meeting -- the decision in essence was we
15 are not going to have a Public Inquiry, that was the
16 ministerial -- unanimous decision of ministers at that
17 time, and I think when the First Minister came up with
18 his fifth option of an expert, independent expert acting
19 on his own to carry out some review, he wasn't demurring
20 from that decision that there should not be a Public
21 Inquiry. He didn't say, oh, I disagree with that.

22 A. I think what he was looking to do was to add to what had
23 been said in the meeting, because the meeting talked
24 about -- as being recorded there -- also ensuring that
25 we, for example, took into account the experience of

1 people in foster care, how the Health Department work
2 could support victims, I think that is what that related
3 to, adult survivors of abuse other than sexual abuse.

4 So the intention was to pull together a whole series
5 of things. However, when the First Minister came back
6 with -- it was an addition rather than --

7 Q. But he wasn't questioning the decision on the Inquiry?

8 A. No, I don't think he was questioning at that stage, he
9 was looking for, well, is there another way that we can
10 add to some of this?

11 Q. He was politically astute enough to realise it would be
12 better to give something about the past than nothing,
13 and he said, well, we have got to look backwards, not
14 just look forwards. So he comes up with this option
15 that is not on the table and is not floated at that
16 meeting, would that be fair?

17 A. Yes, I think that is a fair point.

18 Q. And you can tell me if I am wrong about this, but that
19 meeting ruled out a Public Inquiry, and the
20 First Minister didn't demur, as I have said --

21 A. I am not -- I think it is one of those ones where we
22 could say by the fact it was not put forward, was that
23 effectively ruling it out at that stage?

24 Q. It was put forward in the briefing, so it was ruled out.

25 A. It was ruled out in the sense of the full Public Inquiry

1 as had been anticipated that perhaps the petitioners
2 would have wanted at that stage.

3 Q. It was never -- that decision was never revisited before
4 1 December 2004? Everyone within Government accepted
5 that position as agreed unanimously on 25 --

6 A. I think that was the case. People then went off in
7 their departments and looked at what were the other bits
8 of this package of measures in each of the departments.

9 Q. I suppose that then begs the question why it took from
10 25 September 2003 to 30 June 2004 to publicly announce
11 the decision that had been reached nine months or more
12 earlier?

13 A. I can't answer why that was the case.

14 Q. It is not very satisfactory, is it?

15 A. I can understand that when you look back in terms of the
16 length of delay, it is not particularly satisfactory for
17 the people who had put in the petition and the people
18 who were relying on the Government saying something.

19 I don't think it meant that nothing was happening in the
20 background, but I think it was perhaps an issue around
21 how that was communicated, and I think actually in that
22 particular note of that meeting I think it does say --
23 in fact it does, I'm just reading at the end:

24 "The public handling would also have to be
25 considered and ministers should be given further advice

1 on all of the issues."

2 So it was not a case of we are not going to do
3 anything.

4 Q. I am not suggesting that, but I am just trying to see --
5 that was one of the big aims of the petition. It was
6 considered at that stage against a detailed briefing.
7 A decision was taken unanimously by a number of
8 ministers. The First Minister a couple of months later
9 didn't dissent from that decision, he just put forward
10 something else.

11 A. Indeed.

12 Q. And ultimately what was told to the Committee in June of
13 2004 was there is not going to be a Public Inquiry. The
14 same decision that had been arrived at in September the
15 previous year. That is not a great advert --

16 A. No, it's not.

17 Q. -- for efficient Government.

18 A. You know, there can be all sorts of -- again, I am not
19 going to try and make excuses or reasons why that was
20 the case. People were busy doing a number of other
21 things. It is not acceptable for the people who were
22 waiting to hear what the outcome of the petition was and
23 I think, in retrospect, it could have been done better.

24 Q. Just on the question of doing things better, the other
25 thing that troubles me from the records and indeed the

1 statements we have is that it is not obvious that when
2 this very important decision was taken by ministers,
3 against the background of a briefing from officials,
4 that anyone bothered to consult and engage with
5 survivors before 25 September 2003. I know there was
6 engagement subsequently before the apology, but why was
7 there no concerted attempt to say, well, we need to
8 explore with them this issue, find out why they want
9 an Inquiry, how important it is, and against that
10 background we will take an informed decision. No one
11 seems to have questioned this?

12 A. I think -- again going back, obviously the Petitions
13 Committee had good links. Again, I wouldn't be able to
14 say off the top of my head at what point officials began
15 to discuss directly with the representatives of the
16 survivors.

17 Q. I can tell you that so far as the records suggest, there
18 is not much engagement before 2004. There is maybe
19 passing -- there's an informal, I think, contact at the
20 end of 2003, but that is after this meeting. There's
21 not much point in talking about something once the
22 decision is taken, is there?

23 A. Except I think -- and again, I am not trying to speak
24 for other people, but I would suspect at that stage, in
25 terms of developing the various schemes and the various

1 packages of measures that were to be put in place, then
2 it was probably the case that people felt that was
3 an appropriate time to --

4 Q. But part of the response to take account of doing the
5 right thing and to have regard to the needs of survivors
6 is to know whether the Inquiry itself is part of the
7 solution, not just whether there are other measures that
8 will also help.

9 The point I am putting to you is that when ministers
10 took this key decision in September 2003, they hadn't
11 carried that exercise out, so they didn't know the
12 importance of the Inquiry itself to survivors who were
13 campaigning for that and continued to campaign for it?

14 A. I think ministers were aware of the strength of feeling
15 of some of the survivors in the groups who were
16 campaigning, I think that --

17 Q. You are thinking more of 2004, though, rather than 2003?
18 This is --

19 A. I think people were aware of the strength of feeling of
20 some of the people. I suspect at that stage that there
21 was still a view that that was a small group of people
22 who were campaigning rather than everybody who had been
23 affected. And I think there were some discussions, and
24 again I couldn't put a date on them, but I think it also
25 influenced how things were framed later on, which was to

1 ensure that whatever was put in place would reach out to
2 people who hadn't as yet come forward, and that was
3 quite important.

4 I take the point that could something have been set
5 up with individuals? Yes, potentially that could have
6 been done. That would have been a group of individuals
7 making representations.

8 Q. Because that is what happens in modern Government, isn't
9 it? There is consultation and engagement to get some
10 more structured view about people's views on
11 a particular matter that they have an interest in?

12 A. Yes, and also the expectation always would be that
13 officials would be reaching out and would have their
14 ears to the ground, talking to the relevant voluntary
15 organisations and meeting with people and so on

16 Q. Can I move on to another subject? I am conscious of the
17 time, and I would like to explore this one with you as
18 well.

19 You mentioned the Scottish Law Commission. Why were
20 there two references to the Scottish Law Commission, one
21 in 2004 and another in 2005?

22 A. Again, I would need to be reminded of the exact dates of
23 those. I think in the first instance --

24 Q. Can I help you?

25 A. If you could, just in terms of the dates.

1 Q. The reason I am asking is we have heard there was a big
2 issue of what is loosely called, and I use that
3 advisedly, time bar problems, and the time bar problems
4 fell into two distinct scenarios. One, limitation
5 provisions, where a defender can take a limitation point
6 or waive it and the court decides whether the limitation
7 should be applied or not. There is a discretion to
8 waive it or to depart from it. And then there is
9 prescription, which means that you don't have any right
10 to bring an action at all. Your claim has gone, it's
11 lost, however compelling it might have been and whether
12 you have a conviction or ...

13 These are two distinct things. You are not
14 a lawyer. You were Minister for Justice. You made
15 a reference to the Scottish Law Commission
16 in September 2004, which I will call the first
17 reference, and it seems plain from the terms of that
18 reference that what was referred to the Law Commission
19 at that time was to review certain provisions on
20 limitation only, not on prescription. Was that
21 a mistake?

22 A. I don't think it was a mistake. I think perhaps at that
23 time, and I think I said that in the statement, and
24 maybe it was naive to think that when a reference was
25 made to the Law Commission, it was because ministers

1 thought there was a problem somewhere, and that they
2 expected the Law Commission to review the whole range of
3 things and then come back with a change. I think as we
4 went on later, I think it became clear that for child
5 abuse or potential historical abuse cases, even if we
6 got the first part changed, it would not follow that
7 victims would still be able to seek redress, and that is
8 my recollection of why -- I couldn't remember the
9 sequence (overspeaking) --

10 Q. I will just help you a bit more then, if I may. The
11 reason I am asking you this is that when the Petitions
12 Committee -- when Peter Peacock appeared before the
13 Petitions Committee he did make reference to the fact
14 that you, as Minister for Justice, had sent the -- had
15 asked for a review by the Commission on the law of
16 limitation. He was right, it was a review on the law of
17 limitation. But what the Committee picked up from that
18 is that wider issues, including prescribed claims,
19 pre-1964 claims, were going to be addressed, looked at,
20 and they wanted it done as quickly as possible.

21 So whether unintentionally or not, he created the
22 impression by what he said in the minds of the Committee
23 that the Law Commission was going to address prescribed
24 claims issues when in fact they weren't asked to do so.

25 A. They weren't asked to do so until later --

1 Q. Until August 2005.

2 A. Yes, because it became -- I think there was quite a lot
3 of discussion at that stage, and it became a kind of
4 bone of contention around the pre-1964 and the post-1964
5 claims as to whether what we had asked the
6 Law Commission to do actually would deliver.

7 Q. And forgive me if I can just -- I don't know if you were
8 involved in this, but there are certainly records
9 suggesting that officials were anxious to point out
10 before the debate on 1 December that the remit was more
11 limited than perhaps assumed and they were warning not
12 to create false impressions. That is -- I think there
13 are records to that effect that you may have seen,
14 I don't know, before giving evidence today. And indeed
15 they did create a false impression, did they not, of
16 what Mr Peacock said at the debate? Because I am
17 just -- I looked at the debate and one contribution
18 I picked out was by the current First Minister, who
19 I think has a legal background, I may not be right,
20 but -- and she, in response to what was being said about
21 the Law Commission and the review at that time, said
22 that she welcomed what was said about the referral to
23 the Scottish Law Commission, and I quote:

24 "Many survivors cannot seek redress through the
25 courts as they would wish to do because they were abused

1 prior to 1964 and a time bar applies. I have no doubt
2 that it is time to change the law of limitation.

3 I welcome the comments that the Executive has made."

4 She thinks that the Law Commission is looking at
5 prescribed claims and that they may come up with
6 a solution when in fact they weren't.

7 A. At that time.

8 Q. At that time. In fact it took until August of the
9 following year to make a second reference to the
10 Commission, is that correct?

11 A. That is correct.

12 Q. Is that when you were Minister for Justice?

13 A. Yes. And I was going to say I think that is because it
14 had become apparent, as we were going through further
15 detailed discussions, that the initial reference was not
16 going to deliver what -- even if the Law Commission
17 agreed it, which ultimately, of course, they came back
18 and didn't, would not allow us to assist the victims,
19 the pre-1964 and the post-1964 victims, in the way which
20 I think had been the intention of ministers, which was
21 to ensure that people would not be time-barred and that
22 they would be able to seek redress.

23 Q. Can I take you forward then, and I don't know if you
24 have a memory of this, but did you pick up this
25 eventually and say, well, actually maybe at the debate

1 people have been left with the impression, and we need
2 to make sure the Commission do look at this issue? Is
3 that what prompted ultimately the second debate --

4 A. I'm not sure if it was the debate per se, but it was
5 certainly beginning to come through in discussion and in
6 the briefings and the information that was coming that
7 perhaps the first referral hadn't fully encapsulated --

8 Q. It didn't encapsulate at all --

9 A. -- what the intention was, and hence it was re-referred.

10 Q. I don't know if you have a memory of this, but again
11 just to help you with some records I managed to find.
12 You received a minute on 29 April 2005 from an official
13 in the Human Rights and Law Reform branch of justice
14 about prescription of claims arising from pre-1964 child
15 sexual abuse consideration by the Scottish
16 Law Commission, and this was reporting to you as
17 minister on informal discussions with the Law Commission
18 on pre-1964 claims being extinguished by prescription,
19 and following a request by you to explore whether they
20 might examine these cases, I will quote what you were
21 told by the official:

22 "The Law Commission has advised us informally that
23 it would recommend against the introduction of
24 legislation to recreate obligations which had legally
25 ceased to exist in or before 1984. The Scottish

1 Law Commission has also indicated that it could provide
2 definitive advice on the subject in early course without
3 waiting for the conclusion of its review on limitation."

4 I think the minute that you received recommended
5 taking that offer up; of early formal advice, and it
6 added that:

7 "The officials would likely support a recommendation
8 by the Commission that the law should not be changed."

9 Do you remember that?

10 A. To be honest, I don't have recollection of that and
11 I don't recall seeing that as part of the paperwork
12 prior to the Inquiry. But again if that is the --

13 Q. That is what --

14 A. If that is what is said, then that is what happened.

15 Q. I will tell you -- I will just follow this little
16 chapter through. I think you will maybe see the point
17 I am about to make, that there was no compensation
18 available to these people --

19 A. Indeed.

20 Q. -- under the law as it stood and that had been the
21 position, as they put it there, for 18 years?

22 A. Yes, and that is what we wanted to change.

23 Q. Yes. But they have just said -- the Commission said
24 informally: here's your answer and we can give you it
25 quickly if you want in 2005, but you asked for feedback

1 from various people and Mr Peacock's officials were
2 asked to give comment to him at that time, and one said
3 to him that INCAS and other survivors had stressed that
4 the inability to take forward pre-1964 cases --
5 and I quote:

6 "... has caused real frustration and upset. They
7 welcomed the minister's announcement on 1 December [that
8 is at the debate] that this prescription issue would be
9 reviewed. Should ministers ultimately accept the advice
10 put forward on behalf of the Scottish Law Commission,
11 then many survivors are likely to express extreme
12 disappointment. In addition, given that the minister
13 has taken the position until now that there are legal
14 remedies open to those who suffered abuse, if we end up
15 in a situation where for many this avenue has been
16 effectively removed, then further thought will need to
17 be given to what possibilities of redress remain."

18 Including a compensation scheme presumably. So that
19 was the advice the officials were giving to
20 Peter Peacock. His comments in response, which I think
21 were copied to you:

22 "I do not favour the line being suggested here by
23 the official. It seems to me that the issues of
24 limitation and the 1964 issue need to be seen to be
25 taken together and reported at the same time. Who is to

1 say that, during the review, views might not mature and
2 develop. I am less concerned about timescales than I am
3 about having the issues looked at in depth and in the
4 round. As a matter of principle, in the case of
5 survivors of abuse, I am not clear how we can in all
6 conscience maintain a limitation of this sort. It seems
7 arbitrary, discriminatory and I'm not clear of its
8 necessity."

9 That was the comments he made. The Lord Advocate of
10 the day also provided his comments at the time, and his
11 comments were to the following:

12 "The Lord Advocate is reluctant to get involved in
13 this issue but has seen Mr Peacock's response. He is
14 content with the Scottish Law Commission being asked to
15 take more time, but is doubtful about the last point
16 made by Mr Peacock."

17 This is about the principal issue:

18 "It seems difficult [said the Lord Advocate] to
19 argue that a limitation on actions should be extended
20 solely for survivors of abuse. This might seem
21 arbitrary and discriminatory to others. While the
22 Lord Advocate will await the advice of the Scottish
23 Law Commission, he remains to be persuaded that it's
24 appropriate to amend the law in this area."

25 So you are not getting much encouragement from the

1 top legal adviser or the Commission that anything is
2 going to change?

3 A. No, there wasn't a huge amount of encouragement but,
4 nonetheless, I think, reflecting back, I was more on the
5 side of the Minister for Education and Young People at
6 that point. We wanted to try and find a way to do this
7 and that is what we hoped that the Law Commission would
8 do.

9 Q. A cynic might say -- and I am just putting this point to
10 you -- that one advantage of rolling it into the review
11 on limitation would be that the matter is shelved until
12 the limitation report is produced and, therefore, you
13 don't have to look at the compensation issue there and
14 then. Whereas, if you had just taken the early advice
15 from the Commission, which was the ultimate advice you
16 relieved, you could have got round to looking at
17 compensation much earlier than you did?

18 A. I don't think it was a case of trying to shelve it.
19 I think it was a case of trying to ensure we had
20 a solution which worked for the pre-1964 and the
21 post-1964.

22 Q. But you have seen what I have read out to you --

23 A. I have heard --

24 Q. Realistically had you any real basis or grounds for
25 thinking that there is going to be some magic solution

1 that the Commission will come up with?

2 A. I don't think it is a question of a magic solution.

3 I think it was a question at that stage, and that is why

4 I made the reference before about perhaps I was naive in

5 thinking that, if ministers were saying that they felt

6 a need for change and they needed something which would

7 help bring justice for the victims, then the

8 Law Commission would look at that, and potentially you

9 will put the legal minds that they had towards finding

10 a solution. And that is what I had hoped would happen.

11 Q. Is that why you now say you were somewhat naive?

12 A. It's possibly the case. Because, at the end of the day,

13 as you correctly point out, I am not a lawyer. I relied

14 on legal advice and I also relied on the fact that there

15 were people in the legal world who have a lot of wisdom

16 and expertise, and I didn't think it was beyond them to

17 come up with a solution.

18 MR PEOPLES: I think I probably would end there my

19 questions. I hope I have covered areas sufficiently

20 that others wanted me to cover.

21 LADY SMITH: Are there any outstanding applications for

22 questions? No.

23 MR PEOPLES: I think I will pick up the story with other

24 witnesses. I would just like to thank you for coming

25 today and making the journey in difficult circumstances.

1 Thank you very much again.

2 LADY SMITH: Cathy, can I add my thanks. I assure you I am
3 aware we have been asking you to look back over
4 a lengthy period and no doubt much has happened in your
5 life since then. And I am also aware this is not just
6 a matter of coming here today, but you have put in a lot
7 of work beforehand in a way that has enabled us to
8 acquire a very detailed and helpful statement from you.
9 So thank you very much for that. I am now able to get
10 you go.

11 A. Thank you.

12 (The witness withdrew)

13 LADY SMITH: So that completes the evidence for today,
14 Mr Peoples. At 10 o'clock tomorrow morning we have
15 a witness. Thank you very much.

16 (4.08 pm)

17 (The Inquiry adjourned until 10.00 am on Wednesday,

18 18 November 2020)

19

20

21

22

23

24

25

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Opening submissions by MR PEOPLES3

Opening submissions by MR SCOTT6

Opening submissions by MR GALE17

Opening submissions by MS DONALD22

Opening submissions by MS O'NEILL30

MR MICHAEL MCMAHON (sworn)37

 Questions from MR PEOPLES37

MS CATHERINE JAMIESON (affirmed)113

 Questions from MR PEOPLES113

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9