

Tuesday, 16 March 2021

1
2 (10.00 am)

3 LADY SMITH: Good morning, it is good to be back.

4 You know that today we begin phase 1 of the
5 evidential hearings in relation to our investigations
6 into the provision of residential care by boarding
7 schools in Scotland. And I welcome all of you here in
8 Rosebery House to this first day, and all of you who are
9 connected remotely, and that is quite a number of you,
10 because of the impact of COVID restrictions which we
11 continue to do the best we can to comply with. Indeed,
12 because of that, I want to express my considerable
13 regret that due to current COVID restrictions, I cannot
14 also at the moment welcome members of the public to the
15 hearing room.

16 If restrictions are relaxed during the case study in
17 a way that that makes possible, I will be delighted to
18 be able to do so, and let you know all immediately what
19 the future arrangements will be, but at the moment I am
20 sorry but I have to say no to members of the public.

21 Of course I do welcome members of the media here,
22 they are able to come, because they are travelling and
23 attending for work purposes, and it's good to see some
24 familiar faces in the room. Thank you for that, as
25 I know that you attend dutifully and assiduously to your

1 work of letting the public know what you think matters
2 about the hearings that are taking place here.

3 The subject of face masks, thank you to all of you
4 who are wearing them. I request if possible that
5 throughout your time in the hearing room you do that.
6 I know some of you find it unduly difficult or you have
7 reasons why you can't, and I fully understand that, but
8 generally people are wearing face masks in the room and
9 that helps to assure others as well as themselves.

10 Turning to the evidence in this phase of the case
11 study, it will be a mixture of in person evidence and
12 remote evidence, and you probably have got used to
13 expecting that in the current climate. We have tested
14 the systems, they are working very well; we are not
15 expecting any difficulties, but please bear with us if
16 any do arise, because experience has taught us that the
17 unforeseen can occur. Indeed, I was reminded of that
18 only in the last few days when looking at the transcript
19 of the hearings we had in November, and seeing that we
20 had a glitch for quite a while there.

21 A quick word about the procedure we will follow
22 during the opening submissions. I'm sure those of you
23 who are connected, and indeed those of you who aren't
24 but are here, are now experts in muting and operating
25 your camera. Please understand that I cannot mute or

1 unmute anybody and I cannot switch the camera on and
2 off. I am not an observer of a local council such as
3 a certain one in Handforth and maybe that assures you
4 all I won't stop you making your contributions.
5 However, what that does mean is the way we will run it
6 is I will invite Speakers to activate their microphone
7 and their camera, and please would you unmute and switch
8 off your camera when your contribution is finished.
9 I am sure you are all in that position just now, and
10 I see we have a blank screen up there with a name on it.
11 That is the usual practice. No doubt you are all doing
12 it in your sleep nowadays but that is the practice
13 I will be following.

14 So that is all I want to say at the moment. I am
15 delighted to welcome Mr Brown and Ms Bennie counsel who
16 are leading in this case study, and I will turn to
17 Mr Brown to address me.

18 MR BROWN: My Lady, good morning. Thank you. I would
19 propose, before submissions are made by those granted
20 leave to appear, just to simply set the scene of what is
21 planned for the next two weeks, and then look forward
22 a number of months to the next phase of this part of the
23 Inquiry which obviously, as your Ladyship has said,
24 focuses on boarding schools.

25 Seven schools will be particularly focused upon.

1 This phase 1 is going to be focusing on the background
2 to those seven schools and also to the regulation of
3 boarding schools in Scotland over the period covered by
4 the Inquiry's remit. I should say that this obviously
5 has been delayed very much by COVID, it had been planned
6 that we would have started this in the summer of last
7 year, but that has not proved possible, but the work of
8 the Inquiry has gone on. It has gone on well, but not
9 so well as was suggested in one newspaper yesterday,
10 that the findings will be given this week. That was
11 a little over-optimistic.

12 What will happen this week is essentially
13 the regulators will give background evidence, both the
14 Scottish Government regulators but also interested
15 bodies such as GTCS, SCIS, the independent schools body
16 which provides a great deal of assistance across the
17 information for boarding schools, and then next week we
18 will move into the schools themselves. That will spill
19 into a third week, it is just for logistical reasons
20 essentially, but we hope to conclude phase 1 by
21 31 March. There will then be a gap of a month, but
22 applicant evidence and the first two schools, which will
23 be Loretto and Morrison's, we hope to start on 4 May,
24 and we should be sitting throughout May to deal with
25 those two institutions. Thereafter, we will continue

1 with the remaining five as soon as we possibly can.

2 In terms of how evidence is given, your Ladyship has
3 touched on this, it will be direct evidence from
4 regulators and the schools, but in some cases a number
5 of witnesses will be speaking to a given institution;
6 because of COVID regulation, one witness will be here in
7 person, other witnesses will join remotely, effectively
8 with a panel session in person and on screen, and
9 hopefully that will work well.

10 Unless I can assist further.

11 LADY SMITH: That's very clear, thank you, Mr Brown.

12 Somewhere Mr Scott for INCAS should be ready to
13 offer his opening submission. So, Mr Scott, could
14 I invite you to activate your microphone and your
15 camera, and I am ready to hear you whenever you are
16 ready to deliver yours.

17 Opening submissions by MR SCOTT

18 MR SCOTT: Thank you, my Lady, and good morning. Can I just
19 check I can be heard?

20 LADY SMITH: You can be heard and we can now see you,
21 thank you.

22 MR SCOTT: Thank you.

23 On behalf of INCAS I would like to start this
24 morning by welcoming the recent publication of the
25 Inquiry's findings from the fourth case study into the

1 provision of residential care by the Christian Brothers
2 at St Ninian's.

3 Survivors who gave evidence in person and by
4 detailed statement can now see that their impressions of
5 being heard and listened to by the Inquiry were right,
6 their evidence has been documented, and accepted. For
7 many survivors this official confirmation of the fact of
8 serious abuse is a powerful vindication and comfort to
9 them, after many decades of doubt, suspicion and
10 accusation.

11 If your Ladyship would bear with me a moment, I am
12 having difficulty with my own technology here. (Pause).

13 I was in touch with Frank McCue, my Lady, just after
14 publication of the findings. Although our
15 correspondence wasn't intended for dissemination, he has
16 agreed to allow me to quote from his response:

17 "I've been going over the report all day, John. It
18 has been well worth the wait. Lady Smith's findings
19 were spot on. Now there is a sense of relief in being
20 officially believed."

21 Publication and reporting of the findings have also
22 contributed to the overall aim and purpose of the
23 Inquiry in relation to raising public awareness of the
24 abuses of children in care, particularly during the
25 period covered by the Inquiry.

1 In terms of reporting of the work of the Inquiry,
2 and your Ladyship has acknowledged that this morning, it
3 is worth once more mentioning the excellent coverage by
4 the Daily Mail, who has stuck with the Inquiry
5 throughout.

6 As before, I also wish to make mention
7 Dr Andrew Tickell of Glasgow Caledonian University and
8 his very powerful article in The National newspaper on
9 21 February, so just a couple of weeks ago. This quotes
10 from the start of your Ladyship's recent report and
11 says:

12 "It is a devastating opening paragraph and one that
13 I am worried you may not have heard. Lady Smith's
14 fourth case study focussed on the Christian Brothers'
15 operations in Fife over four decades. This week's
16 findings are perhaps the worst so far, but the basic
17 inhumanity of St Ninian's is horribly consistent with
18 the failures and failings of institutions run by the
19 Daughters of Charity and the Sisters of Nazareth,
20 Quarriers, Aberlour and Barnardo's."

21 "Much of the Scottish media seems inclined to turn
22 away from Lady Smith's findings. Part of me understands
23 why. For some the pain of the testimonies is too
24 profound; the details of how grown adults treated
25 children may feel too raw, too harrowing, too desolate

1 to confront. I would simply observe this: our political
2 culture is routinely outraged by nonsense and unmoved by
3 real scandals. It is easy to enjoy being angry when the
4 stakes are so low, but here the stakes couldn't be
5 higher. Hard and sickening as it is, for the sake of
6 survivors, for all the people whose childhoods were
7 blighted by these Scottish institutions what happened to
8 them demands our full attention.

9 "The conduct of the Christian Brothers was of
10 a different order of malice, incompetence and depravity
11 but it is often said Scottish education used to be the
12 envy of the world. As well as shining an unforgiving
13 light on institutions like St Ninian's, when it comes to
14 Scottish education perhaps Lady Smith's Inquiry should
15 prompt a wider reappraisal of rose-tinted memories."

16 This reporting of the work of the Inquiry is crucial
17 to its overall aim and purpose. Survivors are grateful
18 to those such as Graham Grant and Andrew Tickell, who
19 are following the work of the Inquiry and keeping it in
20 the public eye.

21 Turning to the present case study, it will be
22 important to see that child abuse happens without
23 respect for privilege or apparent privilege. We have
24 heard much of the abuse of those who were born in
25 poverty or deprivation, whose families did not or could

1 not care for them, some without any parental love or
2 support and some who have been abused by members of
3 their own family. But survivors of abuse live in every
4 part of society. Despite origins and helping those who
5 were abused in the care of the State, INCAS members
6 reflect that diversity, supporting survivors of any
7 setting where abuse has happened. INCAS encourage all
8 whose abuse is covered by the terms of reference to get
9 in touch if they wish to join, obtain support or even
10 just to talk or to listen.

11 This case study may further highlight the need to
12 listen without assumptions or prejudice, and it may
13 further expose the risks of abuse which extend even to
14 those with loving and supportive families. That may
15 involve a level of betrayal which is in addition to the
16 abuse of trust of which we have heard so much.

17 It is important to reflect on the different
18 circumstances which can bring a child to a boarding
19 school such as those to be considered in this case
20 study, and these include those placed there from care by
21 the State by way, for example, of scholarship.

22 This will be another opportunity to examine and
23 explore the similarities and themes of which we have
24 heard so much so far in different establishments at
25 different times, involving different abusers.

1 Although as a core participant the interest of INCAS
2 extends across the full breadth of the Inquiry's remit,
3 in terms of known members of INCAS, and members and
4 those who attend are not obliged to say what their
5 background is, for obvious reasons, there is
6 a particular focus on the next phase of this case study
7 which will begin, from what Mr Brown said, later on in
8 the year, and specifically of those who are known at
9 Keil School in Dumbarton.

10 In conclusion, my Lady, INCAS and its members
11 continue to follow and support the work of the Inquiry,
12 they remain committed to its aim and purpose. As
13 before, they wish to encourage any survivors who have
14 not yet come forward to the Inquiry to do so. Based on
15 the experience of INCAS members, they will find
16 empathetic and trauma-informed listeners, support to
17 tell their stories and, for many, findings which are, to
18 quote Frank McCue, "spot on" and which provide a sense
19 of relief in being officially believed.

20 Thank you, my Lady.

21 LADY SMITH: Mr Scott, thank you for that opening for this
22 case study, and more generally the tribute you have paid
23 to the work of the Inquiry, it does help to have it
24 openly appreciated in that way. Thank you.

25 Could I now invite you to turn off your microphone

1 and your camera, and the next person I would invite to
2 speak and to deliver an opening submission is
3 Ms O'Neill, who is here I think.

4 MS O'NEILL: Good morning, my Lady.

5 Opening submissions by MS O'NEILL

6 MS O'NEILL: My Lady, as in earlier hearings, I appear on
7 behalf of the Scottish Ministers and, as the Inquiry is
8 aware from previous hearings, the Scottish Ministers
9 also represent in the context of this Inquiry
10 the Executive agencies which form part of
11 Scottish Government and for which the ministers are
12 directly responsible. In the context of this part of
13 the Inquiry's work, those agencies include in particular
14 Education Scotland and Disclosure Scotland. The
15 Scottish Government is also responsible for the
16 Registrar of Independent Schools, and the Registrar is
17 appointed by the Scottish Ministers. Clearly I do not
18 represent the Crown Office and Procurator Fiscal
19 Service, which is represented separately, and nor
20 do I represent agencies such as the Care Inspectorate,
21 which are also represented separately before the
22 Inquiry. Scottish Government does nevertheless have
23 policy responsibility for the framework within which
24 bodies such as the Care Inspectorate operates.

25 So far as the ministers' interest in this phase of

1 the Inquiry is concerned, the Scottish Ministers
2 continue to have an interest in all aspects of the
3 Inquiry's work and to be represented throughout the
4 hearings of evidence from applicants and from others.
5 The Scottish Government response unit continues to have
6 responsibility for co-ordinating the provision of
7 information by Scottish Government to the Inquiry, and
8 as with earlier phases of the Inquiry, the response unit
9 has provided information to the Inquiry in response to
10 notices issued under Section 21 of the 2005 Act.

11 Several reports have been provided to the Inquiry in
12 relation to this part of the Inquiry's work. A report
13 has been prepared by the Registrar of Independent
14 Schools in Scotland concerning the Registrar's role and
15 the registration and regulation of independent schools
16 in Scotland and the Registrar, Alec O'Neill, will give
17 evidence to the Inquiry this afternoon. A report has
18 also been prepared by Education Scotland on scrutiny of
19 independent schools in Scotland, particularly through
20 the inspection system as it applies to independent
21 boarding schools, and on how Education Scotland works
22 with the Scottish Government, the Registrar of
23 Independent Schools and the Care Inspectorate.

24 Janie McManus, Strategic Director for Scrutiny at
25 Education Scotland, will give evidence to the Inquiry

1 tomorrow.

2 Finally, at the invitation of the Inquiry a paper
3 has been prepared by Disclosure Scotland in response to
4 issues raised by the General Teaching Council for
5 Scotland in its submission to the Inquiry.

6 As with the approach taken in earlier phases, the
7 Scottish Ministers do not anticipate applying to Inquiry
8 counsel to have questions asked of witnesses about their
9 experiences of abuse.

10 This part of the Inquiry's work may be viewed as
11 being different from other case studies considered by
12 the Inquiry, in that it involves institutions operating
13 independently from the State and concerns in many cases
14 the abuse of children who were not formally in the care
15 of the State in the way in which children in other care
16 settings have been. The Scottish Ministers nevertheless
17 have direct and indirect interests in this part of the
18 Inquiry's work, first in relation to the statutory
19 powers and duties that fall to the Scottish Ministers to
20 exercise in relation to independent boarding schools
21 I have mentioned already the inspection of those schools
22 by Education Scotland and registration with the
23 Registrar of Independent Schools in Scotland. In
24 addition, Scottish Ministers have a range of regulatory
25 functions relating to independent schools under Part V

1 of the Education (Scotland) Act 1980, many of which are
2 discharged with the support of the Registrar, and the
3 Scottish Government's Learning Directorate holds all
4 policy responsibility for independent schools.

5 The Scottish Government statutory functions also
6 include certain powers and duties in relation to
7 standards of care, and the inspection of residential
8 care by the Care Inspectorate, including at independent
9 boarding schools.

10 Second, the Scottish Government recognises the role
11 that it should and does play in ensuring the protection
12 of children in all schools, including independent
13 boarding schools. Government's responsibility is
14 different from the responsibilities of parents and of
15 local authorities who place children in boarding
16 schools, and is different from the responsibilities of
17 the schools themselves.

18 The Scottish Government nevertheless shares in the
19 collective responsibility of all agencies in the field
20 of child protection, and in light of that
21 responsibility it has a strong interest in understanding
22 the issues raised by applicants who were abused in a
23 boarding school setting with a view to improving, where
24 necessary, the regulatory system. And I say, my Lady,
25 "where necessary" because I should say that a range of

1 changes to the regulatory regime have been made since
2 devolution and indeed in the period since the Inquiry
3 was established. Changes continue to be made while the
4 Inquiry carries out its work, both in relation to
5 independent schools specifically and in relation to
6 the education sector more generally.

7 In the post-devolution period changes include
8 reforms brought about by the Children (Scotland) Act
9 1995, which placed a duty on managers of independent
10 boarding schools to safeguard and promote the well-being
11 of children accommodated by them, and confirmed HM
12 Inspector of Schools had powers to inspect residential
13 accommodation in those schools to determine whether
14 welfare was being adequately safeguarded and promoted.
15 Other examples include the School Education (Ministerial
16 Powers and Independent Schools) Act of 2004 which
17 increased the scope for intervention by ministers in
18 independent schools, and the development of the
19 disclosure regime under the Protection of Vulnerable
20 Groups (Scotland) Act 2007.

21 In the period since this Inquiry was established new
22 developments have included the introduction of
23 a requirement in 2017 that all teachers in independent
24 schools be GTCS registered, which must be complied with
25 by 1 June this year. Reform of the protection of

1 vulnerable groups and disclosure regime by the
2 Disclosure Act 2020 and the changes that will take place
3 when that Act is brought into force, and the
4 incorporation of the United Nations Convention on the
5 Rights of the Child in Scots law by a Bill that is
6 expected to be passed by the Scottish Parliament today.
7 Notwithstanding those changes Scottish Government wants
8 and needs understand the nature and extent of abuse
9 suffered by the survivors who have engaged with the
10 Inquiry, and how that abuse was able to happen.

11 It appreciates that the evidence of these survivors
12 may lead the Inquiry in due course to make further
13 recommendations about the regulation of boarding
14 schools.

15 Finally, my Lady, the Scottish Government has
16 a direct interest in supporting those who were abused
17 while boarding at an independent school, and ensuring
18 that they secure acknowledgement of and accountability
19 for the abuse that they experienced. As the Inquiry has
20 heard in previous phases of hearings, the
21 Scottish Government has made and it continues to make
22 provision to address the needs of survivors, and a range
23 of support services is open to survivors, including
24 those who suffered abuse at independent boarding
25 schools.

1 The Inquiry will also be aware of the Bill just
2 passed by the Scottish Parliament to establish a redress
3 scheme that will provide financial redress to eligible
4 survivors of abuse who boarded at an independent school,
5 where they had both their care arranged and fees paid by
6 an education authority or care provider. Eligible
7 survivors in that category have been able to seek
8 financial redress under the Advance Payment Scheme
9 since April 2019. The Scottish Government will reflect
10 on all evidence given during these hearings, including
11 evidence that may relate to how the Government has
12 responded and continues to respond to survivors of
13 abuse.

14 My Lady, that is my opening submission.

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

16 I would now like to turn, please, to the
17 representation for the Care Inspectorate and that should
18 be Mr McClure, who is joining remotely if I am right.
19 Mr McClure, I would invite you to switch on your
20 microphone and your video, please.

21 Opening submissions by MR MCCLURE

22 MR MCCLURE: Can my Lady see and hear me?

23 LADY SMITH: Yes, thank you very much. When you are ready,

24 Mr McClure, I am ready to hear you.

25 MR MCCLURE: My Lady, in the first place I wish on behalf of

1 the Care Inspectorate to restate and to reaffirm its
2 primary purposes in participating in this Inquiry; these
3 are to assist the Inquiry in its work in any way that it
4 can, and to learn from it in order to improve.

5 As I indicated in my opening submission of
6 31 October 2017, the Care Inspectorate is the statutory
7 successor to the Care Commission. The Care Commission
8 commenced regulation of the residential care element at
9 boarding schools in 2005. These were termed "school
10 care accommodation" by statute, and they remain so
11 titled. They share that definition with the
12 accommodation element provide by residential special
13 schools in which children and young people may be placed
14 on account of their additional needs, and with school
15 hostels which are typically operated by local
16 authorities in rural areas to facilitate the attendance
17 of children and young people at local authority schools.

18 The first inspections undertaken following
19 conclusion of the registration process for school care
20 accommodation associated with boarding schools began in
21 2006, carried on jointly with Her Majesty's Inspectorate
22 of Education. The approach to the regulation has been
23 developing since then. Significant developments have
24 been the introduction of the quality assessment
25 framework and grading in 2008, and the creation of the

1 Care Inspectorate itself and its succession to the
2 Care Commission's role in April 2011, with associated
3 structural and organisational changes and changes to the
4 organisation's roles and responsibilities.

5 In my previous submission I touched very briefly
6 upon the functions of the Care Inspectorate, which are
7 broadly similar to those of the Care Commission before
8 it. Perhaps the most important of these functions and
9 one which is plainly of considerable interest to this
10 Inquiry is that of carrying out inspections. When the
11 Care Commission commenced the inspection of school care
12 accommodation associated with boarding schools in 2006
13 the frequency of those inspections was prescribed in
14 legislation as twice every 12 months. In 2009, the
15 statutory requirement changed to require inspection
16 a minimum of twice in every 48 months, although at least
17 twice in the period of 24 months, followed by
18 registration. All is detailed in the
19 Care Inspectorate's report for the Inquiry on the
20 registration of boarding schools.

21 On the creation of the Care Inspectorate in 2011 the
22 statutory requirements as to frequency of inspection
23 changed again, to a requirement to inspect in accordance
24 with a plan and the resultant move to inspection
25 frequency based on previously assessed grade and

1 assessment of risk. Since 2009, all inspections of
2 school care accommodation and services associated with
3 boarding schools have been conducted on an unannounced
4 basis.

5 Notwithstanding the requirement that inspections be
6 carried out in accordance with a plan, there remains
7 flexibility to inspect at any time in response to events
8 which may cause concern, information received,
9 complaints received, or other factors which may impact
10 upon the assessed risk.

11 Regulation, and as part of that inspection, seeks to
12 assess the quality of the care service and reports on
13 that in order for the service to take corrective action
14 where that is necessary. That assessment through
15 inspection provides a commentary on the service
16 provider's ability to put in place a suitable
17 environment, together with capable, competent and
18 well-trained management and staff in order to deliver
19 proper and safe care and protection practices. It is
20 submitted that the prospect of unannounced inspection
21 and public reporting on that, coupled with the prospect
22 of enforcement action should be a powerful driver for
23 the making and the sustaining of improvement.

24 Inspection, however, allows only an assessment of
25 the way in which a care service is being provided at

1 a specific point in time, and day-to-day oversight must
2 be provided by competent and capable managers.
3 Ultimately, responsibility for the effectiveness and the
4 safety of any care service lies with those who provide
5 and manage it, while inspection will indicate where
6 improvement is necessary.

7 The Care Commission and now the Care Inspectorate
8 were and are required by statute, as are providers of
9 care services, to put in place a complaints procedure.
10 While the level of complaints from boarding schools has
11 been low, those received have been considered against
12 the procedure as it has been framed from time to time,
13 and investigated as appropriate.

14 Both the Care Inspectorate and its predecessor, the
15 Care Commission, were provided by statute with powers of
16 enforcement as set out in the Care Inspectorate's report
17 on the regulation of boarding schools which is before
18 the Inquiry, and in Professor Norrie's report to the
19 Inquiry. The first of those reports details that these
20 powers have not been exercised in relation to school
21 care accommodation services associated with boarding
22 schools during the period 2005 to 17 December 2014.
23 Formal enforcement action is a relatively rare
24 occurrence in the regulated care sector, and the number
25 of boarding schools is small, currently 21 out of

1 approximately 12,000 registered care services regulated
2 by the Care Inspectorate.

3 In conclusion, my Lady, I would return to my initial
4 and primary submission, that the Care Inspectorate's
5 motivation is to assist in the work of the Inquiry and
6 to be receptive to its recommendations and other
7 learning which may arise from the Inquiry and its work.

8 Unless I can assist my Lady with anything further
9 that concludes my opening submission.

10 LADY SMITH: Thank you very much, Mr McClure, that is very
11 helpful. I would now invite you to mute yourself and
12 disappear from our screens, if you can switch off your
13 video that would be very helpful too.

14 Now I will turn to representation for the General
15 Teaching Council for Scotland, and that is Mr Lindsay,
16 who I hope is out there in the ether some where.

17 Mr Lindsay, can I invite you to switch on your
18 microphone and video, and when you are ready I am ready
19 to hear your opening submissions.

20 Opening submissions by MR LINDSAY

21 MR LINDSAY: I trust you can see and hear me clearly.

22 LADY SMITH: Yes we can. Thank you.

23 MR LINDSAY: By way of introduction on behalf of the General
24 Teaching Council for Scotland, which I will refer to as
25 "the Council" we wish to thank the Inquiry for the

1 opportunity of participating in this particular case
2 study. The Council has co-operated fully with the
3 Inquiry's investigations and will continue to co-operate
4 fully during the hearings for this case study, and all
5 available records which are relevant and of assistance
6 will be made available to the Inquiry if they haven't
7 already been.

8 In addition to responding to the Inquiry's requests
9 for information and documentation, the Council intends
10 to assist the Inquiry in carrying out this case study by
11 exploring with the Inquiry's witnesses their
12 understanding of the referral process, registration of
13 teachers in independent schools, and the Council's role
14 in child and public protection within the education
15 sector, and appropriate questions have been submitted to
16 the Inquiry team so they can be asked of the witnesses.

17 The Council hopes to bring to the attention of the
18 Inquiry any learning or development that may be required
19 in order that the Inquiry can consider whether it is
20 necessary to make any recommendations when preparing its
21 report on this particular case study.

22 While the Inquiry is primarily focused on the
23 boarding school context, the Council's interest is
24 clearly focused on the role of teachers, within the
25 concerns raised through the Inquiry. Although the

1 Inquiry is looking at this through the lens of the
2 independent and boarding sector, the matters raised are
3 relevant to the education system as a whole. As
4 a result, the Council believes that while the Inquiry's
5 focus and the Council's involvement is in children and
6 care, and in this phase boarding schools, lessons
7 learned can be extended across the whole of the
8 education sector, particularly in learning for the
9 independent sector, and effect real improvements in
10 child protection practices within Scotland's care and
11 education sectors.

12 Saying a few words now about the Council's role and
13 mandatory registration before highlighting the Council's
14 two principal areas of concern about how the existing
15 system is operating.

16 The Council is an independent statutory body. It
17 was created in 1965 through the Teaching Council
18 (Scotland) Act 1965. Its role and functions and
19 independence were updated and clarified through the
20 Public Services Reform (General Teaching Council for
21 Scotland) Order 2011. The Council's functions include
22 keeping a register of teachers, and investigating the
23 fitness to teach of individuals who are or who are
24 seeking to be registered with it. Through its
25 registration and regulation functions the Council has

1 a key public protection role as gatekeeper to
2 the teaching profession, seeking to ensure that only
3 those suitable to teach are entered onto and retained on
4 the Council's register of teachers.

5 Mandatory registration has in recent years been
6 expanded beyond teachers working in local authority
7 schools to teachers employed in a Scottish independent
8 school. From 1 October 2011, any teacher newly employed
9 by an independent school as a teacher is required by law
10 to be registered with the Council. From 1 June 2021,
11 all independent school employed teachers will require by
12 law to be registered with the Council.

13 Prior to 1 October 2017, registration by teachers in
14 the independent school context has not been
15 a requirement of law, and has therefore operated largely
16 on a voluntary or a condition of employment basis.

17 Moving on to the two areas of concern for the
18 Council. Firstly, referrals and inspections. The
19 Council intends to assist the Inquiry in exploring the
20 independent sector's awareness of mandatory and
21 discretionary referral of registered teachers to the
22 Council and how this could be improved within the
23 independent and boarding sector to provide greater
24 assurances to those involved. In addition, the Council
25 intends to assist the Inquiry in assessing the role of

1 inspections and inspectors within independent and
2 boarding schools to ensure greater cohesion and
3 implementation accountability in joining up of public
4 protection measures.

5 Secondly, inadequate sharing of relevant
6 information, which is of real concern to the Council.
7 The Council also intends therefore to assist the Inquiry
8 in carrying out this case study by providing evidence
9 relating to deficiencies in the current system for
10 safeguarding children in Scottish boarding schools
11 insofar as they relate to the discharge of the Council's
12 statutory functions. These deficiencies relate to
13 difficulties in the sharing of relevant information
14 between the various agencies and bodies that have a role
15 to play in safeguarding children in Scottish boarding
16 schools, and also across the education sector as
17 a whole.

18 The Council's regulatory effectiveness depends to
19 a large extent upon the co-operation and actions of
20 others. The Council is not on the front line of child
21 protection; it does not regulate schools and has no
22 power of inspection. Although employers are under
23 a duty to provide information to the Council when
24 requested, it has no powers to compel individuals to
25 give it information or, for example, to attend its

1 fitness to teach proceedings. It has to apply to the
2 Court of Session for such orders. Sharing of relevant
3 information by other agencies involved in child
4 protection is essential if the Council is to perform its
5 regulatory function effectively.

6 The Council and other regulators within the system
7 experience significant challenges with
8 information-sharing amongst other relevant agencies, for
9 example, criminal justice agencies such as
10 Police Scotland and the Crown Office and
11 Procurator Fiscal service, as well as the lack of
12 ongoing monitoring and restrictive information-sharing
13 practices at Disclosure Scotland. The Inquiry is placed
14 in a unique position in being able to see and take
15 a holistic view how the relevant processes and agencies
16 work together, and how these processes may be improved
17 to ensure the system is fully and properly joined up in
18 order to be fully effective.

19 The Council intends to assist the Inquiry in
20 identifying where improvements to the public protection
21 system may be made, where strict application of
22 legislation operates as a barrier rather than enabler
23 for public protection and where misunderstandings of the
24 current public protection system can create gaps and
25 areas of risk.

1 In highlighting these deficiencies and difficulties,
2 the Council recognises that other agencies and bodies
3 may be operating under statutory provisions that
4 restrict the sharing of information with the Council.
5 Nevertheless, the Council has real concerns about how
6 this legislation is being interpreted and applied in
7 practice by these other agencies and bodies. The
8 Council wishes to bring its concerns to the attention of
9 the Inquiry in order that the Inquiry can consider
10 whether it is necessary to make any recommendations on
11 the sharing of relevant information when preparing its
12 report on this particular case study.

13 In conclusion, the Council can assure the Inquiry of
14 its continuing full co-operation in the conduct of this
15 case study, and would be obliged if the Inquiry could
16 consider the Council's key areas of concern when
17 preparing its report.

18 Those are the opening submissions on behalf of the
19 General Teaching Council for Scotland.

20 LADY SMITH: Mr Lindsay, thank you very much for that. That
21 is all very helpful and I note in particular what you
22 said towards the end about where the General Teaching
23 Council for Scotland is looking for assistance. I now
24 would like you, if you would please, to mute yourself
25 and cut off your video.

1 I would like to turn to the next representation
2 which is for Police Scotland, and Ms van der Westhuizen
3 I think is ready to give an opening submission.

4 MR BROWN: Sorry to interrupt, my Lady, but I think the
5 SSSC --

6 LADY SMITH: I have missed the SSSC. I am so sorry.
7 Thank you for that.

8 Please don't take it badly, Mr Weir, but my eye
9 slipped on the list in front of me.

10 The Mr Weir of course that I am speaking to is
11 Mr Weir who is representing the Scottish Social Services
12 Council. Would you like now please to switch on your
13 microphone and your video, and I am ready to hear your
14 opening submission when you are ready to deliver it.

15 Opening submissions by MR WEIR

16 MR WEIR: I am very grateful, thank you, my Lady. Can
17 your Ladyship see and hear me?

18 LADY SMITH: I can certainly hear you, and now I can see you
19 as well. Thank you.

20 MR WEIR: Good morning, my Lady. Thank you for allowing me
21 the opportunity to provide this opening statement on
22 behalf of the Scottish Social Services Council.
23 Your Ladyship may also here our organisation being
24 referred as to as the "triple S C" or the SSSC.

25 The SSSC is a non departmental public body, or NDPB,

1 and is a regulator for the Social Services workforce in
2 Scotland. The SSSC is accountable to the
3 Scottish Government, and its sponsor department is the
4 Office of the Chief Social Work Adviser. It has
5 statutory functions to protect the public by registering
6 social services workers, setting standards for their
7 practice, conduct, training and education, and by
8 supporting their professional development. Where people
9 fall below the standards of practice and conduct the
10 SSSC can investigate and take action.

11 The SSSC was created under the Regulation of Care
12 (Scotland) Act 2001 by the then Scottish Executive
13 following the way forward for care policy position paper
14 dated July 2000. The SSSC was established to protect
15 people who used services, raise standards of practice
16 and strengthen and support the professionalism of the
17 workforce.

18 The SSSC's interest in this phase of the Inquiry is
19 twofold. It is firstly to provide the Inquiry with
20 information about the development of the system of
21 regulation and how it relates to the registration,
22 qualification and regulation of staff in boarding
23 schools, since the SSSC's establishment in 2001.
24 Secondly, it is to provide the Inquiry with information
25 about the SSSC's fitness to practise process, how we

1 work with other bodies to protect the public, as well as
2 any information we can provide in specific cases
3 referred to us regarding staff in boarding schools. To
4 that end, we have engaged openly with the Inquiry and
5 are committed to providing the Inquiry with any
6 information it requires to ensure these matters are
7 fully considered. We will continue to engage with the
8 Inquiry in a positive way and will provide any
9 information it so requires to fulfil its purpose.

10 Your Ladyship will hear from two witnesses on behalf
11 of the SSSC, and it might be helpful if I could address
12 your Ladyship on the specific areas each witness can
13 speak to.

14 Your Ladyship will hear from Lorraine Gray, the
15 SSSC's Chief Executive. Lorraine can assist the Inquiry
16 by providing evidence on the establishment and remit
17 of the SSSC, how we carry out our statutory functions,
18 the commencement of registration for staff in boarding
19 schools carrying out caring roles, the qualifications
20 framework and the SSSC's relationship with stakeholders.

21 Your Ladyship will also hear from Maree Allison, the
22 SSSC's Director of Regulation. Maree is responsible for
23 the operation of our registration and fitness to
24 practise work, and Maree can assist the Inquiry by
25 providing evidence on the fitness to practise framework,

1 how referrals are made and how we deal with them
2 generally, how we make decisions related to our
3 registration and fitness to practise work, how we share
4 information with other organisations including
5 Police Scotland, Disclosure Scotland and any other
6 relevant regulatory bodies, or any specific questions
7 relating to particular fitness to practise
8 investigations involving workers employed in any of the
9 institutions of interest to this phase.

10 The SSSC register of social service workers opened
11 on 1 April 2003, with social workers being the first
12 group of workers to register. In April 2005 the
13 Care Commission, now known as the Care Inspectorate,
14 commenced registration of residential school care
15 accommodation services. Residential school care
16 accommodation is a collective term including special
17 schools, school hostels and independent schools. From
18 2009 the SSSC began to register workers employed in
19 these three settings. Currently there are over 167,000
20 workers in the SSSC register. Of that number, 391 are
21 registered and a part of the register for residential
22 school care accommodation service workers.

23 Of the 7 schools that the Inquiry are looking
24 at during this phase, we have 124 people currently
25 registered; they fulfil a houseparent type role.

1 The SSSC is committed to continually reviewing
2 and improving how we regulate the social service
3 workforce. We welcome any recommendations that Your
4 Ladyship makes in this area and will take them forward
5 to make sure users of services are protected as much as
6 possible in the future.

7 Thank you, my Lady, and unless I can be of any
8 further assistance those are my opening submissions on
9 behalf of the SSSC.

10 LADY SMITH: Thank you very much. Thank you, Mr Weir, for
11 that.

12 Can I now please turn to Ms van der Westhuizen for
13 Police Scotland, who I think is joining us remotely.

14 Opening submissions by MS VAN DER WESTHUIZEN

15 MS VAN DER WESTHUIZEN: I am indeed. Can you see and hear
16 me, my Lady?

17 LADY SMITH: I can, thank you very much.

18 MS VAN DER WESTHUIZEN: My Lady, as always I am grateful for
19 the opportunity to make this opening statement on behalf
20 of the Chief Constable of the Police Service of
21 Scotland.

22 Firstly, on behalf of the Chief Constable I would
23 like to express continued sympathy to survivors across
24 Scotland who have experienced childhood abuse, including
25 those who experienced abuse within boarding schools.

1 Police Scotland remains committed to delivering its
2 response to the Inquiry and ensuring that all relevant
3 information held is provided in compliance with the
4 terms of notices issued under the Inquiries Act 2005.
5 This information includes policies, procedures and
6 documents relating to investigations into the abuse and
7 neglect of children in establishments falling under the
8 Inquiry's remit.

9 With regard to this phase of the Inquiry's hearings,
10 as your Ladyship will be aware a written submission has
11 been provided on behalf of the Chief Constable in
12 respect of concerns raised regarding Police Scotland's
13 information-sharing practices. In addition,
14 Police Scotland has identified and provided to the
15 Inquiry all material which remains in its possession
16 relating to previous police investigations into the
17 abuse and neglect of children within schools that are
18 the focus of this phase of the public hearings.

19 Police Scotland also wishes to inform the Inquiry
20 that in keeping with its continued commitment to
21 non-recent investigations it is currently investigating
22 non-recent child abuse within a number of these
23 establishments.

24 Police Scotland continues to build on its engagement
25 with adult survivors of childhood abuse, seeking views,

1 and consulting with survivors, support services and
2 statutory partners in an effort to enhance public
3 confidence, and to improve service provision to adult
4 survivors.

5 Police Scotland recognises the importance of using
6 organisational learning to ensure its staff have the
7 capabilities and skills required to effect continuous
8 improvement. As such, Police Scotland will take into
9 account any good practice or areas of learning that may
10 be identified from this phase of the Inquiry's hearings
11 as part of its commitment to developing and improving
12 its service provision.

13 Police Scotland remains committed to child
14 protection both locally, on a daily basis as a core
15 statutory child protection agency, but also nationally,
16 invested with multiagency and strategic leadership
17 groups to implement continuous improvements and to make
18 a positive contribution to protecting Scotland's
19 children both now and in the future.

20 My Lady, unless I can be of further assistance that
21 is the opening submission on behalf of the
22 Chief Constable.

23 LADY SMITH: I have no other questions at the moment.

24 Thank you, Ms van der Westhuizen.

25 MS VAN DER WESTHUIZEN: Thank you, my Lady.

1 LADY SMITH: Could I invite you to mute, thank you, and turn
2 your video off. Thank you.

3 Now I would like to turn to the representation for
4 the Lord Advocate, please, and I think that is Ms Ross,
5 who should be waiting to switch on her video and her
6 microphone. When you are ready, Ms Ross, I am ready to
7 hear you.

8 Opening submissions by MS ROSS

9 MS ROSS: Thank you. Can my Lady see and hear me?

10 LADY SMITH: We can hear you. We can't see you. If you can
11 keep speaking. There we are, we have you now.
12 Thank you.

13 MS ROSS: Thank you. My Lady, I'm grateful for the
14 opportunity to make this opening statement on behalf of
15 the Lord Advocate. As with previous case studies, the
16 Lord Advocate's continued interest in the work of the
17 Inquiry stems from his responsibilities as head of the
18 system of criminal prosecution in Scotland, and his
19 responsibility in that regard for Scotland's Prosecution
20 Service, the Crown Office and Procurator Fiscal Service,
21 often shortened to COPFS. These responsibilities, which
22 the Lord Advocate exercises independently of any other
23 person, are engaged in relation to allegations of
24 criminal conduct involving the abuse of children in care
25 in Scotland.

1 Reports of such abuse have been and will continue to
2 be submitted to COPFS by the police. When they receive
3 a report from the police, prosecutors are responsible
4 for deciding whether there is sufficient evidence to
5 prosecute in the public interest. Prior to reaching
6 a decision, prosecutors may instruct the police to
7 conduct further enquiries. Once investigations are
8 complete, a decision falls to be made both as to whether
9 there is sufficient evidence to justify a prosecution
10 and what action is in the public interest. The legal
11 and public interest considerations that inform
12 prosecutorial decision-making are set out in the
13 prosecution code published by COPFS.

14 As has been explained in previous statements to the
15 Inquiry, COPFS has a dedicated team of prosecutors who
16 are responsible for considering these reports, and
17 instructing police to conduct further inquiries where
18 required. Upon the conclusion of investigations,
19 prosecutors are responsible for deciding whether there
20 is sufficient evidence to justify prosecutorial action
21 and what action is in the public interest.

22 The focus of the present case study is the abuse of
23 those children who as part of or all of their education
24 attended boarding school. Given this focus, it is
25 anticipated that the Inquiry will hear evidence not only

1 from boarding schools themselves but of the emotional,
2 physical and sexual abuse of children attending those
3 schools. During this particular case study the Inquiry
4 may hear evidence about both past and continuing COPFS
5 involvement in relation to allegations of the abuse of
6 children at those establishments.

7 In conclusion, my Lady, may I once again repeat the
8 Lord Advocate's public commitment, first to supporting
9 the Inquiry's work and to contributing positively and
10 constructively to that work where possible, and secondly
11 to the effective, rigorous and fair prosecution of crime
12 in the public interest consistently and for all,
13 including the most vulnerable in our society.

14 LADY SMITH: Thank you very much, Ms Ross. I now invite you
15 to mute yourself and switch off your video, please.

16 I turn now to the representation for Fettes College.
17 Mr Brodie, I think you are joining us remotely? When
18 you are ready would you like to switch on your
19 microphone and your video, and I am ready to hear you.

20 Opening submissions by MR BRODIE

21 MR BRODIE: Good morning, my Lady. Is my Lady able to see
22 me?

23 LADY SMITH: Yes, thank you.

24 MR BRODIE: My Lady, I appear on behalf of Fettes College.

25 Fettes College, its board of governors and head of

1 college, Mrs Helen Harrison, have asked me to open by
2 making a full and unreserved apology to those who have
3 suffered abuse whilst at Fettes.

4 The school recognises that words of apology of
5 themselves may have limited worth. Therefore, the
6 school wants to be clear: Fettes accepts and recognises
7 that in the past there have been occasions of sexual
8 abuse, of physical abuse and of emotional abuse. That
9 has been the result of acts by certain members of staff,
10 and by failing to prevent peer to peer bullying. The
11 school recognises that on occasions it did not act
12 appropriately or responsibly when evidence of abuse came
13 to light. It is a matter of profound regret that Fettes
14 failed those who suffered abuse, when school should have
15 been a safe and nurturing environment.

16 What the school seeks to do now is to listen. That
17 there have been past occasions of abuse is evidenced by
18 a review of the records, and speaking with former
19 teachers and former pupils. Two former teachers
20 admitted sexual abuse and were required to leave.
21 Former pupils have come forward with courage to speak to
22 both school and the Inquiry. These accounts have been
23 moving, some remarkably forgiving, and all insightful.
24 They provide insight as to how abuse may occur, how it
25 may take many forms, and how it may be concealed by its

1 perpetrators or, having been identified, left
2 unaddressed.

3 The school promises to listen and to reflect, both
4 on what is contained in those written accounts and all
5 the evidence to be given to the Inquiry. Come phase 2,
6 when survivors give evidence, Mrs Harrison will be
7 present to hear what is said. That is because it
8 matters to the school to hear from those who were the
9 victims of abuse, and that is because it matters to the
10 school that it learns of the extent to which its past
11 responses have or have not been appropriate.

12 In line with changes in society and within
13 education, and because its pupils' safety and well-being
14 must always be central, the school has developed
15 measures to safeguard and provide pastoral support to
16 those in its care. The school understands they can
17 never be complacent. Fettes hopes these measures mean
18 past failures can never happen again, and that the
19 school can fulfil its aim of providing a safe and happy
20 environment in which to learn.

21 It is very important to the leadership of the school
22 that Fettes continues to learn and improve. The school
23 looks forward to any recommendations the Inquiry may
24 make.

25 Listening and learning how such abuse can happen,

1 unnoticed or ignored, is a vital part of developing best
2 practice in child protection. It is perhaps striking
3 that some acts of abuse could occur without being
4 noticed. The school realises that for those with good
5 and happy memories of Fettes, and thankfully there are
6 many, it is shocking to learn of such abuse. It is
7 informative that some behaviour, excessive use of
8 corporal punishment, peer to peer bullying, absence of
9 pastoral support, could occur and yet not be challenged.
10 The school recognises that its systems for safeguarding
11 and its provision of pastoral support must prevent the
12 unnoticed, and must critique how it seeks to look after
13 the children in its care. Education must be a safe and
14 nurturing environment.

15 The school hopes that it has engaged with the
16 Inquiry in a positive and active way. In preparing its
17 response to the Section 21 notice the school undertook
18 a review of the records it holds and has spoken with
19 former teachers and pupils. The school has recently
20 reviewed its response to the Section 21 notice and
21 reflected on further accounts received from pupils and
22 staff. That caused the school to produce an addendum to
23 aspects of its Section 21 notice, and in a recent letter
24 to the Inquiry team has provided yet further
25 amplification. That was done at the school's own

1 initiative. Further, Mrs Harrison has written to the
2 community of former pupils to invite them to respond to
3 school and Inquiry with their experiences of Fettes.
4 Those responses have been disclosed to the Inquiry.

5 The school wishes me to repeat, as it has previously
6 encouraged, that anyone who has been affected by abuse
7 at the school should come forward to speak to the
8 school. The school wishes both to listen and to learn.

9 Let me say also, as the Inquiry would expect but as
10 I wish to affirm, Fettes is committed to assisting the
11 Inquiry as best it can.

12 Finally, allow me to confirm that I shall be in
13 attendance during week 1 of phase 1 of the Inquiry and
14 in the course of week 2 for the evidence of
15 Professor Lindsay Paterson and when Mrs Helen Harrison
16 comes to give evidence in that week. Thereafter in
17 phase 2, and subject to how attendance at the Inquiry
18 will be managed in light of coronavirus restrictions,
19 Mrs Harrison and a representative of the governors will
20 be in attendance if permitted, and if not by remote link
21 as possible. This is, as I have said, because the
22 school wants to hear from the applicants, and make clear
23 that its door is ever open to any affected by abuse
24 during their time at Fettes.

25 Thank you, my Lady.

1 LADY SMITH: Thank you very much, Mr Brodie. That is very
2 helpful indeed.

3 I would now like to turn to representation for
4 Loretto School, and that is Ms Grahame, who should be
5 connecting remotely. Could I invite you to turn on your
6 microphone and video. I am ready to hear you whenever
7 you are ready.

8 Opening submissions by MS GRAHAME

9 MS GRAHAME: I'm obliged, my Lady. May I confirm at the
10 outset that I can be seen and heard now?

11 LADY SMITH: Yes, both, thank you very much.

12 MS GRAHAME: I represent Loretto School and present today,
13 albeit virtually, is Dr Graham Hawley, headmaster of the
14 school, and Peter McCutcheon, who is chair of the board
15 of governors. Both will be giving evidence to this
16 Inquiry in due course, and they will continue to be
17 present throughout to hear the evidence of the
18 applicants and the other witnesses, and that is due to
19 the importance of this Inquiry to the school, and the
20 evidence given especially by survivors of abuse.

21 I also appear with Mr Hossack from Morton Fraser, my
22 instructing solicitor.

23 We would all like to thank the Chair and her Inquiry
24 team, particularly to senior counsel to the Inquiry, for
25 the considerable ongoing assistance which has been

1 provided to Loretto School in our efforts to fully
2 engage with the work of the Inquiry and to assist
3 insofar as possible.

4 I would like to begin with some brief information
5 about Loretto School. Loretto School is Scotland's
6 oldest boarding school, and was founded in 1827. Since
7 then the school has changed considerably. It is now
8 a modern thinking coeducational boarding and day school.
9 Compared to many, Loretto is a small school. The staff
10 and pupils consider themselves a family, with
11 friendships made at the school lasting a lifetime.
12 Former pupils belonging to the Lorettonian Society
13 organise a range of social events in both Scotland and
14 further afield, and these events are attended by former
15 pupils across all generations. The Loretto community
16 comprises the governors, teachers, support staff,
17 pupils, former pupils and parents.

18 So why am I here today? For those former pupils who
19 will be giving evidence to this Inquiry, my Lady, and to
20 any others who may be listening now, I am here today on
21 behalf of Loretto School to give an unreserved apology
22 to those who have suffered any form of abuse whilst in
23 the care of the school.

24 Loretto does not underestimate the challenge for you
25 as survivors of abuse, and to your families, of giving

1 evidence now, many years later, when you may have tried
2 to forget or to suppress those childhood experiences.
3 But by shining a light on the past, distressing as this
4 may be, will help to improve the experiences of children
5 in the future.

6 For any comfort it may give you today, please be
7 reassured that Loretto School acknowledges that you were
8 abused whilst at school, acknowledges that some of you
9 were victims of a teacher at the school in the '50s and
10 '60s, acknowledges that some experienced serious
11 bullying, acknowledges that some were poorly treated,
12 and acknowledges that the school let you down, did not
13 prevent this abuse, and did not take sufficient steps to
14 protect you from harm.

15 Why is Loretto School at these hearings?
16 Loretto School is here to encourage survivors of abuse
17 to speak up. Loretto School stands behind you now.
18 Loretto School is listening. The school will hear what
19 you have to say, as hard as that will be, and will
20 respect what you tell us. Loretto wants to understand
21 where things went wrong. Loretto School will not
22 forget, and whatever can be done will be done to protect
23 children in the care of the school now and in the
24 future.

25 It is only by sharing your experiences that the

1 school can understand how to enhance the layers of
2 protection and strive to do all that can be done to
3 reduce the risk of abuse. The reality is that this must
4 always be a priority and Loretto School will never be
5 satisfied that the job is complete.

6 What support has Loretto School given to the
7 Inquiry? Loretto School wholeheartedly supports the
8 work of this Inquiry. As part of that support the
9 school has endeavoured to provide all the information it
10 can, and will assist with the Inquiry's aims having
11 regard to the available historical written records. The
12 headmaster, Dr Hawley, wrote some time ago to all former
13 pupils on the database to alert them to the Inquiry and
14 to encourage them to contact the Inquiry with any
15 information they could share. A number responded
16 directly to the headmaster, and those individuals were
17 also invited to provide wider reflections on their time
18 at the school again to the Inquiry.

19 Having given significant consideration to the
20 matter, Loretto School has taken great care to leave
21 other witness contact exclusively to the Inquiry team,
22 who are highly trained, skilled and experienced in
23 speaking to survivors of abuse. This approach was taken
24 to ensure that the school has not influenced in any way
25 those survivors and other witnesses who are trying to

1 furnish their best recollections of their experiences to
2 the Inquiry team.

3 What changes have there been over the years? The
4 Terms of Reference of this Inquiry span over 80 years.
5 Significant changes in society and at Loretto have
6 occurred over this time. Schools, including Loretto,
7 are very different places now but any abuse, whether
8 physical, sexual, psychological or emotional, is wrong
9 now and has always been wrong.

10 Noting all of these important changes, safeguarding
11 measures, child protection training, the Protection of
12 Vulnerable Groups scheme, the taking up of and providing
13 references, the introduction of codes of conduct, and
14 policies such as anti-bullying, Loretto School remains
15 committed and keen to embrace any and all further
16 improvements that this Inquiry can identify.

17 Loretto School will not seek to hide failures or
18 wrongdoing behind those significant changes in society
19 or legislation.

20 I would like to turn to the school's ongoing
21 commitment to improvement. Where flaws or shortcomings
22 in the procedures and practices in the school over these
23 years have allowed these acts of despicable abuse to
24 take place, then Loretto School wants those to be
25 highlighted. Loretto School wishes to make sure that

1 every child in the future attending the school can be
2 assured of a blanket of protection; no child at risk, no
3 child slipping between the gaps. These are not hollow
4 words. In recent years there has been considerable
5 focus on child protection and safeguarding, both at the
6 operational level of the school and at governor level.
7 Training and independent inspections are conducted
8 regularly, and governors have active oversight through
9 a pastoral and welfare subcommittee of the full board.
10 In addition, and in line with the school's commitment to
11 and a culture of continuous improvement, a child
12 protection audit report from independent experts has
13 verified that the school are aligned with best practice.
14 This report has given welcome reassurances to those
15 running the school that pupils feel safe and consider
16 the school to be a positive environment in which to
17 learn. The school will not rest, however, until they
18 can be sure that every child has the best possible
19 experience at the school, and these efforts will not
20 only be maintained, but will continue on an ongoing
21 basis.

22 Turning now to my final remarks. It is only by
23 looking at the past with a critical eye can the school
24 ensure that all measures are put in place that will
25 enhance and improve the existing protections in place

1 today. This would not be possible without the courage
2 of those who have come forward to tell their stories.
3 Loretto School thanks each and every one of you. Your
4 evidence will inform the recommendations of this
5 Inquiry, which in turn will positively impact on
6 children at boarding schools in the future. Your
7 courage is also your legacy to future generations.

8 My Lady, that concludes my opening submission. I'm
9 obliged.

10 LADY SMITH: Ms Grahame, thank you very much for that. It
11 is very helpful indeed. Could I invite you to mute and
12 switch off your video, thank you.

13 I turn next to representation for
14 Morrison's Academy. Mr Hamilton I think is waiting to
15 speak. Mr Hamilton, when you are ready I am ready to
16 hear your opening submission.

17 Opening submissions by MR HAMILTON

18 MR HAMILTON: Thank you, my Lady, can you see and hear me?

19 LADY SMITH: Yes, thank you. And the sound is good.

20 Thank you for that.

21 MR HAMILTON: Thank you. I appear today on behalf of
22 Morrison's Academy, an independent school for boys and
23 girls which was founded in 1860.

24 Morrison's Academy is very grateful to the Inquiry
25 for the opportunity to participate in these hearings.

1 That participation allows the present rector and the
2 board of governors to express a heartfelt and sincere
3 apology to each of the individuals who have shown the
4 strength and the courage to share some of the most
5 damaging experiences of their lives. Gareth Warren, the
6 rector of Morrison's Academy, is in attendance today,
7 albeit virtually, and wishes to offer that apology in
8 person when he gives evidence next week.

9 My Lady, the rector and governors understand that no
10 apology can ever be sufficient but it is an essential
11 place to start, and is therefore offered with respect
12 and humility, and without reservation.

13 But for all of us in this Inquiry, listening to the
14 evidence of survivors is just the start. We need to
15 understand what went wrong, and do whatever it takes to
16 ensure that such events cannot ever be repeated. For
17 Morrison's Academy, contributing to the work of this
18 Inquiry is an important part of giving that necessary
19 reassurance.

20 My Lady, the events described in the evidence
21 produced to this Inquiry relate to the experience of
22 former pupils who attended many decades ago. Over that
23 time society has changed, and the school with it. Those
24 events took place within a model of schooling from which
25 Morrison's Academy departed many years ago. As my Lady

1 will be aware, since June 2007 there has been no
2 residential schooling at Morrison's Academy at all. But
3 that is not to limit for one moment the lessons which
4 require to be learned.

5 All of those in the Morrison's community, staff,
6 pupils, former pupils, parents and governors, have
7 a duty and a desire to do so. We are here today because
8 of a failure to protect the most vulnerable and a
9 failure to guard properly against the abuse of power by
10 individuals within the Morrison's community. The
11 mission for every school in this Inquiry facing up to
12 the failures of the past must therefore be to understand
13 how that happened. Not just as an essential
14 acknowledgement of past failures, but to listen and to
15 learn for the future.

16 30 years may have passed since the last of the cases
17 at Morrison's Academy in relation to which this Inquiry
18 will hear evidence, but each of those cases resonates
19 today and underscores a challenge which has not gone
20 away. That challenge is to commit to vigilance,
21 scrutiny, transparency and accountability in all that
22 takes place within a school environment. That is
23 a challenge which the current leadership of Morrison's
24 are meeting, and will continue to meet with sincerity
25 and with purpose.

1 Doing so requires the public reaffirmation of a core
2 commitment to guaranteeing safe, positive, transparent,
3 accountable, high quality pupil-centred education. It
4 means protecting all children at all times.

5 My Lady, beyond the public apology to all of those
6 who have come forward, and indeed to any who have not,
7 committing to those principles and practices is the
8 greatest and most tangible evidence that the wrongs of
9 the past will never be repeated. The Inquiry can be
10 assured that the weight of that responsibility is one
11 that Morrison's Academy understands and embraces.

12 Unless I can assist your Ladyship further, those are
13 the opening submissions on behalf of Morrison's Academy.

14 LADY SMITH: I have no further questions just now,
15 Mr Hamilton, thank you for that. Could I invite you to
16 mute and turn off your video. Thank you.

17 I turn next to representation for Queen Victoria
18 School. Mr McIver I think is waiting remotely to
19 deliver his opening submission for the school. When you
20 are ready, Mr McIver, I am ready to hear you.

21 Opening submissions by MR MCIVER

22 MR MCIVER: I am obliged, your Ladyship. Can I be both
23 heard and seen?

24 LADY SMITH: Yes, thank you.

25 MR MCIVER: As my Lady has noted, I appear for

1 Queen Victoria School in Dunblane, QVS, which welcomes
2 the opportunity to contribute to the Inquiry.

3 QVS understands that the present phase is the
4 Inquiry's opportunity to assess the operation of
5 Scotland's boarding schools caring for children in the
6 period within living memory, essentially, of any person
7 who suffered abuse up to 2014, with a view primarily to
8 ascertaining three things. Firstly, the extent of
9 events from which abuse occurred; secondly, the extent
10 to which policies and practices within those schools may
11 have caused or contributed to that abuse; and thirdly,
12 and perhaps most importantly, the extent to which better
13 practices either have developed or might develop in
14 future, so as to protect children from such events
15 occurring again.

16 It is expected that a primary outcome from the
17 Inquiry will be recommendations as to future best
18 practice in Scotland's boarding schools. QVS must
19 emphasise that it will welcome such recommendations, and
20 is of course committed to giving proper effect to them.

21 I should begin by saying a few words on the status
22 of QVS. It is in an unusual position among Scotland's
23 boarding schools, in that it is a historic institution
24 founded in 1905 for the special purpose of education of
25 sons of both fallen soldiers and sailors. It continues

1 to operate under that original 1905 constitution and
2 together with a royal warrant which is updated from time
3 to time, most recently in 2018.

4 QVS was and remains state funded under the auspices
5 of the Secretary of State for Defence, who has directed
6 it for children and young people. Though the governance
7 of the school takes place at one remove, being vested in
8 a board of commissioners, both Ministry of Defence and
9 the board thereby have distinct interests in the
10 operation of the school. Put broadly, MOD is concerned
11 perhaps more with policy and oversight, whereas the
12 board's interest is primarily with the more routine
13 operations of the school. Witnesses in respect of both
14 aspects will be heard by the Inquiry.

15 That is the broad arrangement which has been
16 in place in the school since 1905. Other governance
17 features have been the result of evolution throughout
18 its operation. To put this in its most general terms,
19 there has been a trend since World War II to move from
20 a strongly male and military influenced establishment
21 towards one with a more inclusive and civilian outlook.
22 Throughout that, the service ethos has remained intact;
23 it was established as and it remains a school for the
24 children of service personnel, and as such the culture
25 of the armed forces has always had a strong influence.

1 But that is a culture that of itself has evolved with
2 time and with societal norms. All involved are
3 committed to ensuring this remains so, and that future
4 evolution at all times reflects best practice from all
5 relevant authorities, both Ministry of Defence and
6 civilian authorities, and all involved welcome this
7 Inquiry process as an important contribution to that.

8 QVS is keen to ensure that it maintains a process of
9 continual refinement for its governance. Its current
10 operations are conducted through a comprehensive set of
11 manuals and policies, some of which are dedicated to QVS
12 and some of which reflect broader MOD policies relating
13 to young people. The Inquiry has been furnished with
14 copies of those.

15 QVS takes great care to ensure its practices remain
16 up to date and are consistent with current legislation
17 and with current best professional practice. In recent
18 years particular focuses have been upon child-centred
19 care and child protection policies, the basis of those
20 being Scottish national guidelines. The school is and
21 remains subject to inspection by HMI and by the
22 Care Inspectorate.

23 QVS is, of course, influenced strongly by MOD
24 policy, for example matters of staff discipline. Those
25 policies are routinely updated and the view is always to

1 seek to employ its best practice.

2 So far as it has been able to ascertain, QVS
3 believes that it has followed its policies and practices
4 throughout the period of interest to the Inquiry.
5 However, the main focus of the Inquiry will rightly be
6 upon incidences of abuse suffered, and QVS does
7 recognise that such instances have occurred throughout
8 its operations. It deeply regrets every such incidence
9 whenever and however it may have occurred.

10 QVS must emphasise that it could not take more
11 seriously its responsibility for providing education and
12 care for young people.

13 QVS has taken great care --

14 LADY SMITH: You are breaking up a little. Thank you.

15 MR MCIVER: Apologies, my Lady.

16 QVS has taken great care to assess its records in
17 advance of this phase of the Inquiry, and the Inquiry
18 has been made aware that there have been a number of
19 events of abuse of different kinds at QVS during the
20 period covered. Although QVS is at this part of the
21 present phase not focused on individual examples, it is
22 appropriate to emphasise QVS's apology to each
23 individual concerned. QVS considers that it did seek to
24 address such allegations appropriately at the time they
25 arose, and the details of those have been provided to

1 the Inquiry.

2 Further, it is QVS's understanding that in each case
3 the behaviour concerned resulted from individual action
4 and, so far as is possible to ascertain, not from
5 a systemic failure within its practices and policies.
6 However, QVS of course recognises that any function of
7 having policies and practices is to minimise the scope
8 for harmful individual actions.

9 QVS is also conscious that part of the function of
10 the Inquiry will be to uncover incidences of abuse, and
11 thus further events have become available to the Inquiry
12 as it has proceeded and perhaps more will become
13 available as this phase proceeds.

14 Though QVS has drawn the Inquiry's attention to such
15 incidents that are known to it, it of course cannot know
16 which incidents may arise as part of -- (noise
17 interruption on audio feed) -- QVS must emphasise that
18 in no case does it seek to cast doubt on any accounts
19 which become available to the Inquiry. QVS's priority
20 is always to seek to learn lessons from any such
21 incidents. The school recognises and reiterates that
22 all students within its care at all times were entitled
23 to the best care from the school, and no student should
24 have been let down.

25 LADY SMITH: Mr McIver, forgive me for interrupting.

1 A couple of moments ago you said that the school cannot
2 know which incidents may arise as part of ... and then
3 we lost you because of an interruption to the audio
4 feed. Can you help me with what you said then?

5 MR MCIVER: Yes, my Lady.

6 This part of the present phase is to address the
7 schools and regulations. The second part arising in May
8 onwards will, QVS understands, be to hear from
9 individual survivors of abuse.

10 LADY SMITH: It was actually specifically what you said
11 after QVS "cannot know which incidents may arise as part
12 of ..." then our sound system that is recording and
13 transcribing lost you until you picked up "QVS must
14 emphasise that in no case ..." Can you fill in that gap
15 for me or not?

16 MR MCIVER: Yes. QVS is aware that the Inquiry will hear
17 about certain incidents, when individuals come to speak.
18 There will be other accounts which QVS is not yet aware
19 of. That was the point that I was trying to make. The
20 Inquiry is inviting -- the Inquiry is inviting further
21 accounts from further survivors, and QVS does not wish
22 them to be left out of the apology in this present
23 submission.

24 LADY SMITH: Thank you. That's very appropriate.
25 I appreciate that.

1 MR MCIVER: To close, regarding the evolution of QVS, as
2 I indicated, the evolution of the school throughout the
3 period has been from a more military establishment to
4 one with a civilian outlook. Particular events such as
5 the movement of staff away from those of military rank
6 towards civilian teaching staff are events that have
7 occurred with QVS and are perhaps unique to it. That
8 demonstrates an evolution in the culture over the period
9 of interest to the Inquiry, and part of that culture has
10 been a softening, is perhaps the correct word for it,
11 such that matters of pastoral care and child protection
12 are at the forefront of QVS's consciousness today in
13 a way that may not have been the case as one looks into
14 the past.

15 In terms of oversight, QVS has long been subject to
16 inspection by HMI and also by the Scottish
17 Care Inspectorate. As well as ensuring proper provision
18 of education, QVS is subject to scrutiny by those bodies
19 in its more general practice, such as complaints and
20 staffing. QVS endeavours to maintain close internal
21 oversight by the board of commissioners in its
22 day-to-day running, and also by the Ministry of Defence.
23 The Ministry of Defence takes a direct role in staff
24 discipline matters within QVS and appropriately
25 (inaudible) upwards referrals are made.

1 LADY SMITH: Thank you. Just to confirm something that you
2 probably already know, I am going to hear the next two
3 opening submissions now, and then the final opening
4 submission will be delivered at 1.45 pm. Then when we
5 finish the opening submissions we will have a very short
6 break and we will go on to this afternoon's evidence.

7 So the next opening submission that I would invite
8 is the one that Mr Reid I think is going to present on
9 behalf of Merchiston Castle School.

10 MR REID: Hopefully my Lady can now see me.

11 LADY SMITH: I can hear you. If you keep speaking -- there
12 we are. Yes. Thank you.

13 Opening submissions by MR REID

14 MR REID: Thank you, my Lady. Merchiston Castle School is
15 grateful for the opportunity to participate in this case
16 study and to make an opening submission. I should
17 apologise, it's uncharacteristically sunny in north
18 Edinburgh so I am not particularly well lit, I'm afraid.

19 LADY SMITH: I don't think any of us are complaining about
20 seeing the sun shine after the winter we've had.

21 MR REID: I propose to say a few words about the history of
22 the school and then the approach the school has taken to
23 the Inquiry and its important work. I don't propose to
24 say much about the substance; the time for that will
25 come later in this case study.

1 Merchiston Castle School was originally founded in
2 1828 and has been on its current site off Colinton Road
3 in Edinburgh since 1930. The founding Memorandum of
4 Association, which dates from 1927, records that
5 the school was founded to give education and training of
6 the highest order and to develop the mind, body and
7 character of its pupils.

8 It has always been a boarding school for boys, and
9 today has a multinational community of pupils coming
10 from all parts of the globe. Over the last century the
11 school has had a steadily increasing number of day
12 pupils. The ratio of boarding to day pupils today is
13 now around 2 to 1, 40 years ago it was almost 5 to 1.
14 The School has long prided itself on the quality of the
15 academic and all-round education that it provides to its
16 pupils and, more generally, the social and pastoral
17 education it offers to prepare those pupils for later
18 life.

19 It is now clear, however, that not every pupil
20 received the experience of Merchiston Castle School on
21 which the school prides itself today. Some pupils had
22 an experience which, even judged by the standards of the
23 time, was unacceptable. With hindsight, warning signs
24 were missed. With hindsight, in relation to at least
25 one former member of the staff the dots were there to be

1 joined. And with hindsight, stronger action should have
2 been taken when concerns did arise. That the signs were
3 missed or not recognised for what they were, that
4 the dots were not joined, that the stronger action was
5 not taken are all matters of considerable regret for the
6 school.

7 The Inquiry will hear more details about that in due
8 course. For now, the school wishes to acknowledge that
9 those events took place, and to publicly acknowledge the
10 profound regret that for the pupils concerned
11 Merchiston Castle School was not the safe environment
12 that it should have been, and it did not provide the
13 supportive caring and educational experience to which
14 those pupils were entitled. The school unreservedly
15 apologises for that.

16 I should also make explicit what is implicit in the
17 school's acknowledgement that those events took place.
18 The school does not come to this Inquiry to challenge
19 any of the evidence that will be heard about experiences
20 at the school. Merchiston Castle School is here to
21 listen, to learn and to support the Inquiry in its
22 important work.

23 Merchiston Castle School has always taken the
24 Inquiry with the utmost seriousness. It has sought to
25 co-operate with the Inquiry as fully as it possibly can.

1 A dedicated team of staff at the school has been working
2 on and with the Inquiry since 2017 and continues to do
3 so. The school has been open, it hopes fulsome and
4 fully transparent in all of its responses and
5 submissions to the Inquiry. The work undertaken by the
6 school's Inquiry team has included reaching out to the
7 school's alumni and other networks to ensure former
8 pupils are aware of the Inquiry and have the opportunity
9 raise any issues they may have.

10 The school has not actively sought out positive
11 statements. I'm aware that the Inquiry has heard such
12 evidence in earlier case studies, and that it did make
13 some requests in the present case study. Whilst such
14 evidence has its place, the school wishes to be clear
15 that it is here to listen. Evidence of positive
16 experience is not ameliorative, nor can it serve to
17 detract from the unacceptable experiences that some
18 pupils had whilst at Merchiston. That those pupils had
19 such experience is an uncomfortable truth that
20 the school has had to come to terms with, but the school
21 is absolutely committed to learning the lessons of those
22 experiences and taking all steps it can to ensure no
23 pupil should have such an experience of the school in
24 the future.

25 Much has already been done in that regard. External

1 reports on child protection and safeguarding were
2 commissioned by the governors in 2014 and 2016. A new
3 suite of safeguarding procedures has been introduced,
4 along with refreshed and updated training for staff.
5 Merchiston Castle School is confident that it is the
6 safe and welcoming environment which every pupil is
7 entitled to expect. Nonetheless, the school is not
8 complacent. As identified in the 2016 report, authored
9 by Professor Julie Taylor, the school has worked hard to
10 make the necessary changes in approach and to the
11 policies and procedures for keeping young people safe.
12 The school is committed to keeping those policies and
13 training under review, and at the very least keeping
14 pace with best practice in relation to safeguarding.

15 This is as well as learning the lessons that will
16 emerge from this Inquiry. One of the comments in the
17 2014 report that the school commissioned from Ms Cherry
18 was that and I quote:

19 "There was a deficit in the school's organisation,
20 which did not have in place a mechanism to see the whole
21 picture of individual staff behaviour."

22 It seems to us that this Inquiry will be uniquely
23 placed to see not just the whole picture of
24 an individual school, but the whole picture of boarding
25 schools throughout Scotland. That perspective will make

1 any findings or recommendations that my Lady makes at
2 the conclusion of this case study particularly valuable
3 to the school, the education sector as a whole and,
4 crucially, for the young people it continues to serve.

5 Merchiston Castle is committed to doing all that it
6 can to assist the Inquiry in this important work.

7 There are two final points I wish to make at this
8 stage. First, the school recognises the importance of
9 the evidence the Inquiry will hear in due course and how
10 important it is that it is heard. Mr Scott, on behalf
11 of INCAS, illustrated that earlier this morning.
12 Present today, albeit virtually, are the headmaster
13 Jonathan Anderson, who took up post in the summer of
14 2018, and the senior deputy head Alan Johnston. The
15 chair of the board of governors, Gareth Baird, would
16 have joined us remotely had it not been for a power cut
17 that prevented him doing so.

18 During the evidence stage a senior representative of
19 the school will be present throughout. This reflects
20 an appreciation that participation in this case study is
21 not simply a case of having lawyers in the room present
22 on behalf of the school; it is a recognition that
23 reading accounts on the printed page is no substitute
24 for being present when the evidence is given, and that
25 the school of today, not just its lawyers, should be

1 present to hear that evidence.

2 Secondly, many associated with Merchiston Castle
3 School have a multigenerational connection with it.
4 That bond with and affinity for the school, the
5 education it delivers and all that it stands for has
6 made it difficult for some to come to terms with what we
7 now know about the experiences some pupils endured. It
8 has prompted significant self-reflection by the school.
9 The school profoundly regrets, and sincerely apologises
10 for, the fact that such experiences were endured by
11 pupils and that the means for preventing them or at
12 least uncovering them at the time were inadequate. The
13 school acknowledges that some lessons were not learned
14 quickly enough.

15 The school of today is wholeheartedly committed to
16 supporting the Inquiry in its work, to ensure that
17 the lessons of the past are learned and that
18 the mistakes of the future can be prevented. The school
19 is determined not to be defined by past mistakes, but
20 instead by the lessons it has learned and its
21 implementation of those in the future.

22 My Lady, unless there are any particular other
23 issues that I should address at this stage, those are
24 the submissions for Merchiston Castle School, and I am
25 grateful for the opportunity make them.

1 LADY SMITH: Thank you, Mr Reid. I have no other questions
2 just now. So I am grateful to you for that, and I would
3 invite you to mute yourself and switch off your video
4 please. Thank you.

5 I turn now to the representation for Keil School,
6 and that is Mr Harvey-Jamieson. Whenever you are ready
7 I am ready to hear you, with your microphone switched on
8 and your video switched on, please.

9 MR HARVEY-JAMIESON: Thank you, my Lady. I hope I'm both
10 visible and audible.

11 LADY SMITH: Yes, all is well. Thank you.

12 Opening submissions by MR HARVEY-JAMIESON

13 MR HARVEY-JAMIESON: First of all, I would like to start by
14 saying that all of the trustees of the MacKinnon MacNeil
15 Trust are utterly devastated by the events which have
16 led to this case study and they offer their deepest
17 sympathy to all who have been affected by them. Even
18 a single case of abuse is one too many.

19 My personal background is that I am a trustee of the
20 MacKinnon MacNeil Trust which was the governing body of
21 Keil School until its closure in 2000 and which now
22 operates a scholarship scheme for young people going up
23 to university for the first time. I am also the
24 nominated representative of the Trust for the purposes
25 of this Inquiry.

1 I was a solicitor in private practice with the firm
2 of Murray Beith Murray in Edinburgh until my retirement
3 in 2002 and had been a partner since 1973, a long time
4 ago.

5 I was a generalist rather than a specialist. My
6 clients included charities, private individuals, small
7 businesses, banks and building societies. I obtained
8 a postgraduate degree in business administration from
9 Edinburgh University in 1994 but I had no qualifications
10 or particular expertise in education law.

11 Although Keil School was based in Dumbarton, my firm
12 had acted for the Trust since its formation in 1915.
13 The Trust and school remained clients of my firm
14 throughout. From the late 1970s, and for more than
15 20 years thereafter up to the closure of the school,
16 I maintained the connection as clerk and minute-taker of
17 the Trust, after which I was invited to become
18 a trustee.

19 My evidence to this Inquiry will be given solely
20 from knowledge I have during the period as clerk to the
21 governing body. The duties of clerk as I understood
22 them were set out in a memorandum of 1968 and a separate
23 one of 1979 prepared by my predecessor who was a senior
24 partner in my firm, and both of these memoranda are
25 amongst the surviving records already delivered to the

1 Inquiry.

2 My own visits to the school were generally limited
3 to days when the Trust was holding meetings there and to
4 speech days at the year-end. The MacKinnon MacNeil
5 Trust was formally established as the governing body of
6 the school in terms of a scheme authorised in terms of
7 the Education (Scotland) Act 1928 when the school had
8 already been in operation for over ten years. The
9 school was also subject to reports by HMI from at least
10 1938. It was initially a residential boys school
11 specialising in technical subjects, but the Trust did
12 provide bursaries for girls to attend other
13 establishments. The school became fully coeducational
14 in the 1980s, catering for both day pupils and boarders.

15 The constitution of the Trust was revised in terms
16 of orders of council of 1937, 1960, and 1966 and also in
17 terms of a petition brought by the trustees in terms of
18 the Education (Scotland) Act, which were approved by the
19 Court of Session in 1985. The Trust operated a system
20 of delegated authority, first through a house committee
21 and latterly through the governors of Keil School,
22 a body of which was recognised by the revised
23 constitution of 1985. This body provided the direct
24 link for the head teacher.

25 The professional link was felt to be particularly

1 strong by the inclusion of, first of all, the Clerk to
2 the Senate of Strathclyde University and then by his
3 successor and member of the court of Glasgow University,
4 both of whom were nominated governors in terms of the
5 constitution.

6 The governors of the Trust considered that the
7 governors of Keil School formed a suitable body to
8 fulfil the tasks delegated to them and a strengthening
9 of the formal position of the house committee as they
10 included additional old boys, current parents and
11 prominent businessmen.

12 Recruitment of staff at the school was in two parts.
13 The recruitment and appointment of the head teacher
14 remained a matter for the core governing body. I, as
15 clerk, had an involvement in the selection process for
16 candidates for that post I think in 1975, 1982 and 1992.
17 I became aware of the practice at the school for
18 obtaining both confirmation of teacher qualifications
19 and also what was then known as List 99 reports from
20 police sources of staff with police contact. In other
21 words, the forerunner of Disclosure Scotland.

22 Both these elements were applied to the recruitment
23 of the head teacher as an addition to taking up
24 references from previous employers. Other teaching
25 staff were recruited and appointed directly by the head

1 teacher, whilst domestic staff were recruited and
2 appointed by the bursar who was normally from a senior
3 professional background.

4 Although Keil was not a well-known public school, it
5 appears to have been held in some affection and regard
6 given the relative success of funding appeals in 1968
7 and 1983 and the strong support for the Save Keil
8 campaign in 2000.

9 The 1992 HMI report quoted in the history stated
10 that:

11 "Keil School aims to provide a family atmosphere
12 within which pupils can achieve their full academic
13 potential and in a wider context develop interests,
14 skills, maturity and self-confidence that will enable
15 them to make a worthwhile contribution to society."

16 Which would appear to indicate a good governance and
17 good practice in the years leading up to its closure.

18 It may also be considered highly unlikely that
19 either of the prominent 20th century businessmen
20 Sir Hugh Fraser of House of Fraser or James Gulliver of
21 the Argyll Group would have agreed to support
22 fundraising activities for major enhancements to the
23 buildings and ancillary facilities or to become patrons
24 of the school, as they both did, had any suggestion or
25 rumour of serious malpractice or abuse been circulating

1 which would have affected their reputations.

2 Having said that, it is fair to say that the
3 traditional regime at Keil School was rigorous and the
4 history as published in 1993 and 2016 suggests that
5 the continuation for a number of years of a general
6 routine which had its origins in the 1950s and 1960s,
7 when acceptable standards were very different from those
8 prevailing now. Formal child protection policies began
9 to be developed only after the publicity surrounding the
10 death of Maria Colwell in England in 1973 and gained
11 pace with initiatives, such as the introduction of
12 Esther Rantzen's Childline in 1986.

13 In common with many other schools, corporal
14 punishment was still being administered on occasion at
15 Keil School until legislation was passed to abolish the
16 practice following the decision of the European Court of
17 Human Rights in 1982. The school's reputation for
18 encouraging physical sports, and rugby in particular,
19 appears to have been widely known and may have appealed
20 to some parents and/or boys. However, there were also
21 academic achievements with some notable -- (noise
22 interruption on audio feed) --including the late
23 Hugh Kennedy, who was a partner in the firm of Ruthven,
24 Keenan Pollock & Co in Glasgow, and the late
25 Joseph Thomson, Regius Professor of Family Law at

1 Glasgow University, both of whom went on to serve as
2 governors.

3 One witness has already alluded to the significant
4 changes made under the direction of Tom Smith as deputy
5 head in the period from 1993 and who became the last
6 head teacher in 1999. Mr Smith was described by one
7 former member of staff as a "powerhouse who ran
8 everything".

9 Mr Smith is now in his late 70s and has been
10 suffering from lapses of concentration for a number of
11 years. He currently provides secretarial services for
12 the Trust from his home but will be retiring from that
13 role in the next few weeks.

14 The decision to close the school in 2000 was taken
15 by the governors in the light of increasing financial
16 pressures and the decline in the school roll over many
17 years. Apart from a period of revival when
18 Mrs Thatcher's assisted places scheme was in operation.
19 At the time of the closure of the school the headmaster
20 requested advice and guidance for himself and the bursar
21 as to their duties in relation to the preservation of
22 the records kept at the school. I was informed by
23 the headmaster there was no single comprehensive index
24 of the papers kept in the school's walk-in safe.
25 Insofar as relating to pupils, many consisted solely of

1 handwritten notes which were normally retained only for
2 the academic year to which they related.

3 The position regarding the retention of records was
4 researched and there appeared to be no comprehensive
5 guidance beyond that which was directed towards
6 financial records and the formal minutes of appropriate
7 bodies, except to the extent that individual pupil
8 records should be passed to successor schools and other
9 records, including personnel files, should be managed in
10 accordance with the provisions of the Data
11 Protection Act of 1998, the principal -- (noise
12 interruption on audio feed) -- of that act stating that
13 personal data processed for any purpose or purposes
14 shall not be kept for longer than is necessary.

15 The conclusion was that most records should be kept
16 for ten years.

17 LADY SMITH: If I can just interject, Mr Harvey-Jamieson.

18 You are breaking up sometimes. I think you were telling
19 us the conclusion was that most records should be kept
20 for ten years. Is that right?

21 MR HARVEY-JAMIESON: That is correct, my Lady, yes. Would
22 you wish for amplification, my Lady?

23 LADY SMITH: No, that is all right. It is just that
24 sometimes we are having a little difficulty picking you
25 up because of -- it must be because of either your wi-fi

1 or our connection. Probably your wi-fi. I don't know
2 if you sometimes have difficulty with it. But if you
3 can just keep going and maybe keep going slowly so that,
4 if there is a lapse in the connection, it does pick up
5 again. That would be helpful. (Pause). One idea that
6 might help with the sound production,
7 Mr Harvey-Jamieson, if you turn off your video. It's
8 not that we are not delighted to see you, but that might
9 help with the production of the sound. So if you can
10 carry on now, let's see how it goes. (Pause).

11 MR HARVEY-JAMIESON: Thank you. I shall endeavour to work
12 my way through.

13 LADY SMITH: That is fine. I can see your video is off but
14 if you carry on speaking --

15 MR HARVEY-JAMIESON: -- the preservation of the minute books
16 and associated materials, all of which have now been
17 delivered to the Inquiry. (Pause).

18 LADY SMITH: Would you like to carry on?

19 MR HARVEY-JAMIESON: Thank you, my Lady, yes. I do
20 apologise.

21 LADY SMITH: Don't worry. I know these problems happen.

22 MR HARVEY-JAMIESON: We did question the appropriateness of
23 the advice of retention for ten years, with SCIS, the
24 Scottish Council of Independent Schools, of which Keil
25 was a member. It was confirmed by SCIS that a ten-year

1 period of preservation of records would normally be
2 regarded as sufficient. Much of the material under my
3 control became the basis for two editions of the history
4 published in 1993 and 2016. And finally the Old Boys
5 club, which had been active for many years, suffered
6 from decline in -- (noise interruption on audio feed) --
7 2020.

8 Turning now to historic abuse at Keil School, the
9 trustees had no knowledge or inkling of serious historic
10 abuse until Tom Smith, their present clerk, was
11 contacted by the police in 2015. The police were
12 initially investigating a teacher at
13 Keil School -- (noise interruption on audio feed) --
14 police had also noted -- (noise interruption on audio
15 feed) --

16 LADY SMITH: Mr Harvey-Jamieson, we are losing you. We are
17 losing you quite a bit. You have been good enough to
18 provide me with the text of what you were proposing to
19 say today. I see that there are just a few paragraphs
20 left in that text. Would you be happy if I proceeded by
21 reading the text and then I can check with you whether
22 there is anything you want to add or indeed subtract
23 from that? Do you think that would be helpful?
24 (Pause).

25 We may have lost the connection completely.

1 MR HARVEY-JAMIESON: Thank you, my Lady. I would be much
2 obliged if you would very, very kindly do as you
3 suggest.

4 LADY SMITH: I will do that. Where you had got to was
5 saying:

6 "The police were initially investigating a teacher
7 of [REDACTED] and [REDACTED] who had been at the school in the
8 late '80s and early '90s, at a time that he had just
9 been [REDACTED] at his
10 previous school in England.

11 "The police had also noted the suicide in 2004 of
12 a member of staff who had been at the school between
13 1991 and 1997, following that member of staff being
14 accused of abusing children at his new school in
15 Lancashire. And also it became known that a third
16 former teacher, who was at Keil between about 1987 and
17 2000, was also under investigation.

18 "Mr Smith was advised that the police intended to
19 talk with a large number of staff and pupils, but the
20 Trust were not provided with any feedback from the
21 investigation other than a suggestion [relayed to you]
22 that concerns about a possible paedophile ring may have
23 been unfounded.

24 "A teacher was eventually charged in connection with
25 offences said to have been committed whilst at

1 Keil School, and the outcome was that he pled guilty and
2 in May 2016 was sentenced to a prison term.

3 "In the following week a letter was received from
4 solicitors representing a former pupil who had attended
5 the school between 1990 and 1995, asking for details of
6 the school's insurers. Those solicitors confirmed that
7 legal action against the Trust was not anticipated. The
8 Trust was able only to offer the name of the insurance
9 company concerned, and it was again those solicitors who
10 traced the full details of the insurance. The claim was
11 subsequently settled without any reference to the Trust.

12 "The complete absence of feedback from either the
13 police or the insurers meant that the Trust was unable
14 to identify or make contact with any other victims of
15 abuse. [You] have no personal or direct knowledge of
16 the events which are the subject of this Inquiry, [your]
17 contact with the school was limited to your duties as
18 clerk to the Trust.

19 "All of the extant records of the school were
20 delivered to the Inquiry on 30 October 2019 as the
21 present Trust has no dedicated secretarial office or
22 support staff of its own. That is, they were delivered
23 to [us] for perusal and copying at that stage. The
24 records have not been returned and the Trust has had no
25 access to them in the intervening period."

1 Mr Harvey-Jamieson, are you content that what I have
2 read accords with what you were proposing to say had
3 your connection not been letting you down? (Pause).

4 Mr Harvey-Jamieson, I am not sure whether you can
5 hear me or not. I suspect it is the latter, that you
6 can't hear me or can't hear me properly.

7 What I will then do is rise now, which I was going
8 to do in any event for a break at this point. We will
9 try to contact you by other means for you to confirm
10 whether you are content that those paragraphs, which to
11 remind you are from paragraph 43 to the end of your
12 opening submission, are what you would have said if we
13 had been able to hear you.

14 Very well. We will rise now for the lunch break,
15 and sit again to hear the last of the closing
16 submissions at 1.45 pm. So if you can all be here a few
17 minutes before 1.45 pm so we are ready to go then that
18 would be helpful.

19 (12.27 pm)

20 (The short adjournment)

21 (1.45 pm)

22 LADY SMITH: Welcome back. I'm hoping that we have -- do
23 you know if we have a connection with Mr Dunlop? Yes.
24 Good, thank you.

25 I am going to turn now to the last of the opening

1 submissions that are to be delivered and that is
2 the opening submission for Gordonstoun School.
3 Mr Dunlop, if you would like to unmute yourself and
4 switch on your video I would be delighted to hear you
5 any time you are ready to address me.

6 Opening submissions by MR DUNLOP

7 MR DUNLOP: My Lady, I have now unmuted and I hope
8 your Ladyship has the video feed as well. It certainly
9 shows as working from my end.

10 LADY SMITH: All is well, thank you.

11 MR DUNLOP: I am obliged, and I am obliged to the Inquiry
12 for accommodating, in terms of timing, my availability.

13 My Lady, at the outset Gordonstoun tenders a sincere
14 and unequivocal apology to anyone who suffered abuse in
15 their time at the school. Through its open engagement
16 with alumni and its work in preparing for this Inquiry
17 the school recognises the excellent care taken of
18 children today was not always the case, and it affirms
19 its commitment to drawing important lessons from the
20 past in order to make children even safer in the future.

21 Gordonstoun was founded in 1934 by a visionary
22 educationalist, Kurt Hahn, who left his home in Germany
23 after being imprisoned for speaking out against the
24 Nazis, and had previously founded Salem School in
25 southern Germany where he pioneered a unique

1 educational ethos which used challenge, adventure and
2 service alongside academic learning as a way to develop
3 individuals with both a strong sense of self and of
4 their broader social responsibility.

5 That is apparent to this day, in that if one dials
6 999 in Moray in response a fire, a Gordonstoun appliance
7 crewed by pupils may well be part of the response team.
8 It was Mr Hahn's belief that this uniquely rounded
9 education should be available to young people from
10 across the world and social and financial divides, and
11 from its inception Gordonstoun has provided a programme
12 of bursaries and scholarships to enable children
13 from every social background to study side-by-side.

14 The influence of that unique educational ethos has
15 spread well beyond Moray. It resulted in the foundation
16 of the Duke of Edinburgh Award, the Outward Bound
17 movement and the Round Square global network of over 200
18 schools named after Gordonstoun's iconic Round Square
19 building.

20 As your Ladyship and the Inquiry is also aware,
21 Kurt Hahn further founded the small prep school
22 Wester Elchies in 1946. This school relocated to and
23 became known as Aberlour House in 1947. Although they
24 share a founder, Gordonstoun and Aberlour operated as
25 separate schools until 1999, when Aberlour became

1 a subsidiary of Gordonstoun. This was a precursor to
2 the formal closure of Aberlour House in June 2004, and
3 the move to the Gordonstoun campus later that year.

4 Before 1999 Aberlour House had its own headmaster
5 and board of governors, and whilst many students went on
6 to Gordonstoun from Aberlour House the relationship
7 between the two was informal, although strong.

8 When instances of historical abuse first came to the
9 school's attention in 2013, Gordonstoun was shocked, and
10 immediately embarked upon what it hopes has now become
11 a characteristically proactive response. It
12 acknowledged victims, requested more information, and it
13 offered support where possible. Through direct contact
14 and press coverage the school has urged alumni to come
15 forward and to report their experiences to the police,
16 and it repeated this appeal when the Inquiry came into
17 being.

18 Support for alumni survivors was enhanced through
19 the school's committed legal work from
20 Professor Kendrick at the Centre for Looked After
21 Children in Scotland.

22 Through all of this work it has become clear that
23 for all its ambition and achievement Gordonstoun has not
24 always provided the protection it should to the students
25 in its care. There have been individual and serious

1 cases of sexual and physical abuse. And there is
2 a significant period in the past during which some
3 children in some boarding houses experienced severe
4 bullying, with adults neglecting their supervisory
5 responsibilities. For all of this, Gordonstoun is
6 sorry.

7 Gordonstoun recognises and respects those former
8 pupils who have had the courage to report these
9 experiences. While the school does not underestimate
10 the emotional toll this will have taken, they know that
11 providing the best possible care for students today
12 relies upon understanding, acknowledging and learning
13 from the mistakes of the past. There will of course be
14 other survivors who have not or not yet felt able to
15 come forward, and Gordonstoun apologises to them too.

16 It is now also known that some pupils at Aberlour
17 House suffered abuse by adults who were charged with
18 caring for them. Although Gordonstoun cannot answer
19 formally for the school before '99, because there is no
20 existing institution which can do so, it has
21 consistently sought insofar as it can to support the
22 Inquiry's investigations in that regard. More
23 importantly, because there is no one else appearing
24 before this Inquiry who can do so, it would like to
25 extend a further apology to Aberlour House victims in

1 order to acknowledge their experience, especially given
2 so many of them would go on to become Gordonstoun alumni
3 as well.

4 The distressing experiences shared could not be in
5 starker contrast with the warmth of the school day.
6 Pastoral care at Gordonstoun is now consistently and
7 independently recognised as sector leading, and this is
8 due to systematic and sustained improvement over several
9 decades, as well as a relentless commitment to
10 self-evaluation.

11 Initial improvements focused on appointing more
12 staff, with a particular responsibility of supervising
13 boarding, from housemasters at the outset of 1930s to
14 over subsequent years the addition of assistant
15 housemasters, tutors, school matrons. During the 1990s,
16 alongside the rules already stated, each house was
17 appointed its own full-time matron and the roles of
18 director of student welfare and child protection officer
19 were introduced. That decade, the 1990s, saw particular
20 momentum in terms of care improvement at Gordonstoun,
21 spearheaded by a change in leadership and in parallel
22 with a developing societal and governmental
23 understanding of the need for explicit childcare and
24 child protection policies.

25 Since then improvement has been continual and, in

1 addition to personnel changes, improvements in training
2 and systems have been key. The need to support students
3 and reporting of concerns is fundamental to robust
4 pastoral care in a boarding school, and Gordonstoun is
5 committed to creating an environment in which reporting
6 feels safe.

7 Since 2008 staff have been trained in recognising
8 signs of trauma and/or abuse in students, and in
9 reporting and recording those concerns, enabling staff
10 to be proactive rather than reactive in proffering
11 support.

12 Child protection training for all staff became
13 compulsory in 2011; staff contracts require the
14 mandatory reporting of any suspected abuse. And senior
15 students are trained in peer support.

16 A key development in 2013 was the launch of the
17 school's Wellbeing IT system. This has received
18 repeated acclaim throughout sector and from regulators.
19 Wellbeing is a bespoke reporting and recording system
20 which has carefully controlled access, meaning any
21 member of staff can record a concern but access to those
22 reports is determined by the role of the staff member.
23 So, for example, a housemaster has an overview of all
24 students in their house, the principal has a whole
25 school dashboard, an email alert is automatically sent

1 to key carers when a child protection concern is raised,
2 and colour-coding enables easy interpretation.

3 The development and management of the pastoral
4 department remains ongoing, in response to emerging best
5 practice in the support and management of up to 600
6 teenagers, as well as legislative requirements. Current
7 projects include expanding the number of residential
8 staff, a new management structure to build capacity and
9 provide sustainable leadership roles, and the
10 development of a restorative approach to behaviour
11 management.

12 Having introduced a full-time clinical psychologist
13 in 2013, there are now two full-time professional
14 counsellors specialising in child mental health,
15 complementing a growing community of qualified mental
16 health first aiders. A new and urgent priority post
17 COVID is children's wellbeing recovery, and next term
18 will see Gordonstoun implement a mental health recovery
19 curriculum.

20 Despite all of these improvements, young people will
21 always make mistakes and will need guidance in their
22 decision-making and behaviour, and it is Gordonstoun's
23 belief that the cultures, the support structures and the
24 processes available to students today mean that when
25 things do inevitably go wrong, it can provide the best

1 possible response and support to all involved.

2 In closing, my Lady, Gordonstoun would also like to
3 thank the many former students who have taken the time
4 to share their positive experiences of life at
5 Gordonstoun, both directly with the Inquiry and with the
6 school. In addition to these individual connections,
7 Gordonstoun took the opportunity of some curricular
8 research being undertaken by Edinburgh University to
9 engage with over 1,000 pupils who attended the school
10 over six decades, and it is worth noting that this
11 unearthed very little unpleasantness at the school.
12 Whilst this in no way negates the experience of those
13 who were victims of it, it goes some way to confirming
14 this was thankfully not universal.

15 It does not take an inquiry to teach Gordonstoun
16 that there are times when it should have done better. But
17 what this Inquiry does allow is an opportunity to take
18 full, unreserved and unequivocal responsibility for the
19 past, and to pledge a commitment to learning all the
20 lessons the school can. Principal Lisa Kerr and
21 governor Eve Poole are in attendance today and will be
22 through this process. Gordonstoun hopes that its active
23 participation in this Inquiry will also contribute to
24 wider lessons learned for the sector and the country,
25 and is extremely grateful for this opportunity to place

1 on record its deep regret and sorrow, and the promise to
2 continue to keep the wellbeing of its students at the
3 heart of everything it does.

4 My Lady, I am obliged.

5 LADY SMITH: Mr Dunlop, thank you very much for that. I am
6 very grateful to you. I can now invite you to switch
7 off both your microphone and your video, and we will
8 turn to other evidence.

9 I think we will have a short break first, because
10 there might be a little bit of removal work to be done.

11 Very well.

12 (1.57 pm)

13 (A short break)

14 (2.02 pm)

15 LADY SMITH: Mr Brown.

16 MR BROWN: My Lady, the first witness is Alec O'Neill who is
17 going to be speaking to the Registrar of Independent
18 Schools.

19 LADY SMITH: Thank you.

20 Good afternoon, Mr O'Neill. Could we begin by
21 raising your right hand and repeating after me.

22 MR ALEXANDER O'NEILL (sworn)

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

24 First of all, help me with this: many witnesses are
25 more comfortable for me just to use their first name,

1 but what matters most is that you are comfortable, so do
2 you want to be Mr O'Neill or Alexander or Alex or
3 however you are known?

4 THE WITNESS: Alec, please, my Lady.

5 LADY SMITH: Alec, I will hand you over to Mr Brown in
6 a moment, he will explain to you what the red file is
7 for, and all I want you to bear in mind is that if you
8 have any queries or you want a break for any reason,
9 don't hesitate to let me know. Anything that helps you
10 give your evidence as easily as you can works for me.
11 All right?

12 THE WITNESS: Thank you very much.

13 LADY SMITH: Mr Brown.

14 Questions from MR BROWN

15 MR BROWN: Alec, good afternoon. You are here to speak
16 about the Registrar of Independent Schools and
17 I understand you are now the Registrar of Independent
18 Schools in Scotland, is that correct?

19 A. Indeed. I was appointed in February last year.

20 Q. I think from some documentation we have had at one stage
21 you were a Registrar Officer, so you have worked for
22 some time with the Registrar, the department?

23 A. Yes.

24 Q. Could you first of all tell us what your working
25 experience in terms of the Registrar has been up until

1 now?

2 A. Certainly. For the past year I have been the Registrar
3 of Independent Schools, and therefore responsible for
4 the provision of advice to the Scottish Ministers as
5 required by the circumstances.

6 Q. Obviously you have worked with Education Scotland and
7 within the Registrar of Independent Schools for longer
8 than that period?

9 A. Yes.

10 Q. That is what I was asking about. What is your
11 background --

12 A. Sorry.

13 Q. -- leading up to being the Registrar?

14 A. I was appointed Registrar Officer in would have been the
15 summer of 2015, and that is when the Registrar function
16 was moved from the Scottish Government Learning
17 Directorate to Education Scotland, and the Registrar at
18 that time was Ms Denise Brock. So I worked for her
19 drafting the advice, handling day-to-day matters,
20 fielding the inbox, that sort of thing.

21 Q. Just so we understand the scale of the operation, the
22 Registrar is part of Education Scotland but is separate,
23 for example, from Education Scotland itself. I think
24 you have difference offices. Is that you operate from
25 different places?

1 A. No, we have the same physical offices, the same physical
2 presence.

3 Q. Where is that?

4 A. Optima Building in Glasgow, 58 Robertson Street.

5 Q. Prior to working with the Registrar from 2015, what did
6 you do before that? Did you have any background in
7 education?

8 A. No, it was my first posting in the education portfolio.
9 I have been a civil servant since around 2010, having
10 held variety of posts in Disclosure Scotland, the Energy
11 and Climate Change Directorate.

12 Q. How many people work for the Registrar of Independent
13 Schools?

14 A. No one. It's myself, and I have the benefit of some
15 time from a business manager in Education Scotland who
16 helps support me where possible.

17 Q. So you were a Registrar Officer helping your
18 predecessor, Denise Brock. You don't have such
19 a person?

20 A. No.

21 Q. It's you. And such help as you can get as necessary.

22 A. Indeed.

23 Q. All right. I take it then -- and you will see a red
24 folder in front of you which contains relevant
25 documentation, which in your case is the report that was

1 prepared by the Registrar of Independent Schools,
2 dated November 2020. Did you draft this?

3 A. I did, yes.

4 Q. Just you?

5 A. Yes.

6 Q. Right. It's on the screen in front of you, if it's
7 easier just to look there. If we go to page 4, pages 2
8 and 3 being contents and preface. You will understand
9 that this Inquiry is interested not just with the state
10 of play now but obviously looking back to living memory.
11 And to that extent, whilst your experience of the
12 Registrar is perhaps the last five or six years,
13 obviously the Registrar has operated much longer than
14 that.

15 A. Indeed.

16 Q. I take it you don't really have any knowledge of the
17 world before you started, or other than presumably
18 reading reports.

19 A. Absolutely. Other than the information that has been
20 shared with me for the purposes of this Inquiry, it's
21 not something I would know a great deal about at all.

22 Q. I think in fairness, as you say in paragraph 2.1 which
23 we see on the screen, as noted in
24 Professor Kenneth Norrie's report for the Scottish Child
25 Abuse Inquiry, the Registrar of Independent Schools,

1 hereafter the Registrar, was a role created by the
2 Education (Scotland) Act 1946. And if I may, before we
3 come to the body of the report and what you can perhaps
4 speak to from personal experience, if we could look at
5 Professor Norrie's report, just to look at the history
6 of registration of independent schools. That is
7 document LIT.001.001.5968, which your Ladyship will have
8 seen previously and also heard Professor Norrie speak
9 about on previous occasions.

10 If we can go to page 318 of the report, which
11 contains information about the registration of
12 independent schools. I think probably simply to
13 understand how it operated, it is simpler just to read
14 in and then ask Mr O'Neill questions.

15 As you have said, registration of independent
16 schools began in -- or began with the
17 Education (Scotland) Act 1946 although, as
18 Professor Norrie says, the relevant provisions were not
19 brought into force until 30 September 1957. So it's
20 only in the last 65 years that registration of schools
21 has taken place -- independent schools has taken place.
22 Prior to that, it simply didn't happen. Is that your
23 understanding?

24 A. That is my understanding. But it is not a topic I would
25 know particularly well.

1 Q. But as we see, registration was required by the new
2 Registrar, as it was then, of Independent Schools, which
3 was then a Secretary of State for Scotland position.
4 And it became a criminal offence to carry on
5 an independent school that was not so registered.

6 But looking mid-way down:

7 "The Registration of Independent Schools (Scotland)
8 Regulations 1957 laid down the procedure to be followed
9 for registration and the information to be supplied. At
10 that stage, when it began, details were to be given
11 about the proprietor of the school, the number of
12 pupils, their sex, whether or not they were boarders,
13 also the names, dates of birth and qualifications of
14 each teacher employed in the school."

15 So from the outset it was assumed that there would
16 be some interest in the qualification of the teacher,
17 that is apparent. But Professor Norrie goes on:

18 "This was nothing more than a requirement to supply
19 information, and the regulations themselves did not lay
20 down conditions, for example, as to the qualifications
21 of the teachers or the standards of education or
22 personal care of pupils to be expected."

23 So there is a request for what the qualifications
24 are, but no demand for what they should be in order to
25 teach. Is that fair?

1 A. Yes.

2 Q. Okay. He goes on:

3 "The Acts themselves provided that no independent
4 school to be registered if the proprietor was
5 disqualified from being the proprietor of an independent
6 school or if the school premises were disqualified from
7 being used as school or any purpose specified in the
8 disqualification."

9 I think the point he goes on to make at that point
10 is that anyone could set an independent school up, but
11 the only way it wouldn't be registered was unless you
12 had been previously disqualified.

13 I think at this juncture, just to understand the
14 process, could we please look at document SGV-000067149.
15 Have you seen a document like this before?

16 A. Yes.

17 Q. This, as we can see if we read down, is the application
18 by Keil School, dated 29 November 1957, or the letter
19 from the Registrar is dated 29 November 1957 and it is
20 confirming to Keil that particulars of Keil have today
21 been registered provisionally in the register of
22 independent schools, and we understand that that was the
23 opening position, provisional registration, which was in
24 due course confirmed.

25 A. Yes.

1 Q. Okay. I think if we go down to the bottom of that page
2 we can see that the people the letter is being sent to
3 is Messrs Murray Beith Murray, who we heard this morning
4 represented Keil throughout.

5 If we go over the page we have a pro forma which
6 seems to go to various individuals, and reference to
7 a branch of the Registrar called "P Branch", if we go to
8 the third entry. Does "P Branch" mean anything to you?

9 A. It does not, no.

10 Q. But I see -- or you can see the question asked:

11 "To see and note particulars of teaching staff
12 employed in Keil School, Dumbarton, will you please
13 confirm that none of the staff has been found unsuitable
14 to be in charge of children?"

15 And someone in manuscript has written:

16 "Nothing shown in department's records."

17 So that would suggest that at the inception of the
18 Registrar there was some sort of cross-checking with
19 records of unsuitability to be in charge of children,
20 but I take it that what those were, from your
21 perspective, are lost in the mists of time?

22 A. I am afraid so, yes.

23 Q. Going on to page 3, we see at paragraph 8 HM Inspector
24 Mr Forsyth, and presumably this may be the final arbiter
25 in terms of such background:

1 "Application is made in the attached form RIS1 for
2 the registration of Keil School, Dumbarton. Provisional
3 registration was accorded on 29 November and a copy of
4 the Registrar's letter is enclosed for your attention.
5 If in your opinion the registration should be made
6 final, please fill in the blank spaces in the following
7 minute. Where final registration is not recommended,
8 please delete the second sentence and attach ..."

9 It was clearly inspected and it was signed off in
10 due course.

11 Paragraph 9 suggests, if we go down, "S Branch" --
12 again, I take you don't know what S Branch was?

13 A. No.

14 Q. But the school was visited on 13 December 1957 and
15 graded A, "I consider that its registration should be
16 made final". So it would appear that there is
17 a practical check about the suitability or otherwise of
18 teachers, and the school was visited and graded,
19 presumably "A", we take it, would be a good grade, and
20 accordingly registration was made final.

21 So there was some degree of assessment, but it is
22 not necessarily terribly clear from this document at
23 least?

24 A. Yes, that would seem fair.

25 LADY SMITH: Have I picked up the dates correctly?

1 Either/or both of you can help me with this. Keil's
2 application was 29 November?

3 MR BROWN: I think it was before that, my Lady. The letter
4 is to Keil's representatives, Murray Beith Murray, from
5 the Registrar, dated 29 November 1957.

6 LADY SMITH: So we don't have a record telling us when Keil
7 applied?

8 MR BROWN: Not in the bundle, but I'm sure we --

9 LADY SMITH: I was just curious to see what the time lapse
10 was between the application coming in and -- we know
11 there was provisional registration on 29 November, and
12 just two weeks later final registration. It might just
13 indicate something about the thoroughness that was
14 being applied, or not, to checking the school before
15 registration.

16 MR BROWN: Yes.

17 LADY SMITH: It may not matter particularly.

18 MR BROWN: I don't think the records are -- that we have are
19 that clear.

20 LADY SMITH: Thank you.

21 MR BROWN: If I can put it that way.

22 If we can go back to Professor Norrie's report, and
23 page 319. Thank you. We had been looking at the
24 previous page, about disqualification being a bar.
25 Professor Norrie goes on to talk about a complaint

1 mechanism, and that is something that you are familiar
2 with; that complaint mechanism still exists, but albeit
3 in a rather different form.

4 A. Indeed.

5 Q. Which was brought into effect, he goes on, in 1957.

6 Which gave added teeth to the inspection process that
7 had existed by then for the previous ten years. Under
8 this mechanism the Secretary of State would specify in
9 a complaint shortcomings that required to be rectified,
10 having presumably been identified at inspections. But
11 I think that makes the point that you presumably work
12 closely with the Inspectorate of Schools --

13 A. Very much so.

14 Q. -- in Scotland, HMIE? And that remains the position?

15 A. Yes.

16 Q. In terms of the efficiency and suitability of the
17 education being provided, the suitability of the school
18 premises, the adequacy or suitability of the
19 accommodation provided.

20 So it's a number of things they are looking at.
21 Education, obviously, principally; but also suitability
22 of school premises, and adequacy and suitability of the
23 accommodation. He goes on:

24 "The Secretary of State could also conclude that the
25 proprietor of the school or any teacher was not a proper

1 person to be a proprietor or teacher."

2 Again, that may tie in with what we have seen about
3 checking to see about suitability. But I think we
4 should understand from Professor Norrie that at this
5 period, and for some considerable period thereafter,
6 there was no guidance as to what a proper person was.
7 Although Professor Norrie assumes that having committed
8 offences against children would obviously make someone
9 improper.

10 Should any finding be made against a school after
11 a complaint, those findings could be appealed to
12 an independent schools tribunal. But I think from what
13 you have said at paragraph 4.3 of your report, that
14 independent schools tribunal, which ran for approaching
15 50 years, did it ever sit?

16 A. Not to my knowledge, no.

17 LADY SMITH: Alec, a small point that won't have occurred to
18 you, if in response to a question you nod your head our
19 stenographers, who are working remotely, can't see that,
20 so nothing will be on the transcript. Actual words will
21 help. Thank you.

22 A. Of course. Sorry.

23 MR BROWN: I think if we move on to page 320, the next page
24 of Professor Norrie's report. From 1957 we continue for
25 23 years until the Education (Scotland) Act of 1980,

1 which is the Act that you still operate under.

2 A. Yes.

3 Q. Part V is the relevant part of the statute, is that
4 correct?

5 A. Indeed.

6 Q. But the version you are working on is not the original.
7 Would you understand that?

8 A. Yes, it was amended to a great extent by the Ministerial
9 Powers Act 2004.

10 Q. Yes. But I think as we see, change was introduced in
11 1980 which replaced the provisions on registration of
12 independent schools, but more material change had to
13 wait until the regulations which governed the operation
14 of the Registrar were changed in 2005 by the
15 Registration of Independent Schools (Scotland)
16 Regulations of that year. So it would seem broadly, and
17 if you can agree or just confirm that this would appear
18 to be so, for 50 years there is very little change?

19 A. That would certainly appear to be the case, yes.

20 Q. But the 2005 regulations introduce, or repeat the idea
21 of a notice of complaint, and potential actions to
22 remedy a complaint. And if we look at page 321 of
23 Professor Norrie's report:

24 "Notice of complaint can be served with specified
25 actions to remedy the situation if: (a) efficient and

1 suitable instruction was not being provided at the
2 school, having regard to the ages and sexes of the
3 pupils attending [so that's education, again] (b) the
4 school premises or any part thereof were unsuitable for
5 a school; (c) the accommodation was inadequate or
6 unsuitable, having regard to the number, ages and sexes
7 of pupils; and (d) the proprietor or any teacher was not
8 a proper person to be a proprietor of an independent
9 school or a teacher at any school."

10 So it's essentially very similar broadly to what has
11 been in place since the '50s.

12 A. Broadly, yes, though substantively changed since.

13 Q. Yes, but again "proper person" still undefined --

14 A. Yes. Yes.

15 Q. -- in 2005.

16 But you made mention of new provisions in 2000, and
17 this was in terms of -- bear with me. If we can go to
18 323, the Standards in Scotland's Schools etc Act 2000
19 introduced two important amendments to the registration
20 rules, and this came into force on 13 October 2000.
21 First, the grounds for refusing registration were
22 expanded and, as we see halfway down the page, the 2000
23 Act added to the existing grounds a new ground for
24 refusing registration, that:

25 "The Scottish Ministers are satisfied, on grounds

1 they must specify, that the proprietor is not a proper
2 person to be proprietor of any school or a teacher to be
3 employed in the school is not a proper person to be
4 a teacher in any school, or that the school premises or
5 any parts of those premises are unsuitable for
6 a school."

7 So finally, in 2000 you can refuse an application
8 because of the quality of the person making the
9 application itself.

10 A. Yes.

11 Q. But still, as we see from the penultimate lines of the
12 report, "proper person" still has no statutory
13 definition so far as the Scottish Ministers are
14 concerned.

15 A. Yes.

16 Q. Okay. Going on to 324, the second major change in 2000
17 again, 13 October 2000, is a new ground of complaint
18 through which the Scottish Ministers could require
19 remedial action was added, namely, that the welfare of
20 a pupil attending the school is not adequately
21 safeguarded and promoted there. So it's only
22 in October 2000 that safeguarding and child welfare
23 becomes an element that is clearly defined or
24 distinguished, so far as the Registrar is concerned?

25 A. Yes.

1 Q. Things then seem to take on slightly more pace, because
2 the 2004 Act, I think you referred to earlier on, the
3 Scottish Education (Ministerial Powers and Independent
4 Schools) Act is brought into force on 31 December 2005,
5 and again quoting from Professor Norrie's report
6 referring to the policy memorandum:

7 "The Bill provides a revision of the legislation
8 governing independent schools for a number of reasons.
9 First, many of the provisions in the 1980 Act date from
10 the early part of the 20th century and no longer reflect
11 expectations of a modern school. In particular, they do
12 not allow for quick action to be taken by ministers
13 where necessary to address child welfare concerns; and
14 second, the appeal process lacks clarity ..."

15 Or, it would appear in reality, it simply didn't
16 exist for practical purposes, because the Independent
17 Schools Tribunal didn't sit.

18 A. I wouldn't know enough to concur or otherwise.

19 Q. I think this is going back to your report, though, at
20 paragraph 4.3. As far as you can establish, it never
21 sat?

22 A. Indeed.

23 Q. Okay. But it would appear that it is only in 2004 there
24 was a recognition publicly that there has not been
25 perhaps a very proactive approach to registration. And

1 to repeat the words, the provisions from the 1980 Act
2 date from the early part of the 20th century, so for
3 half a century, broadly, little had been taking place,
4 thinking in terms of child protection. Little if
5 anything. Do you agree with that?

6 A. In terms of the legislation around registration, yes.
7 I would concur there.

8 Q. Obviously what we are talking about is the Registrar of
9 Independent Schools.

10 The other things that took place, and we can move on
11 to page 325 of Professor Norrie's report, the third
12 line, on the same day as the 2004 Act was brought into
13 force also came into force the Registration of
14 Independent Schools (Scotland) Regulations 2005, which
15 replaced the regulations of 1957. Those regulations
16 were themselves replaced from 1 July 2006 by the
17 Registration of Independent Schools (Scotland)
18 Regulations, and these are the regulations that you work
19 with today?

20 A. It is.

21 Q. And reading on, Professor Norrie says:

22 "The 2006 regulations required the application to
23 contain information about the school's child protection
24 policy and procedure, including a statement of the
25 school's policy and practice in seeking criminal record

1 certificates under Part V of the Police Act 1997, and a
2 statement of what checks are made in respect of all
3 persons working or to be working in a childcare position
4 relative to the school.

5 "Also to be included is a statement confirming that
6 criminal record certificates have been obtained in
7 respect of the proprietor of the school, all proposed
8 teachers and all other persons in or to be in
9 a childcare position relative to the school."

10 So after 50 years of little activity, in the space
11 of two or three years, put colloquially, the world has
12 turned upside down and there is real focus on what the
13 Registrar requires from someone who wishes to register
14 as an independent school.

15 A. Yes.

16 Q. Policies and confirmation of checks.

17 A. Yes.

18 Q. Okay. The information -- because what we are talking
19 about there is the initial registration, but it is more
20 than that because, as Professor Norrie goes on:

21 "This information also has to be supplied to the
22 Registrar in annual returns. In this way the
23 Scottish Ministers may judge more readily than before,
24 and with more transparency, whether a proprietor or
25 teacher is a Fit Person to be a proprietor of

1 an independent school or a teacher at any school."

2 Again, just to be clear, we will come back to your
3 report shortly, that annual return is another thing that
4 persists to this day?

5 A. Yes, it is conducted in the September of each year.

6 Q. Obviously, and I think you talk about this more in your
7 report and we will come back to it, checking of
8 information and sharing of information in due course,
9 reference there to the Police Act of 1997. I think I am
10 right in saying the regulation still reflects that?

11 A. They do, yes.

12 Q. But obviously the world, in terms of checking rigorously
13 about people's backgrounds, has moved on.

14 A. Yes.

15 Q. And we now fall under the 2007 PVG Act, is that correct?

16 A. Yes.

17 Q. The regulation hasn't changed, but is there any lack of
18 understanding in the independent schools that you deal
19 with, which Act they are responsible for?

20 A. There is no confusion that I am aware of. As my report
21 states, it is far from ideal, and certainly in my view,
22 that the reference to the previous Act is made.

23 However, in practice all the correspondence from myself
24 or from any other body to independent schools makes
25 clear that it should be the PVG scheme, and that is well

1 understood, to my eye, by the sector and bodies that
2 work with the sector.

3 Q. Is it something you have ever had to pick a school up
4 on?

5 A. No.

6 Q. It's quite clear that it relates to all staff who work
7 at the school? Which staff, just to be clear, are you
8 interested in, in the annual return?

9 A. In the annual return? It's primarily teachers and --
10 teachers and members of any board of governors or
11 proprietor.

12 Q. All right. Support staff are dealt with by other
13 departments, is that fair?

14 A. Yes.

15 Q. So from your perspective, just to be clear, as the
16 Registrar of Independent Schools, it is the educational
17 and perhaps management side, speaking generally, that
18 you are interested in?

19 A. In the annual return, yes.

20 Q. Yes. But to be clear, teachers are one set of people
21 that you would be annually checking they are all
22 suitable in terms of PVG assessment?

23 A. Sorry, I don't quite follow.

24 Q. Every year you have an annual return from the school.

25 A. Yes.

1 Q. And we can come back to this in a moment, but is one of
2 the things you want to establish in that annual return
3 that all teachers have been PVG assessed?

4 A. That -- ah, yes. Whoever it is who is returning the
5 form for their school has to sign an undertaking.
6 I can't remember precisely what the ask is, but yes,
7 it's that appropriate checks have been made.

8 LADY SMITH: Alec, we should probably insert into
9 the transcript that "PVG" stands for "Protection of
10 Vulnerable Groups".

11 A. Absolutely.

12 MR BROWN: I'm obliged, my Lady. Falling into shorthand.

13 If we return then and we can finish with
14 Professor Norrie's report, we are now, as we have
15 established, up to the Regulations and Act that you are
16 dealing with. If we can go back to your report at
17 page 5, please, which is paragraph 2.3. There you set
18 out the purpose of registration.

19 A. Yes.

20 Q. Which is, to read:

21 "... intended to provide assurance to the public
22 that proposed independent schools are suitably
23 scrutinised prior to opening to the public and to ensure
24 that the schools are able to deliver efficient and
25 suitable education, the welfare of learners will be

1 safeguarded and promoted at the school, proprietor and
2 staff are appropriate individuals, and the premises and
3 accommodation are suitable."

4 So a continuation, but with emphasis now on
5 welfare --

6 A. Yes.

7 Q. -- was the thing which I think we have established has
8 developed.

9 At 2.4, and we have obviously just touched on it,
10 suitability of proprietors and staff, and you say there
11 are a number of mechanisms in place to ensure the
12 suitability of proprietors and staff, as well as
13 mechanisms to remove those who are not suitable for
14 their role, and you make reference to the PVG scheme.
15 Which is, as you say at footnote 8, the Protection of
16 Vulnerable Groups (Scotland) Act 2007.

17 You are talking in paragraph 2.4.1 initially about
18 registration, so the beginning of a new school?

19 A. Yes.

20 Q. Obviously the seven schools we are interested in, in the
21 context of this Inquiry -- you are aware of which
22 schools we are dealing with?

23 A. Yes.

24 Q. None of those are new schools.

25 A. That is correct.

1 Q. And have been registered for a very long time, in fact
2 from the inception in 1957 --

3 A. Indeed, yes.

4 Q. -- of all those schools. But just to be clear,
5 applicants and proprietors -- sorry, reading from that
6 paragraph, thinking about new schools, someone seeking
7 to register an independent school has to demonstrate
8 that proprietors and staff are members of the Protection
9 of Vulnerable Groups scheme. And as you say, that is
10 prior to appointment:

11 "Applicants and proprietors are also expected by HM
12 Inspectors to have ['joined', I think that should say]
13 the PVG scheme as part of their recruitment and staff
14 induction processes. PVG status of staff and
15 proprietors is followed up by HM Inspectors as part of
16 their pre-registration visit."

17 So having seen what happened with Keil, there was
18 a pre-registration visit in 1957, that remains the same;
19 there would be a pre-registration visit to the school by
20 HMIE, Her Majesty's Inspectorate of Education?

21 A. Yes, I don't know that the process is quite following
22 the same way, because as you noted with the older
23 registration at Keil School there was provisional
24 registration, which isn't language that I recognise
25 today.

1 Q. No indeed. But the point is the same, there is
2 an inspection before registration is granted.

3 A. Yes.

4 Q. By HMIE.

5 A. Yes, there is a visit, yes.

6 Q. All right. And as part of that process you are relying
7 on the Inspectorate to confirm that PVG status exists
8 for proprietors and staff?

9 A. Yes.

10 Q. So that is not something you physically check, but the
11 inspectors will be reporting to you?

12 A. That is correct.

13 Q. And confirming that.

14 A. Yes.

15 Q. You go on, for extant schools it is done by the annual
16 report?

17 A. Yes.

18 LADY SMITH: Just thinking of the old system of provisional
19 registration followed by final registration, it seems
20 that that could in principle mean that a school gets the
21 benefit of provisional registration, begins to take
22 pupils, gets underway, and then it fails to get final
23 registration, maybe because the inspectors who inspected
24 it were not satisfied about the provision they made for
25 children?

1 A. It certainly seems possible, my Lady.

2 LADY SMITH: Yet they have been doing it between the
3 provisional registration and the final registration.

4 A. Yes, that seems entirely possible, absolutely.

5 LADY SMITH: I can fully understand why you're quick to
6 point out that you don't get provisional registration
7 nowadays. There is registration or no registration, is
8 that right?

9 A. Absolutely, my Lady, yes.

10 LADY SMITH: Thank you.

11 MR BROWN: Since we are on the PVG scheme, though, at the
12 foot of page 5 you make reference to the census being
13 further detailed in section 5 of your report. If we
14 could just for convenience go to page 17 and look at
15 this. I think as you have said already, in September of
16 each year the Registrar administers a census of all
17 independent schools in Scotland and the powers under the
18 2006 regulations. In practice, around June of the year
19 you would write to the proprietors of the independent
20 schools, information will be sought, and this is
21 followed by further communication which includes
22 instructions on how they should complete the census.

23 Presumably, as a matter of practicality, for schools
24 like the seven we are dealing with this is a matter of
25 routine for them and they don't, I imagine, require

1 particular assistance from you as to what their duties
2 are? They know them, because they have done them
3 annually for years.

4 A. Yes, certainly.

5 Q. But presumably you would still check to make sure that
6 the returns are complete and contain all the necessary
7 information?

8 A. Yes.

9 Q. All right. 5.2 on that page talks about the census and
10 PVG, and obviously there is reference, as we discussed,
11 to Part V of the 1997 Act, which has been superseded.

12 Looking at the final paragraph on that page:

13 "A statement confirming that criminal record
14 certificates under Part V of the 1997 Act appropriate to
15 the position have been obtained and are in accordance
16 with the schools child protection policy and procedure
17 in respect of (a) the proprietor of the school, (b) all
18 proposed teachers, and (c) all other persons in or to be
19 in a childcare position relative to the school."

20 When we spoke a moment ago you were talking about
21 the proprietor and teachers, but you seemed less clear
22 about part (c) as quoted there "all other persons in or
23 to be in a childcare position relative to the school".
24 In the context of a boarding school one could imagine
25 school matrons, people who we would understand are now

1 regulated by SSSC?

2 A. Yes.

3 Q. Is this something that you still are concerned to see in
4 the census, confirmation that all other persons are
5 covered by the PVG systems, are members of the PVG
6 system?

7 A. Yes, absolutely, the person making the return is
8 undertaking that, yes.

9 Q. Right. So even though it's referring to the 1997 Act,
10 it is not just proprietors, not just proposed teachers,
11 it is all other persons in or to be in a childcare
12 position relative to the school that are contained
13 within the annual return?

14 A. Yes.

15 Q. If we go over the page to page 18 and the final
16 paragraph, please. And go down to the last paragraph,
17 please:

18 "For registered schools, proprietors are required to
19 confirm in the annual census that staff have undergone
20 relevant criminal record checks in line with the 2006
21 regulations. As above, in practice this is understood
22 by proprietors to refer to the PVG Act as it is to the
23 PVG scheme, membership which is required by that Act for
24 individuals in the types of roles referred to in the
25 2006 regulations."

1 Have you ever come across a situation where a return
2 is sent to you where someone has not been
3 PVG membership, or have membership of the PVG scheme?

4 A. No.

5 Q. And if it did, what would you do?

6 A. The individual who is completing the return on behalf of
7 the school signs that undertaking, but they do not
8 provide me with a list of everyone in the school and
9 then saying: yes, this person is a PVG scheme member.
10 They simply sign to undertake that all staff at
11 that school have had the relevant check.

12 Q. All right. What steps, if any, are then taken to
13 quality assure that signature, or audit is another way
14 of putting it?

15 A. I suppose some of the assurances that come, there is one
16 for the teaching profession, the overwhelming majority
17 of teachers in the independent sector are registered
18 with the GTCS, and a requirement of registration with
19 the GTCS is PVG scheme membership; and summer this year
20 GTCS registration will be a requirement for all teachers
21 in the independent sector. Then for other staff, as you
22 identified earlier, they could be professionally
23 registered with the SSSC or require registration with
24 the SSSC, and again that is the professional body for
25 those staff.

1 Q. All right. I was coming on to GTCS and the requirement
2 for membership of the GTCS which of course, and you have
3 just said, requires membership of the PVG scheme.
4 Obviously there has been a transition period, and we
5 will come to this --

6 A. Yes.

7 Q. -- up until June of this year, where existing teachers
8 didn't have to be GTCS registered, and potentially
9 I suppose didn't have to be members of the PVG scheme,
10 however unlikely that may be in practice, because there
11 wouldn't be the cross-check of having GTCS membership.

12 Q. Could you follow what I mean?

13 A. Yes, forgive me. Yes, I see where you are coming from.
14 They wouldn't have been obliged previously to be GTCS
15 scheme members, absolutely. But the responsibility then
16 would be on the proprietor, as with any employer who is
17 employing individuals into regulated work, just to
18 ensure they are not employing anyone who is listed by
19 the Scottish Ministers.

20 Q. The question I suppose -- you are operating as the
21 Registrar, as you have told us, essentially you are it?

22 A. Yes.

23 Q. You have presumably a very close working relationship
24 with education -- on the part of Education Scotland,
25 which is the school inspectorate?

1 A. Yes.

2 Q. Can you tell us, is that something that inspectors would
3 be checking on school inspections, the status of staff
4 in terms of membership of the PVG scheme?

5 A. I imagine that they would, but I understand Ms McManus
6 is attending tomorrow.

7 Q. Absolutely. I just wondered if you knew, because you
8 have a close relationship with them, presumably, you
9 rely on them to give you information, as we'll come
10 on to.

11 A. Yes, absolutely.

12 Q. All right. But in any event, membership of the PVG
13 scheme as of June should be certain, because to be
14 a teacher in Scotland from June in an independent school
15 you have to be a member of the GTCS.

16 A. Absolutely, yes.

17 Q. And that is because of the Registration of Independent
18 Schools (Prescribed Person) (Scotland) Regulations 2017
19 statutory and Scottish statutory instrument number 259?

20 A. Yes.

21 Q. Which you will be aware of. All right.

22 LADY SMITH: Alec, you no doubt in your annual requests for
23 data set out clearly which data you are looking for.

24 A. Yes.

25 LADY SMITH: Would I be right about that? Are your

1 specifications of data based on the underlying statutory
2 provisions or do you decide what data you want? Do you
3 see what I mean?

4 A. Yes, my Lady, yes. It's the same information that has
5 been gathered for some time, but it's -- as you say,
6 it's the information stipulated by the regulations.

7 LADY SMITH: So would, for instance -- sorry, I haven't
8 checked it -- that mean that you require schools to tell
9 you how many people, on the date they are delivering
10 their data, how many people are employed or working in
11 the school that fulfil childcare responsibilities?

12 A. No, the return at that level is by individual teachers.

13 LADY SMITH: Right. I see. So just teachers, not others?

14 A. Yes, my Lady.

15 MR BROWN: I think, my Lady, if I may assist, it is the 2006
16 registration, in the Schools Scotland regulations, it is
17 a very short statutory instrument.

18 LADY SMITH: Yes.

19 MR BROWN: And schedule 2, particular information:

20 registered schools, number of pupils in the school
21 arranged by year of birth, sex, and whether they are
22 boarding pupils. And the following particulars,
23 information in relation to every teacher employed by the
24 school as at the date on which such information is
25 furnished to the Registrar under Regulation 4: full

1 name, date, birth, sex, whether they are employed on a
2 full-time, part-time or other basis; and if employed on
3 a part-time basis, the number of hours which the teacher
4 is employed per week. Their qualifications are for
5 subjects which they are employed to teach, and
6 confirmation of whether or not they are registered with
7 the Council, and a statement confirming that criminal
8 record certificates under Part V of the 1995 Act
9 appropriate to the position have been obtained and are
10 in accordance with the school's child protection policy
11 in respect of any teacher and any other person in a
12 childcare position employed for the first time or
13 re-employed by or in the school within the previous
14 twelve month period.

15 So it is very general.

16 LADY SMITH: Yes. I thought it might be. Thank you.

17 MR BROWN: What involvement do you have with GTCS Scotland?

18 GTCS, forgive me.

19 A. Certainly where a new school is being registered, I will
20 make GTCS aware of it for their interests. But that is
21 the only routine interaction that comes to mind.

22 Q. Do you see a need to have more engagement with them?

23 A. There has certainly been more engagement of late in
24 relation to the prescribed person regulations that you
25 referred to earlier. Of course, they are very

1 interested in the census returns that I have, because
2 that, as you outlined earlier, tells me how many GTCS
3 registered teachers there are at an establishment and,
4 more importantly, how many unregistered teachers there
5 are at an establishment. So they are certainly
6 interested in that, and there has been lots of
7 discussion between myself and the GTCS on that
8 information.

9 Q. But is that purely in relation to how many remain
10 unregistered, in essence?

11 A. Yes.

12 Q. But as of June this year, when the transition period
13 comes to an end, all teachers have to be GTCS
14 registered.

15 A. Indeed.

16 Q. So will that mean more or less engagement with them, do
17 you think?

18 A. Ultimately I suppose that will tail off, because that
19 should be at 100% return, all GTCS registered, and that
20 would be that.

21 Q. That being so, do you think further engagement by you
22 with GTCS is necessary?

23 A. I would think so, certainly for the next year or so:
24 one, in terms of making sure everybody who should be
25 GTCS registered is, and we will find that out with this

1 year's census in September, if not sooner; and then
2 thereafter it is anything that the GTCS needs in terms
3 of helping new teachers, because of course there will
4 continue to be new teachers entering into the
5 independent sector, and making sure that that obligation
6 is continued to be understood.

7 Q. All right. Who audits that? Is it you or GTCS? That
8 there is membership of the GTCS by people registered in
9 schools by you.

10 A. Sorry, auditing --

11 Q. In the sense of checking -- you obviously get an annual
12 census return, which as of September this year should
13 confirm that everybody is PVG compliant.

14 A. Yes.

15 Q. And that should be a given, even after -- since
16 after June '21 everyone will be GTCS registered, and
17 a condition of that is membership of the PVG scheme.
18 What I am asking you is who should check that that is
19 in fact the correct position? You are relying on the
20 return which just says "I sign confirming that is so".

21 A. Yes.

22 Q. You are not physically checking that?

23 A. No, that is correct.

24 Q. Should a check be done, and if so by whom?

25 A. That is a very good question. To be perfectly candid,

1 I do not have an answer to that. But I can certainly
2 undertake to get one to you on that, in terms of what
3 should happen there.

4 LADY SMITH: That would be helpful, Alec, because it seems
5 thus far that quite a lot is being taken on trust. The
6 school filling in the return may simply take on trust
7 that when a teacher says they are a member of the
8 scheme, that they are. They fill in the form saying
9 everybody is a member of the scheme; you then take that
10 on trust, it all gets filed and the data is neatly
11 stored, looked after. Now, if the truth is the teacher
12 may have been hoping to be accepted for membership of
13 the scheme or was meaning to apply for membership of the
14 scheme but it never happened and they never became
15 a member of the scheme, and perhaps would not have been
16 allowed to become a member of the scheme for some good
17 reason, it may be nobody will ever know.

18 A. In terms of that, my Lady, in terms of the PVG scheme
19 specifically, the proprietor of an independent school,
20 as with any employer who is employing individuals who
21 would be carrying out regulated work as defined in the
22 PVG Act, it has an obligation to ensure that they are
23 not employing someone who has been listed by the
24 Scottish Ministers as barred, effectively, from the
25 regulated work. So there's that responsibility --

1 LADY SMITH: Is that only coming in the summer?

2 A. No, that has been the case since the PVG Act's
3 inception.

4 LADY SMITH: Well, add to the mix of my hypotheses, and
5 sadly these sorts of things happen, that the school
6 didn't check, didn't make it a condition, or took on
7 trust that the person said "I'm not yet a member of the
8 scheme but my application is being processed", and the
9 school never followed it up?

10 A. I see what you mean, my Lady, yes.

11 LADY SMITH: The system doesn't seem to have a way of
12 a compulsory check to confirm that genuinely there is
13 registration, there is membership. Or whether there was
14 but it has lapsed, as can happen.

15 A. With membership of the PVG scheme, and
16 Disclosure Scotland would be far better placed to get
17 into the detail of this, but in terms of PVG scheme
18 membership, once one is an individual, as a teacher,
19 they are a PVG scheme member and their employer, in the
20 case of an independent school the proprietor, is a body
21 that would be updated through ongoing monitoring, and
22 for a teacher who is also registered with the GTCS, the
23 GTCS as that body too would be intimated as to any
24 ongoing change.

25 So unlike previously, where one would have

1 an enhanced disclosure that may require updating, this
2 scheme offers ongoing monitoring. And the employer and
3 the appropriate regulatory body would be made aware of
4 any substantive change that was needing attention.

5 MR BROWN: Sorry, to follow up on that, you say "would be
6 expected to be aware of any change". That assumes the
7 change has been notified in the first place.

8 A. Sorry, change in terms of?

9 Q. Status under the PVG scheme or status in terms of the
10 school, because a proprietor is informing the PVG
11 scheme, advising GTCS, advising you. Because I think if
12 we go to page 6 of your report, and paragraph 2.4.3
13 which is at the foot of the paragraph:

14 "Where a suitable individual has been identified,
15 the individual working in an independent school may be
16 considered unsuitable for a number of reasons. Schools
17 are expected to respond appropriately to the
18 circumstances, for example, suspending individuals
19 pending investigation, reporting concerns or disclosures
20 to Police Scotland, social services, et cetera."

21 The word that stand out perhaps is "expected".
22 There is an assumption it will happen, but is there
23 a mechanism to ensure that it happens?

24 A. It would depend entirely on the circumstance whereby
25 someone may be unsuitable.

1 Q. Yes, well this was another topic that I was going to
2 come to you with, because obviously what we are talking
3 about is essentially the sharing of information.

4 A. Yes.

5 Q. As between you and the Inspectorate, you rely on them,
6 presumably, to tell you what they have found in school
7 inspections.

8 A. Yes, absolutely.

9 Q. If there is something untoward.

10 A. Yes.

11 Q. Likewise, and I think we have this in your report at
12 page 27, this is part of the annex B which starts at
13 page 23, the Memorandum of Understanding between
14 the Care Inspectorate and Registrar of Independent
15 Schools.

16 Going back to 4.1:

17 "The Care Inspectorate and the Registrar of
18 Independent Schools will exchange such information as is
19 necessary to fulfil their respective statutory functions
20 and to ensure the safety and wellbeing of people who use
21 school care accommodation, but subject always to such
22 constraints as may exist restricting or preventing such
23 exchange of information."

24 It then goes on to talk about data protection,
25 inevitably. Is that a bar to sharing information, from

1 your experience?

2 A. Not in my experience, no.

3 Q. What constraints do exist about sharing information
4 then?

5 A. (Pause). None that I can think of, to be perfectly
6 honest, at the moment. I am sure there are, but I can't
7 think of any particular barriers at all.

8 Q. You are the Registrar. If it is your experience that
9 there are in fact no real constraints on the sharing of
10 information, that presumably is your evidence.

11 A. Certainly my experience, yes.

12 Q. All right. So should we understand that as between you
13 and the Care Inspectorate and the Inspectorate of
14 Schools there is a sharing of information, partly with
15 one because you are all part of Education Scotland --

16 A. Yes.

17 Q. -- but with the other because you have a Memorandum of
18 Understanding and it is part and parcel of your function
19 to talk with these bodies?

20 A. Yes, absolutely.

21 Q. Who else do you talk with?

22 A. The schools themselves, of course, and the -- either the
23 local local authority, as in if there is a school in
24 Glasgow then Glasgow City Council, but particularly with
25 independent special schools there might actually be

1 a variety of local authorities who have referred
2 children and young people to that establishment.

3 Q. But remembering, obviously, we are focusing on boarding
4 schools.

5 A. Yes.

6 Q. Local authorities presumably wouldn't feature as regards
7 them?

8 A. They may, depending on the circumstance. Either because
9 it is the physical locality or because it involves
10 a child or young person who has come from another local
11 authority to that establishment.

12 LADY SMITH: Mr Brown, it is now 3 o'clock. I usually take
13 a very short break in the middle of the afternoon, so if
14 that would be a convenient point to do it, we will do
15 that just now, Alec, and resume in five or ten minutes
16 or so.

17 (3.01 pm)

18 (A short break)

19 (3.20 pm)

20 LADY SMITH: Alec, are you ready for us to carry on?

21 A. Yes, thank you, my Lady.

22 LADY SMITH: Mr Brown.

23 MR BROWN: Thank you, my Lady.

24 If I may, I will return to information-sharing in
25 a moment. But just to perhaps go through quickly

1 a number of other issues, because your report is very
2 thorough in terms of the application process, with
3 appropriate reference to other documentation, which we
4 can read for ourselves, I don't think we need to labour
5 that.

6 Obviously applications to the register can be
7 refused?

8 A. Yes.

9 Q. But also in due course, under various circumstances that
10 you make reference to, schools can be removed from the
11 register.

12 A. Yes.

13 Q. If need be. And one obvious reference -- and this,
14 my Lady, is at page 9 of the report, at paragraph 2.10,
15 which sets out the five ways that may lead to removal
16 from the register -- a school can request to be removed?

17 A. Yes.

18 Q. A school can close? A complaint has been served on the
19 school because there is dissatisfaction of one of
20 a number of areas that you are concerned with --

21 A. Yes.

22 Q. -- and there has been inadequate rectification? So at
23 that point there is concern under section 102B, the
24 fourth one, of the 1998 Act that there is such a risk
25 around the continued operation of the school that

1 the order is necessary, to be removed from the register.
2 And also, in the extreme scenario, the
3 Scottish Ministers may also make an order to remove
4 a school without first serving a notice of complaint;
5 that is only in extraordinary circumstances.

6 A. Yes.

7 Q. Has that ever happened, to your knowledge?

8 A. I believe -- I would have to check, but I believe
9 an order in those circumstances was made in relation to
10 the Hamilton School in Aberdeen, where no notice of
11 complaint had been served, the Scottish Ministers moved
12 to remove the school from the register.

13 Q. All right. To be fair to you, I think you have listed
14 in annex C to your report the occasions when schools --

15 A. Yes, I have.

16 Q. And from reading that, I think there have been two
17 schools have been removed from the register. They are
18 not schools that concern this Inquiry, obviously,
19 though.

20 A. Yes.

21 Q. The next part of your report is regulatory action, but
22 if you will bear with me I will hold that, because that
23 may tie in with one of the schools that we are dealing
24 with this, and it's perhaps a good example of the need
25 to share information and what the consequence of sharing

1 information can be.

2 A. Yes.

3 Q. Do you follow? All right. We were talking about the
4 sharing of information, and you receiving information
5 from the schools.

6 A. Yes.

7 Q. Could you look, please, at a number of documents now.
8 These are documents before your time. The first one is
9 SGV-000006387. You see this is a letter dated
10 [REDACTED] 2005 to the then headmaster of QVS, from
11 your predecessor Lynn Henni.

12 A. Yes.

13 Q. Is that someone you actually met so or is that just
14 a name from the past?

15 A. I haven't met, no.

16 Q. Okay. The letter obviously is dated [REDACTED] but
17 begins:

18 "I understand that in [REDACTED] you suspended two
19 teachers at QVS in connection with certain allegations
20 which are being investigated by Central Scotland Police.
21 As the school is registered as an independent school
22 I should be grateful if you could keep me informed of
23 further developments. The care and welfare of pupils
24 and the propriety of teachers in an independent school
25 are issues of interest to Scottish Ministers in

1 the context of registration of such schools, but are
2 also matters on which ministers can take action if they
3 consider that appropriate.

4 "Without in any way prejudging the outcome of the
5 current police investigation I should meantime be
6 grateful to know what, if any, action you have taken to
7 secure the care and welfare of pupils at the school."

8 Obviously that is a letter written by the Registrar
9 in 2005, roughly approaching a month after the event, it
10 would appear, and asking for further information from
11 the school. Would you be surprised at that length of
12 time after what you would consider perhaps something you
13 should know about?

14 A. Without knowing the full context of this, yes, I would
15 be surprised.

16 Q. All right. Could we look then at SGV-000010997. This
17 is a letter from 10 February 2011, from the then
18 headmaster of Merchiston, Andrew Hunter, and I think it
19 has been wrongly sent to Mr Jamie MacDougall, it should
20 be Reid, at the Registrar of Independent Schools. If we
21 go over the page to page 2, because it talks about
22 a variety of things, at the bottom paragraph you will
23 see the last paragraph begins:

24 "I am also seeking clarity with regards to the
25 communication chain from a school like Merchiston to

1 external agencies like the Registrar for Independent
2 Schools, the Care Commission and HMIE. At the time of
3 dealing with major disciplinary issues last term my main
4 priority was to look after my various constituencies and
5 pupils, staff, parents and governors. Furthermore, this
6 all took place during terrible weather conditions in
7 Scotland and, unlike many other educational
8 establishments, Merchiston operated normally every day.

9 "In the midst of also trying to ensure that I was
10 making fair and just decisions with regard to the
11 welfare of a number of young adults, I was also dealing
12 with the media. On the basis of the maxim 'no
13 surprises' (a maxim which one always uses!) I would
14 normally have informed the Registrar for Independent
15 Schools, the Care Commission and HMIE. I did not,
16 and I apologise for this. However, I wish to receive
17 guidance on where it is stipulated that this is
18 a mandatory expectation of a head. I may have missed
19 this advice amidst all the publications I have
20 consulted."

21 That was 2011. What do you understand the position
22 to be about schools informing you of events at the
23 school that you would be interested in? Is there any
24 mandatory expectation that they provide such
25 information?

1 A. There is an -- I beg your pardon. There is
2 an obligation in relation to independent boarding
3 schools that have a registered school care accommodation
4 service with the Care Inspectorate. These are
5 notifiable incidents, I believe is the language used by
6 the Care Inspectorate, and there is an obligation for
7 the school manager to notify the Care Inspectorate where
8 those circumstances have been met.

9 In terms of informing either myself as Registrar or
10 HM Inspectors, that, to my knowledge, is a matter of
11 good practice, rather than an obligation set out in law.

12 Q. All right. I think then if we look on to SGV-000008414.
13 This is a letter dated 18 January 2013, to the then
14 headmaster at Loretto, albeit the letter starts
15 "Mr Hunter", who I think we understand was at
16 Merchiston. Second paragraph:

17 "As you are aware, all independent schools are
18 required to notify the Care Inspectorate within 24 hours
19 of a serious incident. There is also an expectation
20 that schools notify the Registrar of any incidents
21 relating to the safeguard of the pupils. However, the
22 Registrar was not notified of this particular incident
23 by Loretto School."

24 That is what you are talking about, this requirement
25 to notify the Care Inspectorate?

1 A. Yes.

2 Q. But there is no like requirement to notify you or the
3 inspector of schools.

4 A. That is correct.

5 Q. All right. Is that a deficiency do you think, from your
6 perspective?

7 A. I can certainly see the benefit of obliging schools to
8 make notification to either myself or HM Inspectors, or
9 indeed both, in certain circumstances. Though good
10 practice is that schools make such notification and they
11 frequently do so.

12 Q. Right. We talked about communication. Are you, let's
13 be practical about it, getting information from
14 a variety of sources; schools, the Care Inspectorate,
15 the inspectors? Are you all sharing information or are
16 you primarily relying on others to tell you things, as
17 in not the school?

18 A. Where it's not the school? Yes, largely I am the
19 recipient of information, as opposed to the
20 disseminator.

21 Q. Okay. But you have just said the schools do tell you
22 things.

23 A. Yes.

24 Q. Is that something, and that you have worked with the
25 Registrar for a number of years, is that something that

1 schools are getting better at doing?

2 A. In my view, yes.

3 Q. Was it a concern when you started, your predecessor as
4 Registrar, were you aware of complaints that schools
5 weren't responding as necessary?

6 A. Yes, I think there will have been occurrences where
7 something hadn't necessarily been reported as timeously
8 as we would have liked, or wasn't reported and there
9 were other means by which it came to a public body's
10 attention.

11 Q. All right. Andrew Hunter's letter obviously sets out
12 some of the practical difficulties from a headmaster's
13 point of view. If there is a child protection issue
14 there is a great deal to do within the school, let alone
15 advising inspectors or the Registrar; and would you
16 understand that schools may as a priority have to deal
17 with the incident on the ground, before worrying about
18 other things, or would you disagree with that?

19 A. I would disagree with that. I would consider it to be
20 part and parcel of the response.

21 Q. Right. But from your perspective, and I appreciate this
22 is a difficult question to answer, where does one draw
23 the line about where you have to be informed and where
24 you don't have to be informed? Is there a level where
25 you should be informed, and if so what is it? Or should

1 there just be reporting of everything?

2 A. My own preference, personally, is that I would rather be
3 over-reported to than under-reported to. Personally.
4 There are practical considerations around that,
5 of course, in terms of the sheer volume of information
6 that that might invite. But yes, I would always rather
7 have too much information as opposed to too little.

8 Q. All right. In terms of sharing information then,
9 disseminating, to use your word, to others, are there
10 occasions where you are the disseminator to your
11 Inspectorate or the Schools Inspectorate?

12 A. Yes, indeed.

13 Q. And is it fair to say you have a broad sense of how
14 perhaps schools are doing, schools on the register are
15 doing, in terms of being the subject of a concern to any
16 of those bodies?

17 A. Yes, I would say so, yes.

18 Q. Because this returns to the issue of regulatory action,
19 which is at page 11 of your report. If we could have
20 that up, please. Consideration of concerns or
21 complaint. As you set out, I think this may sometimes
22 happen, individual parents may complain to you?

23 A. Yes.

24 Q. But that is not something you can deal with, respond to
25 them individually. What may happen is the complaint

1 gives rise to concerns on a broader level.

2 A. Yes.

3 Q. Which may lead to investigation and a complaint being
4 issued.

5 A. Yes.

6 Q. All right. Because you say Scottish Ministers may
7 determine whether an independent school is objectionable
8 or at risk of becoming objectionable, which from your
9 perspective is the essence of intervention.

10 A. Yes.

11 Q. Or potential intervention.

12 A. Yes.

13 Q. All right. Objectionable, again looking at your report,
14 is a scenario that is triggered by meeting one of
15 the grounds listed in section 99(1A) of the 1980 Act?

16 A. Indeed.

17 Q. As we see, you have set it out in footnote 28, that
18 includes obviously concerns about accommodation and
19 educational matters, but also includes at A(a) that the
20 welfare of a pupil attending school is not adequately
21 safeguarded and promoted there.

22 A. Indeed.

23 Q. Again from your experience, there has been further
24 change, not specifically legislatively in terms of you
25 the Registrar, but within education in Scotland in

1 general, "Getting It Right For Every Child".

2 A. Yes.

3 Q. That is something obviously you will be aware of?

4 A. Yes.

5 Q. And the associated other acronym, SHANARRI?

6 A. Yes.

7 Q. Who assess, as your Ladyship heard at length --

8 LADY SMITH: Yes, indeed.

9 MR BROWN: I don't need to produce wheels. That has

10 obviously presumably impacted on your work, though not

11 perhaps as directly as some other bodies?

12 A. Yes.

13 Q. All right. But is it fair to say that that is something

14 that you would be aware of because of your relations

15 with other bodies and their interventions? For example

16 the Care Inspectorate looking at particular schools?

17 A. Yes.

18 Q. Which has led you to becoming involved and, as we see

19 set out under section 3.2 of your report, the potential

20 to impose conditions on a school that is seen to be

21 failing?

22 A. Yes.

23 Q. As we know from annex C and the engagement of the

24 Registrar, Merchiston School in 2015 was placed on

25 a number of conditions.

1 A. That is correct, yes.

2 Q. And you would be involved in that?

3 A. Yes.

4 Q. Is that fair? If we look, please, at SGV-000009839.

5 This is a document from Shirley Anderson in the
6 Learning Directorate, which is raising advance notice of
7 a joint inspection report carried out by the
8 Care Inspectorate and HMIE in October 2014
9 and November 2014 as the result of various safeguarding
10 issues. You will remember that?

11 A. It was slightly before my taking post but I am aware of
12 it, yes.

13 Q. Presumably you took post and it was one of the things
14 you had to pick up?

15 A. Yes, it was still ongoing, yes.

16 Q. Okay. The effect of that was, if we go to
17 SGV-000064585, this is obviously a letter to the
18 chairman of the board of governors, from
19 Education Scotland.

20 A. Yes.

21 Q. And it is from you, if we go to the second page.

22 A. Indeed.

23 Q. You were then policy officer.

24 A. Yes.

25 Q. According to that. Sorry, if we go back to the top of

1 the previous page, this refers to:

2 "... engagement and support provided by HM
3 Inspectors and the Care Inspectorate to
4 Merchiston Castle School following their last inspection
5 in May 2015, including their most recent visit of
6 22 October. You will recall that the theme which
7 emerged from those inspections and from the ongoing
8 engagement with the school was the concerns in relation
9 to the inadequacies in child protection policies and
10 safeguarding procedures and the implementation of those
11 policies.

12 "The culture within school was not conducive to
13 staff and pupils to raise any welfare issues or concerns
14 in a supported way. In addition, staff misconduct
15 issues regarding welfare were not dealt with in
16 accordance with disciplinary procedures. Further, the
17 most recent visit identified that the school did not
18 follow best practice insofar as no formal support was
19 immediately offered to two young people who had made
20 disclosures about a child protection matter. Further,
21 no immediate effort was made to contact the parents of
22 the young people concerned.

23 "With due consideration of the foregoing,
24 Scottish Ministers are satisfied that it is necessary in
25 terms of Section 98(A) (1) of the Education Act 1980 to

1 impose conditions on the school to prevent it becoming
2 objectionable on the grounds set out in
3 Section 99(1A) (aa) of the 1980 Act, namely that the
4 welfare of a pupil attending the school is not
5 adequately safeguarded and promoted there.

6 "The conditions imposed on the school are as
7 follows:

8 "1. By 31 December 2015 take appropriate steps to
9 ensure;

10 "(a) staff and young people at the school are aware
11 of their roles and responsibilities in respect of
12 safeguarding matters;

13 "(b) young people at the school are informed about
14 the support which the school will provide to them should
15 they make a child protection disclosure.

16 "2. The board of governors must by 29 February 2016
17 conduct a review of how the school's safeguarding
18 policies and procedures and internal disciplinary
19 procedures are implemented by staff and consider any
20 barriers that prevent those procedures being followed
21 appropriately in the school.

22 "3. That the board of governors by 29 February 2016
23 provide to the Registrar a report of the review carried
24 out under condition 2 ..."

25 I don't need to read the rest. And 4:

1 "That the board of governors must by 31 April 2016
2 provide to the Registrar a report on the actions taken
3 and outcomes achieved as a result of the review under
4 condition 2."

5 Obviously that was in response to particular
6 concerns that had been raised, not by you, but reported
7 to you by the joint inspections of HMIE --

8 A. Yes.

9 Q. -- the school inspectors and the Care Inspectorate?

10 A. Yes.

11 Q. It is an example of the co-operation between those two
12 bodies and you, and you as the Registrar reflect the
13 decision of the Scottish Ministers to put conditions on
14 ongoing registration?

15 A. Indeed.

16 Q. All right. Again we can go through the paperwork in
17 relation to that. Is it fair to sum it up that
18 Merchiston responded with alacrity to those conditions
19 and did a great deal of work?

20 A. From my recollection, yes. I believe the conditions
21 were all met and revoked by the Scottish Ministers in
22 due course.

23 Q. Yes. I think, just in fairness to them, SGV-000064734
24 is an email from you dated January 2016, 7 January:

25 "Merchiston Castle School has submitted a mammoth

1 evidence pack in respect of condition 1 as imposed
2 in November. I have pulled together their key evidence
3 that relates solely to meeting the condition, although
4 there have been a number of other actions and
5 initiatives going on at the school, two that are very
6 welcome such as liaising with St Aloysius College to see
7 best practice."

8 It is more than fair to say that Merchiston have met
9 the first condition and it may now be revoked?

10 A. Yes.

11 Q. So it would appear, and from what you have said more
12 generally, the system in that regard worked. Merchiston
13 responded appropriately and fast and the conditions were
14 in due course removed?

15 A. Indeed.

16 Q. Progressively?

17 A. Yes.

18 Q. Okay. (Noise interruption).

19 LADY SMITH: Hello? Is that someone who has connected
20 remotely having a problem? It may be someone has not
21 muted. Just carry on. They will no doubt shout again
22 if there is a problem they want to bring to our notice.

23 MR BROWN: What I am interested in is the reference you make
24 to liaising with St Aloysius College to see best
25 practice.

1 LADY SMITH: I think somebody who is connected remotely has
2 not muted. I am not going to name and shame, or ask
3 them to confess. Could everybody just check they are
4 muted, please? Thank you.

5 MR BROWN: Is best practice something, from your perspective
6 as the Registrar, that is shared between schools? Or
7 encouraged to be shared by the Registrar?

8 A. Certainly the sharing of best practice is encouraged.
9 Certainly when HM Inspectors through their scrutiny
10 activities, if those inspectors identify something and
11 they think this is a really novel and well-worked --
12 well thought out approach, it might not fit every single
13 school in Scotland but it might provide food for thought
14 so that a school may come up with their own solution.
15 So, yes, absolutely that is encouraged.

16 Q. I think elsewhere in your report you make reference to
17 SCIS?

18 A. Yes.

19 Q. The Scottish Council of Independent Schools. SCIS we
20 will hear from later in the week, but should we
21 understand that you liaise with them too?

22 A. Yes, depending on the topic, absolutely. Very regularly
23 of late in reference to disseminating information and
24 providing information in relation to COVID restrictions
25 and the various directions that have been issued to

1 establishments.

2 Q. SCIS are a point of contact for dissemination of perhaps
3 best practice?

4 A. Yes.

5 Q. Are they a body you would rely on for best practice to
6 be disseminated?

7 A. Yes. One of many, absolutely.

8 Q. Who else would you be engaging with?

9 A. I would be expecting the establishments themselves to --
10 if they believe they are doing something well, to share
11 that. And certainly the HM Inspectors, as I say,
12 through their inspection activities, if they identify
13 something to share it. Same with the Care Inspectorate.

14 Q. Do you have a sense, because of all this sharing you
15 have just spoken about, about how schools are getting
16 on? Do you have some, from your perspective, awareness
17 of when schools are about to potentially have problems?

18 A. In some cases, yes. I will be informed by perhaps
19 intelligence or just a straightforward conversation with
20 these schools' link HM Inspector or indeed with the
21 school themselves or another third party.

22 Q. The reason I ask is, if we could look at document
23 MER-000000337, and if we could go to page 8, please.
24 This is a School Care Accommodation Service,
25 Care Inspectorate, unannounced inspection report from

1 29 September 2016. So, in other words, after the
2 episode that we have been discussing --

3 A. Yes.

4 Q. -- which led to conditions, and you will see that up to
5 4 September 2013, which is the date at the top, and it
6 runs down to 2008 at the bottom, you will see that these
7 reflect announced and unannounced Care Inspectorate
8 reports on Merchiston?

9 A. Yes.

10 Q. And all the reports are either "excellent" or "very
11 good"?

12 A. Yes.

13 Q. Then if we go back to page 7, one looks at 15-16 where
14 it would appear there is a period of weakness,
15 "adequacy" and "good".

16 A. Yes.

17 Q. So on the face of just looking at the simple
18 progression, there has been a great drop suddenly after
19 a succession of positive and enthusiastic responses?

20 A. Yes.

21 Q. Do you know, was that anticipated?

22 A. I don't know that it was, no.

23 Q. No. I appreciate you are not doing inspections, you are
24 relying on others to tell you?

25 A. Yes.

1 Q. But you were involved with Merchiston. I appreciate you
2 picked it up. Do you remember, was there surprise that
3 it had come to that stage that conditions were
4 necessary?

5 A. I don't recall surprise, no.

6 Q. All right. Do you recall there being any expression
7 that you do remember?

8 A. To be perfectly honest, no. I certainly recall the
9 conditions were necessary and that that would have been
10 the inspection there, December 2015. So, from memory,
11 I would have been in post before that, but after
12 the May 2015 inspection. But, no, I cannot recall what
13 the response at that level would have been.

14 Q. All right. It is obviously perhaps a question for
15 others.

16 A. Certainly.

17 Q. But the Care Inspectorate, who are doing regular
18 assessments, it is -- "cliff edge" would be too dramatic
19 but you are going from one level down, quite
20 dramatically it would appear --

21 A. Yes, certainly.

22 Q. -- from "excellent" to "weak" swiftly, might that
23 suggest that assessments don't necessarily always work?

24 A. That could be a reading of it but, without having been
25 part of that inspection, I couldn't say with any degree

1 of certainty that that was the case.

2 Q. All right. Again I come back to GIRFEC and SHANARRI.

3 A. Yes.

4 Q. Have you been professionally involved with the
5 progression of both of those in your working career with
6 the Registrar?

7 A. No.

8 Q. No. Is it something that impacts on you to any material
9 degree?

10 A. I wouldn't say directly, no, but certainly indirectly in
11 terms of that is the framework with which schools
12 operate and that will have had effects on how schools
13 operate and the expectations of the schools.

14 Q. And is the expectation -- and this is perhaps something
15 that you are aware of, because they have to put in
16 reports, certainly for new start up schools about
17 policies --

18 A. Yes.

19 Q. -- is there a considerable increase in the number of
20 policies schools have to have in place?

21 A. I wouldn't say it has increased the number of policies,
22 no. It has certainly changed what those policies may
23 look like, but I don't think it would have increased the
24 number of policies in and of itself.

25 Q. Okay. Looking to your function, Alec, we have talked

1 about co-operation and I appreciate that the operation
2 of, for example, the PVG scheme is not something that is
3 your responsibility, and it may be we can learn about
4 that for others. You just work with it.

5 A. Yes.

6 Q. Are there things, thinking about the welfare of
7 children, that you think should change?

8 A. It's an interesting question. It's not static. Today
9 there is -- yes, it is the 16th today, there is the
10 Stage 3 debate on the new NCRC bill and things like that
11 and even over the time of the Inquiry there has been
12 GIRFEC and SHANARRI. So it's not a static position
13 anyway. In terms of improvement, as is highlighted this
14 afternoon, it is obligatory for certain things to be
15 referred to the Care Inspectorate and there is that --
16 I suppose "disparity" wouldn't be an unfair term to use,
17 in terms of there isn't that same obligation for day
18 schools or indeed for boarding schools to make those
19 reports to HM Inspectors or to myself.

20 Q. Would you wish greater involvement with any other
21 bodies?

22 A. I don't know that there need be greater involvement as
23 such. Particularly in terms of HM Inspectors and the
24 Care Inspectorate, it would be wholly improper for me to
25 be involved in inspection, for example. But I can't see

1 where there would be anything bad to come out from more
2 engagement.

3 Q. Obviously we have talked about GTCS becoming more
4 involved because of the regulation changes --

5 A. Yes.

6 Q. -- requiring GTCS membership of all teachers at
7 independent -- or registered independent schools.

8 Obviously GTCS have their function to perform under
9 their regulations?

10 A. Yes.

11 Q. Is that something that you would wish to be involved
12 with too or is that unnecessary?

13 A. "Aware of" certainly as opposed to "involved in".
14 Because again, similarly in the same way it would be
15 wholly inappropriate for me to be involved in
16 an inspection, I shouldn't be involved in any way with
17 a fitness to teach panel, but certainly should be made
18 aware of the outcomes in the way that I am made aware of
19 the outcomes of an inspection.

20 Q. So what functions they perform you would be grateful to
21 be informed of their conclusions?

22 A. Yes.

23 Q. All right. Last question. From your perspective who
24 regulates independent schools?

25 A. A number of bodies. The proprietor, as the manager, has

1 responsibility for what goes on in their establishment
2 and then on top of that there is obviously the
3 Scottish Ministers' role, which is administered through
4 myself in terms of should that school be registered,
5 should the school be de-registered, should regulatory
6 action been taken. Then for boarding schools, the
7 School Care Accommodation Service I would say is
8 regulated by the Care Inspectorate, and then there are
9 the appropriate professional bodies in terms of the GTCS
10 and the SSSC.

11 Q. So it is a range of people?

12 A. Yes.

13 Q. Does that emphasise the need for communication between
14 all of them?

15 A. Yes, I would agree with that.

16 Q. Again just to come back, asking about changing, you have
17 talked about the potential, like the Care Inspectorate,
18 of reporting having to take place to you, as it does
19 with them. Is there anything that you would do to
20 improve communication in all these regulatory bodies?

21 A. I think that is something my direct predecessor as
22 Registrar and the work that I did when supporting
23 Ms Brock when she was Registrar was to more frequently
24 have conversations with these different bodies, to the
25 point where I am quite comfortable that I can phone

1 a Care Inspectorate and have a very useful conversation
2 without the "Hello, how do you do" having never met
3 before. So we have that good working relationship. It
4 strikes me as an advantage of -- as I say, when I became
5 Registrar Officer that was at the time that the
6 Registrar responsibilities had been moved from the
7 Scottish Government Learning Directorate to under
8 the umbrella, if you like, of Education Scotland and
9 that made it far easier to communicate with them because
10 we were in the same office. We could have those
11 separate and distinct functions in terms of this is
12 inspection, this is Registrar work, but we could have
13 far more frequent conversation and an appreciation of
14 each other's work.

15 Q. That is in relation to the inspectors obviously?

16 A. Yes.

17 Q. More broadly, would you say that that ability to talk --
18 I think you referenced the Care Inspectorate, you can
19 now phone people up, is that -- there has been
20 improvement in your experience in the time you have
21 worked?

22 A. Yes, yes. I wouldn't contend for a second that it is
23 perfect but I would certainly say that it has improved.

24 Q. Your word it is not "perfect". What could be done to
25 make it perfect? Or closer to perfect?

1 A. I think more understanding of, if not our shared
2 responsibilities, because again there are these clear
3 lines between who is responsible for what, but more
4 shared understanding of what those responsibilities are
5 and precisely who does what. I think occasionally there
6 does seem to be "I'm not quite sure who I should be
7 reporting this to" perhaps. So the information will get
8 out but there is that element, as opposed to clarity
9 "Oh, you are responsible for this, here you are, I am
10 disseminating it to you for that purpose".

11 Q. Again, sorry, it is my fault. Who are you speaking
12 about? The schools, the proprietors or other regulatory
13 bodies?

14 A. Other bodies. Schools as well, but I think it would
15 be -- and that is part of -- and there is refreshed
16 guidance due to be published quite soon for applicants,
17 proprietors and parents that tries to do that,
18 particularly for schools and parents; that these are the
19 different bodies that may be involved in your school
20 depending on what sort of school it is, and here is
21 their roles and responsibilities. So I think that will
22 help.

23 Q. When is that due to be published?

24 A. Imminently. It is with the publishers presently. But
25 certainly, once it is published, I would be very happy

1 to intimate that to the Inquiry.

2 Q. That would be very helpful.

3 A. Happy to do so.

4 MR BROWN: My Lady, that is all the questions I would have
5 for Alec.

6 LADY SMITH: Thank you very much, Mr Brown. Alec, I am very
7 grateful to you for coming today to help further my
8 learning and understanding of your role and what
9 you understand was done by your predecessors. It's
10 a very important one and your evidence is very important
11 to the work we are doing here in relation to boarding
12 schools. I am happy to say that I can now let you go.
13 I'm not aware of any other questions having been raised
14 at any stage. I would have expected to know before now
15 if there were.

16 MR BROWN: My Lady, the GTCs did send some questions which
17 I hope I have adequately reflected --

18 LADY SMITH: You have incorporated. And I am not hearing
19 anybody over the remote system trying to alert me to
20 having a fresh question. So please feel free to go now,
21 Alec. Get outside while the sun is still shining,
22 incredibly, and enjoy what is left of your afternoon
23 with, I hope, a rest ahead and not having to go back to
24 work. Thank you very much.

25 A. Thank you, my Lady.

1 (The witness withdrew)

2 LADY SMITH: That, Mr Brown, neatly takes us to 4 o'clock.

3 So do we rise now until tomorrow morning?

4 MR BROWN: If we could rise and tomorrow we will be hearing
5 from Education Scotland principally, talking about
6 school inspection.

7 LADY SMITH: Thank you very much indeed. Thank you.

8 (4.00 pm)

9 (The Inquiry adjourned until 10.00 am on Wednesday,
10 17 March 2021)

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22

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24

25

INDEX

1		
2		
3	Opening submissions by MR SCOTT	5
4		
5	Opening submissions by MS O'NEILL	11
6		
7	Opening submissions by MR MCCLURE	17
8		
9	Opening submissions by MR LINDSAY	22
10		
11	Opening submissions by MR WEIR	29
12		
13	Opening submissions by	33
14		
	MS VAN DER WESTHUIZEN	
15	Opening submissions by MS ROSS	36
16	Opening submissions by MR BRODIE	38
17	Opening submissions by MS GRAHAME	43
18	Opening submissions by MR HAMILTON	49
19	Opening submissions by MR MCIVER	52
20	Opening submissions by MR REID	61
21	Opening submissions by MR	68
22		
	HARVEY-JAMIESON	
23		
24	Opening submissions by MR DUNLOP	81
25		

1 MR ALEXANDER O'NEILL (sworn)89

2

3 Questions from MR BROWN90

4

5

6

7

8

9

10