

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Wednesday, 26 January 2022

(10.00 am)

LADY SMITH: Good morning and welcome to a day when we have one witness in person, but I think he's going to take a little while. Is that right, Mr Brown?

MR BROWN: I would anticipate so, my Lady.

LADY SMITH: Yes.

MR BROWN: That witness is Andrew Hunter, who is here.

LADY SMITH: Thank you.

Andrew Hunter (sworn)

LADY SMITH: As you're giving your evidence, would you like me to address you as Mr Hunter or would you prefer Andrew? Whatever works for you will work for me.

A. Andrew's absolutely fine, thank you, Lady Smith.

LADY SMITH: Thank you.

Andrew, you see there's a microphone in front of you. The light's on. It's really important that you use it, not just for the people in the room, but so the stenographers can hear you clearly as well.

A. (Witness nods)

LADY SMITH: You have your statement in hard copy in that red folder, so I don't know if you've brought your own copy, but that copy might be helpful to you, the one in the red folder. We'll also be putting it up on screen as we go through your evidence and you might find that

1 helpful as well.

2 A. (Witness nods)

3 LADY SMITH: If you have any questions or queries in the
4 course of your evidence, please let me know, don't hold
5 back. You're not being rude in interrupting. It's more
6 important to me that you feel at ease and comfortable
7 when you're giving your evidence.

8 A. (Witness nods)

9 LADY SMITH: Also, if you want a break at any time, just
10 say. It's quite all right if you need that.

11 A. (Witness nods)

12 LADY SMITH: With those preliminaries over, I'll hand over
13 to Mr Brown if you're ready. Is that all right?

14 A. (Witness nods)

15 LADY SMITH: Mr Brown.

16 Questions from Mr Brown

17 MR BROWN: My Lady, thank you.

18 Andrew, good morning again.

19 A. Good morning.

20 Q. You've heard reference to the statement. It's on the
21 screen in front of you. It's in the red folder. If we
22 can begin with the statement briefly, it has a reference
23 number, WIT-1-000000517 and we see it runs to 98 pages
24 and you signed it on, looking at the last page,
25 17 November 2020. We take it you read it before you

1 signed it to ensure its accuracy --

2 A. (Witness nods)

3 Q. -- because you say in the last paragraph:

4 "I have no objection to my witness statement being

5 published as part of the evidence to the Inquiry.

6 I believe the facts stated in this witness statement are

7 true."

8 And that was correct?

9 A. That is correct.

10 Q. I imagine you will have read it again in advance of

11 today?

12 A. (Witness nods)

13 Q. Is there anything materially different?

14 A. There were just one or two minor points. So could

15 I refer to point number 112, and originally it was

16 page 43.

17 Q. Yes. This is paragraph 112?

18 A. Yes. Paragraph 112. In the text where it says:

19 "... reflect on the value of your school and your

20 school."

21 Should read:

22 "Reflect on the values of your school and family."

23 So that is in the text of my guidance for the

24 pupils.

25 Q. It's a long paragraph. Are you on page 42 or page 43?

1 LADY SMITH: It's lines 2 to 3 on page 43.

2 A. Sorry.

3 LADY SMITH: The second point.

4 MR BROWN: "Family", yes, thank you.

5 And the next point?

6 A. Then the second one, I believe with practitioner
7 RCQ which is on I think 249, page 82.

8 Q. Yes?

9 A. I think my dates are wrong. I believe that RCQ left
10 the school at the end of the academic year [REDACTED]

11 Q. Yes. Thank you very much.

12 I think, as we know, you did this statement, which
13 covered a lot of grounds for obvious reasons, without
14 the benefit of all the papers that the Inquiry has been
15 given by Merchiston because you were no longer with
16 Merchiston.

17 A. (Witness nods)

18 Q. So that is entirely understandable. I'm very grateful
19 to you for the detail that you have provided, because
20 there is a lot of ground to cover.

21 You will understand that having confirmed the
22 accuracy of the statement much of the material we have
23 read, we can read again, and we don't need to dig into
24 today. You follow that?

25 A. I'm happy, yes.

1 Q. In terms of how we approach your evidence, if we can
2 start with some of your background and educational
3 thoughts, we'll then talk about moving to Merchiston,
4 the reasons why you wanted to go to Merchiston, why they
5 wanted you, what you were expected to do once you
6 arrived there and what you found. We'll talk about the
7 structure of the school, which I think was new, and the
8 various systems in place and the difficulties you faced,
9 some of the realities. We will then talk about
10 recruitment as a discrete issue, we'll talk about child
11 protection and its development, and then obviously we
12 can move on to particular issues about particular
13 teachers and discoveries that you had to make and share
14 with outside agencies. So take things progressively and
15 in parts.

16 Looking to the first page, you are now 63 and you
17 were the head of Merchiston from 1998 to 2018.

18 A. (Witness nods)

19 Q. But we see from the early paragraphs, 3 and 4, in terms
20 of your teacher experience, you were at two English
21 boarding schools, Worksop College and Bradfield College,
22 the first from 1983 to 1991 and the second, Bradfield,
23 from 1991 to 1998.

24 A. (Witness nods)

25 Q. I think having spoken with you, you had experience of

1 the boarding system prior to that as a pupil?

2 A. Yes, I went to a prep school in Kenya from the age of 6

3 to 13, and then I went to a senior school down south in

4 Hertfordshire called Aldenham.

5 Q. Thank you. And that was 13 to 18?

6 A. 13 to 18.

7 Q. From that we take it your early life was spent abroad?

8 A. Yes. My father was born in Africa and I and my brother

9 and sister were all born in Africa.

10 Q. Thank you. Having been in the boarding system, both in

11 Africa and in Hertfordshire, I think you would have had

12 experience of corporal punishment as a routine?

13 A. (Witness nods)

14 Q. A norm?

15 A. (Witness nods)

16 Q. And, as you've told me this morning, beating at prep

17 school was regular and, you felt, abusive?

18 A. Yes, that's correct. It took some time for a youngster

19 to get used to. A number of conduct marks that you were

20 allowed to accrue in a week, which wasn't very many,

21 which was five, and quite often you were beaten on

22 a Wednesday break if your number exceeded more than

23 five. I didn't hold many records at school, but

24 allegedly I did hold one of the records for having the

25 highest number of conduct marks in a term.

1 Q. From that would we deduce that you were beaten
2 regularly?

3 A. Yes.

4 Q. Can I ask you perhaps to shift the microphone up just
5 a little bit and project. I can hear you, but it's
6 a little bit faint. Thank you.

7 Did that impact your views on corporal punishment
8 throughout your career?

9 A. Unequivocally. I cannot remember corporal punishment in
10 my senior school in the UK, but I quickly learnt when
11 I became a practitioner that this was just not the way,
12 even though legally it was acceptable, it was just not
13 the way to remedy a pupil and his making of mistakes.

14 Q. Did you ever beat?

15 A. Once.

16 Q. And once was enough?

17 A. Yes. I vomited afterwards and swore never to do it
18 again.

19 Q. That, can we take it, would be at Worksop?

20 A. Yes.

21 Q. And when you went to Worksop as a relatively fresh
22 teacher, new teacher, were you conscious that within the
23 teaching side of things there were old schoolteachers
24 and perhaps new, rather more progressive ones, like you,
25 who didn't view corporal punishment as ideal, as

1 distinct from the old school who presumably used it
2 a lot? Or is that too simple?

3 A. I think roughly speaking that's true. But on the other
4 hand in that school there were some remarkable
5 old-school practitioners who inspired me in how to be
6 a teacher. They, too, were changing.

7 Q. But did you see resistance from some of the old school,
8 at least, when corporal punishment was being withdrawn
9 to that change?

10 A. No, I don't think so.

11 Q. Okay. In comparison with Merchiston, which we'll come
12 to shortly, Worksop and Bradfield, were they bigger,
13 smaller?

14 A. I would say that Worksop, if I remember correctly, at
15 that stage, was about the same size as when I started at
16 Merchiston, which was 350 pupils, but it was
17 co-educational. Bradfield was a bigger school.
18 I remember roughly speaking it was 600 pupils. When
19 I started at Bradfield it was a boys' school. Worksop
20 was always a co-ed school once it had changed. When
21 I was at Bradfield, girls started to enter the sixth
22 form.

23 Q. Thank you. We see that in both you became
24 a housemaster?

25 A. (Witness nods)

1 Q. You'd had experience, clearly, of the house system in
2 your own education, but do you remember, thinking back
3 to the 1980s and 1990s in England, was there induction
4 or training to be a housemaster in any formal sense?

5 A. Unequivocally. In my first school, Worksop, I was lucky
6 to be a non-residential house tutor of Pelham House, and
7 I learnt a huge amount from that housemaster, who was
8 also my head of department of English. So it was
9 fortunate for me that I was offered that boarding house,
10 because it meant that I knew that house extremely well
11 and I really did feel I had been prepared for
12 an extremely important role in any school.

13 Q. But forgive me, I think I asked was there formal
14 training? Or was it simply that you learnt on the job
15 with a very good mentor?

16 A. It would be true to say I don't remember interesting
17 working practices like the housemaster's manual, which
18 he would definitely have now. We didn't have that.

19 Q. That's what I was interested, because we've heard some
20 evidence that by the mid-1980s at least one English
21 school was, by Scottish comparison, advanced --

22 A. (Witness nods)

23 Q. -- and understanding perhaps more of the approach that
24 would be commonplace now. This is moving into the shift
25 to Merchiston, but having got to Merchiston -- we'll

1 come back to the appointment in a moment -- did you feel
2 that Merchiston was behind the times as compared with
3 Bradfield?

4 A. I find that very difficult to answer. Bradfield was
5 a bigger school, sophisticated leadership and management
6 systems, well, well resourced. Obviously they also had
7 to work to budgets, but the boarding houses -- the
8 renovation of boys' boarding houses had happened a long
9 time ago, there were brand new girls sixth form boarding
10 houses appearing on the campus.

11 Merchiston ... lots had happened, but, for example,
12 we still had communal showers in every single boarding
13 house in 1998, so we had a big project on our hands and
14 we had to fund it, which cost a lot, to immediately put
15 that as a sort of top priority, that in these houses we
16 had to have private showers. That's just one example.

17 In terms of reporting lines, at Bradfield as
18 a housemaster I knew that the second master looked after
19 us all as housemasters and housemistresses. That's who
20 I went to. I expected that. I didn't expect direct
21 access to the head. So we would go to the second master
22 about anything that was worrying us in the house. We
23 would meet the head for his two housemasters or
24 houseparents' meetings twice a term.

25 So it was quite sophisticated, whereas at Merchiston

1 it was wonderfully grounded, but everything funnelled up
2 to the head, absolutely everything.

3 Q. We'll come back to the staffing and structure perhaps in
4 a little more detail shortly, but I think one of the
5 things that you do say is that in moving to Merchiston,
6 Bradfield allowed you to take all its policies with you?

7 A. (Witness nods)

8 Q. From that, would one infer that Merchiston was policy
9 light?

10 A. Its policy suite was there, but it was developing. Just
11 like even in my tenure, every single year policies were
12 being redrafted or new policies were being written.
13 There was definitely a suite of policies at Merchiston,
14 and I was very grateful for that, because clearly the
15 policies maybe for Bradfield weren't necessarily right
16 for Merchiston, but at least we had some help.

17 Q. You had templates you could amend --

18 A. Yeah.

19 Q. -- to fit Merchiston?

20 A. (Witness nods)

21 Q. Last few questions about Worksop and Bradfield. You
22 start teaching in the 1980s and stay in England to 1998.
23 We know that in that period initially, in terms of
24 inspection, it would be educational inspection rather
25 than care inspection, as we would now understand it, but

1 that in that period government become more interested,
2 legislation is passed and the care aspect begins to take
3 on a prominence which it's only grown ever since. Fair?
4 Broad summary?

5 A. Correct.

6 Q. Do you remember being surprised when changes began to
7 take effect that that hadn't happened earlier?

8 A. Are we talking about changes at Worksop and Bradfield or
9 changes in Scotland and Merchiston?

10 Q. No, in Bradfield and Worksop. In the sense that there
11 is a focus beyond just good education in terms of
12 inspection, they're looking at wider topics, including
13 care of children.

14 A. No, I wasn't surprised.

15 Q. Were you surprised it hadn't happened earlier?

16 A. I think -- I started at Worksop in 1983, it feels like
17 a long time ago now. There was always implicit in that
18 school as well a care of children, but it wasn't
19 necessarily being superimposed from above. It was up to
20 us to set our own standards as a school as to what
21 constituted good care of the boys and girls in the
22 houses, in the classrooms, in the co-curricular
23 activities.

24 Q. So was there some surprise that legislation was
25 necessary, because it was being done already?

1 A. I always think it is good, as a practitioner, to have
2 legislation present to help one as a practitioner, and
3 of course I learnt that myself.

4 Q. Yes, okay. There comes a stage, though, where you, as
5 we know, become aware of the post of head in The Times
6 Educational Supplement and you set out in detail the
7 process, which was pretty laborious, of getting
8 appointment.

9 A. (Witness nods)

10 Q. Can I just ask a number of questions. Looking at the
11 precis of your career in paragraph 3 and 4 both at
12 Worksoop and Bradfield, you have house responsibility,
13 you detail specific things that you had done. What is
14 not obvious is management experience.

15 A. (Witness nods)

16 Q. Deputy head or the like, is that correct?

17 A. That is absolutely correct.

18 Q. First question then: why did you think of going straight
19 to a headship?

20 A. In those days it was still happening that
21 housemistresses and housemasters graduated to headship
22 from the position of a housemaster or a housemistress.
23 There were parts of the Bradfield role which were part
24 of the Bradfield job, because in the Bradfield role as
25 a housemaster, somewhat oddly, in a way, because it

1 wasn't a premier league school, we filled our own
2 houses. So, in other words, we were the recruiters for
3 our house, but not just for the next year, we ran house
4 lists for about five years. So that was one example how
5 being a housemaster at Bradfield prepared one for some
6 aspects of Merchiston.

7 But you are right, because the learning curve could
8 not have been steeper. Despite a year of being
9 appointed and watching everybody in management at
10 Bradfield, and they were very generous to me, but
11 there's a world of difference between being the head
12 than training for it.

13 Q. When you saw the advertisement in the TES, did you get
14 a sense of what Merchiston were wanting from the new
15 head? Was it clear what was expected?

16 A. I think it was absolutely clear.

17 Q. What were they wanting in a head?

18 A. They wanted -- which is unconventional -- a husband and
19 wife team. That was made quite clear. That suited my
20 wife and myself. My wife was interviewed as well,
21 independently of myself. They wanted somebody who would
22 be the equivalent -- which is what happens in a school
23 that size -- of a super housemaster. That is the
24 challenge of being a head of a school that size, because
25 the parents also expect you to be the super housemaster

1 and to have vast knowledge almost of every pupil in the
2 school. But that didn't frighten me.

3 They wanted somebody to recruit. Recruitment at
4 Merchiston was hard and --

5 Q. Is that of pupils or staff?

6 A. Pupils.

7 Q. Numbers were low?

8 A. Well, they were -- I think they were 350. That wasn't
9 low at the time, but it's very difficult to run a school
10 that size and to actually improve it dramatically.

11 Q. Can I be blunt. In terms of funding, what was the state
12 you inherited?

13 A. There was a remarkable bursar, my first bursar,
14 absolutely remarkable. I think we were teetering along
15 at just about breaking into a surplus or running, you
16 know, negatively.

17 Q. Was that part of the process of interview, making plain
18 to you that part of your function would be to get
19 numbers and profitability as a result up?

20 A. I don't remember clear discussions on profitability, but
21 I understood that. Fee income and non-fee income is the
22 bedrock of many, many schools.

23 Q. In conversation earlier, you said at Bradfield you took
24 things so much for granted. It was a very different
25 environment as compared with Merchiston. You've touched

1 on it already. Much capital work had been done.
2 Policies were in place. Was it, in comparison, ahead of
3 Merchiston in terms of the sort of school you would
4 want?

5 A. Yes, but when you go through the graduation system, as
6 I call it, I think it's very rare to do what I did,
7 which is to move from a very good school, Bradfield, to
8 also a very good school, Merchiston, but its very good
9 aspects were different, yet also go up in position. One
10 would never expect to become the head of a school like
11 Bradfield without maybe having been the head of two
12 other schools first.

13 Q. That's telling. Putting Merchiston in the -- perhaps
14 list. You talked about division one. From your
15 perspective, it wasn't in the same division as
16 Bradfield?

17 A. In crude terms, but I would say that the work ethic of
18 the pupils in many ways showed up some aspects of
19 Bradfield.

20 Q. No doubt, but just in terms of what you as a head are
21 having to deal with, there's much to do, which would be
22 part of the appeal of taking the job, I imagine.

23 A. (Witness nods)

24 Q. Were you surprised to get the job, given the absence of
25 management on your CV?

1 A. I had had other interviews for other schools as a head,
2 but I'd also had other interviews for other schools as
3 a deputy head, but equally I wasn't scattergunning.
4 I was just delighted because I loved the feel of the
5 school.

6 Q. You talked about it being very positively a husband and
7 wife team; that was common then?

8 A. I think it was probably on the way out by then.

9 Q. Now, your wife, as we can read from the statement, was
10 a teacher.

11 A. (Witness nods)

12 Q. But were you aware of husband and wife teams where the
13 wife had no particular skill in terms of education but
14 was appointed nonetheless?

15 A. My predecessor's wife was not a teacher, but they were
16 very much a husband and wife team, but she obviously
17 didn't contribute in the learning and teaching. She
18 contributed in other areas. But it was a husband and
19 wife team.

20 Q. Thinking of today, and we will touch on recruitment, do
21 you find that approach, looking back, surprising?

22 A. It suited my wife and myself, that sort of an approach.
23 I don't know why. I don't know if that means that --
24 which is not a problem to me -- that I like working with
25 my wife and vice versa. It really suited us and played

1 to our strengths.

2 LADY SMITH: Andrew, does this mean that your wife was
3 actually made an employee of the school?

4 A. To start with that there was that magical -- how would
5 I describe it, two-for-the-price-of-one approach, and my
6 second chair moved to formalise my wife's position with
7 remuneration.

8 LADY SMITH: Who line managed her?

9 A. Very good question. I didn't in that sense, formally.

10 LADY SMITH: Mm.

11 Mr Brown.

12 MR BROWN: Thank you.

13 You set out in detail, and as I say, we don't need
14 to touch upon this, the various processes, the visits,
15 the familiarisations, which are lengthy and detailed,
16 meeting every constituent part, what would now be
17 described as the stakeholders but I don't imagine it was
18 described like that then.

19 A. (Witness nods)

20 Q. The key meeting, presumably, really was speaking to your
21 predecessor, David Spawforth?

22 A. (Witness nods)

23 Q. That was the one you were most interested in?

24 A. (Witness nods)

25 Q. You talk about this in paragraph 11 on page 3 and you

1 mention this elsewhere. There are two approaches you
2 can take with your predecessor. You can walk and talk,
3 as you did, not taking notes, or, as I think you suggest
4 elsewhere, you could have sat down in a room and
5 solemnly gone through every staff file, and you had
6 sought advice and went for the walk option. Is that
7 correct?

8 A. I didn't necessarily take advice. My predecessor wished
9 to take me for a walk to discuss more or less every
10 single member of staff.

11 Q. With hindsight, do you think that was the appropriate
12 way to do it?

13 A. No. It meant that I had to remember a mighty lot. And
14 also it was quite difficult walking and -- or I couldn't
15 take notes, so I just had to remember a mighty lot.

16 Q. In the course of that walk, as you say, you literally
17 walked for three hours and he spoke to you about every
18 single member of staff, which was good. You couldn't
19 remember everything, however you tried, and he flagged
20 up a number of individuals as "red alerts".

21 A. (Witness nods)

22 Q. We can see the details of one of them in the statement.
23 Was James Rainy Brown one of those red alerts?

24 A. Yes.

25 Q. What did he tell you? Do you remember?

1 A. It's difficult for me to remember. I just remember that
2 he said that he had problems -- there were problems
3 managing him. And where I went wrong was not then
4 looking at that member of staff's file with
5 a fine-tooth comb. Because I was given the heads up
6 that, you know, things were not plain sailing, despite
7 that member of staff's huge strengths with pupils, that
8 there were aberrations as well.

9 Excuse me, Mr Brown. Is it possible for me to go
10 back to Lady Smith on that interesting question?

11 LADY SMITH: Please do.

12 A. I suddenly remembered that if my wife taught art in the
13 school, of course she was managed by the head of
14 department.

15 LADY SMITH: Okay.

16 A. And when she helped with marketing and admissions, she
17 was managed by the head of marketing and admissions.

18 LADY SMITH: Right. So it depended what she was helping out
19 with at any particular time?

20 A. Yes. These were in her job description, these various
21 aspects.

22 LADY SMITH: I see.

23 A. She only helped in the art department when we had
24 emergencies.

25 LADY SMITH: Right. Okay. So quite a difficult employee --

1 that's not casting aspersions on your wife at all --
2 situation to handle.

3 A. For myself or ...?

4 LADY SMITH: Yes. For the school, for whoever's head of the
5 department. Particularly if she's chopping and changes
6 where she's working.

7 A. She was always helping marketing and admissions, from
8 1998 to 2018, that was a permanent --

9 LADY SMITH: I see.

10 MR BROWN: I think, my Lady, paragraph 8, which is further
11 up the page we're on, sets out --

12 LADY SMITH: It does, it explains what she does.

13 MR BROWN: And past experience at other schools doing
14 similar things, but it's perhaps the formality or lack
15 of it that is, to modernise, somewhat troubling.

16 LADY SMITH: Do let me assure you, Andrew, I don't suggest
17 for a moment that we have any evidence indicating that
18 there was any problem with the way your wife performed
19 the roles she performed. What I'm more interested in is
20 just looking at this as a concept, and at the moment
21 it's striking me as one that does have risks attendant,
22 if the wife of the head performs unsatisfactorily in any
23 way, who directs, who disciplines? How do you control
24 that person who's not just like any other member of
25 staff? Particularly if you haven't really formalised

1 their contract of employment as opposed to saying: we're
2 going to just pay them a salary. Do you see what
3 I mean?

4 A. I agree. It was very unconventional and I think that
5 I was remarkably lucky that some would say that my wife
6 was -- how would one say this -- of enormous value to
7 the school, maybe more so than her husband at times.

8 LADY SMITH: We don't need to cover there, don't worry.

9 Mr Brown.

10 MR BROWN: Thank you, my Lady.

11 Going back to James Rainy Brown, I think you talk
12 about his staff file on page 74 at paragraph 216 and you
13 say:

14 "I had to learn, especially with him. His staff
15 file was huge, so eventually I said to other staff that
16 we could not see clearly what was happening with this
17 member of staff so could we prepare an audit of 'double
18 asterisk issues', as in instances of inappropriate
19 behaviour."

20 Again, this is the learning experience that we are
21 undertaking and which you have experienced first hand,
22 looking back you have your red flag raised on the
23 three-hour walk. Do you think, with those red flags,
24 you should have looked at files --

25 A. (Witness nods)

1 Q. -- and gone through them with a fine-tooth comb, as
2 I think you said you should have done?

3 A. Yes. On the training courses one was told there were
4 two ways to do it. Don't do that, don't go through
5 every single file, or do it. I really regret that I did
6 not go through every single member of staff's file.
7 Because at the very least, I wouldn't have been left --
8 I'd already spotted, with that particular member of
9 staff, challenges -- and presumably we will discuss
10 these later.

11 Q. We will.

12 A. I dealt with those challenges, but I now realise how
13 I should have dealt with them better. So I was already
14 seeing what I call double asterisks. I was also then
15 seeing a double asterisk repeating itself three years
16 later. Whereas if I had analysed that file from day 1,
17 I would have been ahead of the curve.

18 Q. Put very simply, if you're faced with a pile of staff
19 files for all the staff at Merchiston, it would have
20 stood out like a Belisha beacon because it was so big.

21 A. (Witness nods)

22 Q. Is that in itself not a red flag which should be -- you
23 would now say, I imagine, if you inherit a school and
24 you have a file like that, look at it as a priority?

25 A. Absolutely. I mean I'd want to stress that some of

1 these -- his file wasn't the only big file. A lot of
2 them were big because absolutely everything was kept.

3 Q. Yes.

4 A. Which I didn't disagree with. I did the same. If
5 I congratulated a member of staff, a copy of that note
6 went in his file, so most of these staff files were not
7 thin. But I agree with that one. And that was
8 an omission.

9 Q. You said that at training courses -- I think this was
10 the allusion I was meaning when you took advice, or you
11 had had advice at training courses, not to look through
12 the staff files when you took over a school. Why was
13 that?

14 A. I think the idea was that every member of staff started
15 with a fresh slate, a clean piece of paper. But I don't
16 think that can ever apply to double asterisks, as I call
17 them, safeguarding and child protection issues.

18 Q. With hindsight, would you think that advice was wrong?

19 A. Yes. But there has to be a system put in place for any
20 new head as to how that task is going to be made
21 realistic and achievable. I'm not sure where a head
22 stands leaving very detailed notes on every single
23 member of staff with what happens if a member of staff
24 asks to see those notes.

25 Q. I suppose, accepting those slight concerns, what

1 happened with your handover is Spawforth flagged up
2 problems. You didn't go then into the five red flag
3 files and immerse yourself in them. Question one: why
4 not? Because of advice you'd had at training courses,
5 which I think with hindsight you would now differ from?

6 A. (Witness nods)

7 Q. Was it also practically -- this is moving on to what you
8 found at Merchiston -- you discovered that as head you
9 had a colossal amount to do and, as compared with
10 Bradfield, didn't have the second master, didn't have
11 the supports in place that you'd been used to?

12 A. I had a second master, a good second master, because as
13 part of my induction I remember he wrote a whole series
14 of notes on all aspects of the school, like highland
15 balls, so I remember having this dossier of material
16 from the second master and I spent a lot of time with
17 that second master, who was a very experienced
18 practitioner.

19 I think it would be true to say he also, with me,
20 was worried about that member of staff. I don't think
21 they necessarily saw eye to eye. So I wasn't totally
22 alone with this, but I had lots and lots and lots on my
23 plate.

24 And even my second master, I wouldn't particularly
25 hold it against him. He felt that he would go so far

1 and then, "Andrew, it's up to you", which is reasonable,
2 I guess, but not what I finished off as a head with.

3 Q. But I think it was the allusion, that's why I made the
4 point about a second master -- it was deputy head at
5 Merchiston -- the degree of support that was in place to
6 the head as compared with Bradfield was more limited.
7 Is that correct?

8 A. Very. It was limited by the size of the school, it was
9 limited by financial resources. It was a fact. And
10 gradually, with confidence, I grew those resources.

11 Q. When, with confidence, did you grow them? How long did
12 it take?

13 A. To start with I was very, very worried about my tenure
14 as a head. I mean, I think I'm right in saying at the
15 beginning of year two the numbers were worse, so it took
16 me a long time to feel that maybe -- was I going to cut
17 the mustard? Was I going to pass my probationary
18 period? I did, and then I had some extraordinary staff,
19 who I appointed internally to help me. Am I allowed to
20 name who they are or not?

21 Q. Mm-hmm.

22 A. One of them was Nigel Rickard, who I've written about.
23 Very experienced practitioner. Head of PSHE. He became
24 my first Child Protection Co-ordinator. Then he became
25 deputy head (pastoral). Then I appointed a SNR

1 SNR 'Glenn'.

2 Q. Was that more for the academic side?

3 A. Both of these members of staff in their different ways

4 were really interesting practitioners and I felt

5 I wanted to get the best out of them, I wanted to get

6 the biggest sum out of the parts, because we had so much

7 to do, but Nigel Rickard, really, his big job was

8 looking after the housemasters, because they maybe felt

9 a little adrift when I arrived. 'Glenn', I wanted for

10 operations and also aspects of, you know, student and

11 staff behaviour.

12 Q. What's interesting from that is those positions don't

13 exist when you arrive.

14 A. (Witness nods)

15 Q. Is it an example of you trying to spread the load that

16 was on you to create more of a hierarchy, rather than

17 you being the pinnacle and then perhaps quite a big drop

18 down to the next level of management?

19 A. Yes, but it was also part of trying to put in place the

20 opposite of heroic leadership and trying to put in place

21 devolved distributed leadership, and then supporting

22 them and then of course obviously giving them

23 responsibility and then accountability.

24 Q. But by the sounds of what you've just said, heroic

25 leadership was what you inherited when you first

1 arrived?

2 A. Absolutely.

3 Q. It was all on the individual at the top of --

4 A. Yes, absolutely.

5 Q. -- the hierarchy. And you tried to change that, because

6 it was too much for one person?

7 A. Yes, correct.

8 Q. The other interesting thing about your response was you

9 were appointing internally.

10 A. (Witness nods)

11 Q. So you are using what you have rather than bringing in

12 fresh.

13 A. (Witness nods)

14 Q. Are we back to the resource issue?

15 A. I don't think it would be 100 per cent true to say that.

16 I was a big believer in nurturing talent from within.

17 But as I've written I think at the end of my notes,

18 I took that too far, because I learnt that when you

19 brought somebody in to leadership and management in the

20 school, their wonderfully fresh antennae spotted

21 immediately what needed to improve in a school.

22 Q. Having fresh eyes regularly is a good thing, because

23 otherwise assumptions are made and practice becomes

24 habitual?

25 A. (Witness nods)

1 Q. That leads perhaps on to the issue of governance,
2 because we see at paragraph 13 on page 4:

3 "As headmaster, I reported directly to my chair of
4 the board of governors."

5 Again you detail the individuals and the fact there
6 was a lot of liaison between you, the head, and the
7 chair of the board. You talked about your anxiety about
8 the probationary period, and this we'll come back with
9 James Rainy Brown. The board that you found when you
10 arrived at Merchiston in 1998 was again somewhat old
11 fashioned?

12 A. It had many capabilities on it. It was all male. Apart
13 from the representatives which we had, which I think I'm
14 correct in saying for medicine and law, which we
15 changed, every member of the board was a Merchistonian,
16 as in a member of the alumni.

17 Its formality I remember -- obviously there was
18 a board of governors. I think there was a finance and
19 general purposes committee. There was certainly
20 a finance convener, who came to school most weeks, which
21 the bursar and I welcomed.

22 The subtlety and sophistication of how the board
23 worked at Merchiston with subcommittees changed with my
24 bursar and second chair, who set about remits for
25 governors, subcommittees, so clearly we obviously

1 started education and pastoral. There were many, many
2 others, but we -- with my second chair and bursar, there
3 was a change.

4 Q. That's part and parcel, presumably, of the changes that
5 are happening in education, which we touched on earlier
6 from the mid-1990s.

7 A. (Witness nods)

8 Q. There's legislation requiring things to be done and
9 you're getting advice, I take it, from other schools,
10 other organisations --

11 A. (Witness nods)

12 Q. -- giving you guidance of what a good school should now
13 be doing in terms of governance.

14 A. (Witness nods)

15 Q. We can talk about that perhaps more tomorrow with the
16 current chair of the board, but one of the impressions
17 I think we have from the evidence we've heard and read
18 is that the old-boy factor on the Merchiston board at
19 the time you were appointed was significant. There was
20 a great deal of tradition, and that, as you talk about
21 in the statement, had impact when you were trying to
22 deal with James Rainy Brown?

23 A. (Witness nods)

24 Q. Tell us about that.

25 A. The representatives on the board, apart from maybe the

1 representatives from medicine and law, were
2 Merchistonians, they were all male. They knew a huge
3 amount about the school, which was a good thing, but
4 maybe it was a vision or a lens on what school used to
5 be like.

6 With that particular member of staff, it was a huge
7 problem for me, because it can't be helped but my first
8 chair and him were clearly close friends, they'd been at
9 school together. Other governors on that board, I don't
10 think they'd been to school with James Rainy Brown, but
11 I -- their children had maybe been looked after by
12 James Rainy Brown.

13 It doesn't excuse, which I can discuss later, it
14 doesn't excuse what I should have done.

15 Q. No, but I think as you make clear in the statement, you
16 felt under pressure, real or imagined, that if you tried
17 to take on Rainy Brown, who we know had been at school
18 as a pupil, gone to university and then come straight
19 back and spent his entire adult life teaching at the
20 school, if you tried to interfere, you might meet
21 resistance?

22 A. That is correct.

23 Q. Was that something you could discuss, that anxiety, with
24 anyone?

25 A. I didn't discuss it with any of my board. I didn't have

1 a mentor. It was just a very ... just a very lonely
2 time, really. I obviously discussed it with my wife,
3 which obviously people may think is strange, but why did
4 I not discuss it more? Because I did have some
5 co-leaders. I was very fearful of discussing it with my
6 chair. I honestly thought that, you know, I was going
7 to fail my probation. (Pause)

8 On one other occasion I remember a longstanding
9 member of staff at the school stopped my wife or stopped
10 a governor on George Street to say, "What on earth is
11 that woman doing, changing all the colour schemes in the
12 school?"

13 I don't blame anybody, it's just the way it was.

14 Q. We've heard that phrase from pupils talking about the
15 times they experienced. You've just described the
16 position you were in as a very lonely one. It sounds,
17 certainly in the initial period, you describe your
18 predecessor as being very much the top of the tree in
19 trying to be superhuman, is that what was expected of
20 you too? Initially?

21 A. I don't really know. I don't -- I mean, they were --
22 you know, we had meetings with my chair a lot, probably
23 every week. You know, they understood that for me to
24 get to grips with running the school was going to take
25 time. We had targets.

1 My predecessor was extremely experienced, you know,
2 of 18 years.

3 The transformation to me was really my second chair.
4 I just felt I could relate to him. But even then
5 I didn't have the courage to go near this elephant in
6 the room. But I felt totally supported by him.
7 I could, you know, express my concerns totally to him.
8 And that would have been, I think, year three onwards.

9 LADY SMITH: Andrew, you mentioned you didn't have a mentor.
10 Did you at any time in your 20-odd years as head acquire
11 a mentor?

12 A. If I'm strictly speaking the truth, I did have a mentor,
13 because even HMC in 1998 was thinking about its members
14 and its welfare. And I'm not going to say which school
15 it was, but I was given as my mentor the head of another
16 school in Scotland, who said to me at Edinburgh Airport,
17 "Don't worry, Andrew, I'm not going to bother knifing
18 you in the back, I'll knife you in the front", so
19 I decided there's not much point, really, in asking that
20 mentor to help me. I mean, it was a problem, the system
21 was a problem. It was the head of a competitor boarding
22 school. So I didn't have a mentor.

23 I had people who I trusted implicitly, like
24 John Robertson, Dollar Academy. Many of the Scottish
25 heads were extremely welcoming, outside the cauldron of

1 the intensity of the recruitment numbers of the boarding
2 sector. I had Dr McClure, I was just so pleased that
3 that -- that must have been my second chair who leapt
4 with alacrity at the idea of Dr McClure helping
5 Merchiston on our board.

6 So I did have people that I would ring up and say,
7 "I don't know what to do, this is what I think I should
8 do". I did have them, but in the early days I really
9 didn't have anybody.

10 LADY SMITH: Am I right in thinking that in your early days,
11 when you were still in your probationary period, you
12 wouldn't have had the chance to get to know other heads
13 in Scotland for yourself?

14 A. We attended meetings every term, the Scottish heads of
15 HMC schools attended meetings, so that's where I grew to
16 respect and have an affinity for John Robertson, because
17 him and his wife extended the hand of friendship and
18 companionship and help, even though that school was
19 a day school with boarders.

20 I remember the rector of St Columba's, Kilmacolm --
21 and his name is gone -- was of the same type. They
22 looked out ... they were two heads who looked out for me
23 and tried to give me professional advice.

24 LADY SMITH: I suppose it takes time to build up that sort
25 of relationship?

1 A. Yes.

2 LADY SMITH: Would I be right in thinking that if you have
3 a problem that was in existence before you started, the
4 longer the months passed by without the problem being
5 addressed, the harder it gets to face up to addressing
6 it, even if you have reached the stage that you have
7 other heads you feel comfortable with and can trust so
8 far as sharing difficulties is concerned?

9 A. Yes. I just think that this one was not clear-cut
10 either. I remember that I could not relate at all to
11 the director of studies I inherited. It was blindingly
12 obvious he couldn't relate to me. And with that one, we
13 managed to sort it out. Inevitably I've found in my
14 experience as a head you couldn't sort out some of these
15 challenges without payment, but I did sort that out at
16 the end of year one, so it proves that I could do it.
17 And obviously we used lawyers. I didn't understand
18 constructive dismissal. If we go back to Mr Brown's
19 point, these sorts of areas of employment law are
20 complete new ground to me, so I had to learn them. So
21 we sorted out a challenge with the maximum fee then that
22 we were allowed to pay, but we didn't sort out the
23 elephant in the room.

24 LADY SMITH: Mr Brown.

25 MR BROWN: Thank you.

1 You talk about mentoring at paragraph 16 on page 5.
2 One gets the impression that as time has passed -- and
3 I know we'll come back to mentoring because that is
4 a matter of importance to you, but the willingness and
5 scope of having mentors and advice seems to grow as time
6 passes.

7 A. (Witness nods)

8 Q. Is that a fair reflection of your experience?

9 A. Totally correct.

10 Q. Just one of the things you touched on about the cauldron
11 of presumably you're meaning, really, Edinburgh schools,
12 trying to attract a pupil base, but with Merchiston
13 being boarding, more broadly still, perhaps Scotland and
14 to an extent England, there's a great deal of
15 competition?

16 A. (Witness nods)

17 Q. When you started in 1998, and the first three years
18 sound from what you're saying particularly bleak on
19 a number of levels, was that competition a problem in
20 seeking advice from others, because they wouldn't share?

21 A. Very, very difficult to share with competitor heads who
22 are in the same recruitment pool for boys, as I was in.

23 Q. Did that change over the 20 years? Did that competitive
24 concern lessen?

25 A. (Witness nods)

1 Yes, it did, and I think that's much to the credit
2 of the heads who were in position, because we're in the
3 same -- we were all in the same boat. We were running
4 boarding schools, we were trying to do our best. We
5 became much more collaborative. We shared with each
6 other good ideas, and it was a metamorphosis compared to
7 the beginning.

8 Q. What drove that metamorphosis?

9 A. It's difficult for me to say. I felt that I tried my
10 hardest to drive it. Scottish HMC meetings, I tried to
11 share with other heads ideas rather than keeping them in
12 my back pocket. I would always keep back 10 per cent,
13 because I had to run a school that had pupils in it, but
14 it was just a sign of the times. It was a sign of --
15 a vision that was just beyond one's own boarding school
16 in Scotland. It was a vision to do with the good of the
17 pupils, the good of the colleagues, the good of the
18 parents of the pupils in all these schools.

19 Q. You've talked about headmaster and headmistresses'
20 conference. The other body you mention is SCIS, is that
21 something from your experience that has, as an umbrella
22 body, if you like, has taken on greater significance in
23 your 20 years of headship at Merchiston? Was that
24 a factor too?

25 A. It always was a factor. I think that coming to Scotland

1 as a new head, one is immensely blessed with having
2 membership of SCIS and HMC. Both are slightly
3 different, but the -- even in those days of
4 Judith Sischy, the level of courses provided for us was
5 of the highest order. For example, I remember she
6 visited Merchiston. And that organisation, it was
7 outstanding, and that's why, if we go to things later --
8 maybe we won't now -- we always tried to make sure we
9 were at their courses, because we were hearing things
10 from the horse's mouth and learning from the horse's
11 mouth.

12 We also tried to provide staff to help them run
13 their courses, so I remember doing one at a hotel in
14 North Queensferry for housemasters and housemistresses.
15 I remember doing one on governance. We were very
16 blessed.

17 Q. But that's another example of collegiality, if you like,
18 as between competitors?

19 A. (Witness nods)

20 Q. Was that the schools driving SCIS to play that role or
21 was SCIS encouraging you to play that role?

22 A. I think SCIS, under Judith Sischy and then obviously
23 John Edward, they drove bringing forwards a superb
24 professional development programme for all aspects of
25 all people in schools. And if you opted out of it,

1 I would have thought that was quite unwise.

2 Q. Yes. Again we will come back to what you are doing now
3 at the end of your evidence because that is
4 a continuation, in a sense, of what we've just been
5 talking about. Is that correct?

6 A. That's correct.

7 Q. Okay, thank you.

8 Can we go back, though, to 1998 and your experience
9 of Merchiston, page 33, paragraph 86, you talk about the
10 culture you found within Merchiston School and I think
11 we have the sense from both evidence we've heard and
12 documents that you are very concerned about your pupils
13 and there's no suggestion otherwise.

14 What we see there is you seem to be a little bit
15 taken aback by the culture you find, correct?

16 A. When I arrived, there were so many good aspects to the
17 school. I mean, it had a code of etiquette between the
18 pupils. The house system was already -- that was
19 happening, that the friendship levels amongst boys was
20 huge. There were just edges to the school that were
21 a tad harsh.

22 Q. It was a robust, rugby-playing school, roughy toughy?

23 A. Yes. It -- and it was very successful at what it was
24 doing. And I remember just in very simple terms it
25 meant the world of difference to my wife and I that we

1 carpeted the front entrance to the school and moved away
2 from concrete floors. That we moved dramatically on
3 soft furnishings in houses and all over the school.
4 Because we wanted -- and different colour schemes. We
5 didn't want the school to smell like a boys' school,
6 which they can do. And we wanted it to feel like home
7 for these boys.

8 Q. But I think we see at paragraph 88, when you talk about
9 traditions of tying boys naked to a tree on their
10 birthday, in the previous paragraphs, but 88:

11 "We tried to change the school and move it away from
12 thinking that sporting achievement was the only relevant
13 achievement."

14 Was it as stark as that in 1998?

15 A. No. Its academic achievement was of a pretty good
16 order.

17 Q. But sport, I think, as you say, was still recognised
18 more?

19 A. Yes.

20 Q. Did that surprise you?

21 A. Well, it often crossed my mind why on earth they'd
22 chosen as this new headmaster a headmaster who'd never
23 played rugby in his life, because -- and in fact -- so
24 it did surprise me, but I just thought let's not let it
25 surprise me, let's work with others on changing this.

1 Q. Was that something that was discussed at interview, that
2 was from a board perspective something they wanted to
3 change? Or was this down to you?

4 A. I don't want to come across as, you know, being -- I'm
5 just not aware in my memory bank of that coming from the
6 board. It came from us as practitioners. To make every
7 boy feel he had the chance to be happy and to succeed,
8 to find those hidden nuggets of ability. That's where
9 it started from.

10 We still congratulated those who were successful in
11 sport, but remember we were also talking about sport in
12 those days which was just team sport. So we had to even
13 in sport diversify to individual sports and not just the
14 team sports.

15 Q. And of course one of the things that you discovered or
16 would be aware of at Merchiston, which is distinct in
17 your experience, is the horizontal house system.

18 A. (Witness nods)

19 Q. Which I think was alien, your schooling was vertical?

20 A. (Witness nods)

21 Q. The two schools you'd taught at in England were
22 vertical?

23 A. (Witness nods)

24 Q. Vertical, it would appear, is the norm in most of the
25 boarding schools we've heard about, except for

1 Merchiston and perhaps, I think from what you've said,
2 some of the Catholic schools such as Stonyhurst?

3 A. (Witness nods)

4 Q. Who do employ a similar horizontal, from your knowledge.

5 A. (Witness nods)

6 Q. One of the anxieties that we have heard evidence of, and
7 you talk about being concerned about, was the scope for
8 individuals to really fall by the wayside under that
9 regime.

10 A. (Witness nods)

11 Q. Particularly in a school where sport is all, and team
12 sports is all. Did you see examples of people, as you
13 arrived, falling by the wayside, just not fitting into
14 that horizontal structure?

15 A. No, not necessarily. But we were always conscious in
16 that horizontal structure -- after all, even as fiction,
17 as a novel I've taught many times, *Lord of the Flies* is
18 about youngsters of the same age. So we started with
19 that horizontal house system always thinking there must
20 be some who are in danger of falling in between the
21 cracks. What are we going to do about this? How can we
22 try and build in measures, support measures, as far as
23 we can to prevent this?

24 Q. You talk about this at page 36 and paragraph 95 onwards.
25 You say the pupils said they loved the horizontal house

1 system. [REDACTED] you add:

2 "The theory was that, if you loved it, in that
3 cohort of 60 pupils you would find kindred spirits. In
4 the vertical system, if one of my friends was in a
5 different house, a mile away on the campus, then the
6 only time I really saw that friend was in class or in
7 the dining hall. When I arrived at Merchiston all of
8 the staff said to me that there was no bullying at
9 Merchiston because of the horizontal ... system.
10 I remember raising my eyebrows and thinking this is
11 an impossibility."

12 Was there bullying?

13 A. Yes.

14 Q. Can you express a view, having been at two vertical
15 schools, or make a comparison as to the amount?

16 A. No, I can't do an accurate estimation on that. All
17 I can say is in the vertical house system, as
18 a housemaster in two schools, it's a different challenge
19 because one had to set the ethos in one's upper sixth,
20 final year at school, as to how they treated the
21 youngsters in the first year of the house, in year nine.
22 So as a housemaster in that system, we spent all of our
23 time trying to teach the students who were in the final
24 year how to look after the boys or girls in the first
25 year.

1 In the Merchiston horizontal house system ...

2 (Pause)

3 I do think that they did look after each other very
4 well, but we had to make sure that we put measures in
5 place, because it's inevitable -- so, for example, which
6 boy is in his bedroom or in the dormitory, in these
7 dormitory cubicles, and not in the house room? Why is
8 he not in the house room? So it was a question of
9 trying to teach the staff or all of us, we had to have
10 these antennae in these houses.

11 The presence of the housemaster if at all possible
12 on the ground, having meaningless conversations,
13 apparently, with every sort of boy, so that if a boy
14 went to see the housemaster in his study because he had
15 a concern, that was seen as normal, and it might not be
16 seen as that ghastly word: dobbing.

17 We had to work very hard at this. We -- as
18 a tactic, even in that horizontal house system -- tried
19 to work out which were the influential boys in each
20 cohort and why.

21 In the early days there was in my view
22 an anti-intellectual ethos coming from pupils to other
23 pupils and sometimes those who were intellectual were
24 given a hard time, so we had to work out how to break
25 that down. We tried many, many tactics. We never

1 cracked it, I don't think, because you've got to carry
2 on and carry on and carry on.

3 Q. From what you're saying -- and I'm not trying to
4 criticise your predecessor or the school just
5 gratuitously -- but the systems in place were lacking
6 when you took over, because you are trying to do
7 something about this, from what you just said, which
8 hadn't been done before? Or is that unfair?

9 A. I can't really comment on that. I mean, I remember that
10 my predecessor and my wife were amazing at having the
11 boys in cohorts at the headmaster's house, Castle Gates,
12 and they played board games with them. My wife and
13 I were not so good at doing that. You know, boys in
14 smaller cohorts.

15 Q. Playing games in their dwelling doesn't really seem to
16 address potential issues of bullying within a house.

17 A. But it might lead to a pupil saying, in that setting,
18 "I'm not very happy". It might do.

19 I think as well -- I mean, if I -- I tried to bring
20 as much to the table as possible as a new head. What
21 I did bring to the table was housemastering in two
22 schools. I didn't find that job easy, and it was
23 an amazing job. I learnt a lot and I just tried to
24 bring to the table what I had learnt and what could we
25 carry on learning, because it is a very challenging job.

1 It's the most rewarding job, in my view, in a school,
2 whether it's a housemistress or a housemaster.

3 Q. Well, you were the one who made the point that Lord of
4 the Flies is the same year group, so you will have
5 dominance, you will have a hierarchy within children of
6 the same age.

7 A. (Witness nods)

8 Q. What systems were in place to address that when you took
9 over in 1998, within the houses?

10 A. I think there -- I don't really know. I mean, to start
11 with, you know, as quickly as possible one went on
12 learning walks of all areas of the school and pulled
13 people together.

14 The housemasters I think when I first arrived were
15 a little sceptical of me. They were bound to be,
16 because I came from the vertical house system so they
17 saw me as a critique, or a critic. I was. So I just
18 pulled people together and we started -- and we leaned
19 on each other. We said, "What can we each do? What can
20 you bring to the table as a tactic?"

21 It was very hands on. And I'm not saying my
22 predecessor wasn't hands on, it was just my style with
23 these housemasters because it mattered so much to us.

24 Q. You talk about -- or you used the word dobbing, clipping.

25 A. I hate that word.

1 Q. Was there a culture of not sharing information from the
2 pupils?

3 A. Yes.

4 Q. When you took over in 1998?

5 A. I wouldn't say that was unique to Merchiston.

6 Q. No, it's not, from what we've heard, but it was
7 something that you were conscious of, perhaps part of
8 the rather harder culture of a boys rugby school?

9 A. It was something we were desperate to crack.

10 Q. What did you do to try and crack it? You talk in
11 paragraph 96 about appointing a head of Merchiston
12 juniors, a head of middle years and a head of sixth
13 form. What was the thinking behind that?

14 A. I felt that with our horizontal house system it could
15 rock and roll and there could be gaps, so at the end of
16 the fourth form, a housemaster would hand over to the
17 housemaster of the Shell, 50, 60, boys. There were
18 elaborate handovers. The exiting housemaster went
19 through every pupil's file with the new housemaster. So
20 that was first rate.

21 And remember, under this house system, at its very
22 best, you could appoint suitable personnel for boys of
23 different ages. So the -- I wanted -- and it was
24 Mungo Dunnett who said that he felt this was a very good
25 tactic. I wanted an umbrella of security to reassure

1 myself that particularly in transition times, year 9 to
2 year 10, year 10 to year 11, that's one, we had a head
3 of middle years. Head of juniors, slightly different,
4 Pringle House, but then in the sixth form, head of sixth
5 form.

6 Because I wanted to be reassured -- I mean, boys
7 will be boys. If you listen to a headman and ethical
8 messages on a Tuesday morning, so what? I know that it
9 was the expectation that those messages were then gone
10 through with the boys in house meetings and PSHE
11 lessons, but I wanted this structure to make sure that
12 everything was being drilled down as far as possible.
13 Consistency.

14 Q. You said impliedly there's no complete answer to this
15 question.

16 A. (Witness nods)

17 Q. Having lived both systems, do you have a view on whether
18 one or other is better?

19 A. Each one has huge strengths, each one has potential
20 weaknesses.

21 I think one of the -- it takes some convincing, to
22 my mind. How can you better a young person having the
23 same housemaster or housemistress for five years, as
24 long as the systems are in place to try and overcome the
25 weaknesses of such a system?

1 I think it's the Jesuits, is it not: give us the
2 child and we'll deliver you the man.

3 LADY SMITH: There you're talking about the vertical system?

4 A. Yes. I wanted to change the horizontal system when
5 I arrived. But I grew to respect it, I grew as well to
6 try and work with others on improving its Achilles
7 heels.

8 Ironically, as I left Bradfield the head asked two
9 of us as housemasters to chair a committee and the
10 recommendations of that committee for Bradfield was that
11 Bradfield's first house was to be a horizontal house,
12 before those boys and girls then joined their vertical
13 houses for a four-year career. And that initiative is
14 still hugely successful at Bradfield.

15 LADY SMITH: Just reflecting on what you said about wanting
16 to change the horizontal system when you arrived at
17 Merchiston, Andrew, did you take any steps towards
18 achieving that?

19 A. Well, first of all, I had to prove what was the
20 educational validity of my premise.

21 LADY SMITH: Okay.

22 A. So --

23 LADY SMITH: Did you try to do that?

24 A. Yes, I did. I checked that actually I felt that I was
25 doing a disservice to elements of the horizontal house

1 system with my premise of just having come from the
2 vertical house system, but I would not have been happy
3 if we had not worked incessantly -- and we were still
4 working incessantly on these critical issues. I just
5 think those critical issues in a vertical house manifest
6 themselves in different ways to a horizontal house.

7 LADY SMITH: Did you raise, for example, with the board of
8 governors the possibility of at least investigating
9 whether or not it would be better to have a vertical
10 system?

11 A. I cannot honestly remember. I wrote so many strategic
12 think tank papers. I find it difficult to believe
13 I didn't write one on the horizontal house system versus
14 the vertical house system. It was an area which was --
15 how would one describe it? A no-go zone? Because it
16 was such a -- it was in the fabric of the school.
17 I understood that too. I did change parts of it.
18 Originally we had a lower sixth house. So when I first
19 arrived, we then had residential prefects from the upper
20 sixth in all the houses, including the junior house.
21 But then we had a cohort of boys who lived in Evans
22 South and Evans North, and I've written about this.
23 They felt the lowest of the low. In their final year at
24 school they didn't really have any responsibility. They
25 were lovable rogues, but some of their roguery was

1 risky, I think.

2 So hence the opening of Laidlaw House was
3 monumentally important, because the lower sixth and
4 upper sixth formers in the school had single bedrooms.
5 We still had upper sixth formers out of public service
6 who wished to be residential prefects in the other
7 houses, but also it therefore meant the fifth form
8 horizontal house at Merchiston, those boys were living
9 in single bedrooms as well.

10 LADY SMITH: Thank you.

11 Mr Brown.

12 MR BROWN: Thank you.

13 From your statement, and from what you're saying,
14 there are strengths in both, there are weaknesses in
15 both. Does it really come down to this: whichever you
16 use, there have to be systems in place to address the
17 concerns that go with either?

18 A. Absolutely correct.

19 Q. Did you feel by the time you left Merchiston that those
20 systems were in place?

21 A. You can imagine with the staffing issue of RCQ that
22 I felt that whatever I thought about systems in place,
23 in that instance they didn't seem to work. And that
24 completely rocked my confidence in what we were doing.
25 I think it rocked everyone's confidence.

1 It was not a big school, we felt that we knew what
2 was going on.

3 Q. Well, that's what I was coming to. You try and put
4 things in place, but they can still go wrong, so you
5 can't -- one takes it from that -- ever sit back and
6 relax?

7 A. (Witness nods)

8 Q. But also you do what you can, and I think one of the
9 things you talk about was at the beginning it was
10 assumed that staff would be doing the best for the
11 pupils.

12 A. (Witness nods)

13 Q. Is one of the things you learnt in those 20 years: you
14 can't always make that assumption?

15 A. Yes. I think I was too trusting as a human being and
16 a leader. So we had to -- rightly so, we always had
17 professional review and development, but we had to bring
18 in systems of professional review and development which
19 drill down much, much deeper, obviously including much
20 more student input.

21 Q. Well, that's what I was coming to, because what we see
22 is you talk in positive terms, for example, about
23 a chaplain?

24 A. (Witness nods)

25 Q. Who was perhaps rather different from previous

1 chaplains, who could in some cases, as we know, be, as
2 described, the church militant because they beat with
3 gusto. This sounds much more like a counselling
4 chaplain, on top of the school counsellor that we have
5 heard was introduced in your time.

6 A. Absolutely. But we also brought in -- we were in favour
7 at Merchiston of the named person. Ironically, we'd
8 actually already done parts of that with the head of the
9 juniors, the head of the middle years, the head of the
10 sixth form, so we liked that -- that triangle in the
11 school.

12 I can't understand why, I liked triumvirates, so the
13 student leaders, the captain of school, the vice
14 captains, one was always from Pringle, one was always
15 from middle years, one was from the sixth form.

16 I had an academic leadership team of staff,
17 a triumvirate.

18 Why on earth I was so slow in thinking of the
19 triumvirate of the pupil support leadership team I do
20 not know, because I think that was also a very
21 significant move in trying to continue to drill down
22 even deeper.

23 We had to resource it and governance, but to be fair
24 regulators, I think, were suggesting we were under
25 resourced. Governance were totally in agreement with

1 this. And it was definitely in my view a positive step.

2 Q. One brief observation about resource, and this is
3 page 20, paragraph 45, and this is something we can come
4 back to shortly, but this is the HR provision in the
5 school. As you say, and this is looking at -- that
6 paragraph 45 begins:

7 "I do not think that the school was not operating
8 well in terms of child protection and safeguarding prior
9 to 2015. We always thought about the interests of the
10 pupil. However, we were inconsistent for a period of
11 years in automatically seeking advice from regulators
12 outside of the school and external agencies such as
13 Social Services, HMIE or the Care Inspectorate. If
14 there was an incident then why did we not automatically
15 place such a member of staff in the staff disciplinary
16 process?"

17 We'll come to that in detail later:

18 "I do not really have an answer to that except that
19 the leading team of staff running this school to start
20 with was very small. Looking back, possibly, I took too
21 much on my plate and my PA did as well. She was my
22 executive PA and she was also in charge of HR. At that
23 stage, we could not afford the extra function of HR."

24 This is a lady, Sharon Dow, I think?

25 A. (Witness nods)

1 Q. When did you get an HR member of staff rather than just
2 the PA carrying that particular load on top of
3 everything else?

4 A. Could I say as well that she only really handled certain
5 aspects of HR, which was mostly staff recruitment. The
6 system that was also brought in by the government for
7 checking on staff. She didn't do things like
8 disciplinary processes.

9 I can answer your question, because the first HR
10 appointment sat with me in that difficult meeting with
11 Mr James Rainy Brown in April 2013.

12 Q. So for 15 years ...

13 A. I was blessed with very able bursars. They -- they also
14 helped. They pushed their shoulders to the mill as well
15 as doing their jobs, we all mucked in and did it.

16 LADY SMITH: Were your bursars in house or did you use
17 outside bursar services?

18 A. Always in house.

19 LADY SMITH: Just going back to HR, your executive PA no
20 doubt had trained to do the job of executive PA. Would
21 I be right in thinking she had no HR qualifications?

22 A. Yes, that's correct.

23 LADY SMITH: Yet she was doing recruitment?

24 A. With me and others. I mean, I would never ever -- you
25 know, in an area as important as recruitment -- just

1 hand it over. And we were learning from bodies like
2 SCIS what to do, what not to do, and HMC, what to do,
3 what not to do, and then the other regulatory bodies in
4 Scotland. We were always trying to learn.

5 I can't remember where it is in my statement, but
6 she was responsible for bringing in that extremely
7 important form, which was part of the national
8 initiatives -- I'll try and find it.

9 MR BROWN: We can come on to recruitment specifically.

10 I see the time.

11 LADY SMITH: I think we could probably take the morning
12 break at this stage, Mr Brown.

13 MR BROWN: Yes.

14 LADY SMITH: I'm sure you'd welcome that, Andrew, am
15 I right?

16 A. Thank you.

17 LADY SMITH: We'll take a coffee break now and sit again in
18 quarter of an hour or so.

19 MR BROWN: Thank you.

20 (11.28 am)

21 (A short break)

22 (11.49 am)

23 LADY SMITH: Andrew, are you ready for us to carry on?

24 A. (Witness nods)

25 LADY SMITH: Thank you.

1 Mr Brown.

2 MR BROWN: My Lady, thank you.

3 Andrew, we were coming on to recruitment as
4 a discrete issue and you talk about recruitment at page
5 23 of your statement, from paragraph 54 onwards. You
6 make the point that you were fully involved in
7 recruitment of staff, effectively as the head you never
8 employed staff on your own and there was an elaborate
9 recruitment process, which I think we have seen and
10 heard examples of already:

11 "Any gaps in the CV were always explored by asking
12 prospective members of staff to explain any potential
13 gaps in their CV. Of course, this meant that as
14 'screeners' we had spotted ..."

15 So you had to read and use your head?

16 A. (Witness nods)

17 Q. "In time, we also developed a declaration form which had
18 to be signed by prospective employees indicating whether
19 they had been the subject of any disciplinary offences
20 or safeguarding and child protection issues. I cannot
21 remember the date when the declaration form was devised.
22 We did this as part of good working practice as
23 instructed by regulators."

24 And it was endorsed by the Care Inspectorate, you
25 say.

1 "I remember my longstanding PA ... devised the
2 original form."

3 So it would be before 2013?

4 A. Correct.

5 Q. As we've established, she didn't have HR training but
6 presumably she would find perhaps a template from
7 someone else and use that? Or was it her own thought
8 process? Do you know?

9 A. No, she definitely would have relied on other templates
10 and she may well have attended a SCIS course.

11 Q. Right. You go on that she:

12 "... devised the original form in addition to
13 developing the good working practice of job descriptions
14 and, in time, person specifications and a job
15 application form, as opposed to us relying on a cover
16 letter and CV."

17 I appreciate this form she devised is pre-2013 and
18 the appointment of an HR person. Was that process of
19 job application form pre-2013 as well then?

20 A. No, I don't think so. I think we still relied on the
21 letter of application and a CV. I can't remember -- I'm
22 sure we were advised to move to an application form
23 process, but with the letter and the CV we had what
24 I call the special form, which is -- I should know the
25 name of it, but everybody had it.

1 Q. You make the point over the page in the last sentence of
2 paragraph 57:

3 "My long-serving amazing PA had an unreasonable
4 workload so the first HR function was appointed in
5 January 2013."

6 A. (Witness nods)

7 Q. One does get the picture that -- again I'm not being
8 critical -- you were making do with what you had and it
9 took you 15 years to get that HR appointment which
10 perhaps, presumably, you would liked to have had
11 earlier?

12 A. Indeed. Or maybe I wasn't pushing enough. As the head
13 I was very aware of income versus expenditure, always.

14 Q. Either way, finance is a concern?

15 A. Yes, correct.

16 Q. As we continue through, you talk about development of
17 PVG checks and we can read about that, but if we go to
18 paragraph 64 on page 26, you talk about professional
19 development processes for teachers changing, and, 64:

20 "We sought written references wherever possible
21 before interview. The referee was asked about and
22 expected to cover suitability to work in a boarding
23 school, academic qualifications, teaching qualifications
24 if applicable, interests outside the classroom and the
25 character and personality of the applicant."

1 Moving on to 65:

2 "In time, I seem to remember 2013 onwards
3 [presumably with the inception of the HR staff],
4 I specifically asked the referee a question which I was
5 told was potentially not correct in terms of employment
6 law but the question was 'could you tell me if there is
7 any reason, please, as to why this prospective member of
8 staff would wish to work in a boys' school and seek
9 refuge in a boys' school?'"

10 Was that your formulation of words?

11 A. Yes, correct.

12 Q. Why did you formulate that question?

13 A. I can understand totally how one cannot be
14 discriminatory in interviews, but I felt that
15 potentially the pendulum had swung the other way, that
16 clearly I was never ever not going to employ somebody to
17 work at Merchiston if they, you know, were homosexual or
18 a lesbian, I was never not going to do that, but my
19 sixth sense and my nano moments were just saying to me
20 I feel that I need to ask this question.

21 Of course, the recipient head could actually decline
22 to answer it, because it's not a conventional question.
23 I felt I needed to protect -- I felt that we were being
24 stung in this area unintentionally. Or exposed.

25 Q. Just to be clear, though, is this because of the

1 Rainy Brown fallout? Or was this discrete from that?

2 A. It was discrete from that. I would never ever be
3 discriminatory, but it might be possible to suggest, for
4 example, that 'Robert' caused me interesting challenges.

5 Q. Well, let's look at 'Robert'. Could we please, just as
6 a heads-up -- bear with me one second. (Pause)

7 This is Merchiston 295 is a document we'll look at.
8 Just before we look at any documents, this is
9 a young teacher you appointed, I think, in 2001,
10 'Robert'?

11 Can we just keep to the statement for the moment.
12 'Robert' was 20 when he was appointed?

13 A. (Witness nods)

14 Q. I think you thought it was 22. He was actually just shy
15 of his 21st birthday.

16 A. (Witness nods)

17 Q. He was appointed -- and the subject matters don't really
18 matter so far as the evidence is concerned -- because of
19 particular skills.

20 A. (Witness nods)

21 Q. He was fresh out of university. He had no teacher
22 training --

23 A. (Witness nods)

24 Q. -- but he fitted what Merchiston wanted, so was
25 appointed.

1 A. (Witness nods)

2 Q. You remember all this?

3 A. (Witness nods)

4 Q. Was his appointment partly because he had come from

5 [REDACTED] Did that matter?

6 A. Yes, correct.

7 Q. It suited the Merchiston image?

8 A. We were never particularly interested in image. I was

9 always interested in recruiting the best possible staff

10 for pupils, and he won the interview process.

11 Q. All right.

12 A. He didn't win it because he came from [REDACTED]

13 Q. I think, having heard from him, he was somewhat

14 surprised to be approached and encouraged to go for the

15 job, which was not -- teaching was not what he had been

16 thinking of at that point, and this is while he's at

17 university. It's done through connections at university

18 and staff at Merchiston.

19 A. (Witness nods)

20 Q. That's what we understand.

21 A. I don't remember that, but I'm quite happy to be

22 reminded.

23 Q. Well, I think we've seen and heard evidence of that.

24 The other aspect, and given his youth, would he also

25 be -- thinking of 2001 and what you've been talking --

1 an inexpensive teacher, given his lack of experience?

2 A. We never selected teachers, ironically, usually around
3 cost. We always went for quality wherever possible.

4 This post was a difficult post, because [REDACTED] at
5 Merchiston was an enigma because it wasn't in the
6 [REDACTED] So we had
7 to hinge it onto, usually, an [REDACTED] appointment.

8 Q. Why do you think of 'Robert' when you think of
9 employment and recruitment?

10 A. Because I think, with hindsight, did I do him any
11 favours appointing him to Merchiston? I wasn't aware of
12 his sexual orientation or not, but clearly I had
13 a challenge, and it just crossed my mind, you know, if
14 I'd been able to, should I have asked that sort of
15 a question years ago?

16 Q. But I think, as you've said, you would never not employ
17 someone because of sexuality.

18 A. I wouldn't. I feel that that's discriminatory and
19 I think that's where in a boys' school it can be
20 a challenge.

21 Q. Well, I think, as we know from the evidence we've heard
22 in total, and as you know, heterosexual, homosexual, it
23 really doesn't matter, there's scope for abuse.

24 A. Mm.

25 Q. So it would be discriminatory in law, but it would be

1 discriminatory from experience of who abuses and who
2 they abuse. What I was going to speak to you about was
3 not the potential for discrimination but the allegations
4 of abuse that were made against him and were false, as
5 we know, and came to the school from a governor.

6 Correct?

7 A. I was never aware that the allegations were false.

8 Q. Well, I think you reported later to the police and we've
9 heard --

10 A. Ah, right, yes.

11 Q. Post Rainy Brown, you passed the police an appendix with
12 14 names, having done trawls, and the police pursued or
13 didn't pursue, having made investigation.

14 A. (Witness nods)

15 Q. So I think you can draw conclusions as well as we have
16 information from police documents.

17 But in relation to the allegation that was made
18 against him -- which was made after he'd left the
19 school, correct?

20 A. Yes, as far as I remember. This was one of the ones
21 where my sort of synchronisation of what happened was
22 not clear. Because as you reminded me this morning, it
23 was a governor who went to the chair. I thought it had
24 come to me first.

25 Q. Well, I think we've gone through the documents with

1 'Robert'. What is perhaps troubling is that the
2 governor -- I'm saying this for your comment -- makes
3 an allegation and all manner of things then happen
4 without any reference to outside agencies, and in
5 particular, without any reference to the person the
6 allegation is made against.

7 A. I agree. Our procedures were awry.

8 Q. In fact, as we heard, 'Robert' was oblivious to there
9 being an allegation throughout, because he was never
10 told. Correct?

11 A. As far as I know, correct.

12 Q. Because I think we have on MER295 at page 40 a letter
13 which you drafted from June 2006, but it's filed, "Not
14 sent", where long after the event you write to him,
15 advising of a:

16 "... potentially very serious matter in April this
17 year during a regular meeting with the chairman of the
18 board of governors, he notified me that he had met
19 recently with a former parent [who was a governor]. The
20 latter alleged ..."

21 And it goes on.

22 "Child protection guidelines require me to
23 inform ..."

24 All the various people. Did you inform any of those
25 people in 2006; do you remember?

1 A. I assume that if I've notified the police after
2 I received knowledge of this, that I did notify the
3 regulators. I hope I did. If I did not, that was
4 a mistake. I can't understand why I would have written
5 this letter if I hadn't done that. If I hadn't notified
6 the regulators.

7 Q. Well, I think the point is the letter wasn't sent. And
8 the net effect of that was whilst 'Robert', who was
9 coming back to see people at school and was getting very
10 mixed messages, on his account, from you that he
11 couldn't be in the school, that he could be in the
12 school, that he couldn't be with people, none of which
13 made any sense to him, was never aware of this
14 allegation at all.

15 A. (Witness nods)

16 Q. Which would suggest that you may not have shared with
17 anyone, that there was a great deal of anxiety but no
18 action.

19 A. I regret that.

20 Q. Yes.

21 Just out of interest, why do you think you didn't
22 share an allegation with the person who is alleged to
23 have done something?

24 A. I really -- I really don't know, because I'm sure
25 it's -- it was unlike me.

1 Q. Going back, though, to the issue of his appointment,
2 I think from what we have heard, there was uncertainty
3 about sexuality but some staff were anxious of potential
4 homosexuality. Do you remember that?

5 A. No. I remember that we were concerned, which was bound
6 to be the case because he was so young -- I thought he
7 was older than 20 -- of his closeness to senior pupils.

8 Q. Again, this is going back to systems. Was that not
9 inevitable, because given his youth and your choice of
10 appointment, the people he would be closest in age to
11 would be the senior pupils?

12 A. Correct. And even if we had, once we'd appointed him it
13 would have been better if he was not residential on the
14 campus.

15 Q. That was the other aspect that he spoke of, that in
16 interview he was interviewed initially for a teaching
17 post, but in a phone call with you, you then introduced,
18 "Would you also like to work in one of the houses?"

19 A. (Witness nods)

20 That was our normal approach. Lots of staff wished
21 to do that, they wished to actually see the school for
22 real. But the job offer was not conditional on the
23 member of staff saying yes. And obviously, with
24 hindsight, one can see that he should never have been
25 offered the option of working in a house, simply because

1 of his tender age.

2 Q. But that wasn't something clearly that was adequately
3 considered?

4 A. No. And also I think with that particular role, he
5 injected into [REDACTED] in the school
6 something that was quite, quite magical. With that
7 particular role, he probably needs to recharge his
8 batteries, not being a residential member of staff.

9 Q. But it suited Merchiston to have him in both roles,
10 hence you asking would he do it?

11 A. We didn't mean to come across like that.

12 Q. Well, he chose himself, but I think the point that he
13 made was the application initially was to be a teacher.
14 It is then introduced very quickly thereafter, "Would
15 you also like a house role?" Merchiston is doing what
16 suits Merchiston rather than what may suit, with
17 hindsight, the individual or the school. It was a bit
18 hasty, perhaps?

19 A. Yes. I apologise.

20 Q. Just as with the way the report was handled after he had
21 left the school, it doesn't seem to have been, perhaps,
22 adequately thought through, he was never told and do you
23 think it's of concern that a governor can have that sort
24 of sway?

25 A. I apologise again for our procedures being way, way

1 below the acceptable. The governor should never have
2 had that sway and influence. He was a powerful
3 governor.

4 Q. Are we back to what we were talking about during your
5 probationary period: you had issues with some of the
6 governors, perhaps more traditional long-term Merchiston
7 governors, who thought they could control to that
8 extent?

9 A. No. This governor of the pupil was a new-style
10 governor.

11 Q. I see.

12 A. His son was -- enjoyed Merchiston to the full in all
13 aspects of school life, so I think he was a parent
14 governor. He could articulate his views in quite
15 a strident fashion, but he wasn't a Merchistonian. It
16 just strikes me that this just careered out of control,
17 and again, you know, I should have handled this
18 differently and better.

19 Q. In fairness to you, this is 2006, within the first
20 decade, when things are still, from a staffing level,
21 perhaps tighter than you would like?

22 A. Yes, correct.

23 Q. Had devolution of responsibility from you adequately
24 been shared out or were you still bearing too much of
25 the burden; do you think?

1 A. I think I was -- we were still finding our way. We had
2 to also find people to help us in the houses. I agree
3 that this wasn't the right way to do it, because helping
4 in a house was not necessarily what people wished to do.

5 LADY SMITH: Andrew, did you speak to the Chair of Governors
6 about this conduct on behalf of the parent governor?

7 A. I can't honestly remember, Lady Smith. I mean,
8 obviously I would have met with this chair and discussed
9 this issue a lot, and I'm sure he met the governor.
10 I seem to remember the governor also came to meet me
11 over this issue, but I may be wrong about that.

12 I do not remember -- so the chair definitely spoke
13 to the governor about this and that was as far as
14 I think it went.

15 LADY SMITH: As I understand it, correct me if I have this
16 wrong, the governor demanded that -- was it the
17 housemaster -- go to speak to him in his office in term?

18 A. (Witness nods)

19 That is coming back to me now, and again that is
20 unreasonable.

21 LADY SMITH: If you look at it from the point of view of
22 a governing body, would you agree that that's just not
23 acceptable, an individual member of the board cannot go
24 off on a frolic of their own, if you like?

25 A. I agree totally. But equally, governance shouldn't

1 really be involved in the executive of the school, but
2 the executive of the school should get better what it
3 should be doing in the executive of the school. Which
4 then goes back to the poor handling of this whole issue.

5 LADY SMITH: Do you know whether anyone made it clear to
6 that governor that that kind of thing simply mustn't
7 happen again?

8 A. I couldn't comment on whether my second chair did that
9 or not. I mean, I just do not know.

10 I mean, this mess was further compounded by the
11 sudden death of the governor.

12 LADY SMITH: Yes, yes. Thank you.

13 Mr Brown.

14 MR BROWN: Thank you, my Lady.

15 I think we can move on from 'Robert'. But going
16 back to the issue of appointment in the round, it's fair
17 to say that you had issues yourself in terms of what had
18 not been said to you in references in the case of
19 'John'?

20 A. (Witness nods)

21 Q. That, as we see from CIS182, all becomes apparent in
22 July 2014, 8 July, when an allegation is received from
23 a former pupil of another school that one of your
24 members of staff has abused in the past.

25 A. (Witness nods)

1 Q. This obviously is after the death of Rainy Brown and the
2 inspection, so would it be fair to say you were on your
3 mettle in terms of responding proactively to that sort
4 of issue?

5 A. Absolutely. Tuesday, 8 July is in the summer break.

6 Q. But matters progressed, and we can see this, over the
7 summer and the net effect was that that member of staff
8 did not return to school?

9 A. Correct.

10 Q. But what is apparent, and we don't perhaps need to go
11 into the full details, but there is great enquiry and it
12 is apparent that you are concerned principally that that
13 teacher had not answered the questions you had asked him
14 to report, had there been any incidents, accurately?

15 A. I think my real anxiety was I couldn't get the form from
16 his present employer, so the headteacher -- that was my
17 real anxiety. Because I'm sure the member of staff on
18 his application form would presumably have ticked the
19 box, "No, there were no incidences", but we were still
20 awaiting the form from the actual employer. And the
21 mistake made, because we -- it was the summer holidays.
22 We pestered and pestered and pestered that employer, to
23 no successful end.

24 Again, with hindsight, we should have withdrawn the
25 job offer on the basis of not receiving that form.

1 Q. I think if we look at CIS page 39 at the bottom, and
2 this is a memo that you have created reflecting some of
3 your conversations with, I think, the other headmaster,
4 if we go down to the bottom:
5 "At this stage, ARH indicated to JG two issues with
6 regard to child protection that Merchiston had already
7 had with [this teacher] over the past two terms ..."
8 You set them out there:
9 "[The other headmaster] indicated that he saw this
10 as [the teacher] getting it wrong again: 'making
11 a mistake and needing a reminder'."
12 The teacher may not have ticked the box accurately,
13 but it would appear that there were signs potentially at
14 Merchiston which hadn't been picked up on?
15 A. To my knowledge, we acted on those two issues, because
16 certainly one of my Child Protection Co-ordinators
17 reported them to me.
18 Q. But what takes to prevent him coming back at the end of
19 the summer holiday is the information you received from
20 a former pupil about activities with another school?
21 A. Absolutely. And remember with this one, JG I think is
22 the head of this candidate from maybe two schools
23 further back. Or three schools, I can't remember.
24 Q. Absolutely, going back to an incident I think as we know
25 in 2002.

1 A. (Witness nods)

2 Q. What's telling, though, is that incident was known about
3 in the first school in 2002, but clearly he has gone
4 through two previous schools after that before coming to
5 Merchiston and knowledge has not been shared by the
6 schools.

7 A. Correct, which was why -- I mean, this was summer
8 holiday. That was why we had no choice but to end this
9 member of staff's employment at Merchiston before the
10 beginning of a new academic year.

11 Q. But that demonstrates -- presumably this was your
12 thinking: I wish we'd known from the other schools what
13 they -- or certainly the first school, what they knew?

14 A. Absolutely.

15 Q. But in your experience -- sorry, just to put it in
16 context, with 'John', Merchiston got its fingers burnt?

17 A. It did.

18 Q. Because of a lack of candour, on the face of the emails,
19 because he hasn't responded to the questionnaire
20 properly, but perhaps more significantly, allowing for
21 self-interest, because referees in the past have not
22 been candid. I'm just interested in your views of
23 candour in references.

24 A. I think that mistakes have been made in the past in that
25 area. I think even at Merchiston I also made mistakes.

1 We hit challenges, sometimes with references for
2 employees outgoing, particularly in the area of
3 settlement agreements, and we had to re-examine our
4 policy in that area.

5 With this one, I still feel -- and hindsight is
6 a fine thing, but now what I would do, I wouldn't have
7 known any of this. I would have withdrawn the job offer
8 because we didn't receive the form from the present
9 employer. Because that in itself, it was already saying
10 to me: I don't understand this, why am I not receiving
11 this form?

12 Q. So in an ideal world, heads are candid and open about
13 what has gone on?

14 A. (Witness nods)

15 Q. Would you agree with that?

16 A. In an ideal world, yes, they are, they are, scrupulously
17 honest. I think there have been developments, there has
18 been a huge improvement in that area, there needed to be
19 an improvement. I also needed to improve in some
20 instances.

21 Q. It's just that we -- you've acknowledged already and we
22 don't need to labour the point, but with compromise
23 agreements with **DRW**, you produced a reference which
24 said nothing about any concerns. You'll remember that?

25 A. I do, and I can -- I can give some explanation to that

1 if it would help.

2 Q. If you like.

3 A. That period of first of all one member of staff
4 committing suicide, then the suspension without
5 prejudice of another, and then an external report
6 conducted on behalf of the governors checking what the
7 school had done in terms of safeguarding child
8 protection with those two members of staff being
9 conducted, and we made the decision that we had to cease
10 the employment of DRW.

11 We were also under huge pressure from audiences
12 everywhere. With the suicide of the one member of
13 staff, I had supportive parents, I had supportive
14 pupils, I had those who were the complete opposite,
15 I had distressed pupils, I had very angry alumni, I had
16 distressed alumni.

17 With the issue of DRW, and James Rainy Brown,
18 particularly with DRW, we were under pressure from
19 a member of the alumni who lived locally. That member
20 of the alumni felt that Merchiston had not got it right
21 with James Rainy Brown and DRW. That member of the
22 alumni, who is a very able person, a former headteacher,
23 felt that our processes led by John Robertson were not
24 partial. They were not partial because John Robertson
25 was a former head with me in Scottish HMC --

1 Q. Sorry, do you mean impartial?

2 A. Sorry, impartial. It was not fair. It was always going
3 to be slanted because he was the former rector of
4 Dollar Academy. But it was that report which indicated
5 that in his view, having interviewed lots of staff,
6 including DRW, that DRW was never really going to
7 come on board with the Merchiston way.

8 This member of the alumni -- we shouldn't have done
9 it -- put us under pressure to suggest that at the very
10 least we would supply a reference that did not have the
11 details in the reference. The "us" who were put under
12 pressure was my chair and myself. We should still not
13 have done that reference as we did it. And I cannot
14 remember whether I did a supplementary or an addendum
15 reference or not.

16 Q. In summary, you were being pushed in all directions and
17 you tried to be fair to everyone?

18 A. Yes, but that's not possible.

19 I would wish to stress that with DRW there had
20 been no repetition of the safeguarding and child
21 protection instances from his first passage of time in
22 the school, when maybe, a little like 'Robert', he was
23 of a youthful age. But it was very uncomfortable and in
24 effect we had, in addition to the James Rainy Brown, we
25 had another form of mayhem.

1 I think it's also important to add, and I add I do
2 not say this lightly, that my chaplain was extremely
3 concerned about the welfare of DRW .

4 Q. That's apparent from the files and we don't need to go
5 into them. But part of the reason for that was the
6 response of the school was extremely robust, no doubt
7 because of what had happened to Rainy Brown and all that
8 was uncovered thereafter, but in effect DRW and his
9 family were put under curfew in their own house.

10 A. Awful.

11 Q. Do you think the school's response was too far the other
12 way, having done so little with Rainy Brown, it went too
13 far as a knee-jerk response to all the pressure you were
14 under?

15 A. I agree.

16 LADY SMITH: Am I to take it from what you said, Andrew,
17 that it was on the advice of this alumni who lived
18 locally that you did that? Or not? I'm not sure I was
19 following what you were saying about the influence that
20 person brought to bear.

21 A. Yes, that is -- that was --

22 LADY SMITH: That person's a lawyer?

23 A. No.

24 LADY SMITH: Is it -- no?

25 A. A former schoolteacher, a very able practitioner.

1 A former housemaster at Merchiston and a former
2 headteacher of an independent school in the Midlands.

3 LADY SMITH: Okay. And the report you referred to? Who did
4 that?

5 A. I'm sure we've written about this, but --

6 LADY SMITH: Yes, just remind myself --

7 A. It's my third chair. And in terms of datelines, I'm
8 sorry, I cannot remember the exact datelines.

9 LADY SMITH: That's all right.

10 A. He commissioned two reports, rightly, into aspects of
11 the school, particularly safeguarding, child protection
12 and well-being of the pupils. One was commissioned,
13 I remember, by representatives from the universities of
14 Birmingham and Stirling.

15 The second one, I can't remember the order or if
16 they were on the same topic even, was commissioned by
17 Kate Cherry, retired HMIE, whom we had a huge amount of
18 respect for. She inspected the school.

19 This third one, the suicide of the member of staff
20 was 29 April 2013. Within memory, I was then dealing
21 with the suspension without prejudice of **DRW** probably
22 within a week. My chair, I think, felt that we were
23 just hopelessly adrift, what was going on? So he asked
24 me to find a civil servant or a QC to do a report into
25 how the school had handled James Rainy Brown and was

1 handling DRW . So that report was the one done by
2 John Robertson, by then the retired rector of
3 Dollar Academy. I cannot remember the processes of the
4 report, except I remember being interviewed extensively,
5 other members of staff were interviewed extensively.
6 DRW would have been interviewed extensively as well.
7 LADY SMITH: You had that report some time in 2013; did you?
8 A. That would have been in the last four weeks of the
9 summer term of 2013.
10 MR BROWN: I think, if I can cut in, my Lady, it's a report
11 dated 17 June 2013, it's document MER192.
12 LADY SMITH: Thank you.
13 Thank you, Andrew, that helps.
14 MR BROWN: I think the feeling was, certainly from some
15 quarters, that it wasn't impartial because it was
16 written by the person you've described as one of your
17 mentors?
18 A. Correct.
19 Q. Yes.
20 A. But it was --
21 Q. And it was a report that supported everything you had
22 done in relation to DRW ?
23 A. I mean, to be honest, there are parts of this time
24 I just do not remember things, because it was traumatic.
25 Q. Yes.

1 A. And I do agree with you that it felt most odd going from
2 this pastoral spiritual heart to this other way of doing
3 things. And again, should I have stood up and said,
4 "But I don't have to do it that way, we can achieve the
5 same ends by doing this". Because you'll remember as
6 well the traumatic time with 'Jane'.

7 Q. Yes, I was coming on to 'Jane' in a moment. But so far
8 as DRW is concerned, I think we have the reference,
9 and this is following advice of lawyers and part of the
10 compromise agreement, a reference was provided which was
11 positive or didn't make reference -- though I think to
12 be fair to you, by that stage the police had confirmed
13 there would be no charges.

14 A. (Witness nods)

15 Yes, they had, yeah.

16 Q. Okay. That was obviously 2013.

17 Going back in time, 'Glenn' is a teacher you've
18 mentioned already and who was in a senior position in
19 the school.

20 A. (Witness nods)

21 Q. But you will remember that there were issues -- we'll
22 come back to him perhaps briefly in the afternoon, about
23 something else -- in 2009, the year he was retiring, in
24 relation to computer use.

25 A. (Witness nods)

1 Q. You had discussions with him and it was agreed that he
2 would not transgress again and that he would retire; the
3 retirement was already in train?

4 A. (Witness nods)

5 Q. But you'll remember that he had asked you to provide
6 a reference for the English Speaking Board, which you
7 did?

8 A. (Witness nods)

9 Q. You remember that?

10 A. Yes.

11 Q. We've seen -- again, we don't need to burden you with
12 the documentation -- the letter to you requesting that
13 you provide a reference, which makes the point
14 explicitly that 'Glenn' would be working individually
15 with pupils of all ages. You will remember your
16 reference made no account of what had happened months
17 previously.

18 A. (Witness nods)

19 Q. Correct?

20 A. I regret that.

21 Q. Why did you do that, can you remember?

22 A. I really don't know.

23 Again, I would say it just compounded the whole
24 series of mistakes, even dealing with that one. Again,
25 would that have been an early test of -- was an example

1 again of failing to let the chair know? 'Glenn' was
2 also [REDACTED]
3 [REDACTED] but failing to let the regulators know, failing
4 to let the police know ...

5 We did do an extensive risk assessment with the
6 director of IT. I spent a lot of time with the director
7 of IT on this. I didn't even let his fellow deputy head
8 know. So then -- because again one can see quite
9 clearly, whichever way one does it, this would have been
10 a suspension without prejudice.

11 Q. Were you aware -- and we have the documentation that the
12 IT staff at Merchiston had produced, lists of the
13 material that had been viewed, did you read that?

14 A. They gave it to me.

15 Q. Yes. And you read it?

16 A. I didn't particularly want to read it. I read about one
17 page, and that was enough for me.

18 Q. Right.

19 A. And I remember filing it in that part of the record of
20 this issue.

21 Q. The records were kept, the record keeping was great.
22 There was clearly a tension, because you knew the man
23 well, you thought highly of him in every other sphere,
24 fair?

25 A. Yes. He was very effective at his role. He was strict

1 but fair. It took pupils and members of staff some time
2 to adjust to that, because he had very high standards.
3 Again, I just think I was just utterly astounded, but
4 that doesn't excuse the litany of mistakes, which is
5 then compounded by the reference.

6 Q. But I think, and we can just get this over with now,
7 what you know and we know is -- this is from material in
8 2017 and another memorandum that you wrote, it's only at
9 that point that the connection between a previous
10 incident in 1995 under your predecessor in your mind
11 linked potentially with the internet use. Is that fair?

12 A. Yes. That goes back to again the inspection of staff
13 files. 'Glenn' was never mentioned to me by my
14 predecessor as a person of concern, and you are correct,
15 because it was only when we did the equivalent of the
16 double asterisk exercise of this file that we had two
17 issues. And I very much hope I supplied an addendum
18 reference then.

19 Q. I can't honestly remember the answer to that, but it
20 will be there in the documentation, because the records
21 are very clear. A little -- 2017, eight years down the
22 line, might be seen as a little late, but be that as it
23 may. What's interesting is in 2009 -- and it's
24 a counsel of perfection, I appreciate this -- you didn't
25 look at the staff file then.

1 A. I agree.

2 Q. Thinking ahead and touching on evidence you gave
3 earlier, would you say that staff files should be gone
4 through as one of the first things a new head does?

5 A. Yes, and I think the ongoing filing procedure and
6 process has to be exemplary, with systems. We tried to
7 do that at Merchiston. In my latter years I remember we
8 had a special form that went inside the file, which was
9 red, I think.

10 Q. We'll come to 'Jane' momentarily, but just very briefly,
11 touch about 'RCQ', obviously the teacher who I think
12 last caused you difficulty and considerable angst, from
13 what you've said previously.

14 In terms of what we have heard from other staff who
15 have given evidence already, anxieties were raised about
16 her dress.

17 A. (Witness nods).

18 Q. And that was well known? To you?

19 A. Yes, and we attempted to deal with them. We didn't deal
20 with them very well.

21 Q. I think we know that there were anxieties on your part
22 going back to 2011 about some of the things that were
23 reported to you she had been saying in lessons about
24 sharing images?

25 A. (Witness nods)

1 Q. Do you remember that?

2 A. I don't remember it when I did my statement, but I now
3 do remember it.

4 Q. That, of course, has relevance to what you discovered
5 after she had left.

6 A. (Witness nods)

7 Q. Just thinking in terms of references, the discoveries
8 that were made about her conduct, which caused you so
9 much difficulty, were after obviously she'd moved on to
10 another school.

11 A. (Witness nods)

12 Q. And after you had provided her with a reference?

13 A. (Witness nods)

14 Q. If we could look, please, at MER290 and go to page 24.
15 This is the third page of the reference and you can take
16 it from me that there's no reference to either of those
17 matters of concern, and others, in your reference and it
18 conclude, if we look at the last full paragraph:

19 "I support [the] application without reservation."

20 Why did you write that against the background of the
21 anxieties you've just accepted?

22 A. Could I refer to the paragraph before?

23 Q. Yes, please do.

24 A. Where I say:

25 "However, whilst we may be oversensitive as a boys'

1 school, we have had to give advice ... with regard to
2 professional dress and appearance on several occasions."

3 Q. Yes, but in terms of the [REDACTED] sharing of
4 photographs, which was something that I think was shared
5 with you from documents we have in 2011, and also
6 matters that you subsequently that year wrote on
7 an addendum reference saying various items have
8 resurfaced, I think was the word that you used, which
9 involved showing 18 videos to school children and
10 various other activities that were perhaps less than
11 ideal, and you felt should be shared with the new
12 school. You used the word "resurfaced", they were
13 clearly noted. Systems failure?

14 A. I regret not including it in the first reference.

15 Q. Yes.

16 A. I remember that she was not residential in her next
17 school, which I approved of. But I should still have
18 mentioned the first instance of [REDACTED] images.

19 Q. That, if I may say so, is a not uncommon attitude of
20 heads we have heard from or read about. There is
21 a reticence to go into full detail in the hope that
22 either the head will phone the head of the next school
23 or the head of the next school will phone the current
24 head, and really an aspiration that there are matters
25 which will be picked up reading between the lines of

1 what is said, but they're opaque, and it's really the
2 feeling that the onus is on the new school to read
3 through the lines and ask the right questions. Do you
4 recognise that?

5 A. Yes, I do, and with this one ironically, I failed to
6 ring the head. Because actually the memo to a certain
7 extent was to myself to say, "Can I book a call please
8 because I want to discuss other issues", and I didn't do
9 that telephone call. Because I did try wherever
10 possible not to put the onus on the receiving head if we
11 had these challenges.

12 Q. Why did that process exist? What was seen -- you have
13 worked in the environment for 40 years. Why was there
14 such reticence about just being open?

15 A. I don't think there is reticence now, even since this.

16 Q. I'm talking about then.

17 A. (Pause)

18 I don't really know. I mean, this member of staff
19 was very, very capable as an academic practitioner.

20 I was delighted that she'd been made a [REDACTED]
21 [REDACTED] in a very, very good school, a [REDACTED]
22 [REDACTED] [REDACTED]. But a member of staff can never
23 have a new start without all the information being
24 divulged.

25 Q. Forgetting the individual, what we're talking about is

1 practices, and it's a practice we have heard and can see
2 from your conduct, but we've heard and seen it from the
3 conduct of other heads looking back. We'll come to
4 where we are now and what we should be doing now, but
5 why was there reticence, 1990s, 2000s, 2010s, to be
6 candid?

7 A. As far as I feel, it was not about protecting a member
8 of staff. It was not about also exposing other students
9 to risk. It was just, wrongly, what was happening.

10 Q. You talk about concerns -- and this is in the
11 statement -- of giving references, there being no
12 obligation to give a reference. I'm looking to your
13 statement, page 26:

14 "I and others always endeavoured to speak to the
15 referees as well before the interview. I believe this
16 happened the majority of the time from 1998 onwards and
17 often we also phoned somebody whom we might know from
18 the candidate's past employment record who was not named
19 as a referee. We felt this gave the referee the chance
20 to say something that he or she might not wish to put in
21 writing. In time, once we had established an HR
22 function, verification phone calls happened to the
23 referees on the written reference after the actual
24 interviews."

25 The reason I'm asking all this is recruitment from

1 your experience from other heads seems to have been
2 perceived as very difficult and getting references that
3 were open and honest. One head has said, "The problem
4 was, if you're open and honest, they would never get the
5 job". Is that what is lying behind the reticence?

6 A. No. I mean, again with this one, what I should have
7 done with this one -- because I was usually -- the
8 receiving head was the one who always made the phone
9 call. I always made the phone call to the present head
10 myself. With this one, I should have done the phone
11 call to the receiving head as part of the interview
12 process.

13 Q. The problem is either way is leaving things open to
14 chance, and the chance that someone who should not be
15 employed is employed because of reticence.

16 A. (Witness nods)

17 Q. That's hardly satisfactory.

18 A. I agree totally.

19 Q. What do you do to stop that?

20 A. Systems. The tick-box form. And absolute clarity and
21 absolute honesty.

22 Q. Do you see problems in that approach?

23 A. No.

24 Q. And yet it's not an approach that as recently as 2015
25 you were employing?

1 A. Again, I apologise for that. I also don't totally agree
2 that it would mean that a candidate would never get the
3 job. I think receiving heads are actually -- if you do
4 give them the full information, they are more informed
5 at interview. They can do a risk assessment. So
6 I agree that with this one I did not do that.

7 I still believe she had the capacity to be
8 an outstanding [REDACTED]

9 LADY SMITH: Equally, Andrew, and you say this at
10 paragraph 258 of your statement, on page 85:

11 "Her way of dressing her upper body revealed far too
12 much and was wholly inappropriate in a school setting."

13 A. (Witness nods)

14 LADY SMITH: As I understand it, that is why she was spoken
15 to about the way she dressed at school?

16 A. (Witness nods)

17 LADY SMITH: And yet, when you were writing that reference,
18 it was very much toned down, wasn't it --

19 A. (Witness nods)

20 LADY SMITH: -- and all you said was she had to be spoken to
21 about dressing more professionally. That really doesn't
22 tell the reader what the problem was as you capture it
23 in paragraph 258.

24 A. (Witness nods)

25 LADY SMITH: Going back to when you were writing that

1 reference, why did you term it in the way that you did?
2 Why tone it down?

3 A. I certainly was not wishing to get rid of a problem onto
4 another school.

5 LADY SMITH: No, that's not my suggestion.

6 A. Unequivocally, that was never my direction of travel.
7 I honestly do not know. The failure was not doing
8 the follow-up phone call, but I agree that is not
9 systematic, because, as has been proved, I didn't do it.
10 I was also a little disappointed the other head
11 didn't ring me, but that doesn't matter because it was
12 my responsibility.

13 LADY SMITH: Okay, thank you.

14 Mr Brown.

15 MR BROWN: Thank you.

16 I think at this stage just as a remainder, reference
17 to subject has been disclosed and that should not be
18 shared.

19 LADY SMITH: Absolutely, yes. That's purely for the purpose
20 of this important evidence and it's not to be repeated
21 outside this room. But it is significant that what you
22 wrote was less clear and candid, perhaps. I'm not
23 suggesting you were being deliberately dishonest,
24 Andrew.

25 A. I think if I could go back, maybe, Mr Brown, to your

1 question, I think that for whatever reason, it's been
2 hard for heads to develop a skill that I would call
3 "critical candour" or "courageous authenticity".

4 MR BROWN: Why so?

5 A. Sometimes I don't think it's in our nature, that's why
6 we have to learn that that comes first, the critical
7 candour and the courageous authenticity.

8 Q. Since you left Merchiston, have you seen signs of that
9 approach in education?

10 A. Definitely.

11 Q. Where?

12 A. Well, I mentor two heads at present in Scotland and we
13 don't have a fixed menu as to what mentoring entails,
14 but I can assure you we have discussed the concepts of
15 critical candour and courageous authenticity.

16 Q. That's something we can perhaps take up with others.

17 LADY SMITH: Mm-hmm.

18 MR BROWN: Finally, as we approach the lunch hour, you
19 mentioned 'Jane'. In context we've heard from 'Jane'
20 and the particular approach that was taken to her
21 following the December 2015 Care Inspectorate
22 inspection. Are you aware, or has it been reported to
23 you what she was saying about how she was treated?

24 A. No, except in the sense that, you know, clearly we all
25 knew what on earth are we supposed to do here? I mean,

1 we were in the midst of an inspection.

2 To be fair, I also felt that member of staff was not
3 well. In fact, my senior deputy head and myself had
4 gone to visit that member of staff because we knew the
5 inspection was about to happen. We had been told that
6 her GP had signed her off to be able to work part-time,
7 not full time. I couldn't see how that was going to
8 work.

9 And then in this inspection we suddenly find out
10 that -- and the regulators presumably had evidence --
11 that the regulators had great concerns about the safety
12 of some pupils in that part of the school and the
13 presence of a bench, which we thought had gone, and when
14 I asked -- I think my chair was with me that morning,
15 when I asked the regulators, "What do I do here?" and
16 rightly I was told, "Follow your policy".

17 It was horrendous. This was one of my [REDACTED]
18 I had the highest of respect for her. She was not
19 perfect, none of us are, but she -- she really
20 galvanised that part of the school. It was on
21 an upwards curve. Dynamic. It was horrendous.

22 I felt stuck. I felt that I was stuck between two
23 axes, the pastoral and spiritual heart and then this
24 other route, and I could not see my way through, even
25 with DRW [REDACTED], where do I go halfway through this pastoral

1 and spiritual heart and then to me what feels like a --
2 it's just so austere.

3 Q. I think we know from the 2015 report there was
4 requirement that that had to be addressed within weeks.

5 There were two aspects to her evidence, which I'd be
6 interested in your response to.

7 The first was that this was all a misunderstanding
8 and the bench was not used for punitive purposes. Was
9 that in due course borne out or not?

10 A. I don't know. I mean, I would have been very surprised
11 with this outstanding practitioner if it was being used
12 for punitive purposes. But I guess in terms of
13 ambiguity, with the regulators, I don't think they were
14 very happy that the bench was even there.

15 Q. That's one aspect. But the response, again, on her
16 account was abrupt and harsh, in essence. She had to
17 move out of the school.

18 A. I agree. I hated it as well.

19 Q. Did you try and make contact with her?

20 A. Yes. Myself and the senior deputy head. When we had
21 these very challenging situations, I always asked: who
22 is this member of staff's supporter? So with DRW it
23 was the chaplain. With this one, it was my senior
24 deputy head, and I definitely remember myself
25 accompanying the senior deputy head on one of the

1 meetings outside school with 'Jane'.

2 Q. What about the day it all blew up and she's given her
3 marching orders, effectively. Did you make contact that
4 night?

5 A. I cannot remember. I remember that I asked one of her
6 great friends in the school, the head of our support for
7 learning, to also make sure that she was in contact with
8 'Jane'.

9 Q. We understand from 'Jane' that she was at that point
10 living in the school, supervising the children. She was
11 concerned in her evidence about how the way she was
12 treated would impact on the children, she having
13 suddenly disappeared. Did that enter your thought
14 process?

15 A. Yes. This is not dissimilar to the DRW issue. What
16 was I supposed to do when the member of staff lives on
17 the campus and lives in a school house attached or in
18 the job?

19 Everything about me in my bones says you do not do
20 what I did do, but I felt that because I had been
21 criticised for being pastoral and spiritual and not
22 adhering enough to standard policies, process, standard
23 operating procedures, that I had to move to that side.
24 And I hated it.

25 Q. So from one side, you moved to the other?

1 A. Yes, and I hated it.

2 Q. Would you do the same today?

3 A. No.

4 Q. Might you go somewhere in the middle --

5 A. Yes.

6 Q. -- and compromise?

7 A. I also think -- I can only blame myself and my

8 co-leaders, because I'm not going to apportion blame to

9 other people. Whenever we dealt with these issues, I am

10 sure that we always asked for very close legal advice:

11 what do you think we should do? So either -- I cannot

12 believe in any of these issues that I didn't take legal

13 advice. I'm not blaming our legal advisers. I mean,

14 I've made so many mistakes before, unintentionally,

15 I thought I had no option, Andrew, but to make sure

16 I try and dot the Is and cross the Ts. But you're

17 absolutely right. I hated it.

18 We then had to look after not only the pupils, we

19 had to look after that member of staff's welfare, we had

20 to look after all the staff's welfare, because they had

21 not seen an Andrew Hunter, as in **DRW** and 'Jane', ever

22 before.

23 Q. Was the bench removed or was it --

24 A. Yes. That evening. I think it's a pity, it was a very

25 famous bench, but unfortunately it had been used for

1 wrong purposes in the past and I'm pretty sure it was my
2 order that irrespective of how it was being used, I did
3 not want it in that boarding house.

4 Q. That, I think, goes back to Rainy Brown?

5 A. Yes.

6 MR BROWN: We can perhaps talk about him after lunch,
7 my Lady.

8 LADY SMITH: Thank you.

9 We'll pause there for the lunch break, Andrew, and
10 I'll sit again at 2 o'clock. Thank you.

11 (1.02 pm)

12 (The luncheon adjournment)

13 (2.00 pm)

14 LADY SMITH: Andrew, I hope the break's given you time to
15 draw breath.

16 A. Thank you.

17 LADY SMITH: Are you ready for us to carry on?

18 A. (Witness nods)

19 Thank you.

20 LADY SMITH: Thank you.

21 Mr Brown.

22 MR BROWN: My Lady, thank you.

23 Andrew, hello again. I'm sorry, I said that we'd be
24 starting after lunch with James Rainy Brown, but there's
25 just one other person I'd like to speak about before we

1 do so and that's the person we're referring to as
2 [DXP] on the list of names, and if we could go to
3 page 81 of your statement, where I think you make
4 mention of this gentleman, who I think started, we see
5 from the first paragraph, in the same year as you, in
6 1998 and remained in the school until 2006. Correct?
7 A. [DXP] was definitely in the school before me.
8 Q. Okay. That's fine. It's just your statement says you
9 think his employment coincided with yours.
10 A. It did, but he was before me.
11 Q. But he was there before. Thank you, my mistake.
12 You talk about the things he did on that page of the
13 statement, but if you go over to paragraph 247:
14 "I didn't see him discipline pupils and I did not
15 see him abuse pupils. However, allegations of
16 inappropriate behaviour in relation to pupils were
17 reported to me. I cannot remember the precise dates but
18 from memory I had to deal with several concerns. First,
19 I remember that accompanying members of staff on a trip
20 to France wrote to me about appearing to look up boys'
21 kilts ... this was investigated."
22 Then there's another reference to a parental
23 concern. This, I take it, is coming back to you?
24 A. Yes, correct.
25 Q. Could we look at one document, PSS4461.

1 If we go to page 2, please, or go down to the bottom
2 rather of page 1, this is in relation to DXP and
3 it's a police document summarising events quite neatly.

4 The first concerns are raised in 1999 by members of
5 staff.

6 A. (Witness nods)

7 Q. Including one who became your Child Protection
8 Co-ordinator?

9 A. (Witness nods)

10 Q. Then a fourth member of staff raises a concern, again in
11 1999. Then, over the page, we see references to events
12 in 2000.

13 Then we go back in time to 1997, 1998, 1998, 1998,
14 1999, 1999 -- this may be a duplication, I recognise, of
15 some of the earlier complaints -- and then summer 2003,
16 which I think is the parental concern that you make
17 reference to in your statement.

18 Now, again, what seems to be apparent from that
19 police summary is a pattern of behaviour.

20 You were aware of that, excluding the 2003 parental
21 complaint which came later, and I think in 2000 there
22 was disciplinary consideration, correct?

23 A. (Witness nods)

24 Correct.

25 Q. But the end result was that gentleman continued working

1 at the school until retirement in 2006. We have the
2 transcripts of your interviews with that individual, and
3 clearly they were very difficult interviews, because as
4 we know at one stage he was very upset, he was giving
5 profound reassurance to you that this was not true,
6 I think threatening suicide at one stage, potentially,
7 so very difficult from your perspective.

8 And yet, looking at it on paper at least, a very
9 clear picture of a pattern developing?

10 A. (Witness nods)

11 Q. Why --

12 A. Absolutely.

13 Q. -- did he not --

14 A. Absolutely.

15 Q. -- go?

16 A. Clearly this shouldn't be the case, but one could not
17 imagine, which was the wrong thing to imagine, that the
18 [REDACTED] would be in these areas. But obviously we know
19 from history that sometimes [REDACTED] figures might be. So
20 I -- I did find it extremely difficult, extremely
21 difficult. I made mistakes.

22 I was trying by then to become more objective and
23 stand back, because I had Nigel Rickard, who was this
24 outstanding deputy head. And we should have done this
25 differently and better by obviously notifying my chair,

1 notifying the regulators, the police, and then the
2 disciplinary process.

3 Q. Nigel Rickard was your deputy head, he was also Child
4 Protection Co-ordinator?

5 A. He graduated from Child Protection Co-ordinator to one
6 of my deputies.

7 Q. Yes. I think around 2000, though, he would be the point
8 of contact to go to for such concerns?

9 A. As the deputy head or as the Child Protection
10 Co-ordinator?

11 Q. As the Child Protection --

12 A. Yes.

13 Q. It's simply that we heard from Mrs Garcia, who in due
14 course you appointed as Child Protection Co-ordinator
15 and who was one of the complainers about this behaviour,
16 that her experience of reporting that was that she was
17 made to feel she had the polluted mind for thinking such
18 a thing. Not an ideal approach.

19 A. I agree.

20 Q. It makes the point, perhaps, and this is more important
21 than the individual case, that it's very difficult
22 within the small world that is a school, where everyone
23 knows everyone else and there is a complaint against
24 a member of staff, it must, I imagine, be awfully
25 difficult, particularly as you say, given the role that

1 that individual played, you talk in your statement about
2 the emphasis that you placed on forgiveness and
3 ██████████ charity, if I can put it as simply as that,
4 but would you now agree that that sort of charity just
5 has no place in child protection?

6 A. Absolutely. There is no ceiling space for trying to
7 improve members of staff in the areas of safeguarding
8 and child protection.

9 Q. Practical steps were taken, I think, to ensure that he
10 didn't travel alone, that there were always other
11 members of staff on trips, and yet, on the face of it,
12 from 2000 with another reported incident in 2003,
13 lessons, despite assurances, are not learnt.

14 A. (Witness nods)

15 Q. Another example for the future, perhaps, to be rather
16 more cynical.

17 A. Yes. I would say that my style at times was too
18 trusting. Too inclusive. I found it difficult to stand
19 back at times. I very much hope that Chispa -- you
20 know, then I thought she was a marvellous housemaster
21 and also a marvellous Child Protection Co-ordinator, so
22 I apologise if that's how we made her feel. Because
23 perceptions equals reality, to use one of my cliches.

24 Q. Sorry, perceptions?

25 A. Perception equals reality. So what you feel could be

1 for real. So she felt that we made her feel bad.

2 I mean, I really, really hope that I did not do that,

3 it's very unlike me, but what she felt was what she

4 felt. That was reality.

5 Q. Thank you.

6 If we can move on to what I promised, which is

7 James Rainy Brown, you talk about him in various parts

8 of this statement, but if we look at page 71,

9 paragraph 204, and you've touched on this already, he's

10 red flagged by Spawforth. You have, I think, the image

11 of someone who is difficult, won't do it any way but

12 his, is that fair?

13 A. Yes. But obviously as a cover, maybe, and I use that

14 word lightly, tremendous at some aspects of his job.

15 Q. Mm-hmm. Again we have the impression that from a school

16 point of view he was ideal with perhaps less resource

17 than you would ideally want. He was the one person who

18 would always say, "I'll do it"?

19 A. (Witness nods)

20 Q. He'll do the bad shifts, the weekends, and of course

21 that suits everyone else?

22 A. (Witness nods)

23 Q. Is that accurate?

24 A. That's correct. It was a real, real conundrum.

25 I remember in my early days I insisted that he moved off

1 the school campus to his own house, because I didn't
2 want him depending so much on helping, in particular,
3 Pringle, and it was very difficult for the leaders of
4 Pringle because what would we have done without his
5 help, which was huge?

6 But I agree. We moved -- we moved slowly in trying
7 to remove this dependency on the school. But the
8 leaders of Pringle did need his help. Or we should have
9 found another way of providing it, which would have been
10 an expense. And that's what we should have done.

11 Q. But I think, so we understand the context, and this
12 obviously ties in with what we heard this morning from
13 you, he is favoured by generations of Merchistonians,
14 some of whom are on the board?

15 A. (Witness nods)

16 Q. Some of whom have children who have been educated by
17 him. He was protected, you felt?

18 A. Yes. I mean -- but even I as the head worked out --
19 I don't like this analogy, a Marmite character. Because
20 even I as a head worked out that there were some pupils
21 who really did not care for him, yet there were other
22 pupils who really did care for him and respect him, and
23 clearly that was also in the staff body, very much so on
24 the staff body.

25 It was a question of -- I wanted to retire him, and

1 I think it's in my statement. My bursar and I were just
2 too slow in seizing that opportunity before the
3 compulsory retirement age was taken away. We were too
4 slow in our footwork. Because that was an avenue for me
5 apart from, obviously, disciplinary avenues.

6 Q. We've talked about the fact that you didn't go through
7 the enormous staff file to begin with.

8 A. (Witness nods)

9 Q. Can you remember when you first did realise how the
10 past, as was recorded in the staff file and his
11 engagements with Spawforth, for example, and the
12 warnings that had been issued, were tying in with
13 conduct on your watch?

14 A. I can't. And again I think I need to be careful because
15 I'm pretty sure that I would not have started my
16 headship without looking at this file. It's just that
17 I don't think I would have looked at the file and --
18 I would not have gone through and only connect -- I'm
19 sure I would have read this file, but not in great,
20 great detail, just to get a glimpse of what my
21 predecessor had warned me about.

22 I think -- I can't remember, but the penny dropped
23 at some stage that an act of inappropriate behaviour
24 would happen and we'd then find out that this was
25 a return to the same act of behaviour from three years

1 earlier. And this must have happened, I think, on --
2 boys swimming naked at Blakerston. I think it may have
3 happened with apple dooking. It may have happened with
4 Litesome supports and boys.

5 So that's how I think we began to make the
6 connection, which is why then again we were adrift
7 because we didn't have an accurate audit from the
8 beginning of his career right up until then.

9 Q. I think if we look at one document, MER289, and if we
10 start at page 59 and this is covering the period, if we
11 go down the page, of your experiences.

12 If we start with the bold, 11 March, this is before
13 you come on board but very shortly before you come on
14 board, correct?

15 A. Yes, I started in September 1998.

16 Q. Yes. I think we see there's a report of boys naked
17 outside Scripture Union. There's the apple dooking.
18 And after that, he's told boys have to wear trunks.

19 A. Right.

20 Q. "Poor judgement -- exposes him. Requests second adult
21 at Blakerston Camps."

22 I think we know that prior to that, you know, there
23 had been issues of nude swimming and it seemed to be the
24 norm so far as James Rainy Brown was concerned, if
25 you're on a walk and you come to water, you strip off

1 and swim naked and that was well known?

2 A. (Witness nods)

3 Q. Then we move on to your tenure, and within really a year
4 of you being in position, rumours of him swimming naked
5 at Blakerston.

6 Just so we understand, where is Blakerston?

7 A. Blakerston is somewhere in the Borders. It's a sort
8 of -- it's a -- the house that belonged to the member of
9 staff who ran Blakerston -- not my staff or our staff.
10 The member of staff who ran Blakerston and Rua Fiola,
11 and that's where the boys camped and there must have
12 been a river, because that's where they swam, in
13 a river.

14 Q. That connection is Torquil Johnson-Ferguson?

15 A. Correct.

16 Q. He ran Rua Fiola, he ran Solwaybank, and Blakerston is
17 his property too?

18 A. I think so.

19 Q. You come into the school and you discover that Rua Fiola
20 is used by Merchiston?

21 A. (Witness nods)

22 Q. Did you understand that the connection for Merchiston
23 using Rua Fiola was the friendship between
24 James Rainy Brown and Torquil Johnson-Ferguson?

25 A. I think that we were very, very slow in making the

1 connection in that area. Because the issues at
2 Blakerston were levelled at James Rainy Brown, they were
3 never levelled at Torquil Johnson-Ferguson, apart from
4 one, which I think is later than this, where in pursuit
5 of monitoring that there would be enough hot water for
6 showers, he adjudicated as to who had had a long enough
7 shower.

8 Q. Okay. I think we know that in 2007 there were concerns
9 which were raised by the Child Protection Co-ordinator
10 and linked in with Iain Lamb from the Care Inspectorate
11 about boys being encouraged to have showers by having
12 foam breasts -- is that what you're thinking of? Or is
13 it something else?

14 A. I can't really remember. That obviously comes back as
15 well in my memory bank. I just remember that I was told
16 that why was Mr Johnson-Ferguson observing boys in
17 showers? Because he was monitoring that there would be
18 enough hot water for everybody to have a shower. But
19 I don't know if those two are the same.

20 Q. Right, but your instinctive thought was that was
21 Blakerston?

22 A. Yes.

23 Q. Not Rua Fiola?

24 A. Well --

25 Q. Or Solwaybank?

1 A. I had little -- hang on, yes. Rua Fiola is definitely
2 the foam one, I think. That's coming back to me.

3 Q. Okay. But moving on, November 1999 there was a request
4 that there is a second supervising teacher. Do you
5 remember how that went down with James Rainy Brown?

6 A. I can't imagine it would have been a bundle of joy.

7 Q. No. Was your experience that if you tried to enforce
8 control over him, you would meet resistance?

9 A. Yes. But I mean again this was -- it's manifestly
10 obvious that even then we were behind the curve,
11 because, you know, it's not right to just have one adult
12 in charge of some pupils on a trip. So even in
13 November 1999 -- I guess it's better late than never --
14 at least -- in all sorts of reasons, risk and hazard
15 assessment, health and safety. He wouldn't necessarily
16 have liked that because he saw risk and hazard
17 assessment in a different way to us.

18 Q. Yes. But then reading on, there's a complaint from
19 a parent that he's using the boys' loos.

20 A. (Witness nods)

21 Q. And again, in context Pringle, I appreciate you're
22 gently and progressively ushering him out, but did you
23 understand that Pringle in his mind at least was his
24 domain, his kingdom?

25 A. Oh, unequivocally. Even though by then, you know,

1 an outstanding practitioner, Peter Hall, when I arrived
2 at Merchiston Peter was the housemaster at Pringle, very
3 difficult position being the housemaster of Pringle when
4 the founding housemaster of Pringle is still there. And
5 then Peter eventually became the head of juniors,
6 because I wanted -- I wished to see clarity there.

7 It was extremely difficult for Peter. I mean, Peter
8 was incredibly gracious about all this, but I -- he was
9 always concerned, but we could just not work out how to
10 sort this out. And that's why we -- we -- we sort of,
11 you know, went to things like he couldn't live on the
12 school campus, but it didn't really make that much
13 difference. We reduced his commitments, you know,
14 et cetera.

15 I don't quite understand -- I mean this would be
16 maybe his obduracy and his stubbornness, because there
17 were toilets for members of staff in Pringle, obviously.

18 Q. But I think as we know, there are suggestions that he's
19 been showering with boys as well?

20 A. (Witness nods)

21 Q. Looking at the totality, nudity, and as we see from
22 continuing on to page 60, ongoing difficulties
23 throughout the 2000s, particularly once you get a matron
24 in post, where he is providing medical treatment,
25 applying ointments, massaging, all manner of things that

1 he shouldn't be but persists in doing --

2 A. (Witness nods)

3 Q. -- in essence.

4 A. Absolutely, and we should have dealt with this

5 differently, obviously at whatever stage I was at in my

6 career as the head, and if -- I mean, it is interesting,

7 because I obviously haven't seen this audit for a long,

8 long time. It's somewhat reassuring that we have one,

9 or we had one. But it is quite interesting that

10 November 2000, "Haunted by the thought of not being able

11 to work in ..." Presumably that's Pringle.

12 I mean, this is a card he did used to play, that all

13 he had in his life was the school -- but again, we

14 should have done something about that.

15 Q. Do you think that in itself is a warning?

16 A. Absolutely. The emotional dependency by him on the

17 school was extremely alarming, and again in a sort of

18 learning lesson, as it were, for any practitioner going

19 forwards, which members of staff are too dependent on

20 the school, and why? Would be a rhetorical question as

21 a leadership team or a management team.

22 Q. Or perhaps looked at the other way around: how many

23 members of staff does the school depend on too much?

24 A. Yes.

25 Q. And too willingly?

1 A. Yes.

2 Q. If someone is volunteering -- to repeat what I said
3 earlier -- is that a red flag in itself perhaps?

4 A. (Witness nods)

5 LADY SMITH: Was he still on the books on the same
6 employment basis as he had always been?

7 A. No, we reduced his salary considerably once he -- that
8 may have even happened before I started. So throughout
9 his time, with me, he taught some maths, probably
10 usually one set -- he was an outstanding teacher of
11 maths -- he coached athletics, he coached rugby and
12 outdoor education in Pringle. It was a reduced remit
13 with a reduced salary. But that wouldn't have
14 necessarily upset the member of staff, the reduced
15 salary, I don't think.

16 LADY SMITH: He was still tied to the school through
17 an employment contract?

18 A. Yes.

19 LADY SMITH: Thank you.

20 MR BROWN: And I think as we see on page 61, April 2003 your
21 next move is to ask him to move out of the school, but
22 it takes until July 2007 for that to happen.

23 A. (Witness nods)

24 Q. It is explained by the sale of land, but was every
25 effort made to delay it?

1 A. Yes.

2 Q. By him?

3 A. Yes. To be fair, he wasn't the only member of staff
4 that was very unhappy about that sale of land. We had
5 members of staff picketing at the front gates. But
6 understand it was a difficult -- difficult moment.

7 Q. I think if we go on to page 62 of the same document,
8 this is a memo you produced, dated as we see on page 64
9 on 1 May 2013, which is in response to the suicide.

10 Your top priorities obviously are focusing on
11 supporting the school without denigrating the man,
12 taking the high ground ... a difficult time for you?

13 A. (Witness nods)

14 Q. You saw him to alert him that the police were going to
15 be speaking to him?

16 A. Yes. The police came to see me to say that they had
17 received, you know, concerns from a member of the
18 alumni. I remember being very, very worried about this
19 man's welfare, Mr James Rainy Brown, because I can't
20 honestly remember, but I think that we were beginning to
21 be concerned, mainly information from my chaplain,
22 I think, that had he actually planned, if he had to, how
23 to commit suicide?

24 So I already was worried, and I did what the police
25 asked me to do. I remember if the police came to see me

1 on the Thursday, I asked -- it would have been Peter --
2 to do a risk assessment on James Rainy Brown for Friday,
3 Saturday, Sunday because I felt that my best decision
4 was to see him on Monday, not the Friday, which is what
5 I did. And that was the first meeting that we had, our
6 newly appointed HR officer present. She then attended,
7 as I said this morning, the second one. So that's
8 a very traumatic start to your new employment at
9 Merchiston.

10 I think this advice as well will have come from the
11 consultant who was helping me to try and deal with, you
12 know, this situation.

13 (Pause)

14 Q. What were you reading?

15 A. I was just reading the statement.

16 Q. Penultimate paragraph:

17 "As the headmaster, I can confirm that to my
18 knowledge there was never any physical, sexual abuse of
19 any child."

20 I think that's repeating in the ensuing pages, along
21 with the line on page 64, a bullet point:

22 "This has been combined with some outdated practice
23 but I never felt boys were in danger of physical or
24 sexual abuse, I never felt boys were at risk. We have
25 audited his file and I can provide a summary of the

1 incidents in it."

2 That's dated 1 May 2013. Did you have any concerns
3 at that stage about potential abuse? Or was it as clear
4 cut as you seem to be saying: you never felt boys were
5 at risk --

6 A. No, it's clearly not clear cut, so I don't quite
7 understand why I wrote that, because I knew it wasn't
8 clear cut. I'd been dealing with him, with these
9 recurring challenges, since September 1998.

10 Q. 2013 was obviously a very difficult year, because
11 following the death I think at that point it revealed
12 that there were tensions within the Merchiston body, if
13 I can put it that way, as between those who favoured
14 Rainy Brown and those who increasingly came out at that
15 stage to say, "We are troubled by this". Is that
16 accurate?

17 A. Totally correct.

18 Q. Prior to the death, had you heard the second set of
19 voices expressing concern from the past pupil body?

20 A. Very, very rarely. Occasionally I would hear from
21 a former pupil, "What is James Rainy Brown still doing
22 working at Merchiston?" And occasionally I think
23 I would hear from a former pupil -- because maybe then
24 they were trying to be or they were prospective parents,
25 that, as a Merchistonian when he was a boy at the

1 school, James Rainy Brown was not his flavour of the
2 month.

3 So there was a -- an inkling, but nowhere near the
4 levels of what happened, you know, after the suicide.
5 And clearly also in this post time I found it very
6 difficult what to write, because obviously I'd read what
7 was in the newspapers, I think, and it's not right what
8 I wrote in the newspapers. It would have been better to
9 have written nothing, to have said, "I can make no
10 comment".

11 Q. Again, you were being torn between two competing views?

12 A. But the price of headship and leadership, that is its
13 price. Sadly.

14 Q. Were you trying perhaps to accommodate both sides,
15 expressing concern to one but by the same token
16 acknowledging his role in the school to the other,
17 publicly?

18 A. I'm not so sure that I was even that subtle. I was
19 just -- as you say, there were just these competing
20 pressures, and although we had a very good
21 representative helping me, I think I got parts of that
22 wrong.

23 Q. Okay.

24 A. I'd rather not have written -- I can't remember what it
25 said, but I can imagine, if you were a very angry,

1 abused Merchistonian and you had maybe lost the
2 opportunity of justice having the chance to occur, and
3 then you read some of the sentences, you would be mighty
4 unhappy.

5 Q. And that, I think we know, and again we can hear from
6 others, perhaps, but you will remember, would agonies be
7 the right word, having to deal with the family, there
8 was a bequest, how did one deal with that? Should we
9 have a memorial service, should we not have a memorial
10 service? The agony continued?

11 A. It was incessant.

12 Q. Were you getting support for that? In trying to deal
13 with all these competing -- from your perspective?

14 A. Of course I was. I mean, I had an amazing
15 communications person trying to help me with public
16 communications, but as we can see, I didn't necessarily
17 get some of that right. I spent a lot of time with the
18 chaplain, just saying, "What -- which directions do I go
19 in? And how?" And it wasn't easy with the board, and
20 it's in my statement.

21 I can't remember when I became aware that this man
22 would maybe leave a very generous bequest to the school,
23 because my development director came to see me. That
24 didn't really alter how I treated James Rainy Brown,
25 because how I treated James Rainy Brown was entirely

1 consistent; it was just entirely consistently wrong. So
2 the legacy didn't mean anything to me.

3 So that then compounds this crisis, that, you know,
4 we have the legacy issue. And I think the board of
5 governors was totally right in debating it, because
6 I think to have had an edict from on high by the chair
7 without debating it would have been wrong. It was
8 properly debated in proper meetings and also involved my
9 school leadership team and absolutely the right decision
10 was made.

11 Q. Yes. What I'm talking about is it was rightly debated,
12 as you say, but that prolonged the agony for you in
13 having to deal with the fallout as head. Was that
14 considered as part of the equation, do you think?

15 A. I don't really -- I can't really comment. I mean, all
16 I can say is that it just felt like a maelstrom to me
17 and an endless maelstrom.

18 Because then we had **DRW** and I just tried every
19 day to complete -- my metaphor is to try and complete
20 one piece of the jigsaw puzzle, to feel that that day
21 I'd done something right, or productively in this area,
22 and then hopefully day by day would fill the whole
23 jigsaw puzzle.

24 And you are right, I was under huge pressure from
25 members of the family, huge pressure. Criticism. Very

1 difficult.

2 No criticism at all from my board, I stress. None
3 whatsoever.

4 Q. You found some reassurance, we can see from page 2 of
5 Merchiston 289, from the Care Inspectorate?

6 A. (Witness nods)

7 Q. Page 2 at the bottom, please. This is an account of
8 a conversation, as we'll come to, and we heard about
9 yesterday with the care inspector, who is referred to
10 there. Final bullet point, the care inspector:

11 "... reaffirmed, 'We have no concerns, we are
12 confident in, and of, all of the school's child
13 protection processes'."

14 Do you remember that being said?

15 A. Well, I hope it was said, because otherwise it's
16 inferred I made it up.

17 Q. Yes. Were you surprised it was said, given what you've
18 just been telling us about what you recognised hadn't
19 been done?

20 A. I felt that -- I mean, this would be the period as well
21 where I've gone through in my mind umpteen times, how do
22 you fall off the precipice of being sector-leading into,
23 you know, the pit. I'm not going to blame anybody.
24 I mean, I remember this inspector. I thought she was
25 very gentle. Was she searching enough?

1 But, conversely, were we giving them the right
2 information? We would never have hidden information
3 from inspectors, ever. They were meeting pupils every
4 time they visited. Because I can assure you I would not
5 make a statement like that up.

6 Q. I'm sure you wouldn't. But I'm asking you, given the
7 concessions you've just made a moment ago, which may
8 reflect a transition between 2013 and now in your mind,
9 do you think she was right to say, looking back from
10 today, "We have no concerns, we are confident in and of
11 all of the school's child protection processes"?

12 A. No. But, on the other hand, when they did all their
13 inspections, you know, were we open and frank about all
14 the challenges we were finding? I don't know the answer
15 to that. Or were their processes not searching enough?

16 Q. Well, having heard from her yesterday, it would appear
17 that even if you were frank about events of 2, 3, 4, 20
18 years before, it wouldn't feature in the process of the
19 inspection report, because it was looking at what had
20 happened since the last inspection.

21 A. (Witness nods)

22 Q. Which may be less than ideal.

23 A. (Witness nods)

24 Q. Equally, the Care Inspectorate, it would appear, would
25 have been as ignorant of what was going on, because

1 prior to the suicide, there hadn't been the audit trail
2 produced that followed the suicide.

3 A. (Witness nods)

4 Q. You follow?

5 A. I accept that.

6 Q. So you hadn't told them previously, but even if you had,
7 it may not have mattered for the 2013 report.

8 If we could just touch briefly on that by looking at
9 pages 86 and 87 of Merchiston 289, this is notes from
10 Sharon Dow's meeting with the lead inspector initially,
11 but then notes taken at a meeting with you and
12 Peter Hall, having feedback with the Care Inspectorate
13 which will not be within the body of the report.

14 Looking down to the bottom. Paragraph 5, you're
15 asking would you have acted differently now? And
16 I think at that stage you, reading the answer:

17 "I acknowledge what would be the mantra, report to
18 the child protection officer, report to outside agencies
19 et cetera, et cetera, et cetera."

20 All the things you'd been doing post the suicide.

21 Although you go on again stressing:

22 "... that the nature, personality, challenge of the
23 member of staff and his relationship with board
24 governors, JRB was at the heart of why some of these
25 processes did not happen."

1 Which is what you've been telling us.

2 But I think if you go down to item 7:

3 "The audit and record keeping at Merchiston is
4 meticulous and this has to continue to be the case, as
5 this meticulous record keeping allows employment law to
6 be used effectively. What still needs to happen, in the
7 record keeping is forming the links on a member of
8 staff's record, ie a member of staff could keep his
9 slate clean for a period of time, during which time
10 a previous transgression can be forgotten. The links
11 were not made with JRB's disciplinary record. So, the
12 tracking of staff misdemeanours must be even more highly
13 effective."

14 Yesterday I questioned the inspector about the use
15 of staff misdemeanours, tracking of misdemeanours must
16 be even more highly effective. Is the reality they
17 weren't effective at all pre the suicide?

18 A. No. What I -- so I don't quite understand. Is that
19 comment number 7 myself, is it?

20 Q. It's a notes taken --

21 A. Right.

22 Q. I would assume it would be your observation.

23 A. What I meant by that was, as we found with RCQ
24 'Glenn' and DRW, and obviously James Rainy Brown,
25 that I still wanted to be reassured -- and it had to be

1 me because I was the head of the school, but it also
2 needed co-leaders to also insist on it as well -- that
3 we didn't have this loose system which didn't make
4 links.

5 So, for example, we discussed this morning how we
6 missed links with 'Glenn'.

7 Q. And yet we heard from the same inspector that whilst in
8 leadership there had been an inkling on their part to
9 reduce the inspection mark from 6, excellent, to 5, very
10 good, that was resisted by Merchiston, who said, "Here
11 are the documents to show why we are excellent", and
12 they accommodated that.

13 Looking over the page at page 87 and the conclusion
14 from the inspectors:

15 "The school continues to provide an outstanding
16 boarding experience for pupils. Boarding staff are
17 enthusiastic and motivated about their roles in the
18 boarding houses. Along with the medical team, domestic
19 and catering teams, they provide an exceptional level of
20 care to boarding pupils. The staff teams are led in
21 an ideal way by the school's senior leadership team."

22 Would you agree now that wasn't an accurate
23 description?

24 A. You mean the "ideal way by the school's senior
25 leadership team"?

1 Q. Yes, who, by acknowledgement, have not been tracking
2 staff misdemeanours adequately and have been missing
3 things?

4 A. We would never have written that line, because we were
5 not allowed to change text in a report.

6 How I read that line is that "ideal" is one step
7 above "satisfactory".

8 Q. Well, I think this is going to the top of the document,
9 where you got excellents for everything and must have
10 been very pleased.

11 A. But how I read that is that in that conclusion the least
12 positive aspect of that inspection is the school
13 leadership team by the very use of the word "ideal",
14 because it doesn't say "excellent", it doesn't say
15 "assiduous", it doesn't say "inspirational". It's what
16 I regard as one above the minimum.

17 Q. That's a matter of interpretation, obviously, one to
18 another, but in context of having fought against, we
19 understand from the inspector, downgrading to a 5, very
20 good, for leadership, and them being persuaded that, no,
21 excellent, the top possible mark, should stand, doesn't
22 necessarily sit well with your interpretation or your
23 own view, since you fought the reduction.

24 A. (Witness nods)

25 I don't remember us fighting the reduction, but that

1 would have been human nature. I regret that if
2 that's -- obviously that's what we did. But I see that
3 comment, which is why I think we must have put the
4 inspector in a difficult place. Because for a 6,
5 I would not have expected the use of the word "ideal".
6 Q. Unless it's my interpretation, which means: what anyone
7 would ever want.
8 A. Maybe. If you look -- if we look at the other
9 adjectives used to describe the other aspects of the
10 school, they're very complimentary.
11 Q. Okay.
12 LADY SMITH: Some people, of course, and you may strictly
13 say this is wrong, use "ideal" as something of a synonym
14 for "perfect". The ideal has been achieved, nothing
15 better could have been achieved.
16 A. (Witness nods)
17 Well, we never as a school senior leadership team
18 ever evaluated ourselves that way. We were always
19 trying to do better.
20 MR BROWN: Regardless of the word, would you agree, from
21 what we've just been discussing, the Care Inspectorate's
22 approach was less than perfect because it didn't allow
23 for notification or reference, as we would understand,
24 to things that are going on in a school if they're
25 outwith the cut-off point, which can be six months, or

1 the previous inspection, and things are not ideal
2 because, however one describes it, pictures hadn't been
3 seen, although the information was there to see them.

4 A. I agree.

5 Q. We talked briefly, and I don't want to labour it because
6 you've talked about it clearly in your statement, but
7 Torquil Johnson-Ferguson, who you know was jailed for
8 18 months for lewd and libidinous conduct and practices
9 involving boys, I think in the 1980s and the 1990s,
10 there were two prosecutions, one an examination of
11 facts, ultimately. None of them involving Merchiston,
12 but it was a well-used resource, whatever the location,
13 and it would appear there were worries, from what we
14 know, in 2007 and before, because of Blakerston.

15 Was that another example of signs being there but
16 not picked up because there wasn't adequate dots being
17 joined?

18 A. Yes.

19 LADY SMITH: Mr Brown, just for convenience at this point in
20 the notes, do you have dates for the conviction and the
21 moving to examination of facts --

22 MR BROWN: Yes, the conviction is 2015 and the examination
23 of facts I think was 2018. We have the indictments,
24 both were at Oban.

25 LADY SMITH: Yes. I thought so, I just wanted to get it

1 into the notes.

2 MR BROWN: Absolutely, my Lady, yes, we have Justice JUS(?)
3 documents.

4 LADY SMITH: Thank you.

5 MR BROWN: I think we know also that there were further
6 reports and concerns in 2012 about Rua Fiola, so 1999,
7 2007, 2012.

8 Just one document very quickly. I think this is
9 again relying on your colleague -- is it Rickard who was
10 dealing with that?

11 A. Nigel Rickard, yes.

12 Q. Nigel Rickard, in 2007. You would be aware that he
13 wrote expressing concern -- this is again about nudity,
14 the same theme -- urging Mr Johnson-Ferguson to ensure
15 that this didn't happen again, and there was a reply
16 from him in 2007, if we look at Merchiston 307, page 29.
17 This is dated 28 November 2007 from
18 Torquil Johnson-Ferguson. It's the last paragraph:

19 "Please would you accept my firmest assurance that
20 there will be no nakedness at any of the activities on
21 Merchiston's courses in the future."

22 Do you remember seeing that?

23 A. I remember -- I mean again if we could just go back,
24 this is where I was still trying to learn, stand back,
25 delegate to co-leaders. I felt uncomfortable asking

1 Nigel Rickard to do this, because such a letter would
2 never normally have gone out of a school from the
3 deputy, it would have come from myself, the head.

4 But when I first read this reply, my reaction to "no
5 nakedness on any of the activities on Merchiston's
6 courses in the future", was: what about the other
7 courses?

8 Q. Quite. It's an interesting choice of words, isn't it?

9 A. (Witness nods)

10 Q. And flags up that if you were coming from another
11 school, you might still have reason to worry?

12 A. (Witness nods)

13 Q. Did you share that with other schools?

14 A. No. And, you know, with hindsight, thinking about it
15 now, we should have done that.

16 Q. By the time you left the school, do you think that again
17 went back to what we were discussing this morning, the
18 willingness to share information, that the culture had
19 shifted so there was greater openness over, say, child
20 protection as well as other more useful day-to-day
21 stuff?

22 A. Absolutely. The change was not schools being in it for
23 themselves but schools trying to actually look after
24 other schools. There was a big shift in all sorts of
25 areas, and rightly so.

1 Q. The last aspect, because it would appear that there was
2 a connection to be seen between James Rainy Brown and
3 Torquil Johnson-Ferguson. They had known one another,
4 were friends for decades.

5 A. (Witness nods)

6 Q. And it would appear that there is a common theme of
7 nudity of children in their behaviour.

8 A. (Witness nods)

9 Q. One other name that appears occasionally is a gentleman
10 who I think portrayed himself as a language expert.

11 A. Mr Reg Woodward.

12 Q. Mr Reg Woodward. Who, when you joined the school in
13 1998, he had been a known quantity within Merchiston
14 prior to that?

15 A. There were all sorts of interesting concepts when
16 I arrived, and again I'm not going to blame anybody.
17 There was a former very senior member of staff at
18 Merchiston who expected to be accommodated in the
19 headmaster's house for one week per annum. My
20 predecessor and his wife had very kindly done this. It
21 was primarily my wife who refused, because we had three
22 very young children, so that was one.

23 And obviously, post 2013, that name became more and
24 more apparent to me as ... red alert. And real evidence
25 for it.

1 This one was not dissimilar in the sense that
2 I understand that Mr Woodward and Mr James Rainy Brown
3 had known each other for a long time. I don't know
4 where that started. But he was a modern languages
5 teacher and a former junior school headteacher, I think,
6 so he too would come to Merchiston, I think I'm right in
7 saying one week every term, or two, twice in the year,
8 one week each, and he would be based in Pringle helping
9 with modern languages.

10 Again, I was very uncomfortable with this.
11 I remember my head of modern languages coming to see me
12 to say on no account is this person going to influence
13 how we deliver the learning and teaching of modern
14 languages at Merchiston.

15 He bequeathed some money to the school, so that was
16 called the Reg Woodward travel scholarship, so I had to
17 send him the applications every year that came in from
18 the boys, upper sixth formers on a gap year to do
19 a Reg Woodward travel scholarship.

20 So this is another example of where I should have
21 just put my foot down and said, "This person is not
22 coming to Merchiston on any visits".

23 Q. I think if we look at Merchiston 311, if we have it,
24 page 2, this is a letter from David Spawforth dated 1990
25 to James Rainy Brown and it emphasises that the visits

1 have been going well before you arrive. And the
2 connection is with James Rainy Brown. The tone of it,
3 looking at various numbered items:

4 "I have no objection at all to you
5 [James Rainy Brown] giving helpful advice.

6 To my knowledge, Reg Woodward is not an accredited
7 language consultant.

8 His note is on Merchiston headed writing paper, and
9 therefore looks as though we have asked his advice -- we
10 have not;

11 We use him as a language consultant -- we do not;

12 He appears to have official status here -- he does
13 not.

14 It is not my view that Reg Woodward should be
15 involved in this way.

16 The note, therefore, should be either not sent at
17 all or written by you on the lines 'a friend of mine has
18 suggested' ...

19 I hope we can be clear about all these points.

20 I see from Reg Woodward's note that you invite him
21 each term. I would not reckon that boys should be taken
22 out of class each term for his talks/lectures. I feel
23 sure you will agree."

24 The language is interesting, because it is clearly
25 brooking no discussion.

1 A. I admire my predecessor's clarity of writing, compared
2 to my letters.

3 I don't remember reading that letter in
4 Mr Rainy Brown's file, because I can't quite understand
5 why these visits were still happening in 1998/1999.

6 Q. But what we see is a picture of a man visiting termly.

7 A. (Witness nods)

8 Q. Staying at Pringle?

9 A. No. In my time that was absolutely refused. I am sure
10 he stayed in James Rainy Brown's house in Colinton.
11 That is my recollection. And I hope that is the case.

12 Q. Once he had moved in 2007?

13 A. No, even -- so James Rainy Brown to start with, when we
14 moved him out of Pringle House, he lived in a school
15 house at the entrance to the school next to Pringle, one
16 of the lodges. Then we moved James Rainy Brown out to
17 his own house in Colinton. But even if Reg Woodward was
18 visiting, I am sure he would have been staying with
19 James Rainy Brown in either his school house, the lodge
20 at the entrance to the school, or James Rainy Brown's
21 own house in Colinton.

22 Q. But I think you'll be aware there was at least one
23 suggestion that Woodward was engaging with the Pringle
24 boys, whether that be accurate or no --

25 A. Yes.

1 Q. -- the concern existed.

2 A. Yes, and I can't remember where that concern came from,
3 but it's clearly -- I must have written it down in my
4 statement, it's clearly in my mind that there was
5 a concern.

6 Well, this in itself illustrates concern.

7 Q. You found, clearly, Woodward frustrating at one level.
8 Did you ever have concerns about him along the same
9 lines there were later concerns with Johnson Ferguson
10 and Rainy Brown?

11 A. I don't think I made that link. One of the links I did
12 make was I wasn't over enamoured with the evangelical
13 Christianity of Reg Woodward and James Rainy Brown, so
14 that I guess was a warning signal as well.

15 Q. What do you mean by "muscular Christianity"?

16 A. A fervency and a ... I don't object to -- I'm an Anglo
17 Catholic myself, so -- it's the fervency and it's the
18 approach to Scripture Union. I just didn't like the
19 feel of Scripture Union, how it was being held in
20 Pringle. So that's why we banned -- I'm sure we banned
21 James Rainy Brown from doing it, and then we also banned
22 another member of staff from doing it.

23 I felt that Reg Woodward was -- I had no evidence,
24 but I felt he was a part of this muscular Christianity,
25 and that worried me, with boys.

1 Q. Particularly, I think, as we know in 1999 when, from
2 a Scripture Union meeting, a naked child emerged and
3 then ran back inside, as we know.

4 A. (Witness nods)

5 So again with this one I regret that we just didn't
6 seize -- get a grip of the elephant in the room. It is
7 interesting that my predecessor also tried to do it, but
8 it didn't work, because there's a considerable time lag
9 between this letter and when I was dealing with
10 Reg Woodward. But I'm not blaming my predecessor
11 either.

12 Q. It perhaps reflects the difficulties in dealing with
13 James Rainy Brown?

14 A. But I think -- I mean, obviously I've thought about this
15 so, so much. If I had my time again, I just would have
16 dealt with all of these totally differently. I still
17 don't know how I would have squared where's the space
18 between pastoral and spiritual and this one here,
19 because some people merit this one here. And I think
20 that James Rainy Brown clearly merited it.

21 Q. Just to be clear, what do you mean by "this one here"?

22 A. Following the policy to the letter.

23 Q. I was going to ask you about that, because obviously
24 some voices now say whenever something is raised, come
25 what may, there should be process.

1 A. (Witness nods)

2 Q. You'll have heard of Mandate Now?

3 A. (Witness nods)

4 Q. Where do you stand on that?

5 A. It's difficult for me to say. I stung myself with how
6 I dealt with issues. I did feel caught between a rock
7 and a hard place with regulators, because I felt: is
8 this the right way? Is this what I'm being encouraged
9 to do? I don't remember them encouraging me to do it,
10 it's not their job. Their job is, "Andrew, you're the
11 head., follow policy". I think there has to be a happy
12 medium, but there has to be that process because how do
13 we know with any of the ones that I dealt with, how do
14 we know that we wouldn't have improved their behaviour?
15 Whereas my method didn't. But the other method might
16 have changed them. Because at the very least one would
17 be saying, you know, to, let us say, Mr Rainy Brown:
18 "I'm very, very sorry, but any repetition in these
19 areas, (a), (b), (c), (d), (e), et cetera, must mean
20 that dismissal is imminent."
21 But it is always easier said than done in some
22 circumstances.

23 Q. One thing that comes across from many of the memos that
24 you drafted, because you'll have been thinking all the
25 time, "What should I do? What is the right thing to

1 do?" Whether or not now looking back you would agree
2 you did do the right thing, that's by the by, but you
3 are, if I may say so, constantly seeking advice from
4 others. Lawyers, you have PR handlers to deal with
5 situations. You can speak to board governors. You can
6 speak to staff, latterly, when there's greater sharing
7 of the burden.

8 One of the aspects that arose at the very beginning
9 of these hearings was the mention from heads who had
10 experience in England of using a LADO system, Local
11 Authority Designated Officer, where heads could have
12 a point of contact with someone to give them advice
13 which was independent.

14 A. (Witness nods)

15 Q. Is that the sort of thing that you would have welcomed?

16 A. Yes. I've read all about the heads commenting on that.

17 First, could I say with myself what I needed to do
18 was to learn how to stand back, and when I had absolute
19 confidence in a deputy head or senior deputy head, let
20 him or her ascertain the facts and the issues and the
21 directions of travel, and then say, "These are my
22 recommendations, Andrew".

23 That meant I would have been -- I would never have
24 been involved in the nitty-gritty and doing pastoral
25 conversations with people who'd made these mistakes,

1 which I was doing.

2 I think as well I hope I allowed them all to play
3 a role in leadership, I really hope I did, because that
4 was my mantra. Did I leave them space to say, "Andrew,
5 you are getting this wrong"? I hope I did.

6 If we go back to LADO, I mean, I never found it easy
7 working out who was I supposed to contact when. Whether
8 it was the registrar's office for independent schools
9 Scotland, HMIE or Education Scotland or the Care
10 Inspectorate or the Scottish Social Services or the
11 police. I never really -- and we tried our hardest to
12 do road maps. So eventually I told them -- I used to go
13 to every single one of them, because I was so by then
14 frightened of making mistakes.

15 So I do think that having one point of contact would
16 be much, much easier for independent school heads,
17 because what I see from the state sector is in effect
18 they have that. Because if they have a problem in their
19 school, they may not have LADO, but at least they can go
20 to central office, HR, and say, "I wish to report this
21 issue, please".

22 So personally, and when I speak to heads south of
23 the border -- and there's different levels of LADO,
24 where you can put a phone call in about concerns. It's
25 not just the High Heaton(?) level, there's different

1 levels. When I speak to the heads in England, they find
2 this an amazing crutch, a support. You know, for the
3 pupils in their school, presumably the students in their
4 school, and their colleagues.

5 Q. I think we know, because you talked about the various
6 reports, Merchiston was given guidance by a local
7 headmaster from the state sector.

8 A. (Witness nods)

9 Q. Did you, when you had that support, discover that there
10 was in fact a world of support that you were missing?

11 A. First, I do think it was innovative that we asked that
12 state school head to help us, and that started from
13 forming relationships with that school, because remember
14 sometimes the state sector rightly is suspicious of the
15 independent sector, because of pupils not going to the
16 state sector and members of staff not teaching in the
17 state sector, so I very much enjoyed spending time in
18 his school. I really enjoyed having him in our audit
19 committee he was on -- or she was on, actually. Because
20 I think it was the depute at the school.

21 I just remember thinking in some circumstances,
22 without abdicating responsibility, it must be marvellous
23 to be able to pick up the phone and say:

24 "This is where we've got to with this issue, we're
25 keeping you informed. We think what we're going to do.

1 Do you agree that that's the right course of action?"

2 Q. Thank you.

3 A. I mean, I wish I would have had that with DRW and
4 'Jane', because for me to run totally contrary to how
5 I am as a human being and as a leader in how I treat
6 people is an anathema, but I didn't know who to ask
7 advice from and I thought this is what I had to do
8 because I'd been so, in inverted commas, off the pace
9 doing it this way, I need to be like this.

10 Q. Thank you.

11 In the last pages of your statement, from 91 on, you
12 talk about helping the Inquiry. We've touched on some
13 of this. Policy, process, structure, child protection,
14 safeguarding, governance, recruitment of staff and
15 strategy.

16 We can read all of that, but is there other material
17 you would like to add to that? I know you have prepared
18 something to say, but I think we've touched on
19 mentoring, and that is something that you're currently
20 engaged with.

21 A. Yes, I'm actually mentoring three heads in Scotland at
22 the moment. One day school head, one day school with
23 boarding and one boarding school with day. I don't have
24 all the answers, but -- and as I say, there's no set
25 menu, but I find just being a listening ear, and to

1 a certain extent helping them to try and learn from
2 maybe how I should have done things better.

3 But I think you need a combination. A mentor is in
4 effect obviously very different to a coach. I know it's
5 very lightweight, but I had to do some training at UCL
6 for this mentoring. It's very different to being the
7 coach.

8 I honestly feel -- because I left it out here --
9 I really deeply believe that every head of any
10 experience level should have access to a professional
11 executive coach. That is very different to having
12 access to a mentor.

13 I also believe that the chairs of independent
14 schools -- because I think that being a chair of
15 an independent school or a charity is very different to
16 being the chair of a business. I believe that also
17 chairs -- I think it would be interesting for them to
18 consider this. I wish I'd had this.

19 In my latter years we very nearly did do it, and it
20 was the right decision, there are lots of providers. We
21 were going to do coaching and mentoring of my whole
22 leadership team to try and make all of us better. It
23 was quite expensive so we didn't go for it, and in any
24 case I was retiring in a year's time so I felt that the
25 best use of that expenditure would be for my successor

1 and his team, but I would really, really recommend this.

2 It's a very, very lonely place. You are -- you're
3 expected -- even with good staffing levels -- to wear so
4 many different hats at so many different times of the
5 day. I think the intensity of running a boarding school
6 is intense.

7 I think colleagues working in a boarding school,
8 that is also very, very demanding.

9 So to a certain extent I fear for the boarding
10 school sector because I think boarding done well --
11 I wouldn't recommend it for youngsters, but boarding
12 done well is remarkable.

13 So that would be one recommendation.

14 If maybe, Lady Smith, because I know time is tight,
15 but I'm going to send you some work that Mungo Dunnett
16 did with us, because over lunch I was thinking again of
17 these houses. Because I think it's really good that the
18 Inquiry is looking at the structures of units of
19 accommodation at these schools.

20 So I am going to start with the truth. It's rather
21 charming, but in recent years my wife and I have been
22 invited to the weddings of five Merchistonians. It's
23 very generous of their parents to give us two table
24 places at these weddings.

25 I cannot say this does not happen in the vertical

1 house system, but I am now seeing it from the other end.
2 These were all different types of weddings, one
3 an academic, one a computer science whizkid, one a very
4 good academic who is also a rugby player. At every
5 single one of those weddings, they were big weddings,
6 there were 25 Merchistonians plus at each one.

7 So what was interesting about our horizontal house
8 system was the levels of camaraderie and trust that
9 could exist between them at school, but now I've seen at
10 the other end -- because these men, some of them are
11 32 -- is remarkable.

12 What was also interesting observing it was this was
13 not exclusive, this was inclusive. They didn't know the
14 grannies and grandpas at these weddings, they didn't
15 know the three-year-olds at these weddings, but these
16 Merchistonians just literally did serve and leadership,
17 public service, and helped these people at these
18 weddings.

19 Now, how does that happen? It happens -- and I know
20 you shouldn't use language like this. You have to in
21 a school show that you love the youngsters, that you
22 care for them. But then, to make sure it happens for
23 everyone, you must always look after the outsiders and
24 the non-participants. I would go so far as to say that
25 it would be very wise in any school that there is

1 a register kept in the year groups of which pupils
2 appear to be outsiders or non-participants, and then
3 we've got to help them -- because they are outsiders and
4 non-participants because they don't feel successful.
5 Then we've got to help them: where can you find success?
6 And then they're no longer outsiders and
7 non-participants, because they get that feeling of: yes,
8 I've done that well.

9 But I will send you these notes.

10 If I could just conclude, please, if that's my
11 invitation, Mr Brown, with some words.

12 As the leader of the school from 1998 to 2018,
13 I tried to set the culture of the organisation of
14 Merchiston. I tried to choose the right people for key
15 roles. I tried to form a strategy and create the
16 appropriate culture. Throughout my time, I tried to act
17 with integrity and display honesty with moral
18 principles. I tried to work according to a clear agenda
19 with a strong team and acting in a respectful yet also
20 reflective fashion as the leader of the school.

21 Some aspects of our safeguarding, child protection
22 and pupil well-being were systemically wrong. It
23 saddens me greatly that whilst I was always trying to be
24 kind as a leader, that particularly in some aspects of
25 safeguarding and child protection that sense of rigour

1 was missing.

2 Recently I read an article by Dr Eve Poole, the
3 former chair of Gordonstoun, in the Church Times. She
4 wrote in this article that the odds are not great that
5 a leader will escape error during their tenure of
6 leadership. She referred to a book by Anthony Bash,
7 Remorse, and how remorse provokes repentance, and when
8 this has happened, positive steps can happen.

9 Dr Poole and Anthony Bash have been working together
10 on how leaders might be helped through the transition,
11 which has five key steps within the minimum process.
12 Owing up, being straightforward, learning from
13 mistakes, making amends and turning around. Each one
14 must take place.

15 So at Merchiston, from 2013 onwards in particular,
16 we had to find hidden depths of courageous authenticity
17 and critical candour to deal with the elephant or
18 elephants in the room and stand by the values, policies
19 and standard operating procedures of the school.

20 We had made mistakes. Always, always, we tried to
21 ensure that abuse, as in neglect, emotional, physical
22 and sexual, was never normalised behaviour at
23 Merchiston.

24 Co-leaders and I moved from regret to ruefulness to
25 remorse and humility in terms of righting the wrongs

1 done to other people, as in some youngsters, and staff,
2 at Merchiston. We had to improve.

3 Over the years of 1998 to 2018, whilst there were
4 many, many happy pupils at Merchiston, any number of
5 unhappy pupils, and now unhappy adults, is unacceptable.
6 Our procedures did not protect pupils to the utmost and
7 we let down those pupils. We failed to prevent them
8 being abused. Then we did not react correctly when such
9 abuse came to light. Dots were not joined and warning
10 signs were missed.

11 We know that there is very little we can say or
12 anything we can change or anything that will make the
13 feeling of former pupils go away. I say sorry, and
14 I accept that there are some actual lives which have
15 been changed beyond repair. I am very aware of the
16 harrowing evidence and testimony. I know that there is
17 very little I can say or anything that will change or
18 that anything will make that go away.

19 We made improvements in making children safer all
20 the time, but we can be as careful as we like, because
21 nobody can ever give a 100 per cent guarantee that they
22 can prevent every possible abuse. However, that is the
23 target.

24 What we can do is ensure the overwhelming majority
25 of children and vulnerable adults who come into contact

1 with the school do so in a safe way.

2 What we did at Merchiston from 1998 to 2018 was to
3 try and learn how to do safeguarding in such a good way
4 as it avoids re-abusing people and promise them that we
5 are learning from lessons of the past.

6 In terms of righting the wrongs done to some pupils
7 at Merchiston, on our improvement programme we did our
8 best to ensure that our safeguarding, child protection
9 and pupil well-being improved and that it was conducted
10 in the best possible way. We took all the
11 recommendations of the regulators as to how to improve
12 extremely seriously.

13 As an organisation, we became even more committed
14 and passionate about conducting safeguarding, child
15 protection and pupil well-being to the highest of
16 standards.

17 When our best was not good enough, and it wasn't on
18 occasions, we did our best to improve and ensure that
19 the welfare and safety of the pupils was the central
20 overriding priority at Merchiston and that our
21 safeguarding, child protection and well-being policies
22 were robust, comprehensive and fully compliant with
23 Scottish legislation.

24 Thank you, Lady Smith, for giving me that
25 opportunity.

1 LADY SMITH: Not at all.

2 Mr Brown?

3 MR BROWN: My Lady, I have no further questions.

4 LADY SMITH: Thank you.

5 Are there any outstanding applications for
6 questions?

7 Andrew, that completes all the questions we have for
8 you. You've worked so hard at engaging with us, both in
9 providing a very detailed and thoughtful written
10 statement and coming here and giving evidence for the
11 best part of a full day. I could tell before you
12 arrived from reading your statement that this would not
13 be an easy thing for you to do, and I can see from how
14 the day has progressed that this has taken an enormous
15 amount out of you. I'm sure that can be taken as good
16 evidence of how much you care about Merchiston to this
17 day. That seems very obvious to me.

18 I hope that as you go away, you do feel that you
19 have given your all to us, because I can see that you
20 have. Thank you very much for doing that. You've
21 improved my learning considerably.

22 And thank you, can I say, for just being so frank.

23 I hope you're now able to go and rest. You need it.

24 A. Thank you, Lady Smith. Thank you to you all for looking
25 after the youngsters who have been through these

1 terrible moments.

2 LADY SMITH: Thank you.

3 A. And I am very confident that these schools will do
4 better.

5 (The witness withdrew)

6 LADY SMITH: Mr Brown.

7 MR BROWN: My Lady, tomorrow we conclude the evidential
8 phase of Merchiston with the current chair of the board
9 of governors and the current head.

10 LADY SMITH: And we're starting at 10.00?

11 MR BROWN: Yes.

12 LADY SMITH: Very well.

13 We'll rise now until tomorrow morning when I'll sit
14 at 10.00 for the remainder of the evidence about
15 Merchiston. Thank you.

16 (3.24 pm)

17 (The Inquiry adjourned until 10.00 am on
18 Thursday, 27 January 2022)

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Andrew Hunter (sworn)1
 Questions from Mr Brown2

