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Thursday, 1 June 2023

(10.00 am)

Professor Ian Levitt (continued)

LADY SMITH: Good morning, and welcome back again, Professor Levitt. I hope you're ready to change gear and look at another of your great reports today, which Mr Peoples is going to help us with. If you're ready I'll hand over to him.

Questions from Mr Peoples

A. Yes.

LADY SMITH: Mr Peoples.

MR PEOPLES: Good morning, Professor Levitt.

Today, we are going to look at another report that you've prepared and provided to the Inquiry, which is entitled:

"The knowledge and definition of child abuse within Scottish office departments in the period 1945 to 1974."

I'll just give the reference for the transcript. That's LIT-0000000379 and I think today and tomorrow, if we're here, we'll look at the report, principally. I don't think we'll be looking at the footnotes; I think we'll deal with the report.

What I've planned to do is to start with a broad introduction, perhaps tying together some of the things you told us about in the previous two days.

1 I appreciate that is a different period, but there is
2 a certain degree of necessity to consider the period
3 we're looking at in this report and the period you have
4 looked at in your inspection report over the last two
5 days. So bear with me if I do sometimes stray beyond
6 1974 and ask you about some of the matters in that
7 period, too.

8 A. That is fine. That's fine.

9 Q. Now, to begin with, can I also say you have, in this
10 report, considered boarding out as well as residential
11 care --

12 A. Yes.

13 Q. -- in schools and children's homes. You'll be aware
14 that we've had a foster care case study, so a good deal
15 of what has been referred to in relation to boarding out
16 and foster care has been covered in that case study.

17 There is one matter, perhaps, which I think will be
18 of interest that was perhaps not covered sufficiently,
19 perhaps, the delay in introducing the 1959 boarding out
20 regulations. You have a section in your report which
21 covers that matter, and I intend to deal with that.

22 Perhaps you can then explain how that delay --

23 LADY SMITH: It will be very helpful.

24 MR PEOPLES: -- came about and the reasons for it. So

25 I will touch on it, but I will probably not touch on it

1 greatly today or tomorrow.

2 LADY SMITH: Yes. Professor Levitt, you will remember
3 yesterday, when we touched on foster care and boarding
4 out, I asked you if you could tell me what the age of
5 the elderly foster father was that you referred to,
6 where there was a death of a child in care.

7 Thanks to Ms Innes, I can tell you, he was 71 and
8 there were problems.

9 A. I couldn't quite remember. I knew they were retired,
10 but I couldn't quite remember the age.

11 LADY SMITH: Thank you. Mr Peoples.

12 MR PEOPLES: So if I can begin. Again, like Mr MacAulay in
13 the previous two days, when I refer to a page number,
14 I will refer to the page of our copy or our version on
15 screen rather than the pages in your own report. I hope
16 that's convenient for you.

17 A. That's fine.

18 Q. First of all, if we can just establish what the aim and
19 purpose of report was. I think that's just summarised
20 neatly on page 10 of your report, at the beginning,
21 which states the report was commissioned by the Scottish
22 Child Abuse Inquiry to establish the extent of knowledge
23 and definition of abuse within the Scottish departments
24 for the period 1945 to 1974.

25 Now, I don't intend to spend a huge amount of time

1 on this section, but I think, perhaps, we have to bring
2 out two points. First of all, one which you have
3 already brought out in relation to your inspection
4 report, is that not all the information that would have
5 been available at the time is still available because
6 there has been a certain amount of weeding out and we
7 only have a certain number of retained files that would
8 help us in this matter; is that correct?

9 A. That's correct. That's particularly the case before
10 1960.

11 Q. Yes. If I can just indicate the extent of your
12 researches in relation to this report. I think you tell
13 us, at page 14, do you not, that you consulted a large
14 number of retained files covering approved schools,
15 List D schools, children's homes, both voluntary and
16 Local Authority, remand homes, deaths of children in
17 care, use of corporal punishment in schools and homes,
18 draft regulations covering approved schools, children's
19 homes and boarding out of children, the Scottish
20 Advisory Committee On Childcare, which was a body set up
21 after the 1948 Act, and also the staffing structure and
22 organisation within the Scottish Education Department,
23 the Scottish Home Department and the Social Work
24 Services Group.

25 Indeed, you tell us that in excess of 400 files were

1 consulted for the purposes of this report.

2 A. That's correct, yes.

3 Q. Now, section 2 of the report, which starts on page 15,
4 is headed:

5 "The Scottish Office and oversight of childcare
6 provision within its administration 1945 to 1974."

7 I would quite like to set the scene by looking at
8 that, but in quite a broad way, so we have a clear
9 understanding of how the departmental structures and
10 Inspectorates were operating in the four areas, so we're
11 clear about who was doing what.

12 So far as the departmental structure is concerned,
13 I think you tell us in that section that there were
14 perhaps two main departments in this period that had
15 concerns with childcare and residential schools for
16 children and young people, and these were the Scottish
17 Education Department and the Scottish Home Department,
18 which I think in the early 1960s became the Scottish
19 Home and Health Department?

20 A. That's correct, yes.

21 Q. These were the Central Government departments that are
22 principally involved in the matters we are interested
23 in?

24 A. That's correct, yes.

25 Q. So far as these departments are concerned, in broad

1 terms, so far as residential schools were concerned,
2 including approved schools, the department concerned
3 would be the Scottish Education Department?

4 A. Yes, yes.

5 Q. So far as responsibility both for the juvenile courts
6 and children's homes were concerned, the principal
7 department would be the Scottish Home Department, which
8 became the Scottish Home and Health Department?

9 A. That's correct. There was, if you like, a division of
10 responsibility in terms of approved schoolchildren.

11 Q. Yes. I think you tell us that the Scottish Home
12 Department was responsible for the juvenile court
13 system?

14 A. That's right, yes.

15 Q. But one point we have to bear in mind is that while it
16 had a childcare branch, at the beginning of the period
17 you're looking at, that branch was transferred from the
18 Scottish Home Department to the Scottish Education
19 Department in March 1960?

20 A. That's correct, yes. But not control over the courts.

21 Q. Not control over the courts. But the childcare branch
22 effectively moved over to the Scottish Education
23 Department?

24 A. The childcare branch moved over, but responsibility for
25 the courts remained within the Scottish Home Department

1 and later the Scottish Home and Health Department, which
2 I think is quite significant for the Inquiry to be aware
3 of, that the control, if you like, of juvenile
4 delinquency, as it was then called, rested with the
5 Scottish Home Department, not with the Scottish
6 Education Department.

7 Q. So matters such as committals by the courts of children
8 and young persons to approved schools would be a
9 Scottish Home Department matter?

10 A. No. Once the decision was made it was up to the
11 Scottish Education Department to place a child. The
12 importance I think the Inquiry should be aware of is
13 that the Kilbrandon Report, the initiation of the
14 Kilbrandon Report came from the Scottish Home
15 Department, because that department was responsible for
16 court jurisdiction. And, in a sense, that pattern needs
17 to be understood, certainly until 1967, when the Social
18 Work Services Group was established.

19 Q. I'll maybe come to the 1967, about changes. But up to
20 that point, yes, you have explained, so the Home
21 Department's interest. But once the committal order had
22 been made, issues of placement, for example, would rest
23 with the Scottish Education Department. So if a child
24 was committed to an approved school by the court, then
25 the Scottish Education Department would have

1 a responsibility at that point.

2 A. That's correct.

3 Q. For the placement.

4 A. That's right. And they would have officials responsible
5 to place that particular pupil.

6 Q. Can I just, at this point, ask you this: so far as the
7 system of placement was concerned in practice; was that
8 a matter which was regulated at Central Government
9 level, in the sense, that the Scottish Education
10 Department determined where places were available,
11 whether they could accommodate a particular child that
12 was sent by the courts? In general terms, was that the
13 case?

14 A. In general terms. But, actually, in reality it was more
15 flexible, in the sense that the head of an approved
16 school could refuse to accept a child, because they were
17 overstretched, they were full. Looking at the
18 background of the child, they didn't want them because
19 they'd been there before and they didn't want them
20 again. So there was some degree of flexibility; some
21 negotiation was required.

22 Q. It was the department and the school that would do the
23 negotiation, rather than a Local Authority body --

24 A. That's correct, yes.

25 Q. -- who was responsible, perhaps, for the child in the

1 general sense?

2 A. That's correct, yes, yes.

3 Q. Perhaps one reason they had this discretion to either

4 accept or refuse was that the bulk of approved schools

5 were run by voluntary organisations; they weren't part

6 of the State system that were required to take pupils

7 from the courts.

8 A. That's correct. But, also, if you look at Glasgow,

9 which had its own approved school, I think at this time,

10 it was also independent, if you know what I mean? In

11 the sense, it was a delegated responsibility of the head

12 to make decisions on admissions when the request came

13 through, usually by telephone.

14 Q. Even in the case of a Local Authority run approved

15 school -- and there weren't many -- they also had the

16 right to say no?

17 A. Yes, yes.

18 Q. You've given reasons why they might say no. Often

19 overcrowding or unavailability, but sometimes: we don't

20 want this particular person --

21 A. That's right.

22 Q. -- for one reason or another.

23 A. Yes.

24 Q. Now, so far as the period after 1968 is concerned, at

25 Central Government level, you have told us, in this

1 report and I think on other occasions, we have the
2 formation in 1967, I think, of the Social Work Services
3 Group, and the following year the establishment of the
4 Central Advisory Service.

5 Essentially, without getting into too much detail;
6 did that group take over the childcare functions of the
7 SED and SHD as they had previously been exercised?

8 A. That's correct, yes. There was one division responsible
9 for approved schools and childcare at that time, both
10 together. Other divisions concerned other aspects of
11 social work provision.

12 Q. That new group was headed by a new appointment, the
13 chief social work adviser?

14 A. That's correct, yes.

15 Q. If I can go back to the pre-1968 period, as I've said,
16 I'll mainly concentrate on residential schools and
17 children's homes, but I'll maybe just ask you briefly to
18 tell us a little about boarding out as well.

19 But, in that period before 1968, 1945 to 1968, we
20 have inspectors at Scottish Office level, Scottish
21 Office Inspectors?

22 A. Yes.

23 Q. Who are not independent; they are a part of
24 a department, a Government department at that time. So
25 we have no independent Inspectorate until 2001?

1 A. That's correct, yes, yes.

2 Q. We seem to have two main types of Inspector. One was
3 Her Majesty's Inspector of Schools and there was, within
4 that Inspectorate, dedicated HMIs for approved schools,
5 I think initially there was maybe one --

6 A. There was one --

7 Q. But subsequently there were two. And one of them was
8 I think a person who features in your report, appointed
9 around 1950, as HMI Macpherson.

10 A. That's correct.

11 Q. He was joined in the early 1960s by HMI Murphy.

12 A. That's correct, yes. Who had come from the Home Office
13 as an Approved School Inspector.

14 Q. So they were the specialists, HMIs for approved schools
15 in that period?

16 A. Yes. They were also assisted from, I think, 1951 or
17 1952 by an educational psychologist.

18 Q. At the time when educational psychology was being built
19 into the approved school services?

20 A. Yes.

21 Q. At Central Government level.

22 LADY SMITH: Professor Levitt, could I just ask you to see
23 if the microphone could be pulled a little bit closer to
24 you?

25 A. Sorry.

1 LADY SMITH: That is better. Thank you.

2 MR PEOPLES: So we have, in relation to schools, including
3 residential schools, we have the HMIs, who were
4 performing inspectorial functions.

5 A. Yes.

6 Q. And the schools we're talking about in this period
7 include the approved schools, which were the former
8 industrial and reformatory schools, before 1933, broadly
9 speaking.

10 A. They weren't industrial schools; industrial schools
11 ended by 1963. They were the previous reformatories
12 retitled as approved schools.

13 Q. And the approved school label first came into prominence
14 in 1933, I think, or around then?

15 A. That's right, yes, yes.

16 Q. The approved schools -- the year of the approved schools
17 was basically until the Social Work (Scotland) Act 1968.
18 Although they did survive beyond that, but were renamed
19 List D schools around 1971 or thereabouts?

20 A. That was part of the plan within the Social Work Act
21 1968 -- was effectively the removal of approval schools.

22 Q. The broad intention of the legislation was to remove
23 them from the system and create a general category of
24 residential establishments, including residential
25 schools, which would provide a range of provision which

1 was available to the new Social Work Departments and the
2 new Children's Hearing System?

3 A. That's correct, yes. Could I just add: in terms of
4 inspection approved schools, that the dedicated
5 inspectors, Mr Macpherson and Mr Murphy, would also be
6 assisted by other mainline inspectors when they were
7 looking at educational provision, and that included
8 diet. There was a specialist Inspector concerning the
9 dietary of all schools in Scotland.

10 Q. Yes. I think when we come to look at the detail of some
11 of the inspections in that period in your report, in
12 section 5, we'll see that one of the areas of concern
13 that the inspectors raised was issues of diet --

14 A. Yes.

15 Q. -- and adequacy of diet?

16 A. Yes.

17 Q. No doubt, on some of these inspections, they had the
18 benefit of those who had more specialist knowledge of
19 these matters?

20 A. My reading of the files indicates that the Scottish
21 Education Department had, if you like, an approved diet
22 for all schoolchildren, certainly at lunchtime, in
23 ordinary schools and, therefore, they were sufficiently
24 knowledgeable about the appropriate diet that
25 an approved school child should have.

1 Q. The HMIs would have responsibility as a team for other
2 residential schools in this period. There would be
3 special schools that were not approved schools in that
4 era?

5 A. That's right, yes.

6 Q. And these could be schools for children with special
7 educational needs?

8 A. That's correct, yes. But there would be different
9 Inspectors.

10 Q. Different Inspectors?

11 A. Yes.

12 Q. But these schools were inspected not by the Approval
13 School Inspectors, but by the other Inspectors within
14 the Inspectorate?

15 A. That's right, yes.

16 Q. Generally speaking -- and forgive me if I have this
17 wrong -- the children that went to the special schools,
18 other than the approved schools, would get there via the
19 education authority, who would place them there if they
20 thought they required specialist provision; would that
21 be the broad way in which the special schools of that
22 nature received pupils?

23 A. I think that would be the case; that some form of
24 assessment would take place within the school itself and
25 the school service would recommend the removal of the

1 child, the pupil, to a special school.

2 Q. The education legislation, rather than the children and
3 young person's legislation would give the power to the
4 Education Authority to make provision for children with
5 special educational needs and, therefore, there had to
6 be provision for them.

7 A. That's right, yes, yes.

8 Q. Can you just remind me what period you are talking about
9 here, Mr Peoples?

10 MR PEOPLES: This is 1948 to 1974. Although I think the
11 provision --

12 LADY SMITH: Over the whole period, you are talking about?

13 MR PEOPLES: Yes, yes.

14 LADY SMITH: This was the same?

15 MR PEOPLES: I think this would be under the early Education
16 Acts, before the more recent legislation. There would
17 be powers to deal with children with those needs,
18 educational needs. Although I think, essentially, the
19 same type of provisions appear in the later legislation.

20 A. That's correct, yes.

21 Q. Although we may give them a different title, "additional
22 support needs" or other terms.

23 A. "Special education needs", "additional support needs",
24 the phraseology, terminology, changed over the period.

25 Q. Can you help me with one matter on this?

1 A. Yes.

2 Q. We sometimes see in reports and in official minutes the
3 term "maladjusted". Sometimes, those who were in
4 approved schools didn't seem to like what they receive
5 what they thought were "maladjusted" pupils; can you
6 help us with that term? It's obviously a term of its
7 time.

8 A. It was a term, I think, developed certainly in the
9 immediate post-war period, when education provision was
10 trying to address issues concerning children, generally
11 speaking.

12 I think the previous term had been one of "mental
13 deficiency" and this was meant to be a softer term to
14 describe children who required specialist support.
15 "Maladjusted" is perhaps not a word we would even
16 consider appropriate now.

17 Q. No.

18 A. But then, I think it was considered an advance that you
19 were actually categorising pupils in a way which would
20 enable specialist provision to develop, and I think the
21 impetus in the immediate post-war period was seeking to
22 encourage Local Authorities -- Local Education
23 Authorities to develop that provision more fully.

24 Q. The sort of children that might be included in that
25 category might be children who were considered to have

1 significant social, behavioural or emotional

2 difficulties, complex needs?

3 A. That's correct, yes. Yes.

4 Q. Therefore that sort of specialist provision, the idea

5 was that children in that category would be given or

6 should be given a specialist form of education in

7 a specialist facility?

8 A. I think it was recognised, certainly by 1950, that some

9 pupils who had been sent to approved schools ought to

10 have been sent to a more specialist school, ASN schools,

11 as we now call them, now, perhaps. And that thrust of

12 policy, if you like, was an important aspect, certainly

13 in the 1950s, but didn't really come into fruition until

14 the 1968 Act.

15 Q. That is what I was going on to go on to say, the

16 difficulty is that you recognise the category and you

17 recognise the need for provision, but for a considerable

18 time after that recognition the provision was not there.

19 There weren't the specialist facilities or sufficient

20 facilities to take children with those needs and often,

21 perhaps, in that period children were simply placed in

22 an approved school?

23 A. They were placed in an approved school. I'm not sure if

24 I -- I reference some discussion that a child would go

25 to an ASN school if they were assessed within the school

1 grounds. A child would end up in an approved school if
2 they committed a misdemeanour outside the school gates.

3 Q. But they might have the same needs?

4 A. They might have the same needs?

5 Q. But they end up in two different places --

6 A. Two different places, yes.

7 Q. -- with two different regimes.

8 A. With two different regimes, yes.

9 Q. In neither regime, at that time, if there was
10 a specialist school; was there necessarily the
11 specialist training to cater for those needs?

12 A. I think one would say, in terms of the special schools,
13 that training was beginning to take place, but I think
14 it's quite right to say that the places available were
15 not that great.

16 Q. Insofar as children who had these needs ended up in
17 an approved school, the special training didn't exist?

18 A. That's correct, yes.

19 Q. Throughout the period we are looking at in your report?

20 A. Yes. I wasn't asked in this report, but I have seen
21 files where the Scottish Office is desperate to
22 establish, through voluntary organisations, more
23 specialist schools, and I think one was Harmeny at
24 Balerno, which they were very keen to support in the
25 1950s.

1 Q. I suppose, moving forward, beyond 1974, we eventually
2 see, do we not, that the trend is towards reduction in
3 residential care, smaller units and more specialised
4 units to cater for children in that category?

5 A. That's correct. I think one must remember that the
6 Chief Social Work Officer, Adviser Officer, who was
7 appointed in 1968, had a record of being very much
8 anti-residential care in terms of the sort of overall
9 provision. And I think, reading the files, was actually
10 appointed because she had that background and it would
11 drive the policy of shifting from approved schools and
12 List D schools to more specialist provision, if
13 required.

14 Q. So, basically, the aim was to get rid of the approved
15 school system?

16 A. Yes.

17 Q. To get rid of the large institutions that catered for
18 a large group of children, including those that may have
19 additional support needs or special educational needs,
20 and move towards a more sparing use of residential care
21 for children that had special needs that could only be
22 catered for in a residential environment?

23 A. That's correct, yes. Yes.

24 Q. But that took a long time?

25 A. A very long time.

1 Q. Even after the 1968 Act?

2 A. Well into the 1970s.

3 Q. Yes. And it was a work in progress?

4 A. It was a work in progress to encourage Local Authorities
5 and voluntary organisations to work together to develop
6 that more specialist provision.

7 Q. Some moved faster than others?

8 A. Yes.

9 Q. We did see, in the 1960s, for example, Aberlour
10 Orphanage closed down in 1967. They diversified, I
11 think Quarriers did something similar, but perhaps
12 a little later?

13 A. That's correct. I think Aberlour understood the change
14 of professional opinion and the change that was likely
15 within the legislation that was being flagged at the
16 time.

17 Q. This was all perhaps starting to emerge -- you mentioned
18 the beginnings of educational psychology in the 1950s,
19 but certainly in the 1960s there was considerable
20 rethinking of childcare and how residential provision
21 should be used. This was simply, perhaps, a continuing
22 development of that.

23 A. It was. Again, I wasn't asked in this report to do, but
24 I think in my second report I indicate that there was
25 a shortage of clinical psychologists -- clinical child

1 psychologists. That was only really resolved throughout
2 the 1970s with additional training.

3 Q. So the specialist support that was needed for the
4 provision was in short supply?

5 A. Yes.

6 Q. I suppose that's getting towards the idea of integrated
7 services; acting together to look after the child's
8 particular needs?

9 A. I think that's a reasonable approach to take.

10 Q. If I could go back to pre-1968 particularly, to the era
11 of the childcare Inspectors. We have talked about the
12 HMI Inspectors and what they were doing at that time;
13 were the childcare Inspectors who, I think you tell us
14 in your report, were attached, firstly, to the Scottish
15 Home Department from 1934 through to 1962 and,
16 subsequently, from 1962 to 1967 to the Scottish Home and
17 Health Department. I think you say, however, despite
18 that attachment they reported to the Scottish Education
19 Department between 1960 and 1968, following,
20 presumably -- or around the time of the transfer of the
21 childcare branch of HSD to SED?

22 A. Yes. I mean, the position in 1960 was that it's a sort
23 of technical issue related to the vote, as they say, and
24 they were classed within the vote for the Scottish Home
25 Department and later the Scottish Home and Health

1 Department. In reality, they worked with the Scottish
2 Education Department.

3 Q. From 1960 onwards, they were effectively SED
4 Inspectors --

5 A. Yes.

6 Q. -- but paid through the money allocated the Scottish
7 Home Department?

8 A. That's right, yes.

9 Q. So far as their functions were concerned, as the name
10 implies, their functions related to childcare and not
11 educational provision?

12 A. They related to childcare in terms of inspection of
13 residential homes and also an overview of boarded-out
14 children.

15 Q. So their main area of responsibility would be children's
16 homes and boarded-out children?

17 A. Yes, yes.

18 Q. They would not, at that time, be concerned with what was
19 happening in the residential schools, including approved
20 schools; they wouldn't be turning up to them?

21 A. No, unless they were invited to.

22 Q. And were they at times?

23 A. I've not come across any incidence of where they were
24 invited to.

25 Q. Just then moving to 1967/1968 and the creation of the

1 Social Work Services Group; am I right in thinking that
2 at that point the Childcare Inspectors moved to the
3 Social Work Services Group and sat within the Central
4 Advisory Service?

5 A. They moved in March 1967, Social Work Services Group,
6 and then became reclassified as Social Work Advisers, in
7 March 1968.

8 Q. But they were former Childcare Inspectors, who became
9 Social Work Advisers?

10 A. It's important to realise that some of those Childcare
11 Inspectors had retired and were replaced by a different
12 group of individuals as CAS, as it was called, expanded.
13 And so that the responsibility of CAS covered not just
14 children, but the elderly and in mental health, and so
15 there was a more diverse group. So some of the Child
16 Inspectorate were retained, some additions to the
17 staffing came in at that time.

18 Q. I follow. I think that would be explained by the fact
19 that children's departments, children -- were replaced
20 by the new generic Social Work Departments in Local
21 Authorities?

22 A. Yes.

23 Q. Therefore, these advisers were, in part, to help this
24 transformation to this new situation or new arrangements
25 and to provide advice, as the name implies, rather than

1 to act as Inspectors?

2 A. That's right. I think it may be important to establish
3 that the new Chief Social Work Adviser Officer had
4 a background in childcare. And I think it is perhaps
5 important to understand the importance and significance
6 given to that particular person, with that particular
7 background, over care for the elderly and in mental
8 health. I think the driving force, if you like, was: we
9 need to somehow or other improve the quality of
10 Children's Services.

11 Q. That social work adviser was Beti Jones?

12 A. Yes.

13 Q. From Wales?

14 A. From Glamorgan, yes.

15 Q. This was all a move, I take it, towards -- there had
16 already been a trend, I think in the 1960s, reflected in
17 legislation of seeking, so far as possible, to keep
18 children at home, rather than move them to residential
19 care.

20 A. Yes.

21 Q. And perhaps use residential care for short-term stays,
22 if possible.

23 A. Short term and more specialist needs, as we have
24 previously discussed. And Beti Jones had a reputation
25 for closing residential homes in Glamorganshire, which

1 may have been added to her advantages in terms of being
2 appointed.

3 Q. The whole idea was that as opposed to the historical
4 position that you separated the children from the
5 family, and took the children as far away as possible,
6 by boarding them out in remote regions --

7 A. Yes.

8 Q. -- now the focus was on keeping the children and family
9 together and doing that by support in the community.

10 A. Supporting the family --

11 Q. Support the whole family --

12 A. Yes.

13 Q. -- including the child --

14 A. Yes.

15 Q. -- as a unit.

16 A. Yes.

17 LADY SMITH: And that woman, Beti Jones, is the one you
18 referred to earlier, is it?

19 A. Yes. It's important to understand, because it's not
20 actually stated in any of the papers I've read, but if
21 you read between the lines, yes, I understand why that
22 particular person was appointed.

23 MR PEOPLES: But following the 1968 Act -- I think you've
24 said this perhaps over the last two days at some point,
25 I seem to recall -- the HMIs continued to operate as

1 before, largely speaking, did they not? The 1968 Act
2 did not remove Her Majesty's Inspectors or their
3 inspectorial functions from schools?

4 A. No. I think what is important to take on board is that
5 the HMIs for approved schools, one of them retired
6 because of -- they were due for retirement and the other
7 moved into CAS and they then subsequently left CAS and
8 were replaced by, I think, from reading between the
9 lines, an approved school Inspector from England, who
10 had a background of also working within the broader
11 childcare sector. But the important thing is that
12 particular person was no longer a member of HMI; they
13 were actually a member of CAS.

14 And there was a division of responsibility between
15 reviewing the suitability of an approved school, List D
16 school, for registration purposes and the quality of
17 education within that, and the quality of education was
18 adjudged by HMIs.

19 Q. So the HMIs continued to exist?

20 A. Yes.

21 Q. In fact, you told us, I think, in relation to the later
22 period that was covered by Part 3 of your inspection
23 report, that there was an important development in that
24 respect in 1995, when HMIe assumed responsibility for
25 both education and care?

1 A. That's correct, yes.

2 Q. Therefore their jurisdiction required them to look at
3 welfare and care, as well as educational provision and
4 its quality.

5 A. Which they had lost in 1968/1969.

6 Q. Yes. To a degree, Inspectors, who were looking at the
7 matter from an educational aspect, would still look at
8 care in a broad way, would they, when they were visiting
9 schools?

10 A. You mean residential schools post-1968?

11 Q. No, pre-1968?

12 A. Pre-1968.

13 Q. Did they look at care?

14 A. In the broad residential sector?

15 Q. Yes.

16 A. Very limited in terms of the pastoral care actually
17 provided, rather than looking at what we now call
18 safeguarding.

19 Q. So they had no statutory responsibility for that aspect
20 of residential provision?

21 A. Not in a specific sense.

22 Q. No. But they might comment in a report on something
23 that we might consider to be a care matter, rather than
24 an education matter?

25 A. Except I've not come across one.

1 Q. Okay.

2 A. Except for the approved schools.

3 Q. Okay. So they did in approved schools?

4 A. Yes.

5 Q. They were prepared to comment on care within that

6 setting?

7 A. Right. That is because the approved schools were

8 required to be registered by the Secretary of State and

9 therefore all aspects --

10 Q. Had to be looked at.

11 A. -- had to be looked at.

12 Q. Because of the fact of registration --

13 A. Yes.

14 Q. -- then it brought in that aspect as a component in

15 assessing whether you should be registered or, indeed,

16 whether you should be deregistered?

17 A. That's right, yes.

18 Q. In the main, the schools are getting inspected by HMIs

19 who are visiting, and we'll look at that in due course,

20 in section 5. And also children's homes, both Local

21 Authority and voluntary homes -- and they were in the

22 majority at that time -- were being inspected and

23 visited by Childcare Inspectors --

24 A. That's right.

25 Q. -- from Central Government?

1 A. Yes.

2 Q. Now, so far as Local Authority inspection is concerned,
3 there was no system of inspection, as I understand from
4 your evidence -- there was no system either in law or in
5 practice until around 1990, when the Local Authorities
6 established registration and inspection units that were
7 independent of the Social Work Departments that were
8 using voluntary homes and local authority homes --

9 A. The assumption --

10 Q. -- is that correct?

11 A. Not quite. The assumption post-1968 was that the
12 registration and inspection of homes, whether voluntary
13 or managed by Local Authority, would actually be
14 undertaken by the Local Authority Social Work
15 departments themselves.

16 Q. Are you saying that the assumption, an implicit
17 assumption in the 1968 Act -- although may not have been
18 spelt out so clearly -- was if you have a registration
19 function then it necessarily means you'll have to carry
20 out some degree of inspection both at start --

21 A. Yes.

22 Q. -- for registration, and for renewal of registration or
23 deregistration purposes?

24 A. That's right. I think in my second report I make
25 a reference, and I can't remember the page number now,

1 but it relates to a children's home in Aberdeen where in
2 fact the CAS advisers note that particular residential
3 home had been inspected in the previous 12 months.

4 So I can only assume when CAS undertook any kind of
5 intervention they noted such things, but I can't
6 actually --

7 Q. Can't find --

8 A. -- can't find definite evidence.

9 Q. The reason I ask you this is, when we took some evidence
10 from Professor Abrams last week, she had some difficulty
11 in working out what was going on so far as inspection
12 was concerned post-1968, right up until 1995, at least
13 at Local Authority level. She couldn't really find much
14 evidence, I think, if I recall her evidence, about
15 something that might be seen as a formal inspection
16 system or programme that was perhaps envisaged by the
17 1968 Act. One might suggest that if they only
18 established a formal separation with these distinct
19 units in the 1990s, that perhaps the situation wasn't as
20 clear or as satisfactory as it ought to have been.

21 A. Let me put it another way. I tried very hard, post-1968
22 to 1990 to uncover, if you like, advice from CAS in
23 terms of the conduct of an inspection and the conduct of
24 registration and not come across any guidance being
25 issued.

1 Q. I follow that, that CAS isn't giving any -- or you can't
2 find evidence of it. But I suppose I'm taking another
3 step and saying: what sort of evidence did you find that
4 Local Authorities were carrying out this implicit
5 inspection function? None?

6 A. The reference I've given is Aberdeen.

7 Q. Just Aberdeen?

8 A. That's the only one I've come across where it is noted
9 in file that it had been inspected.

10 Q. By the Local Authority?

11 A. By the Local Authority Social Work department.

12 Q. By the Social Work Department?

13 A. By the Local Authority Social Work department; that was
14 a voluntary organisation being inspected.

15 Q. By a Local Authority Social Work Department?

16 A. That's right, yes.

17 Q. That was the only example you could find?

18 A. Given that the papers that I've been looking at have
19 obviously been -- there is an issue of retention of
20 papers and, therefore, I have no other evidence, except
21 to assume that was common policy, just to check up that
22 inspection was taking place. But I can't actually swear
23 that to be the case.

24 Q. I think, in fact in fairness to -- it's perhaps a hard
25 one for you to answer because you did say, I think in

1 relation to children's homes, there wasn't even the same
2 quantity of information about children's homes as there
3 was in relation to residential schools, including
4 approved schools that has been retained in file, NRA?

5 A. That's right, yes.

6 Q. So it's quite hard, without the record, to reach any
7 reliable conclusion?

8 A. That's correct, yes, unless there was an obvious
9 breakdown which resulted in an inquiry, as I think we
10 have in one case here.

11 Q. My question might be though: why did the Social Work
12 Departments or the Local Authority of which they were
13 part, decide in the 1990s that there was a need to have
14 a separate and independent registration and inspection
15 unit, when they hadn't previously had such
16 an arrangement between 1968 and 1990?

17 A. That was the direction from Central Government.

18 Q. As a result of direction?

19 A. Yes.

20 Q. Is that a direction that could have been given in 1968
21 or soon after if they were not happy that the Social
22 Work Department or the Local Authority had no specific
23 inspection unit?

24 A. That would be a reasonable assumption.

25 Q. But they didn't do that. You couldn't find evidence

1 they issued a direction before 1990.

2 A. I think the position in 1968 was that a lot of Social --

3 local Social Work Departments assumed that Central

4 Government would continue to inspect.

5 Q. So they perhaps assumed that these Social Work Advisers

6 were Inspectors?

7 A. It would continue the pattern of inspection as in the

8 previous period.

9 Q. And they did, to some extent.

10 A. Until 1972.

11 Q. Until 1972?

12 A. Yes.

13 Q. So, to that extent, their expectation was realised.

14 But, after that, they ceased, perhaps, to carry out the

15 same visits and make reports; is that what you're

16 saying?

17 A. That's what I'm saying. In addition to that, I found no

18 evidence that directions were given to the Local

19 Authorities on -- after that decision had been taken.

20 Q. But if, at Central Government level, there had been some

21 decision taken that the social work adviser should stick

22 to advising, rather than inspecting, if that was

23 happening in practice, one might be forgiven for

24 thinking that it would have been a good idea to tell the

25 Local Authorities to think about the implications?

1 A. That may well have been done in the ordinary course of
2 discussions, but I've not seen any evidence that
3 a circular was issued to that effect.

4 Q. I was going to say, one obvious means which seems to
5 have favoured means when they wanted to draw attention
6 to the Local Authorities to some matter of concern was
7 to issue a circular. They were doing nothing to stop
8 that.

9 A. I've not found any circular, no.

10 Q. But the SWSG was issuing lots of circulars around that
11 time?

12 A. They were, yes.

13 Q. Because there was a new Act, a new structure, a new
14 generic Social Work Department, a new professional, in
15 terms of a generic social worker. Again, one might be
16 forgiven for thinking, if they didn't issue a circular
17 and you haven't found one, it wasn't perhaps a very
18 clever thing not to deal with.

19 A. One would have expected the circular to be attached to
20 its annual reports, which continued until 1977 and, as
21 I say, I've not found in those annual reports any
22 evidence of a circular being referred to.

23 Q. Now, you have told us what maybe was the implications of
24 the 1968 Act and the requirement of registration of
25 homes, voluntary homes, with the Local Authority,

1 post-1968.

2 If I go back to the previous period, between 1945
3 and 1974, there was no statutory requirement for Local
4 Authorities to inspect voluntary homes?

5 A. That's correct, yes.

6 Q. All we have -- and I'll maybe -- I will come back to
7 this, because I have a section on this -- all we had in
8 relation to children's homes that were run by voluntary
9 providers were the 1947 regulations --

10 A. That's correct.

11 Q. -- that you deal with in your report, in section 3.

12 Just to be clear, the effect of the regulations was
13 simply to require Local Authorities to make visits
14 regularly to see children placed in voluntary homes by
15 the authority, that was the extent of their statutory
16 responsibility.

17 A. Yes.

18 Q. But, in practice, they would clearly see the conditions
19 for all children in these homes, whether in their care
20 or not.

21 A. Yes. You mean the central Inspectors?

22 Q. No, no, the Local Authority had a responsibility to
23 visit children in voluntary homes to check on their
24 situation, if I can --

25 LADY SMITH: So you are not talking about inspections here.

1 It was --

2 MR PEOPLES: No, because they weren't charged with

3 inspecting voluntary homes pre-1968.

4 A. That's correct, yes, yes.

5 Q. Neither was Central Government.

6 A. Central Government was responsible post-1934 for the

7 registration of voluntary homes, which involved

8 inspection duties. But, when the discussions were

9 taking place on post-1934 regime, the Scottish Home

10 Department -- the Scottish Office, as it was then, the

11 small Scottish Office -- one can get confused about the

12 departmental structure -- was thinking very closely

13 about regulations, but discovered that the Home Office

14 didn't want regulations south of the border, so

15 regulations north of the border were abandoned.

16 Q. Yes. It wasn't until 1959 that we had the first set of

17 regulations relating to the conduct and management of

18 children's homes, including voluntary and Local

19 Authority homes?

20 A. Yes, by that time I think the 1952 regulations had been

21 issued by the Home Office.

22 Q. Yes, but none by the Scottish Office?

23 A. No.

24 Q. The very first regulations of general regulations were

25 1959.

1 A. That's correct, yes.

2 Q. Although there was a power to make them as well, in the
3 Children Act 1948?

4 A. That's correct.

5 Q. We'll come to that. You have a chapter on why it took
6 so long, and we'll come to that, but I just want to
7 understand where we are.

8 You do say that the voluntary homes, there was
9 a system of registration with the Local Authority from
10 1934; did you say?

11 A. No, with Central Government from 1934, yes.

12 Q. So that would explain why post-1934 we see Childcare
13 Inspectors from the Scottish Home Department visiting
14 voluntary homes and -- well, mainly voluntary homes in
15 those days.

16 A. Voluntary homes, yes. Although, of course, pre-1940
17 Inspectors from the Scottish Health Department also
18 inspected all forms of homes, whether they were
19 voluntary or statutory, where Poor Law children had been
20 placed.

21 Q. There was a Poor Law system before. Obviously, your
22 report is concerned with 1945, but, if we go back, yes,
23 there was another set of Inspectors with almost a public
24 health function.

25 A. No, with a care function.

1 Q. All right, a healthcare function for the children?

2 A. With a general care function. That dated back to the
3 appointment of the first Inspector in 1850, concerning
4 the Poor Law.

5 Q. And you have mentioned the registration of voluntary
6 homes in the 1930s with the Secretary of State.

7 A. Yes.

8 Q. And the fact of inspection by, amongst others, Childcare
9 Inspectors of homes. There was, at that time,
10 a statutory power conferred on the Secretary of State to
11 inspect voluntary homes?

12 A. Yes.

13 Q. But not a duty?

14 A. That's probably correct, yes.

15 Q. I think that is the reality. There was a power, and it
16 looks as if, to an extent, that power was exercised in
17 practice, because we know that certain homes were
18 visited, but probably only the larger ones.

19 I think Professor Norrie made a point in his section
20 8 of his text on child protection, that many small,
21 voluntary homes may have escaped inspection. It was
22 perhaps the larger ones that drew the attention of the
23 Central Government, such as perhaps Aberlour -- I seem
24 to recall had inspections in the 1930s and concerns were
25 raised, perhaps, about the standards of care there.

1 Diet, for example, I think was one, if I recall.

2 A. I wouldn't go so far as that. My intuitive
3 understanding is that all homes were inspected, but it's
4 the level of inspection that occurred. Certainly the
5 retained papers indicate very thorough and detailed
6 inspections of institutions, such as Aberlour. And
7 I think there is also an Aberdeen home as well, where
8 substantial papers exist.

9 But there is inference in the -- certainly the
10 reports around about 1944/1945, that all homes were
11 being inspected. But I suspect that it was a question
12 of the -- whether or not it was a day visit or a
13 several-day visit.

14 But, again, I can't point to any evidence, direct
15 evidence, to support that. But there's an inference in
16 the reports that were being made, that voluntary homes
17 had to be registered and, therefore -- a consequence of
18 registration -- had to be inspected.

19 Q. The reason I'm just explore this generally -- and
20 I appreciate this is going at an earlier period -- is
21 simply that in his work on child protection, in his
22 chapter on institutional care, Professor Norrie does
23 look at the pre-48 position with voluntary homes, and he
24 makes certain observations about that period of how
25 there was a power to inspect, but not a duty to do so,

1 in terms of the statutory language. And also a power to
2 remove children from a voluntary home that was found to
3 be unsatisfactory. I think that is the board term.

4 But he does say, at page 259:

5 "The non-compulsory nature of this inspection regime
6 meant that many smaller homes were able to avoid any
7 form of official oversight."

8 So that was his understanding of the situation. You
9 may think that there's perhaps a basis for challenging,
10 but I just raise it with you.

11 A. Yes. I've not come across any reference which indicates
12 that smaller homes were not inspected. There was
13 certainly a list of all homes, certainly around 1944,
14 1945, 1946, which the Scottish Home Department retained.

15 The inference, if you like, of the conversations
16 that were taking place between the Childcare
17 Inspectorate and Scottish Home Department officials
18 would indicate, yes, you're right, they were
19 concentrating on the large homes in terms of
20 inspections, but you must also remember that there
21 was -- some of these homes would have Poor Law children
22 as well, and it's not clear from the records what the
23 Poor Law Inspectorate were doing in terms of inspecting
24 those homes.

25 Q. No doubt that was why Clyde suggested there had to be

1 quite a significant change at Central Government level
2 in the way these functions were exercised.

3 A. Have A degree of integration.

4 Q. Yes. It's just that again you say there was a list, in
5 the late 1940s at least, of voluntary homes that had
6 been prepared.

7 A. Yes.

8 Q. Was there any official register? And, if so, when did
9 we first -- have you seen any evidence there was
10 an official register kept before then?

11 A. The inferences that a register was kept from 1934 --

12 Q. But you haven't seen anything?

13 A. I haven't seen anything, but the working papers suggest
14 that registration was expected. The extent of any
15 inspections, it's not clear.

16 One must remember that pre-1939 there were, I think,
17 only three Childcare Inspectors within the then Scottish
18 Office.

19 The number increased post-1945, but were not that
20 great.

21 Q. If I was to suggest -- I think Professor Norrie, quoting
22 some earlier authorities, said that in Scotland in the
23 1930s perhaps, and maybe pre-war, there was maybe many
24 hundreds of small homes in existence. If there were
25 only three Inspectors, it's pretty difficult for them to

1 see them all and inspect them on any regular basis. So
2 it may well be that the concentration would be focused
3 on the bigger places.

4 A. On the bigger places, yes, yes.

5 Q. Just to finish this a little bit -- and I appreciate
6 it's taking you pre-1945 -- Professor Norrie offers
7 an explanation for this, this non-compulsory nature of
8 inspection, and having power, but no duty to inspect.

9 His explanation, at page 260 of his textbook, is
10 that voluntary homes -- when he's answering the question
11 of why they were not regulated by the State in the same
12 way, for example, as approved schools, his explanation,
13 and I quote:

14 "They were by and large private or church-based
15 charitable institutions, which the State saw no role for
16 itself in regulating, unless, as with approved schools,
17 they undertook the functions of the State education or
18 rehabilitation of offenders."

19 Now, that sounds quite a plausible explanation why
20 we don't have conduct regulations, we don't have a duty
21 to inspect; because they're mainly private institutions
22 which have some degree of regulation, but not the same
23 degree of regulation as approved schools.

24 A. I would accept that, except when you are dealing with
25 Poor Law children, where there were regulations. So if

1 they were accepting Poor Law children, there would be
2 attendant regulations, and that would necessary involve
3 an inspection by the Local Authority social -- by the
4 Local Public Assistance Department at that time.

5 Q. I can follow that, and I think obviously there was quite
6 an elaborate Poor Law legislation from the mid-19th
7 Century, so there would be a statutory footing for that.

8 A. A statutory footing.

9 Q. The voluntary homes really emerged without statutory
10 authority or requirement. They ran their own show.
11 There was a degree of regulation over time.

12 A. Yes.

13 Q. But very much a limited regulation and a light-touch
14 regulation, until almost, really, 1959, one could say.

15 A. One could say that, yes, yes.

16 Q. Is that fair?

17 A. That's a fair position to take, that regulation did not
18 evolve until after 1959, except for Poor Law children in
19 the period before 1948.

20 Q. Of course, the Poor Law system disappeared in 1948?

21 A. That's right, yes.

22 Q. Sorry, I went back in time. Perhaps I can go forward in
23 time again.

24 We were talking about the pre-1968 period and the
25 work of HMI and the work of Childcare Inspectors and how

1 there was the formation of the Social Work Services
2 Group, and the Childcare Inspectors moved to become
3 Social Work Advisers, but were not solely -- however,
4 the advisers were not solely former Inspectors.

5 A. Yes.

6 Q. They were covering a wide range of services; that was
7 the idea. They were not, at least, required to perform
8 inspections in the traditional sense, but they did visit
9 for a time.

10 So we have all that.

11 Now, the -- just taking that, if I can -- because
12 this is perhaps straying back to what you were talking
13 about in your inspection report in the last two days.

14 1968 was the Social Work (Scotland) Act 1968, the
15 establishment of children's hearings and the new generic
16 Social Work Department and so forth. The Children's
17 Hearing System, I think, first began operation around
18 1971?

19 A. 1971, yes.

20 Q. March or April?

21 A. Yes.

22 Q. The new generic Social Work Departments had to get up
23 and running, no doubt, with the help of CAS?

24 A. CAS.

25 Q. So these things would take time and, indeed, did take

1 time, as I think we know.

2 In that time, post-1968, what happened to the Local
3 Authorities in terms of their responsibilities, in terms
4 of either implicit inspection? Did that disappear?

5 A. I've not found any evidence of the central inspection of
6 Local Authority Social Departments post-1968.

7 Q. None?

8 A. None.

9 Q. Just in that, if I'm trying to get the broad picture
10 between 1968 and 1995 for the Children (Scotland) Act,
11 when, again, there was perhaps there was a big change;
12 can you just help me with that?

13 A. The implicit assumption in the 1968 Act was not just
14 reforming the broad range of Social Services, Local
15 Authorities, but was the increase in employment of
16 professional social workers.

17 CAS's role was to link in with that group of
18 individuals who were increasing in number post-1968, and
19 it was, therefore, one professional group from Central
20 Government discussing and encouraging the work of
21 professionals within Local Authority Services.

22 It must be remembered -- I'm not sure if I mentioned
23 in the report, that in 1962 there was only one
24 professionally qualified Social Worker in Scotland based
25 in Paisley. Edinburgh was certainly training qualified

1 Social Workers, but they went south of the border.

2 From 1965 onwards, there was an expansion of the
3 training programme in Scotland. There certainly
4 remained a shortage of professionally trained Social
5 Workers until well into the 1970s.

6 My understanding -- if you like, implicit
7 understanding -- is the role of CAS was to encourage and
8 not direct, but point towards the future in terms of:
9 yes, we need to get way from residential care; we need
10 to develop a range of home-based, community-based
11 supports for families, including the words "intermediate
12 treatment" that suddenly arrived, which was a nice way
13 of saying, "We're not going down the route of List D
14 schools. We'll try and deal with juvenile offenders
15 within the community".

16 And that is important, to understand that cultural
17 shift, that cultural change.

18 A central, professional body discussing with locally
19 based professionals, who were increasing in number.

20 Q. But it would take time to achieve the aim of that
21 dialogue between two sets of professionals. First of
22 all, to get a professional workforce to talk to and,
23 secondly, to give effect to the dialogue and convince
24 them to change their ways or change their direction.

25 A. Central Government regulations changed, I think in 1977

1 or 1978, that no Chief Social Work Officer could be
2 appointed within the Local Government within Scotland
3 who was not professionally qualified.

4 Q. So, if I'm a young person post-1968 in a List D school,
5 and we know that List D schools were not -- didn't cease
6 to be List D schools until March 1986. So just assume
7 I'm a child there, who's inspecting my List D school
8 between 1968 and 1995?

9 A. A CAS Adviser.

10 Q. A CAS Adviser?

11 A. Looking at the broad range of care and provision,
12 assisted, not necessarily with an integrated inspection,
13 but assisted by an HMI Education Inspector looking at
14 the curriculum.

15 Q. Yes. So there is still the Central Government
16 inspection, if you like --

17 A. Yes.

18 Q. -- through CAS --

19 A. Yes.

20 Q. -- and assisted by HMIE?

21 A. Assisted by HMIE, when required.

22 Q. When required? And the CAS people are not in fact named
23 as Inspectors as such, because they're given the name
24 "advisers"?

25 A. They're given the name -- but they were -- if one looks

1 again at the papers surrounding the establishment of
2 CAS, it's accepted that there were statutory duties of
3 inspection, but we'll still call you an "adviser".
4 Q. Okay. So that's me, when I'm in my List D school.
5 A. Yes.
6 Q. Let's say I had a spell in a children's home in that
7 period; what would be the situation? How would my
8 environment be inspected and by whom?
9 A. By the Local Authority.
10 Q. Between 1968 and 1995?
11 A. 1972 and 1995, yes.
12 Q. No Central Government inspection?
13 A. No. Sorry, between 1972 and 2001.
14 Q. It's quite a long time.
15 A. Quite a long time, yes.
16 Q. That's putting a lot of faith in the Local Authority to
17 discharge any -- either explicit or implicit
18 inspectorial functions that are incumbent on them.
19 A. Yes.
20 Q. In that period, again, sticking between 1968 and 1995,
21 as you told us in the previous two days, there was
22 certain developments in the run-up to the 1995 Act and
23 beyond; can I just follow through this, so I can
24 understand where we came to?
25 There was an Inspectorate formed; the Social Work

1 Services Inspectorate was established on 1 April 1992,
2 I think you told us?

3 A. Yes.

4 Q. But, despite its name, it wasn't an Inspectorate;
5 I thought that was the tenor of your evidence?

6 A. They did conduct inspections, but not of children's
7 homes and Local Authority Social Work Departments in
8 a formal sense.

9 Q. They visited and prepared reports on residential
10 establishments, for example, or -- but they weren't
11 necessarily official Inspectors, in the traditional
12 sense?

13 A. They weren't Inspectors in the traditional sense of
14 inspecting for registration purposes or continuing
15 registration purposes of children's homes.

16 Q. Their interest, largely speaking, was --

17 A. Remained advisory.

18 Q. -- care and welfare?

19 A. Remained advisory.

20 Q. Advisory, but their interest during the visits was
21 looking at care and welfare aspects of these
22 establishments, wasn't it?

23 A. When required. I think we have talked about that on
24 Tuesday, and I think yesterday.

25 Q. Can you help me again? Just remind me: let's say it

1 wasn't a requirement on all visits to consider care and
2 welfare; well, what was it a requirement to consider
3 during these visits?

4 A. There were very few visits. Where there were visits, as
5 I've discussed in a separate report, it covered care and
6 welfare.

7 Q. When they did visit, they would look at care and
8 welfare?

9 A. Yes.

10 Q. So we can get an idea from these reports what they
11 thought about the standard of care, what they thought
12 were the issues for concern and so forth?

13 A. I think as also discussed and pointed out, they would
14 point the finger at the local registration authority to
15 follow up and deal with pertinent issues. I think the
16 phrase was it was not "within their locus".

17 Q. Because the argument was that the 1968 Act has placed
18 responsibility for these establishments on Local
19 Authorities. It's their responsibility to deal with any
20 failures in attaining the appropriate standard.

21 A. Yes.

22 Q. We can come in, point them out, and point them out to
23 the authorities, but, ultimately, they're the ones that
24 have to sort the problem out.

25 A. Unless there is, if you like, a dereliction of duty at

1 Local Authority level, in which case we would have
2 a formal inquiry.

3 Q. That didn't happen very often, did it?

4 A. No.

5 Q. So these were --

6 LADY SMITH: Am I right in thinking, Professor, the point
7 you're reminding us of is that as advisers they couldn't
8 go beyond giving advice, they didn't, for example, have
9 a power of direction or a power of sanctioning the
10 organisation?

11 A. That would require institution of a formal inquiry,
12 which was permissible under the 1968 Act, but I think as
13 I've discussed elsewhere, that involved a substantial
14 number of hurdles to go through before you could
15 actually establish an inquiry.

16 LADY SMITH: And delay?

17 A. And delay, yes, yes. And the 1995 Act permitted, or
18 rather pushed, Local Authorities to conduct inquiries
19 where necessary, themselves, rather than relying on
20 a formal inquiry.

21 MR PEOPLES: Basically, during this period, the way that
22 Central Government saw things was that largely speaking
23 it's for Local Authorities to regulate children's homes.

24 A. Yes.

25 Q. We can come in, visit, identify, have discussions and so

1 forth, but that's really -- we have to be careful we
2 don't overstep the mark and, in fact, trample on their
3 statutory jurisdiction.

4 A. I think when we look at the second report I did for the
5 Scottish Government, I think I do mention the objections
6 that some of the larger Regional Councils had to CAS
7 Advisers actually intruding in their area, shall we say,
8 on the basis that they had substantially more experience
9 as senior officers. I think, really, until you saw
10 District Councils emerging with smaller authorities,
11 that position perhaps changed, and I can see why
12 a region such as Strathclyde or Lothians would object
13 strongly at senior level to a middle-ranking officer
14 coming in and providing advice as to their conduct.

15 Q. It would be seen as interference?

16 A. Interference in the duties of Local Authorities.

17 Q. And these would be the large -- once we came to
18 regionalisation in 1975, the bigger authorities,
19 particularly Strathclyde, would not take that
20 interference well?

21 A. No.

22 Q. So there was this tension; they weren't working
23 together.

24 A. The advice was still being given on the issue of new
25 regulations, but it was not a question of, if you like,

1 the pre-1974 position, where you had Social Work
2 Departments largely staffed by unqualified members.

3 Q. So, once the big departments felt that they were up and
4 running and had found their feet, and had the necessary
5 professionalisation within them, they felt: we don't
6 need you anymore?

7 A. Once they'd had ten or 15 years of experience, yes, of
8 actually working with local Social Services; what
9 purposes would central inspection have?

10 Q. As we saw yesterday, in the later period, after 1995, it
11 would appear at least some Local Authorities, albeit not
12 the Regional Councils necessarily, didn't seem to manage
13 to run their services very well.

14 A. That's correct. There was obviously a distinction
15 between the larger Regional Councils and the smaller
16 Regional Councils, as the evidence of the Orkney Inquiry
17 indicated.

18 Q. Okay. So just again then, if -- so the Social Work
19 Services Inspectorate, we have talked about that. It
20 was established in 1992, in the run-up to the 1995 Act,
21 and it did visit, it did prepare reports from time to
22 time. It did raise issues that related to care and
23 welfare and safety, perhaps, and then it is dissolved in
24 April 2005.

25 A. Yes.

1 Q. I use the word "replaced", I don't think it's a strict
2 replacement, but a new body --

3 A. Yes.

4 Q. -- is created, which is an Inspectorate --

5 A. Yes.

6 Q. -- but it's actually called an agency --

7 A. Agency, yes.

8 Q. -- as opposed to an Inspectorate?

9 A. Inspectorate-

10 Q. Social work --

11 A. Inspection Agency --

12 Q. Was an inspection agency, sorry. No -- yes, it does
13 have the word "inspection".

14 A. Yes.

15 Q. And I think the point you made -- and I don't want to
16 repeat what you told us, but the broad point you made
17 was that it had much wider powers to review relevant
18 documents, records, and to do more things as part of
19 an inspection process.

20 A. Yes.

21 Q. So there would be more thorough, rigorous inspections
22 than previously?

23 A. Yes.

24 Q. But this, again, was still an executive agency of
25 Government. It wasn't independent, like the Care

1 Commission or the Care Inspectorate that came later.

2 A. That's correct, yes.

3 Q. But, where it may have differed from some of the bodies
4 that we have seen before; am I right in thinking it was
5 using professional Social Workers to undertake quality
6 assessments of Social Work Services, including
7 Children's Services? Was that the broad --

8 A. Those who had a background within Social Work Services.

9 Q. So they had the background to be able to assess
10 services?

11 A. Yes, yes.

12 Q. What was happening then, which hadn't happened before,
13 is that these inspections, by this stage, would be
14 addressing quite a wide range of needs. Because we're
15 in the era of care planning by now, are we not?

16 A. We are into care planning, yes.

17 Q. And the message that children's welfare has to be
18 safeguarded and promoted.

19 A. Yes, yes.

20 Q. Not just safeguarded. So these inspections are looking
21 at it from a wider viewpoint and are addressing whether
22 educational, health and social needs are adequately met
23 by the care plan?

24 A. Yes.

25 Q. Of course, to adequately meet those needs, it required

1 involvement of and cooperation between a number of
2 agencies at local level, something that perhaps hadn't
3 been a feature historically.

4 A. Historically, the pattern of provision of services
5 clearly altered, and a child might require the support
6 of Education, Social Work and the Health Services.

7 Q. And so -- of course, from a Central Government point of
8 view, the primary function of the Social Work Inspection
9 Agency, I think you said yesterday, was to deliver
10 rigorous inspections with the aim of driving up
11 standards and improving the quality of services; that
12 was the aim --

13 A. Yes, yes.

14 Q. -- of this new type of inspection?

15 A. Yes.

16 Q. And new approach to inspection.

17 So, post-1995, in broad terms, we reach an era of
18 more rigorous inspection than there's ever been.

19 Then the next, perhaps, significant development is
20 that this Inspection Agency is effectively replaced by
21 the establishment of an independent Care Commission by
22 the 2001 Regulation of Care (Scotland) Act and it
23 started in operation in 2002; would that be the next
24 significant development?

25 A. No, no, no.

1 Q. Oh right, sorry.

2 A. The Care Commission itself was established in 2001,
3 operation --

4 Q. Sorry, yes. The Social Work Inspection Agency was still
5 in being.

6 A. Was still in being, and it was incorporated within the
7 Care Inspectorate in 2011.

8 Q. Yes. So the Inspection Agency survived the 2001 Act,
9 but the Care Commission came into play as an independent
10 commission?

11 A. No. The Social Work Services Inspectorate, SWSI, was
12 replaced by SWIA in 2005.

13 Q. But SWIA survived the 2001 Act?

14 A. No. Hold on a minute. SWSI continued throughout the
15 period, 1992 to 2005, irrespective of the fact that the
16 Care Commission was established in 2001, operational in
17 2002. Some of its functions were taken over by the Care
18 Commission.

19 Q. You are quite correct, because --

20 LADY SMITH: Sorry, your point being, Professor Levitt, it
21 wasn't only an Inspection Agency? The SWSI had more
22 responsibilities than just the sort of inspections that
23 were taken on by the Care Commission?

24 A. That's right, yes. SWIA conducted inspections of Local
25 Authority Social Work Departments.

1 MR PEOPLES: Forgive me. I think I probably was confused
2 there. The Social Work Services Inspectorate was
3 established in 1992.

4 A. Yes.

5 Q. And it survived the 2001 Act, but was dissolved in 2005?

6 A. That's right.

7 Q. About four years after?

8 A. Yes.

9 Q. At that point, another agency was created, the Social
10 Work Inspection Agency, as an executive agency, so there
11 was the independent Care Commission --

12 A. Yes.

13 Q. -- on the one hand --

14 A. Yes.

15 Q. -- and there was the Inspection Agency, which is
16 an executive agency of Government, on the other.

17 A. That's correct.

18 Q. They were both co-existing.

19 A. Yes.

20 Q. And both, to an extent, had jurisdiction in care and
21 welfare matters, if I can put it that way.

22 A. Had responsibilities for ensuring the quality of
23 provision at local level, whether it was in a children's
24 home, old person's home, or whether it was a Local
25 Authority providing the general services.

1 Q. So if I'm the child in the residential home at this
2 point, after 2002, and saying: who inspects my home?
3 A. The Care Commission, twice a year. One of those visits
4 is unannounced.
5 Q. So that at least is, perhaps, a new development?
6 A. It's a new development, yes.
7 There might well have been inspections by the arm's
8 length Local Authority inspection units before, but
9 I'm afraid I haven't seen any Central Government papers
10 on that.
11 Q. They have dropped out of the picture, it would appear,
12 as far as --
13 A. They drop out of the picture. As far as we're told,
14 many of the staff of the arm's length join the Care
15 Commission.
16 Q. Just say I'm a curious resident, I say: you've told me
17 about the Care Commission and I can expect to see them
18 twice a year, once unannounced; what about the Social
19 Work Inspection Agency? When do they come to see me?
20 A. They might, as part of the inspection that they
21 undertake of the Local Authority's Social Work
22 Departments.
23 Q. So it's only because they're looking at the Local
24 Authority's department that they might, as part of that
25 exercise, look at my home?

1 A. They were obliged to take into account, in their
2 inspection, the recent inspections of the Care
3 Commission, in terms of whatever residential provision
4 the Local Authority social work departments were using.

5 Q. So they're really looking at the services in the round,
6 rather than a particular establishment, and reporting on
7 the establishment as such?

8 A. No, they don't report on a particular establishment.
9 Their report is to look at quality of services being
10 generally provided, and they would take into account the
11 work that the Care Commission had done.

12 And almost certainly, as I think I said yesterday,
13 someone from the Care Commission would be attached to
14 their inspections.

15 Q. In assessing the quality of the service -- so they are
16 themselves going to the establishment, and it may be
17 evidence of whether the service as a whole, particularly
18 Children's Services, are meeting the necessary
19 standards?

20 A. That's right. But, in addition, of course you have the
21 HMIe conducting inspections of Children's Services at
22 local level. So there are three Inspection Agencies
23 post-2005.

24 Q. So the HMIe, it survives the 2001 Act, also, the
25 establishment of the Care Commission. It still has

1 a function?

2 A. Yes.

3 Q. Just remind me what are they actually doing there that's
4 different.

5 A. They're looking at the -- they're basically looking at
6 the safeguarding of children within all locally provided
7 services, whether it is education, Health Services, or
8 in Social Services.

9 LADY SMITH: And all, whether or not residential?

10 A. And all whether or not residential and at home.

11 MR PEOPLES: The services could be residential care
12 services --

13 A. Yes.

14 Q. -- for children --

15 A. Yes.

16 Q. -- or other services. The services wouldn't necessarily
17 be children's service, because we saw the scoring might
18 be an overall assessment of the whole service --

19 A. Yes.

20 Q. -- not just for children.

21 A. That's right. That's the Social Work Services. Whereas
22 HMIe were looking solely at children. But they, too,
23 would also have officials from the Care Commission
24 attached to it, and advising them and assisting them
25 with their inspections.

1 Q. Was this simply a continuation of the 1995 assumption of
2 responsibility for education in care?

3 A. I think you could say that, yes. It was a development
4 of that, which was, if you like, crystallised by the
5 decision that local services for children would be
6 inspected by that body, as it emerged.

7 Q. And just to look at the early 2000s, we have the
8 establishment of the independent Care Commission, which
9 is a first --

10 A. Yes.

11 Q. -- for an independent form of inspection of services.
12 We also have, in the post-2001 era, for the first time,
13 the introduction of national standards.

14 A. Yes.

15 Q. Which is part of this move, I suppose, towards a more
16 methodical and rigorous inspection system, and something
17 to measure standards against, standards in particular
18 establishments.

19 Also in the 2000s, I think you say that another
20 innovation would be the introduction of the joint or
21 integrated inspections, everyone getting together and
22 going in?

23 A. Yes.

24 Q. And looking at all the needs and whether they're
25 adequately being met by the services that are being

1 inspected.

2 From time to time, certainly in the initial years,
3 the Care Commission relied on assistance from SWSI
4 because I think, as you put it, the suggestion or the
5 indication is they lacked enough skilled staff to do it
6 themselves?

7 A. That was in the area of secure accommodation.

8 Q. In secure?

9 A. Yes, yes, yes.

10 Q. And just on HMIE -- to go back, so I'm clear -- it was
11 an executive agency, still?

12 A. It was an executive agency of the Scottish Government.

13 Q. And it was created in 2001?

14 A. Yes.

15 Q. Is this as a replacement of the HMIE, with a big E?

16 A. Yes, yes.

17 Q. For its more specific inspection of Children's Services,
18 it was using professionals to undertake assessments and
19 evaluations of the Children's Services, including
20 services for looked-after children?

21 A. Correct, yes.

22 Q. That was their focus?

23 A. Yes.

24 Q. Can I just finish? Because I'm conscious of the time.

25 One last question at this point. The inspections, these

1 integrated inspections that were being carried out in
2 this era, in this period, I think you were asked
3 a number of times to, perhaps, say whether the issues
4 that were identified in these rigorous inspections were
5 long-standing, going back perhaps many decades.

6 I think you said it was difficult, necessarily, from
7 the evidence as such of the reports to say that. But
8 can I put this to you: some of the things that were
9 raised, including for example staffing, for example, and
10 training, were long-standing problems, which hadn't been
11 satisfactorily addressed prior to 2001. We still had
12 a lot of unqualified staff.

13 A. Yes, yes.

14 Q. We are just into the era of this SSSC to regulate the
15 workforce and require qualifications. So is it fair to
16 say it's likely that some of the problems that were
17 highlighted in these services were of a long-standing
18 nature?

19 A. Post-2000?

20 Q. Yes.

21 A. I think it's probably correct to say.

22 MR PEOPLES: I think this is perhaps a good time.

23 LADY SMITH: This is a good point to break, Mr Peoples.

24 MR PEOPLES: Yes.

25 LADY SMITH: I think we're probably ready for a break,

1 Professor Levitt. I'll rise now for the morning break
2 and sit again in a quarter of an hour or so. Thank you.

3 (11.32 am).

4 (A short break)

5 (11.50 am)

6 LADY SMITH: Are you ready for us to carry on, Professor?

7 A. Yes.

8 LADY SMITH: Mr Peoples, when you're ready.

9 MR PEOPLES: I can't remember if I asked you this question
10 before the break, but I'll ask again, just in case.

11 We were looking at the progression and

12 development --

13 A. Could I just add something to what you were ending up
14 on, in terms of workforce capacity?

15 LADY SMITH: Please go ahead.

16 A. There was a division, a section within CAS and then
17 Social Work Services Inspectorate and, actually, I think
18 the predecessor body, the Childcare Inspectorate, that
19 dealt with the issues of developing staff capacity, and
20 certainly I have seen the sort of breakdown of the
21 responsibilities of that section, and it did involve
22 connection with Scottish universities and Scottish
23 colleges in terms of developing the professional side.

24 I think the annual reports -- existed until 1977 --
25 have some indication of the development of associated

1 packages.

2 LADY SMITH: So we're now at the latter half of the 1970s
3 that you're referring to for that, are we?

4 A. That was the last -- the final report of Social Work
5 Services Group was in 1977, but I have seen, within the
6 files I've looked at, various documents relating to
7 staff capacity, and congratulating everyone that
8 95 per cent of frontline Social Workers were
9 professionally qualified by 1992, I think.

10 And there were further papers on the issues of --
11 concerning further development below the professionally
12 qualified level.

13 LADY SMITH: But, of course, by 1992, we're 24 years on from
14 the 1968 Act, and the starting point, I think you told
15 us, of one Social Worker in Paisley and then a build to
16 three, and a slow, slow build-up after that; yes?

17 A. But there were short childcare courses available,
18 sponsored by the Scottish Office at a variety of
19 institutions. I think one was in Jordanhill, and I
20 think there was another one in Edinburgh concerning the
21 probation office, which offered short-term courses for
22 Childcare Officers, which enabled them to be seen as
23 qualified in terms of being appointed as Childcare
24 Officers and approved by the Secretary of State.

25 So there were a number of courses, but the fully

1 fledged Social Work training courses did not take off
2 until after 1965 in Scotland.

3 MR PEOPLES: Yes. I follow that. I think you make
4 reference to that in your report, and I'll come back to
5 the issue of training and qualifications, perhaps in
6 more detail at a later stage.

7 What you've said, though, about the fully qualified
8 Social Workers by 1992, or the high percentage, if I was
9 the young person in residential care and asked the
10 person who is my immediate carer, "Do you have any
11 qualifications?" the chances are the answer would be
12 "no".

13 LADY SMITH: In residential care; when?

14 MR PEOPLES: 1992.

15 LADY SMITH: Thank you.

16 A. That was probably the case. It was encouraged, but --

17 MR PEOPLES: Well, yes. Perhaps the system, if it's dealing
18 with highly vulnerable people, special needs, the first
19 requirement of any system is a trained -- appropriately
20 trained workforce, and that message was being said in
21 the 1940s.

22 A. And continues to be said post-2000.

23 Q. Indeed. So, yes, progress, to an extent, in getting the
24 professional Social Workers with the appropriate
25 qualifications as generic Social Workers, but the

1 residential care workers were not, generally speaking,
2 qualified until quite late in the day.

3 A. And I think you can still see issues emerging with the
4 reports undertaken by the Social Work Services
5 Inspectorate and HMIe on residential provision
6 post-2005, and I think there are one or two examples.
7 I think at Wellington, in Midlothian, there were issues
8 concerning the qualifications of staff.

9 Q. So staff training is still a big issue --

10 A. Yes.

11 Q. -- even in the 2000s?

12 A. Yes, yes.

13 Q. So, as I say, going back to the chronology and the
14 development of the various bodies, we mentioned the
15 Social Work Services Group, which was formed in 1967.
16 I don't know if I took this from you, but, on devolution
17 in 1999, the Social Work Services Group was dissolved,
18 as I understand it, from your evidence?

19 A. That's right.

20 Q. The functions of that group were transferred to the
21 Children and Young Person's Group, which sat within the
22 newly established Scottish Executive Education
23 Department, SEED.

24 A. That's right, yes.

25 Q. Just to finish off this sort of look at how things

1 developed, we had been looking at the post-2001 period,
2 just before the break. I think you told us in your
3 evidence, in relation to part 3 of your inspection
4 report, that there was a major review of Social Work
5 Services commissioned in 2004, with the general aim of
6 improving the quality of the services; I think that's
7 correct?

8 A. Yes. That's correct, yes.

9 Q. There was to be -- or arising out of that review, there
10 was to be a focus on performance improvement at the
11 Local Authority and other services -- other local
12 services level.

13 A. That's right, yes.

14 Q. That was to be achieved by using a system of
15 inspection -- a rigorous system of inspection,
16 integrated inspections, which would identify areas of
17 concern, areas for improvement, and it would use
18 a number of quality indicators and areas of evaluation,
19 I think, they were described as, as well, and I think it
20 was a six-point scale, ranging from excellent to weak?

21 A. Yes, yes.

22 Q. That was a development of the system in this period.

23 From 2011 onwards, we have the Care Inspectorate
24 being established. Thereafter, as I understood your
25 evidence yesterday, the Care Inspectorate led

1 inspections from 2011 onwards of Looked-after Children's
2 Services, which before then had been HMIE led.

3 A. That's right. The integrated services at local levels.

4 Q. Yes, they were looking at the degree to which the
5 services were in fact integrated and functioning, as
6 they ought to.

7 A. Yes, yes.

8 Q. And highlighting where they weren't.

9 A. Yes.

10 Q. But post-2011, the HMIE; did their Inspectors move to
11 the Care Inspectorate?

12 A. I can't remember the actual number. But I think the
13 report I gave yesterday -- those intimately connected
14 with the local inspection regimes and moved across.

15 Q. I think you told us this morning that during the era of
16 the Care Commission that the HMIE continued to have
17 a responsibility in terms of welfare jurisdiction --

18 A. Yes.

19 Q. -- looking at Children's Services.

20 Post-2011, did I understand you to say yesterday
21 that there was still a residual jurisdiction, even after
22 the establishment of the Care Inspectorate? At least
23 there was still a degree of overlap.

24 A. I think when we look at some of the inspection reports
25 at a later date, we will cover that area.

1 I was surprised, but perhaps not surprised, by the
2 fact that HMIe were getting involved with the issue of
3 the registration of a number of particular education
4 units.

5 Q. Can you proffer a reason for that? Was it like the Care
6 Commission; that you need to give them time to bed in?

7 A. I don't think so. Because, of course, the immediate
8 Inspectorate, who had conducted inspections, had moved
9 across. I think there was an issue concerning the
10 registration of those particular units and, therefore,
11 they had a responsibility to inform the Registrar of
12 Independent Schools if there were serious educational
13 issues, which, of course, could include welfare issues.

14 Q. Yes, I think you told us quite a bit about that
15 yesterday, how this worked out and was there information
16 sharing --

17 A. HMI --

18 Q. Or memorandum of understanding.

19 A. That's right. But HMIe had responsibility to keep the
20 Registrar involved.

21 Q. Yes, anything that would affect registration or
22 deregistration.

23 A. That's right, yes.

24 Q. In terms of the more rigorous inspection, we have the
25 era of the joint inspections, integrated inspections, a

1 much more rigorous inspection process, lengthier, more
2 people involved. But there was a refinement, I think
3 you told us, following the Crerar Review in 2006, which
4 culminated in what you described as a more targeted
5 approach in terms of the inspection process?

6 A. That's right. More targeted at -- surrounding risk
7 assessment.

8 Q. Do I understand that before then the general approach
9 was to do inspections on a cyclical basis, every so many
10 years?

11 A. Every three years, yes.

12 Q. Or five in some cases --

13 A. Yes.

14 Q. -- depending on the type of setting. But, following the
15 review, there was perhaps a particular focus on services
16 where deficiencies had been identified, rather than
17 simply a rolling programme of inspection of all
18 services? Was that --

19 A. Yes. Deficiencies established by looking at a number of
20 different indicators, in terms of both the intelligence
21 that came from the ground and also the paperwork that
22 was being supplied on a combination of resources,
23 staffing, staff capacity and so on.

24 Q. So you are targeting the weaker services?

25 A. You are making an assessment.

1 Q. You are assessing which are weaker, and then you are
2 looking at them more closely?

3 A. That's right, yes.

4 Q. Just in terms of the general inspection methodology in
5 the post-1995 period -- if I can just finish this
6 part -- you said, yesterday, it was substantially
7 different from the 1950s and the 1960s; was it
8 substantially different from the 1970s and 1980s as
9 well?

10 A. Yes.

11 Q. Just to be clear.

12 A. Absolutely, yes, yes.

13 Q. I just want to check, in case there was some change of
14 substance.

15 As you've told us, the methodology involved, amongst
16 other things, a substantial review of documents and
17 records, a much more extensive review and scrutiny.

18 A. That's right. The documents prior to 2005 were quite
19 limited to an inspection regime. Post-2005, from the
20 documentation I've seen, virtually any document that was
21 believed to be pertinent could be reviewed.

22 Q. Of course, another very significant development was that
23 now the Inspectors were obtaining the views of the
24 service users.

25 A. That's correct, yes. For the first time.

1 Q. Was that a combination of both questionnaires and direct
2 interviews?

3 A. Direct interviews. With -- certainly if you're looking
4 at the residential schools, with the pupils involved.

5 Q. Do you get any sense of how willing the young people
6 were to give feedback or express views on the system,
7 and their safety and their welfare?

8 Did you form any impression about that? Because
9 obviously, historically, children seemed to have been
10 unwilling or unable to speak up on such matters.

11 A. The published reports indicate that in some cases
12 children were very willing, and in some cases children
13 were less willing.

14 Q. Was there any attempt made to see if one could address
15 the group that were unwilling or to identify the causes
16 of such unwillingness?

17 A. Right. From a methodological point of view, one would
18 want to look at the actual box files of the paperwork to
19 look more closely at what those particular children and
20 pupils were saying.

21 Q. I suppose I was really asking: if that was seen as
22 something that was happening in practice, some might
23 think, "Well, can we see if there's a reason for this?
24 A systemic reason. Either the way we do it in terms of
25 either the training or how we create the conditions

1 where they feel able to express, frankly, views about
2 places which they're still in".

3 A. I didn't progress that; right? On the basis that
4 I would want to look at the box files, which I know some
5 survive. And that would provide information on the
6 focus group, basically, I think you now call it.

7 LADY SMITH: Did you get any indication of how Inspectors
8 decided which children to interview? They can't have
9 spoken to them all.

10 A. I would have to look at the box files again. Speaking
11 as an ex-school governor, I know that many children at
12 the school I was at put their hand up immediately.

13 MR PEOPLES: It's the ones that don't, though, that you want
14 to know why.

15 A. I know.

16 LADY SMITH: And vulnerable children are less likely to put
17 their head above the parapet.

18 A. I think I would want to look more closely at the
19 surviving papers, in terms of the focus group and who
20 they were, before I could give a qualified answer to
21 that question.

22 MR PEOPLES: That's fair. I suppose you can at least say
23 this much: certainly, there were those who didn't feel
24 able, for whatever reason, to proffer views. That was
25 recorded, in the sense that they didn't seem to be

1 wanting to take part in the exercise.

2 A. There's some evidence that pupils, students, whatever,
3 were reluctant to say. On the other hand, there are
4 reports which say that there was any amount of comment.

5 Q. The reason I'm asking that as well, because it's perhaps
6 relevant even to the situation today that I think
7 there's been concern at times that if you have a child
8 or young person involved in formal proceedings, such as
9 a children's hearing, and they participate or have the
10 right at least to participate, but you don't create the
11 conditions in which they feel comfortable to express
12 views, then it doesn't really matter that you've given
13 them the theoretical opportunity.

14 A. Correct, yes.

15 Q. That's still a problem today, is it not? Or are you
16 aware of that?

17 A. I think I would want to look very closely at the
18 pro forma being used, certainly in the post-2005 period.

19 Q. I think we even know from recent publicity that there's
20 a report being issued by a Sheriff you mentioned in your
21 evidence, Sheriff Mackie, about proposed radical changes
22 to the Children's Hearing System, including, as
23 I understand it, attempts to make the setting itself
24 much more -- if I can put it this way -- trauma
25 informed.

1 LADY SMITH: But we also know from that report that they
2 have gathered evidence from many children about how
3 difficult they have found it to speak up at a children's
4 hearing.

5 A. Yes.

6 LADY SMITH: They don't know what's going on and they don't
7 feel anyone's actually really interested in them.
8 That's just been the position for years and years and
9 years, and here we are, in 2023, with that still being
10 reported.

11 A. Yes.

12 MR PEOPLES: So far as the new methodology on inspections is
13 concerned, just to round off, the process was, generally
14 speaking, there were indicators used at each inspection
15 to assist in forming some view on the effectiveness of
16 the service.

17 A. Yes.

18 Q. It wouldn't be all the indicators, necessarily, it could
19 be just some if they were targeting certain aspects of
20 the service.

21 A. I think we haven't really gone beyond what we did
22 yesterday, but if you look at the actual published
23 reports following the development of scrutiny, they are
24 using the same broad indicators.

25 But, again, when we want to look much more closely

1 at the detail within the box files as to the extent to
2 which they moved ahead on specific indicators on service
3 user response, basically.

4 Q. Under a targeted approach, first of all, you might
5 target particular services or particular areas where the
6 services are being provided.

7 A. Yes.

8 Q. That's one aspect of a targeted approach.

9 Another could, of course, be that within
10 a particular service area you identify, either within
11 Children's Services or within some branch of Children's
12 Services, a particularly weak area of service. All
13 I'm asking is: was the inspection process such that they
14 would target the weak area within the service?

15 A. One would want to look at the methodology by which they
16 aggregated the information across the services. Whereas
17 they might have said, for instance, that the local
18 health service input, as we've seen in one of the
19 reports, was rather weak. To what extent that was then
20 subsequently highlighted as a result of the
21 methodological scores they were giving to the services
22 overall -- whether or not the weakness or the
23 unsatisfactory nature reflected a particular aspect of
24 the service. And that's where the qualitative and
25 quantitative become difficult to actually adjust.

1 Q. In broad terms, Inspectors using this approach were
2 looking for anything that would put at risk successful
3 outcomes for the children and young people in care, or
4 would create a risk that they would have an adverse
5 experience while they were in care.

6 A. Yes, yes.

7 Q. So this is a much wider assessment, both of the
8 situation during the period in care, but also whether
9 the care setting is doing enough not just to safeguard
10 their welfare, but to promote their development.

11 A. Promote their care plan and their development, yes.

12 Q. Through care planning.

13 A. Yes.

14 Q. So it's not during, but also after. So it's a much
15 wider approach.

16 A. It's a substantially wider approach than the pre-2005
17 period.

18 Q. One of the changes, also, is that as opposed to simply
19 the single visit and the report, historically, which
20 wasn't even given to the provider or care provider, you
21 have a series of visits, follow-up visits after the
22 initial visit, you have a process that would involve
23 a requirement to produce action plans and to provide
24 regular progress reports, and these were all presumably
25 features that wouldn't be found in the pre-1995

1 inspection regime, in board terms.

2 A. I think referring to certainly my second report, there
3 were follow-up reports of List D schools, where issues
4 emerged, and they could be in six months or 12 months.
5 And I think I also mentioned that where issues were
6 uncovered, say by a CAS officer, that the next visit
7 would also include HMI Education as well, to provide
8 an integrate approach, but not systematic.

9 Q. No. I get the impression from how you described how
10 it's done now, that this is done almost as a matter of
11 routine, if there's a concern. Whereas, maybe,
12 historically, you would find something similar from time
13 to time, but it wasn't a systematic method that was used
14 in every case.

15 A. If there were weak scores --

16 Q. Sorry, going back to pre-1995.

17 A. Pre-1995, yes. Because there wasn't any comprehensive
18 review of local services.

19 Q. No. No. You would occasionally get an Inspector
20 carrying out an inspection of a children's department.
21 It happened in Glasgow in the 1960s. So these things
22 happen, but not in the way they happen now.

23 A. I think if you're looking at the period pre-1968 the
24 retained evidence is not that great. But my perception
25 is that the Childcare Inspectorate did conduct

1 integrated inspections of childcare departments at Local
2 Authorities.

3 Glasgow certainly inspected 1966. It was inspected
4 in 1960, and there is a reference in the 1960 being
5 inspected in 1952. There is an inspection clearly,
6 I think, also in Dunfermline and there is an inspection
7 surviving of Kincardine County around about the same
8 time.

9 Q. The examples, or the cases you have raised, one was the
10 biggest authority --

11 A. Yes.

12 Q. -- dealing with children in care --

13 A. Yes.

14 Q. -- Glasgow.

15 A. Yes.

16 Q. But the others were much smaller.

17 A. Edinburgh was also looked at as -- yes. So they
18 survived.

19 Now, there is no indication that this was not
20 conducted in other Local Authorities. Unfortunately,
21 the papers don't survive. And of course those sort of
22 inspections ended with the introduction of CAS in 1968.

23 Q. I suppose -- and I'm not suggesting that this wasn't
24 a feature of the period we're looking at in the report
25 you prepared, but there seems in the modern approach to

1 the rigorous inspection and the follow-up that there is
2 much more resort -- if I can put it this way -- to
3 ministerial intervention, if it seems to be needed to
4 give the necessary push to the Local Authority or the
5 local services.

6 A. I think it can be said that once you've established that
7 formal pattern of regular inspections, and where the
8 aggregate scores -- whether you consider them
9 qualitative or quantitative -- are poor, I would have
10 expected the officials who were reviewing that, the
11 Scottish Government Officials reviewing that to inform
12 the Minister that there were serious concerns here. And
13 it would be advisable to meet with the authority or
14 issue them with a letter.

15 Q. I suppose a meeting with the Minister himself or
16 herself, or a letter coming from the Minister rather
17 than from an official, or a meeting with officials,
18 might be thought to carry more weight in terms of
19 persuasion.

20 A. I think that's correct, yes, yes.

21 Q. It seems in the cases you gave yesterday, although not
22 universally, that it seemed to work?

23 A. It does seem to work, yes.

24 If we could put it another way, I would be
25 surprised, if there were weak scores, that the Minister

1 had not been informed, and the evidence suggests that
2 the Ministers were informed where there were weak
3 scores.

4 Q. You mentioned this grading system and how you had to
5 achieve satisfactory or above --

6 A. Yes -- positive.

7 Q. -- to have what one would call a positive report.

8 A. "Positive", yes.

9 Q. If I could anything that didn't achieve that a negative
10 report; can we say in broad terms it appears from what
11 you've seen that the negative reports, the Minister
12 would be made aware of?

13 A. That's right, yes. I would be surprised if they weren't
14 made aware of.

15 Q. The more serious the negative report or the aspect that
16 made it a negative report, the more likely it was that
17 the Minister might feel the need to write a letter in
18 his or her own name?

19 A. Yes.

20 Q. And perhaps to meet with the service --

21 A. Yes.

22 Q. -- concerned?

23 A. Usually, the Chief Executive of the Local Authority.

24 Q. High level, as well.

25 A. Yes, yes.

1 Q. Can I go back to something else that you deal with in
2 section 2 of your report. We've talked about the
3 departments and the Inspectorates and the provision for
4 residential schools and children's homes through time.

5 I just want to touch upon, without getting too
6 bogged down in detail, the administrative structure at
7 departmental level in the period we're looking at, which
8 I think was largely unchanged throughout the period that
9 we're looking at, 1945 to 1974.

10 Do we have to understand that the administrative
11 divisions and branches were perhaps -- there were
12 branches that dealt with specific areas such as approved
13 schools or childcare?

14 A. Yes.

15 Q. And these branches sat within a division?

16 A. That's correct.

17 Q. And there was a hierarchy of officials in a department.

18 At the top there is the Secretary?

19 A. Yes.

20 Q. Then a Deputy Secretary?

21 A. Or an Under-Secretary.

22 Q. Yes, Deputy Secretary or Under-Secretary and
23 an Under-Secretary, in broad terms, might have
24 responsibility for two or three divisions?

25 A. Yes.

1 Q. And then below the Under-Secretary there was a head of
2 a division and Assistant Secretary and I think you've
3 said in your report, without getting into the detail,
4 that that individual would be perhaps expected and did
5 have day-to-day knowledge of the work of the Division,
6 including particular branches within the Division?

7 A. That's correct, yes.

8 Q. But the person who perhaps had most knowledge would be
9 the head of the branch or the principal such as the head
10 of the approved school branch, for example, within SED,
11 they would have a good working knowledge?

12 A. Could you give me the page number, please?

13 Q. I'm not really --

14 LADY SMITH: I'm guessing we are in the administrative
15 organisation section?

16 MR PEOPLES: Yes, we are.

17 LADY SMITH: It begins at page 18.

18 MR PEOPLES: I was just trying to summarise the structure in
19 broad terms. I'm not really -- I think the point you
20 make is that -- you did give examples how a Secretary
21 might, if you had to appear before a committee, well
22 bring along someone the Assistant Secretary or head of
23 branch level, because they had the detail in front of
24 them?

25 A. That is correct, yes.

1 Q. The Secretary wouldn't be carrying all the detail?

2 A. The Secretary wouldn't be carrying all the detail, but
3 in this period it's important to understand the role of
4 the Under-Secretary and the Under-Secretary was
5 effectively the principal adviser to a Minister on the
6 issues concerning the work of their respective
7 Divisions. They might bring an Assistant Secretary
8 along with them to a meeting with the Minister. But the
9 phrase has come my way "is act of policy control". So
10 the Under-Secretary was at a level where the principal
11 function was to engage in policy control and policy
12 control meant ensuring that the policy of the Government
13 was being implemented, and where an issue emerged which
14 was relatively new, begin to formulate with the
15 assistant secretaries a new policy, which would get the
16 approval of a Minister, whether that resulted in
17 legislation or not, it didn't really matter.

18 So it's important to understand that although the
19 branch principal would be expected to know everything,
20 they would have to delegate upwards any decision on what
21 to do to an Assistant Secretary and if it was a major
22 issue they would have to go to an Under-Secretary.

23 Q. I was just really looking at the degree of knowledge,
24 because I fully understand, and I think we have this in
25 the Scottish Government case study, that there is

1 a process that may result in the end in a briefing, for
2 example, to a Minister, where a number of officials at
3 different levels can be involved in a collaborative
4 process, exchanging views, various drafts of briefings
5 and submissions, do the rounds and eventually something
6 is formulated that goes in the name of a senior official
7 to the appropriate Minister?

8 A. Yes.

9 Q. That was happening in the 2000s and it was happening no
10 doubt in the period we're looking at. That is a fairly
11 normal process of Government?

12 A. The first draft would normally be composed by the branch
13 principal, who then goes to the Assistant Secretary
14 might call on an Assistant Secretary in another Division
15 in another department for instance and circulated and
16 eventually go forward in the name of the department
17 which held the responsibility for that particular brief.

18 So if you're looking at the Kilbrandon initiative,
19 that was a collaborative one between SED and SHD. It
20 was drafted by the SHD official in conjunction with
21 comments from SED. It went to the Under-Secretary and
22 then went to the Secretary of the Scottish Home
23 Department, because it dealt with juvenile courts and
24 then went to the Secretary of State.

25 Q. If there's a cross-departmental interest in a particular

1 matter then it wouldn't be unusual for this process to
2 involve exchanges between the officials and the various
3 departments before eventually a briefing or submission
4 --

5 A. That would be the expected --

6 Q. -- in the name of the lead department goes to the
7 Minister?

8 A. That would be the expected protocol.

9 LADY SMITH: There might be different Ministers involved,
10 depending on the nature of the information.

11 A. If it was a relatively middle-ranging matter it would go
12 to a Parliamentary Under-Secretary of State. If it was
13 a major issue, it would go to the Secretary of State, so
14 the Kilbrandon submission went to the Secretary of State
15 via at the Parliamentary Under-Secretary of State.

16 MR PEOPLES: At ministerial level, without getting again the
17 detail of it, clearly at the top of the tree was the
18 Secretary of State?

19 A. Yes.

20 Q. But below the Secretary of State there were a number of
21 Ministers who are entitled Joint Parliamentary
22 Under-Secretaries of State and one of whom would have
23 had responsibility broadly speaking the childcare brief?

24 A. Yes.

25 Q. But also other responsibilities?

1 A. Throughout this period, yes.

2 Q. So in this period at least, under the period under
3 review, there was no
4 Minister for Children and Young People as there was at
5 least in part of the Scottish Government era?

6 A. No, no.

7 LADY SMITH: Because that era was post-devolution?

8 A. It was post-devolution.

9 LADY SMITH: Professor Levitt's talking about the
10 pre-devolution area when they're talking about
11 an overall Secretary of State.

12 MR PEOPLES: Yes, but there would be nothing to stop the
13 Secretary of State dividing things according to for
14 example having an Under-Secretary of State with sole
15 responsibility for an area. It could have been done.
16 It wasn't done. But what could have stopped that if
17 they'd wanted to do that?

18 A. Certainly, post-1953 there were three Parliament
19 Under-Secretaries of State and there were (inaudible)
20 Scottish Office departments. They had to divide the
21 responsibilities of those departments to the three
22 Parliamentary Under-Secretaries of State who would each
23 individually report for the Secretary of State. One can
24 argue why did they do it one way, but certainly the
25 1950s the officials who looked-after children also

1 covered fisheries and agriculture.

2 Q. Yes.

3 A. It's as simple as that.

4 Q. That might say it all. It doesn't necessarily make for
5 a sort of obvious combination, children and fish?

6 A. Children and fish, but within the same department, the
7 Scottish Home Department responsibilities included
8 roads, electricity, fish.

9 Q. I follow what you are saying. You see the point
10 I'm making?

11 A. I know.

12 Q. There is a number of Divisions with responsibility or
13 branches for children in the broad sense?

14 A. Yes.

15 Q. And then departmental levels, there's Ministers
16 responsible not for a particular department, but for
17 particular areas and they're not necessarily an obvious
18 fit at times?

19 A. That would be a reasonable position to take.

20 Q. And the danger with that sort of arrangement is that the
21 right hand doesn't know what the left hand is doing when
22 they've got an area of mutual interest. There is
23 a danger. I'm not saying it would always necessarily
24 materialise, but there is a danger that your department
25 is focused on your area of responsibility and you look

1 at it from a very blinkered way and you don't look at
2 the bigger picture?

3 A. You mean the Parliament --

4 Q. No, even departmental level. If you have a branch that
5 deals with approved schools, they don't want to stray
6 off the path, if they have an issue which affects them,
7 yes. They might let someone else know, but there's no
8 one there saying: well, I want to stand back, look at
9 all this information coming in about the various
10 services, what these reports are telling us about
11 different areas, approved schools, children's homes,
12 boarding out and so forth, who is able to stand back,
13 take a long, hard look and say: there's something
14 seriously wrong with this system, because when we put
15 everything together we can see that there's systemic
16 problems?

17 A. I think if you're looking at the 1950s, there was clear
18 distinction between education and what was originally
19 termed "homeless children", which then became childcare.
20 They renamed the branch during that particular period.
21 Their interests related to separate Acts of Parliament
22 and in case obviously of approved schools a completely
23 different set of regulations that were being considered
24 within the Scottish Home Department. And that's how
25 they functioned.

1 Q. But if I was the child in care, I might find that all
2 very interesting, but I might think it's not doing me
3 much good because I could be in all of these different
4 places under different Acts and different regimes and
5 yet I'm the same person and I've got the same needs and
6 the same problems?

7 A. I accept what you're saying, but in view of
8 an integrated view, one could say it did not exist until
9 the late 1950s, when suddenly opinion began to change.

10 Q. Can I ask you this as well: to what degree was childcare
11 given priority in the period we're looking at in terms
12 of the -- there were always political priorities and
13 areas that are given higher priority than others, how
14 would you assess the priority given to childcare,
15 particularly when I'm thinking that it seems to have
16 taken a long time the change regulations, particularly
17 from the 1933 regulations to 1961, from the 1947
18 regulations to 1959. Does that tell us anything about
19 the priority given to this area?

20 A. Pre-1959, I think the issue concerning the Scottish Home
21 Department was to maintain the vote for childcare and
22 there are a number of different papers which say: we
23 won't tell the Minister that we're maintaining the same
24 vote despite the squeeze on public expenditure, so the
25 vote was maintained.

1 If one looks at the volume, the actual volume, of
2 vote for childcare, certainly in the early to the latter
3 period of the 1950s it remains relatively static, so the
4 grant aid being given for Local Authority Services and
5 for training purposes and for capital investment was
6 relatively small.

7 Suddenly, it begins to increase from 1958/1959
8 onwards and that's an indication that it was --
9 I wouldn't say an insignificant part of the -- not
10 considered a high priority.

11 Q. And what that may tell us also is that certainly in the
12 case of approved schools, until 1986 Central Government
13 held the purse strings, because they funded to
14 50 per cent the cost of maintenance of each pupil and
15 they also had a degree of financial control over the
16 levels of expenditure that providers could incur in
17 these types of establishments, because they could say
18 "yes" or "no" to certain suggested improvements that
19 needed State help?

20 A. But that was the same position in the late 19th Century,
21 when grant aid first began. There was a control over
22 reformatory expenditure and control continued to exist
23 over approved schools and List D schools.

24 Q. But point I'm making is that may well have been the
25 19th Century and no doubt the system of management was

1 no doubt 19th Century, but the Inspectors by the 1950s
2 and 1960s had serious criticism of the management?

3 A. Yes.

4 Q. But I'm also saying and suggesting that if they held the
5 purse strings, you can't just turn round and say that
6 they didn't spend enough if they were allowed to spend
7 enough for example on staff training, numbers of staff
8 if they had to have approval for new appointments and so
9 forth. They were all interlinked?

10 A. There are two aspects to that budget. The first is the
11 budget attached to each individual child, which was
12 50 per cent. The next issue was the capital cost of
13 investment and attached to that a bit of training.

14 I think nobody could do very much about the
15 50 per cent. That went up. Actually, throughout the
16 period, there's consistent criticism from The Treasury
17 that the Scots are getting more because there are more
18 approved children in Scotland. Constant objections to
19 why that was the case.

20 The process of capital expenditure was an issue for
21 discussion ahead of each year's vote. And in the
22 Scottish case, the Scottish Office would look and see
23 what the Home Office was doing and would say: we want
24 our 12.5 per cent, unless it was special needs, in which
25 case they would argue for more, so there was a formula

1 attached to capital expenditure.

2 Q. I understand that's the way it is. But once you have
3 your allocation and if it's not a very large allocation
4 in the 1950s, for example, when it comes then to
5 distributing the allocation presumably there's a lot of
6 demand and not enough money so if approved schools
7 wanted to build a new building or create a large
8 extension or employ more staff, because staffing levels
9 were inadequate, or train more people, to some extent
10 their ability to do so was restricted by this system
11 that you've just described?

12 A. Except that on an annual basis there would be
13 discussions with the approved schools association and
14 individual approved schools as to their requirements and
15 there would have to be some form of rationing, if you
16 like, between the different schools, and if you look at
17 the 1960s, where you saw the development of Rossie, for
18 instance, in special provision, Shandon being opened as
19 a new school, you can very clearly see the priority is
20 being given in particular areas as opposed to the
21 refurbishment of other schools. And those other schools
22 then wait their turn.

23 That's not a satisfactory explanation, but that's
24 the way it actually happened.

25 Q. I follow what you're saying. But if you look at the new

1 schools, for example, and to take your example of
2 Shandon or others, the new schools in the 1960s that
3 were opened up for approved schools, that was because
4 there had been a long-standing serious problem of
5 overcrowding and large approved schools which had
6 problems and were run by managers in whom the Inspectors
7 had little faith at times and were staffed by people who
8 were unqualified.

9 Now, one way to sort that out to get a proper system
10 is to qualify the staff and improve the system of
11 management. That doesn't seem to have happened?

12 A. I think in this report I do indicate that there were
13 issues of the quality of staffing that became available
14 for approved schools.

15 If one looks at the broader picture, that explains
16 why there was a rush, really, through the 1968 Act to
17 move on and away from approved schools. So the criticism
18 you are indicating is accepted in principle. The issue
19 was: how do we get through the fog, so to speak?

20 Q. It took a long time --

21 A. It took a long time to get through the fog, but there
22 was an acceptance built into the acceptance of
23 Kilbrandon and ten years in public policy is not a long
24 time.

25 Q. It's a long time if you are a child in care.

1 A. A long time if you are a child in care. But that would
2 be -- if you were able to speak to someone in the SED in
3 the mid-1960s, I'm sure they'd give you the explanation:
4 what else do we do? We have a plan. But we're
5 constrained by the fact that the court system is
6 continuing to send children to approved schools, at
7 an increasing rate, as it happened, in the 1960s. We
8 have a system where we have difficulty in getting staff
9 to approved schools. We are therefore trapped.

10 I think that would be the answer: what can we do?
11 We can only await the move away from this type of
12 provision.

13 Q. I suppose if I was the residential care child, and said:
14 Minister, that doesn't sound like a very convincing
15 answer to me --

16 A. Absolutely, right.

17 Q. -- you are the State, you have a responsibility, at
18 least since 1948, to look after my welfare and
19 interests, both at Central and Local Government level
20 and you're not doing it.

21 A. Since 1933.

22 Q. Yes. Let's take it further back.

23 A. Yes, absolutely right.

24 Q. I suppose in comparing the period of your report with
25 the more modern era that you were looking at on Tuesday

1 and Wednesday, there is one significant change, it
2 appears to me, and that is that the State in the modern
3 period is now prepared to be much more open. In other
4 words, making public the systemic problems of the system
5 of care for children in need of care and protection.

6 A. Yes.

7 Q. Whereas, historically, views expressed by Inspectors and
8 Officials and Ministers can be found in internal
9 minutes, which never -- which were not being publicised
10 at the time, and the views exchanged in private -- and
11 I think you make this point at times -- could be quite
12 frank and revealing about the deficiencies of the system
13 and the people who were in key roles within the system.

14 A. Extremely open in their criticism.

15 Q. Indeed. Indeed, inspection reports in that period
16 weren't even supplied, as we have discovered, to the
17 providers. There was an exchange of discussion normally
18 speaking, but not shown in the report itself.

19 A. They were extremely open reports, which might have
20 a problem today, if they were ever published.

21 Q. Certainly, the minutes might have -- at least there seem
22 to be very frank exchanges about the quality of both
23 managers and heads of homes and schools.

24 A. Yes, consistent criticism.

25 Q. Consistent criticism. It wasn't just, "We have the odd

1 bad apple here".

2 A. Yes.

3 Q. "We have a system that's riddled with bad apples."

4 A. It's systemic, yes.

5 Q. But they don't put that into even a report; they often
6 just put it into an exchange of minutes following
7 a report, or, for example, you mentioned HMI Macpherson.
8 I think in the 1960s he was writing his thoughts on both
9 the system of management and the quality of the heads of
10 approved schools, and it certainly wasn't very
11 complementary.

12 A. I think in the 1950s, the view until Lochburn in 1958,
13 was: how can we make the system work better, given the
14 constraints of the legislation and the operation of the
15 courts?

16 Subsequent to Lochburn and the incident south of the
17 border, at the Carlton Approved School, opinion shifted,
18 so that criticism became more open. Mr Macpherson's
19 criticism and Mr Murphy's criticism, and official
20 criticism became more open. And the issue was: well,
21 how do we move from the system we have at present to
22 a completely different system, which is more child
23 centred?

24 So the criticism becomes more vocal in the 1960s.

25 Q. To some extent, therefore, the Lochburn disturbances and

1 the Carlton report, a watershed moment of sorts?

2 A. Yes, yes.

3 Q. In terms of the way they're looking at matters.

4 A. In the way they're looking at matters and the decision

5 to go down the route of establishing the Kilbrandon

6 Report and then, in early 1962, once I think the

7 Balnacraig incident had happened in Perthshire --

8 I think that's correct -- and then the Springboig

9 disturbances, the Minister making it very clear, the

10 Parliamentary Under-Secretary making it very clear that

11 they wished Kilbrandon to move faster.

12 Q. Can I say this: I will come to -- you have a section

13 dealing with the detail of that, and I want to go over

14 that. But, at this stage, I just want to look at the

15 bigger picture and look at what we had in place and you

16 will tell us why it got there.

17 A. It's not a very satisfactory answer to the child who had

18 been placed. But I think the policy in the 1950s was:

19 how can we make the approved school system work better?

20 Q. The watershed moment wasn't because up until then there

21 was trust in the ability of those in key roles,

22 managers, headteachers, to do what the regulations

23 required them to do --

24 A. Yes.

25 Q. -- because they knew that they weren't doing that, a lot

1 of them.

2 A. A lot of them. But they simply believed if -- you have
3 seen in Dr Guthrie's Girls' and at Wellington, if we
4 replace the Headteacher, we'll get a different scheme.

5 Q. But if I can take it a stage back, if the implicit
6 assumption or presumption of the regulations,
7 particularly those, for example, that placed
8 discipline -- or to be maintained by the personal
9 influence of the person in charge, whether Headteacher
10 or person in charge of a home, which was the way that it
11 was formulated in the regulations, the implicit
12 assumption there is you have people who will be able to
13 conform to the regulations, who will not do things that
14 do not comply with the regulations, will not go
15 off-piste in terms of punishment that is permitted or
16 not permitted. But the reality was, it would appear
17 from the records and your report, is that wasn't what
18 happened.

19 A. They were looking for a perfect system.

20 Q. Well, that may be --

21 A. And they thought they could get a perfect system; right?
22 But the reality was that they could with the existing
23 system.

24 Q. Perhaps I'm not as harsh as that, that it's a perfect
25 system. But they were probably hoping that the majority

1 of the people in the system in key roles would do what
2 they were expected to do. Whereas it appears it was the
3 reverse, the majority didn't do what they were expected
4 to do.

5 A. That's correct, yes.

6 I'm not disagreeing with you.

7 Q. No, I just want to explore.

8 A. Fundamentally, I'm not disagreeing with you. All
9 I'm trying to say is: if you look at actual policy in
10 the 1950s, subsequent to the 1948 Children's Act and the
11 Criminal Justice Act that followed, yes, would try to
12 make the position work better.

13 Q. It's not a criticism of anything. I'm just trying to
14 bring out that there's a regulation with certain
15 built-in assumptions about how it will operate in
16 practice. It has certain key people within the system,
17 but, when we look at how it did operate in practice,
18 it's far removed from the expectation of the legislation
19 and regulation.

20 A. Yes, yes.

21 Q. Yet it was difficult to do very much about that.

22 A. Certainly until after 1958 and opinion changed.

23 Q. Section 3 of your report, which starts on page 28, is
24 devoted to looking at regulations that were relevant to
25 children's homes and approved schools in that period and

1 also boarding out.

2 A. Yes.

3 Q. As I said before, I'll probably concentrate on the
4 children's homes and the residential schools, but
5 I think that those that were involved in the Foster Care
6 Study will want to know why the Boarding Out
7 Regulations, as well as the Children's Homes
8 Regulations, took so long to see the light of day after
9 1947 until 1959.

10 You can perhaps bear that in mind when we're going
11 through this, this section.

12 Before we look at the reasons why the 1959
13 regulations are in the form that were published, and
14 also the 1961 Regulations for Approved Schools; can
15 I just try to take from you the broad situation with
16 both voluntary homes or children's homes and approved
17 schools, just to bring out one or two features which
18 I think bear on perhaps what we're about to discuss
19 about how the regulations evolved and developed into
20 final form?

21 A. Yes.

22 Q. A number of matters, which some might think were key to
23 the success of these establishments in protecting
24 children and promoting their welfare and best interests,
25 it might be thought, could have been addressed by

1 regulation.

2 I'm just looking at it broadly speaking.

3 Regulations gave the Secretary of State a power to lay
4 down broad requirements in various areas. He did so,
5 for example, in approved schools from an early time,
6 about discipline and punishment, very detailed rules.
7 But I'm going to ask you to, maybe, help us to see
8 whether that was a consistent approach, from 1933 right
9 through to 1974; can we just discuss that?

10 A. Sure.

11 Q. First of all, the Scottish Education Department from
12 an early stage, before 1945, I think from 1932 onwards,
13 was permitted to classify approved schools. The
14 classification system that was used -- which perhaps you
15 can confirm -- was one which didn't materially change
16 much between 1932 and the end of the approved schools,
17 in 1968, was quite a basic one?

18 A. Yes.

19 Q. It talked about junior, intermediate, senior, or
20 intermediate senior schools for boys and girls of
21 certain ages, and religion as well was a consideration.

22 A. Yes.

23 Q. There were denominational schools.

24 A. Yes.

25 Q. But that was pretty much it.

1 A. That was it. And it's simply a reflection of the fact
2 that there weren't that number of schools in Scotland to
3 further the classification as south of the border. It's
4 a very simple explanation that was constantly used: we
5 can't break it down any further. We don't have the
6 school to do it.

7 Q. I suppose, though, the problem with that is that
8 classification system was not such as was likely to
9 ensure that a person sent to an approved school was sent
10 to a school appropriate to his or her particular needs,
11 that's the reality.

12 A. That was recognised.

13 Q. Just in terms of the rules themselves, the first rules
14 on approved schools were the 1933 rules, which were
15 contained in part A of the Children and Young Persons
16 (Scotland) Care and Training Regulations 1933?

17 A. Yes. These replaced earlier rules.

18 Q. There had been earlier rules for other similar, like
19 reformatory schools.

20 A. That's right.

21 Q. If I can just focus on the approved school rules for
22 a moment. Because there was an opportunity then, no
23 doubt -- and they did say quite a lot, actually.

24 A. Yes, yes.

25 Q. At least for approved schools.

1 So these were the rules. Then these rules, I think
2 without any substantial change, were the applicable
3 rules until 1961?

4 A. That's correct, yes.

5 Q. 38 years later.

6 A. Yes.

7 Q. That's a long time without any review or revision, one
8 might think.

9 A. Yes.

10 Q. We'll come to this, perhaps, when we look at how the
11 1961 regulations reached the form they did. Broadly
12 speaking, in the end, when the new rules came in, the
13 rules were not a significant revision of the earlier
14 rules?

15 A. No. Basically, a replication --

16 Q. A replication?

17 A. -- of the rules. But with policy directions in terms of
18 the use of corporal punishment.

19 Q. Yes. I'll perhaps just try to bring that out.

20 In broad terms, 38 years on, you might have thought:
21 a lot has happened in 38 years, maybe there's room for
22 change and things.

23 I could give one example. I think officials before
24 1961, when they were looking at new rules, were keen to
25 remove corporal punishment on the posterior for boys?

1 A. Yes.

2 Q. And that was vetoed by the Minister, effectively, or
3 removed?

4 A. It was vetoed --

5 Q. From a draft. It didn't appear in the final form.

6 A. It was removed, but there was also opposition from the
7 Approved Schools Association.

8 Q. Because they ran most of the schools the system was
9 heavily reliant on them and they had a lot of
10 institutional power.

11 A. Yes.

12 Q. That was the reality?

13 A. From my reading of the material, and I think it's
14 replicated in the files, in 1961, when this was being
15 considered, there were issues surrounding juvenile
16 delinquency generally, and the Minister took the view
17 that he wasn't going to get into the general debate
18 about juvenile delinquency in public.

19 Q. Because he might have backbenchers that would be on his
20 case if he wasn't coming down hard on young delinquents?

21 A. He certainly had at least one Scottish backbencher
22 vehemently opposed to any relaxation of the rules.

23 Q. That, for a politician, is an important consideration,
24 as I think we know --

25 A. At a political level, one has to bear in mind those

1 restrictions on the ability of Ministers to take
2 decisions that they might otherwise have wanted to have
3 taken.

4 Q. It was certainly a development that the officials wanted
5 to happen, if it could?

6 A. Officials were pressing for those changes.

7 Q. If they had their way, they might even have wanted to
8 ban corporal punishment, but I think they realised that
9 would be a step too far at that time.

10 A. At that time, I think the officials reluctantly accepted
11 that the Approved Schools Association would not go down
12 that particular line.

13 Q. And the Schools Association's justification, perhaps,
14 was: well, give us time, we'll try to reduce it and also
15 give us alternatives that are effective --

16 A. Yes, yes.

17 Q. -- until you do that, don't expect us to live without
18 these punishment rules.

19 A. Given that we are the resource available to the courts,
20 trust us.

21 Q. Trust us.

22 A. Yes.

23 Q. Arguably, the trust was misplaced because the incidence
24 of corporal punishment didn't seem to reduce, and in
25 some cases increased in the 1960s?

1 A. Proportionately, Scotland had twice the level of use of
2 corporal punishment compared to south of the border.

3 Q. Just looking at the 1961 rules, just in the generality,
4 the ones that did appear, for the first time, I think,
5 the rules applying to approved schools required the
6 managers to manage the school in the interests of the
7 welfare, development and rehabilitation of pupils.

8 A. Yes.

9 Q. That's the primary consideration of how they should
10 manage the school?

11 A. That's right.

12 Q. And while they may not have appreciated in later years
13 the responsibilities, legally, that was quite
14 an important requirement, if not always well understood
15 as to what the implications of it were.

16 A. I think the implications were understood by the Approved
17 Schools Inspectorate.

18 Q. Oh yes, the manager, I mean.

19 A. The manager, no.

20 Q. They probably thought they were a body of
21 well-intentioned volunteers who could beat from time to
22 time, visit the school and generally leave a lot of the
23 serious decisions and day-to-day operation on matters of
24 punishment to the Headteacher or person in charge.

25 A. You mean the Board of Governors?

1 Q. Yes.

2 A. Yes, yes. I think from the reports coming in from the
3 Approved School Inspectors it would appear that the
4 Board of Governors were quite prepared to delegate all
5 of that to the Headteacher.

6 Q. Sometimes there would be headteachers who were basically
7 able to govern the governors.

8 A. Govern without oversight, you mean?

9 Q. And also, no doubt, influence the way the school was
10 run; it was their way or no way.

11 A. Yes. I think that is clear from the reports that are
12 coming in.

13 Q. Looking at the statutory requirement, if I may, if it
14 was properly complied with, presumably it required
15 managers to consider, amongst other things, the
16 disciplinary regime as it operated in practice and the
17 impact that regime was having on the welfare and
18 development of the pupils in the school, if it was
19 properly understood and applied?

20 A. If it was properly understood and applied in terms of
21 that understanding of child development, yes.

22 Q. But, at that time, your report suggests that in many
23 boards of management there wasn't a great understanding
24 of childcare development and thinking.

25 A. No.

1 Q. Modern practice.

2 A. Not of the modern view that was emerging from the late
3 1950s.

4 Q. The managers, I think, under the new rules for approved
5 schools, in 1961, were required to visit once a month to
6 ensure that welfare development and rehabilitation of
7 the pupils were all satisfactory, and were told to take
8 the opportunity to speak with individual pupils and
9 discuss with the Headmaster any complaint made by
10 a pupil.

11 A. Yes.

12 Q. Is there much evidence that they took that
13 responsibility seriously?

14 A. Not from the Approved School Inspector Reports.

15 Q. I suppose the other point that might be made, which is:
16 we had to wait for quite a long time to get any
17 independent oversight by an independent Inspector even.
18 But we have a situation here, do we not, where the
19 managers were the persons who were ultimately
20 responsible for running the school, but having
21 a requirement to visit wasn't providing independent
22 oversight, because they were judging themselves?

23 A. They were judging an institution that they themselves
24 were responsible for.

25 Q. Just turning, at the moment, to the children's homes, as

1 regards regulation. I know we had a bit of discussion
2 about it before the break, but I think we can agree
3 whatever degree of inspection there was in practice by
4 the SHD before 1947. Prior to 1959, there was limited
5 regulation of voluntary homes as a result of the 1947
6 regulations, but no rules as to the conduct and
7 management of children's homes, either voluntary or
8 Local Authority, until 1959?

9 A. That's correct, yes.

10 Q. As we'll see, no doubt, and you'll explain in more
11 detail, the 1959 Regulations and the 1961 Rules -- 1959
12 Regulations applying to children's homes, and the 1961
13 Rules applying to approved schools, did not go as far as
14 officials wanted due, in part at least, maybe in large
15 part, to resistance from both Local Authorities and
16 voluntary organisations.

17 A. Yes.

18 Q. As regards staffing -- which some might think is
19 a critical component of any system of care -- throughout
20 the period of the approved schools, 1933 through to 1968
21 or thereabouts, there were no standards or
22 qualifications in the regulations in relation to school
23 employees in a caring role?

24 A. In children's homes? That's correct, yes.

25 Q. Yes. I'm not sure there was very much about approved

1 schools either, other than a general statement perhaps.

2 A. There was a general statement. And the ability of the
3 Education Inspectorate to indicate that the level of
4 teaching was not at a level which would ensure
5 registration of that home.

6 Q. For example, there wasn't even a regulation saying that
7 all staff in a caring role or indeed in an educational
8 role in an approved school had to have the appropriate
9 qualifications to discharge their functions?

10 A. That's right, yes. You might argue it was rather loose,
11 in the sense that there was a power to regulate, to
12 register an approved school. And then it was often
13 an issue of interpretation of the quality or provision
14 of staff, and the assumption that there would be
15 teachers who were appropriately qualified.

16 Q. That might be an assumption for teachers. But when it
17 comes to carers or those in a caring role, there didn't
18 seem to be any clear regulation on care or safety
19 within -- of safety of children within care to promote
20 their welfare, to protect them against abuse, to prevent
21 abuse and so forth.

22 A. No.

23 Q. As you've told us this morning -- I see it's 1 o'clock.
24 Maybe I can stop there.

25 LADY SMITH: Would that be a good place, Mr Peoples?

1 MR PEOPLES: It's just as good as any.

2 LADY SMITH: We'll rise now for the lunch break and I'll sit
3 again at 2 o'clock.

4 (1.00 pm)

5 (The luncheon adjournment)

6 (2.00 pm)

7 LADY SMITH: That looks all right from here.

8 Professor Levitt. Ready to go?

9 A. Yes.

10 LADY SMITH: Mr Peoples.

11 MR PEOPLES: Good afternoon, Professor Levitt.

12 I think you would like to just add something to what
13 you were telling us about this morning on a matter
14 I must have raised with you.

15 A. That's correct. I think you're asking about the focus
16 of attention on childcare and Children's Services in the
17 immediate post-war period.

18 I think it's important that the Inquiry is aware
19 that in 1946 the then Secretary of State proposed to
20 merge the childcare functions of the Scottish Home
21 Department into the Scottish Education Department with
22 approved schools.

23 The SED objected to that, principally on the basis
24 it was a department of schools.

25 Now, this contrasted with the Home Office, which

1 actually had both functions together, approved schools
2 and childcare under the same Under-Secretary. In
3 addition, the Home Office had an integrated
4 Inspectorate, an Inspectorate that looked after approved
5 schools and, at the same time, looked after childcare
6 services.

7 So if you're asking me the root of the issue is in
8 the 1950s. It lies in the decision not to combine the
9 services together north of the border compared to south
10 of the border, and so there was a division of
11 responsibility and at junior level within each
12 department.

13 Q. So we can see that contemporaneously south of the border
14 they did things differently in a way, perhaps, that
15 could have been done north of the border had they taken
16 up the suggestion of a merger.

17 A. Yes, yes. And I think if you look closely, for
18 instance, at the Carlton disturbance, Inspectorates --
19 the Inspectorate that were sent in were both from the
20 childcare side as well as the approved schools side, and
21 that's an important point you were making about looking
22 after care.

23 Q. I suppose, following that one up, when it comes to
24 regulations, the Home Office seems to have been quicker
25 off the mark than the Scottish Office in terms of

1 post-1948 regulations.

2 A. That's right. They introduced the Children's Homes
3 Regulations and Children's Regulations in the early
4 1950s, and that again indicates that in fact you had
5 an Under-Secretary responsible for both sides of the
6 equation. Whereas, in Scotland, you had
7 an Under-Secretary within the Scottish Home Department
8 who looked after multifarious activities, and the
9 Scottish Education Department, also an Under-Secretary
10 who looked after a whole variety of activities as well.

11 Q. So the Home Office, at least, was quick off the mark
12 after the 1948 legislation?

13 A. Yes.

14 Q. Whereas the Scottish Office, on the face of it -- and
15 we'll come to this -- was not so quick off the mark?

16 A. The Scottish Departments were not linked together.

17 Q. Okay. We'll come back to this, if I may, because we'll
18 have to look at the question of delay.

19 If I can just resume where we were before lunch,
20 that we have been talking about the regulations and
21 features of them, or matters that were absent from the
22 regulations, and we'd spoken about staffing during the
23 period and the absence of any specific standards or
24 qualifications in relation to employees in a caring role
25 in approved schools.

1 I was going on to ask you, just before lunch -- and
2 I think this is really a point you made this morning in
3 terms of the issue of training of staff -- that I think
4 it was not until the 1960s, and perhaps well into that
5 period, that professional courses in childcare were
6 being established at institutions of further and higher
7 education; is that broadly speaking the situation?

8 A. That's broadly speaking, yes, correct.

9 Q. Perhaps to make matters worse -- this is the point we
10 have said before -- not only were residential care
11 workers -- even when courses were available -- if I can
12 begin -- only a small number of residential care workers
13 appeared to have attended those courses for one reason
14 or another.

15 A. That's right. You can see that in some of the reports
16 that were made at the time, and I think my first and
17 second report for the Scottish Government does detail
18 the lack of uptake of such courses, certainly among --
19 within the Glasgow Childcare Inspection, in 1966.

20 Q. To follow that up, to make matters worse, not only were
21 the workers in the main -- residential care workers,
22 that is -- unqualified or not appropriately qualified,
23 if I could also put it, the schools were overcrowded and
24 understaffed?

25 A. Yes, yes.

1 Q. In that period, looking at the Local Authority
2 situation, where there was a children's department,
3 a Children's Committee of Councillors and a Children's
4 Officer, under whom there were Childcare Officers, in
5 that period and, indeed, probably up until 1968, there
6 was an insufficient numbers of Childcare Officers
7 employed by the Local Authorities.

8 A. That's certainly the case, evidently, in Glasgow itself.
9 The 1966 Report and subsequent reports indicate that
10 there were severe shortages of Childcare Officers
11 holding the brief on a daily base.

12 Q. I think from Professor Abrams, if I recall, Glasgow was
13 catering for around half the number of children that
14 required some sort of care provision, residential care
15 provision, or boarding out in that era, something in
16 that order. There was a substantial --

17 A. It was a significant -- certainly around 40 per cent.

18 Q. Just help me, I said I would touch on boarded-out
19 children from time to time.

20 So far as the situation of boarded-out children is
21 concerned; am I right in thinking that they were not
22 visited by either SED or SHD Inspectors? Not specific
23 visits to see them in their home environment, foster
24 home environment.

25 A. We have some evidence, certainly in the early post-war

1 period, that they were visited. I think there is
2 a report, I think the first report for the Scottish
3 Government, that the SHD Inspector visits the Highlands
4 and visits homes and compares them favourably with
5 Smyllum.

6 Q. Right. I seem to remember a comparison being made about
7 substandard crofts in --

8 A. That's right. Substandard crofts but better
9 provisions --

10 Q. Better than a large institution.

11 A. Yes, yes.

12 Q. Because it was more like a family home --

13 A. Yes.

14 Q. -- however bad it may have been.

15 A. Yes.

16 Q. I think you're right. But, largely speaking then, would
17 visits to foster homes be left to local officials,
18 Childcare Officers and Welfare Officers?

19 A. Left to local officials. The Central Government kept
20 a record of boarded-out children and where they were
21 until about the mid-1950s, when it was abandoned.

22 Q. I think we'll see that's one of the changes that
23 occurred between 1947 and 1959?

24 A. That's right, yes.

25 Q. And we can maybe look at that in a little more detail.

1 We have discussed that there were perhaps a shortage
2 of Childcare Officers, if you like, in the Local
3 Authorities that had to pay visits to a range of
4 children in care settings.

5 The impression I think we had from Professor Abrams'
6 work, looking Glasgow, was that the Child Care Officers,
7 certainly there, were overworked and unable to spend
8 much time with individual children for whom they had
9 a responsibility. And that I think she produced some
10 figures that there was some study showing that the
11 percentage of time they had available between travelling
12 and general commitments to devote to seeing children in
13 particular settings. So that's presumably not something
14 that's surprising to you for the period?

15 A. That's something confirmed in the Childcare Inspectorate
16 Report of Glasgow in 1960 and certainly 1966. There is
17 also some reflection of that in the report in Edinburgh
18 and Dunfermline.

19 LADY SMITH: And, of course, that difficulty would be
20 compounded if all that an Inspector was going to be able
21 to see was maybe one or at most two children in one of
22 the outer islands, having taken maybe two days out of
23 his working week to do that.

24 A. Yes, that's correct. Policy, since 1850, had been to
25 ensure that local officers did visit crofts, at least

1 twice a year.

2 LADY SMITH: And we saw, perhaps, an extreme of that
3 difficulty in one or two of the child migration cases,
4 where there is -- I don't know if you know this --
5 evidence of some visiting in Canada. But, plainly, the
6 person the Inspector had sent there had no idea what the
7 distances were that were going to be involved in getting
8 to where the child that had to be visited was.

9 A. I'm sure that was the case.

10 LADY SMITH: I'm sure Mr MacAulay remembers that as well.

11 MR PEOPLES: If I just look at the issue of discipline,
12 including corporal punishment and, again, just having
13 a look at the rules applying to children's homes and
14 approved schools for the moment.

15 As regards both approved schools and, after 1959,
16 children's homes, discipline was to be maintained by the
17 "personal influence" of the Headteacher of the school or
18 person in charge of the home.

19 A. That was the general --

20 Q. Requirement. Or rule?

21 A. -- within the 1933 regulations, which were basically
22 restated in 1961.

23 Q. But they were followed in the 1959 Regulations applying
24 to children's homes, that approach of: leave it to the
25 personal influence of the person in charge --

1 A. Yes, that's right.

2 Q. -- to regulate discipline.

3 A. After objections from various institutions.

4 Q. I think I'll try to come to that. But, yes, we've said

5 broadly that there was a difficulty there, because

6 I think the officials wanted to go further?

7 A. Yes.

8 Q. Although in the case of children's homes, where that was

9 the situation, so far as discipline and rules were

10 concerned, including corporal punishment, it was open to

11 the Local Authority or care provider to make rules for

12 the particular establishment, was it not?

13 A. That's right, yes.

14 Q. I think a number of Local Authorities, in practice, did

15 make rules. I'm not sure it was universal, but I think

16 some did, and indeed I think you have an example where

17 they made rules, but they don't seem to have been

18 followed.

19 A. That's correct, yes, yes.

20 Q. So they could dictate -- in fact, they could even go as

21 far as to say: we don't approve of corporal punishment,

22 don't use it.

23 A. That's right, if they so wished.

24 Q. I don't know if you're able to help us, whether any went

25 that far at the time?

1 A. It's not well reported. That particular issue is not
2 well reported, in terms of the implementation of that
3 regulation.

4 Q. But we do know, I think from your answers, there
5 certainly were rules made by different authorities on
6 the matter and perhaps voluntary organisations, too --

7 A. Yes.

8 Q. -- in relation to their own homes.

9 A. Yes.

10 Q. Just looking at the situation with discipline approved
11 schools, there wasn't the same measure of discretion
12 given to managers of approved schools. They had to
13 operate within the more detailed rules in the 1933
14 Regulations and ultimately in the 1961 Regulations?

15 A. They were specified. In terms of corporal punishment,
16 the actual level of punishment was specified and how
17 often it could be used.

18 Q. I think, both in the 1933 Regulations, part A, and the
19 1961 Rules applying to approved schools, the rules on
20 discipline were much more detailed than anything found
21 in the Children's Homes Regulations?

22 A. That's correct, yes.

23 Q. But can I suggest this: in practice, the use of corporal
24 punishment, whatever the regulations may or may not have
25 said, and whatever rules providers may have laid down,

1 the rules on corporal punishment in both settings were
2 not effectively regulated and, in truth, were wholly
3 unsupervised, the use. I'll develop that.

4 A. It's clear --

5 Q. There was no one standing over the person administering
6 punishment to determine whether, on the occasion in
7 question, they were applying six strokes, eight strokes,
8 where they were applying their strokes, what force was
9 used, and the like.

10 LADY SMITH: Or what they were applying them for.

11 MR PEOPLES: Or what they were applying them for.

12 A. In theory, I would agree with you. All I can say is: in
13 terms of the reports coming in, it's clear there were
14 considerable levels of infractions of the permitted
15 rules concerning corporal punishment.

16 Q. That might just be about the point I've made. They
17 weren't effectively regulated by the system if there
18 were many infractions?

19 A. Yes, there's a recognition that there were -- there were
20 certainly reports of infractions, and at such a level as
21 to indicate that infractions were more common than not.

22 Q. Perhaps I can just develop that point a little bit.

23 So it could be said, just looking at this whole
24 situation, and indeed the evidence of infraction, that
25 the systems and mechanisms of oversight and monitoring

1 of the use of corporal punishment were unlikely in the
2 absence of complaints to detect inappropriate or
3 excessive corporal punishment.

4 A. Correct.

5 Q. The only evidence -- and not a very reliable source at
6 that -- would have been the punishment logbook?

7 A. The punishment logbook simply reflected the application
8 of the regulations.

9 Q. And what the person chose to put down.

10 A. And what the person chose to put down.

11 Q. I suppose, at a school where the Headteacher was
12 prepared to exceed the maximum number of strokes or
13 resort to using considerable force when using a tawse,
14 or inflict corporal punishment on the bare bottom, or
15 use corporal punishment other than on a permitted part
16 of the body, or resort to punishments other than those
17 permitted by the regulations, the punishment book is
18 likely to have contained a record of these things
19 happening.

20 A. That's correct.

21 LADY SMITH: Nor would it have been likely -- let's just
22 spell this out, Professor -- to contain a record of the
23 fact that an occasion of corporal punishment was being
24 used as an opportunity for sexual abuse.

25 A. It could well be the case, and clearly the Inspectors'

1 reports indicate that form of punishment took place.

2 MR PEOPLES: Perhaps the desire of officials, in 1959, to
3 remove the right to inflict corporal punishment on the
4 posterior might have been influenced by considerations
5 of why it was being used and how it was being used?

6 A. I think by 1958/1959 childcare theory had been developed
7 sufficiently to indicate that corporal punishment was
8 not appropriate in a children's home.

9 Q. But, just looking broadly, even if corporal punishment,
10 like a tawse in a school on the hand, might well have
11 been acceptable to society and to regulators, the
12 officials were concerned about the use of corporal
13 punishment on the bottom, even if the regulations
14 stipulated that it should be administered over ordinary
15 cloth trousers.

16 I think we'll come to some examples of, perhaps,
17 their concerns were well founded.

18 A. I think their concerns were well founded, that even with
19 regulations there were issues concerning the care and
20 welfare of children in children's homes.

21 Q. Even when a time came when the administration of
22 corporal punishment had been witnessed, if the
23 Headteacher and the witness were like minded, or the
24 witness was fearful of the consequences of reporting
25 a breach of the rules by the Headmaster, that

1 requirement would not likely have reduced the risk of
2 excessive or inappropriate corporal punishment.

3 A. That's correct, yes.

4 Q. Just in terms of the differences between the rules,
5 because I'll go back to my example that I'm the boy in
6 an approved school, but I happen to have also spent time
7 in a children's home, which is not an unfamiliar
8 scenario --

9 A. A younger boy, I think the report makes it clear, is
10 likely to go to a children's home, but (inaudible) to 10
11 might find themselves, after a spot of trouble on the
12 streets, in an approved school.

13 Q. Yes, because quite young children, including children
14 under 10, could be at an approved school, although there
15 was provision they could be boarded out.

16 A. Yes.

17 Q. So very young children could be in an approved school
18 setting very quickly.

19 A. Yes.

20 Q. If we just look at the rules for the moment, as regards
21 corporal punishment, the Approved School Rules
22 distinguished between boys and girls. Whereas the 1959
23 Children's Homes Regulations did not.

24 A. Yes.

25 Q. The 1933 Approved School Rules provided that corporal

1 punishment should rarely be imposed on girls. In girls'
2 schools under the 1933 Rules, corporal punishment could
3 only be inflicted on the hands; whereas in boys' schools
4 it could be inflicted on either the hands or the
5 posterior over ordinary cloth trousers.

6 A. That's correct.

7 Q. And I think, as I say -- and we'll come to this --
8 an attempt by officials to prohibit the corporal
9 punishment on the posterior when the new Approved School
10 Rules were being prepared in the 1950s failed.

11 A. Yes.

12 Q. I think you told us this morning, managers and heads of
13 approved schools, which were mainly run by voluntary
14 organisations, were opposed to any major changes to the
15 existing 1933 discipline and punishment rules?

16 A. That's correct, yes.

17 Q. We've talked about the system of compulsory registration
18 of various types of establishment, and there was, in the
19 1948 Act, a system of compulsory registration of
20 voluntary homes.

21 A. Yes.

22 Q. At that point, the homes had to be registered with the
23 Secretary of State.

24 A. Yes.

25 Q. But the first -- 1948 Act, for the first time I think,

1 imposed obligations on Local Authorities to provide for
2 children in need, in their areas, a specific duty,
3 statutory duty to provide?

4 A. Yes.

5 Q. So far as the Secretary of State was concerned, he had
6 a power to de-register a home, voluntary home?

7 A. Yes, that's correct.

8 Q. As we discussed this morning, without debating power or
9 duty again, the Secretary of State continued as before
10 to have a power to inspect voluntary homes and a power,
11 not exercised until 1959, to make regulations as to the
12 general conduct of voluntary homes and indeed local
13 authority homes?

14 A. Yes.

15 LADY SMITH: So you're saying, Mr Peoples, he could
16 deregister a home. He could inspect, and the outcome of
17 an inspection could be, at an extreme, a deregistration?

18 MR PEOPLES: In theory.

19 LADY SMITH: In practice, it wasn't happening.

20 A. In practice, we know that a number of voluntary homes
21 closed after 1948, and the very brief text that
22 surrounds that indicates that they were not up to
23 standard, whatever the standard was being applied.

24 Now, one can infer that they had been inspected, and
25 the Inspectors had indicated the support of the

1 department, the Scottish Home Department, that some
2 improvements would be necessary.

3 MR PEOPLES: Therefore, in these examples, it may be because
4 they were required to be registered and there had to be
5 some decision on it that they might not -- they might
6 have been told: you're not going to get registration,
7 unless --

8 A. Or: you'll be deregistered.

9 Q. Yes.

10 A. Unfortunately, the papers don't survive in sufficient
11 detail to actually indicate the number of the --
12 specific number of homes, or who those -- or who or
13 where those homes were.

14 All the reasons surrounding whether or not they had
15 been inspected, but --

16 Q. But there was a mass closure of voluntary homes
17 following the 1948 Act, it would appear?

18 A. I would have to look back at the source material that
19 I read, but there were certainly a not insignificant
20 number of homes that were closed.

21 Q. How many of these might have achieved registration and
22 then were deregistered having done so?

23 A. We're not told.

24 Q. No. Because that might be something that's less common
25 than simply not getting over the starting line.

1 A. My --

2 Q. Once you've registered and you are satisfied, you might
3 be loath, particularly if there is shortage of
4 provision, to exercise the most draconian power to
5 close.

6 A. I think there are two things. Firstly, I think
7 registration was relatively easy post-1948. You simply
8 sent in a form, and you could get provisional
9 registration. And then you'd be inspected and,
10 subsequently, you might be informed that certain
11 structural alterations were required to the building,
12 and you would come to the conclusion that your voluntary
13 organisation could not afford that.

14 The second thing, which I think my report brings
15 out, was there was a thrust from 1949 for Local
16 Authorities to develop their own homes, and the number
17 of children in Local Authority homes substantially
18 increased in the 1950s. It may well have been that the
19 combined pressure of Central Government inspection and
20 the competition from Local Authority homes effectively
21 forced those, shall we say, weaker homes out of
22 business.

23 Q. It's fair to say that the system continued to rely very
24 heavily on the voluntary homes. The Local Authority
25 homes, there may have been, and they may have risen in

1 the 1950s, but they certainly weren't capable of
2 accommodating the bulk of children in care.

3 A. They weren't capable of accommodating all the children
4 in care, but I'd have to look at the figures again.
5 Certainly I think round about 50 or 60 per cent of
6 children in residential accommodation by the late 1950s
7 were in Local Authority homes.

8 Q. So there is a movement by the late 1950s towards more
9 use of Local Authority homes --

10 A. During the 1950s.

11 Q. -- than voluntary homes?

12 A. Yes.

13 Q. That's the trend?

14 A. Yes, that's the trend.

15 Q. That's the probably the trend that the 1948 Act wanted.

16 A. I think the implication of the 1948 Act was to improve
17 the standard of the children's homes, and the Local
18 Authorities came under pressure. There were certainly
19 some grant aid provisions within the Local Authority
20 Grant for Children for that to occur.

21 Q. As regards the provision of residential homes for
22 children and young persons by the Local Authority, under
23 the 1948 Act, the Secretary of State had a power to
24 direct a Local Authority to provide homes for children
25 in their care, presumably, if he considered existing

1 provision to be insufficient.

2 A. Yes.

3 Q. Did you ever see any evidence of that?

4 A. I've not seen that being implemented as a direction. My
5 assumption, like the period after 1968, it was
6 a question of let's try and encourage, rather than
7 issuing directions.

8 Q. The carrot not the stick?

9 A. The carrot not the stick, and also the fact that they
10 could claim additional capital expenditure support for
11 such activities, and it would seem to have had some
12 effect.

13 Q. Because the number of homes did increase?

14 A. The number of homes did increase, and the number of
15 Local Authority homes did increase.

16 Q. There seems to have been some decrease in the number of
17 voluntary homes?

18 A. Some decrease in the number of voluntary homes.

19 Q. But the big homes continued?

20 A. The big homes continued, but perhaps not at the same
21 level as they had prior to 1948.

22 Q. Was one cheaper than the other?

23 A. Yes. Voluntary homes were considerably cheaper.

24 Q. Was that a disincentive to create Local Authority homes
25 and spend more money than you would if you farmed them

1 out, or even boarded them out? Which is even cheaper.

2 A. Foster care was certainly cheaper. But, again, one
3 would have -- the problem anyone has in this period is
4 there was no annual publication on childcare in Scotland
5 compared to England. So one finds it very difficult to
6 establish, given the fact that the official papers --
7 most have been shredded -- to establish what is going
8 on.

9 My reading is that there was considerable influence
10 from the centre, from St Andrews House on local
11 authorities to develop children's homes and develop them
12 in a more specialist way.

13 Q. Do you know why -- this looks like England and Wales is
14 ahead of Scotland in terms of the way they run things,
15 like annual reports, for example, to give information,
16 presumably publicly.

17 A. Yes.

18 Q. Whereas in Scotland there was no annual report that
19 would allow you to look at the situation at that time.

20 Was there a reason why in Scotland it was felt that
21 having that information collated and reviewed at the end
22 of each year -- why that wasn't a necessary step or
23 an important step?

24 A. There was a more simple explanation. There was
25 a division of responsibility between the Scottish Home

1 Department and the SED.

2 Q. It goes back to the Home Office situation.

3 A. Yes, that's right. There was one Under-Secretary
4 responsible, south of the border, for what we now call
5 looked-after children.

6 Q. So that person, down south, at least in theory could
7 look at the big picture each year?

8 A. Yes.

9 Q. And prepare a report for public consumption?

10 A. Yes.

11 Q. Whereas in Scotland, the arrangements were such that
12 that wouldn't happen.

13 A. Not until I think 1962 or 1963 was a separate childcare
14 report published in Scotland.

15 Q. How long was that published for?

16 A. Until the SWSG was established and it began to issue
17 publications, annual publications.

18 Q. Did it continue do that throughout its existence?

19 A. Until 1977, when -- the publication of annual reports
20 related to the vote for each section and, historically,
21 you published a report about a department's activities
22 ahead of the vote in Parliament, round about May, June
23 and July.

24 Once you had a change in the way that public
25 expenditure was distributed, there was no reason to have

1 such publications, and by 1980 departmental publications
2 fell by the wayside across the board.

3 Q. So the public wouldn't have the benefit of seeing how
4 well the department had done?

5 A. I think the explanation was there were different ways in
6 which the public could be kept informed.

7 Q. What were these ways?

8 A. Various publications on specific aspects of care of
9 children in Scotland.

10 Q. Looking at regulations for children's homes, the ones
11 that were made in 1959, the 1959 Regulations placed
12 ultimate responsibility for the good running of the home
13 on either the Local Authority who was providing the home
14 or the persons who were carrying on the home.

15 A. Yes.

16 Q. That body was obliged by Regulation 1 to make
17 arrangements for the home:

18 "To be conducted in such manner and on such
19 principles as will secure the well-being of the children
20 in the home."

21 So the managers had a specific statutory
22 responsibility?

23 A. Yes.

24 Q. Not too different from managers of approved schools.

25 A. Pretty identical.

1 Q. I note that the words change over time in legislation.
2 You see words like "welfare", "well-being", "best
3 interests", terms. It can be difficult to interpret is
4 embraced by the concept of well-being; does it embrace
5 specifically safety and well-being while you're in the
6 home?

7 A. I think when you are looking at the 1959 Regulations,
8 the officials who were drafting that set of regulations
9 looked very closely at the Home Office regulations that
10 had already been issued, and also the approved school
11 regulations, which were already in circulation before
12 amendment, and they were basically paraphrasing from
13 both.

14 If you're looking at well-being, if you look within
15 the general regulations, south of the border, and
16 approved schools in Scotland, it concerned diet,
17 domestic accommodation, sanitary accommodation,
18 clothing, but not necessarily what might be called
19 "personal development".

20 Q. Or safety while in the home?

21 A. Safety in the home, in terms of --

22 Q. In the children's home, I mean, sorry.

23 A. In the children's home, "safety" probably meant fire
24 precautions in the children's homes.

25 Q. So it wouldn't be the safety we would see, like the

1 policies in child protection or safeguarding
2 arrangements that the Inspectors in later years were
3 looking for?

4 A. No.

5 Q. Because there's certainly no express mention of safety
6 in the 1959 Regulations.

7 A. No.

8 If I could add, there's a difference between the
9 regulations governing teachers in terms of safeguarding,
10 as opposed to children's homes. The regulations
11 governing teaching which applied to approved schools is
12 that any person who committed an offence, particular
13 kind of offence, that school would be informed; if they
14 so employed that person, they might face deregistration,
15 which effectively prevented someone with a conviction
16 for a child offence being employed in an approved
17 school.

18 That provision did not apply to children's homes.

19 Q. The regulations you have in mind; are these to do with
20 the Education Act Regulations?

21 A. They applied to all schools.

22 Q. All schools?

23 A. Yes.

24 Q. But the specific regulations applying to both approved
25 schools and children's homes didn't build in that --

1 A. Approved schools came under that regulation as far as
2 teaching staff were concerned, but not non-teaching
3 staff.

4 Q. I suppose one of the problems might have been that for
5 a lot of these schools the bulk of the staff were
6 non-teaching staff or not qualified teachers?

7 A. Yes.

8 Q. So they wouldn't come under that regime.

9 A. They would not be under the register which SED kept
10 north of the border, Education Department and the Home
11 Office kept south of the border, which was to register
12 anyone, anywhere in the UK, who had committed an offence
13 under the Children's and related Acts.

14 Q. Because just moving forward a little -- and I realise
15 I'm taking you out of your period of the report
16 a little -- the 1959 Regulations remained in place, as
17 did the 1961 Rules for Approved Schools until 1987, well
18 after the 1968 Act.

19 A. Yes.

20 Q. I just mention in passing, in Regulation 16 of the 1987
21 Regulations, the Local Authority that issued
22 a certificate of registration is obliged to visit the
23 residential establishment at least annually, under those
24 regulations, to satisfy itself, among other things,
25 that:

1 "The safety and welfare of children resident within
2 the establishment are being maintained."

3 A. Yes.

4 Q. So they're certainly recognising, explicitly, that
5 safety is something that has to be considered,
6 specifically.

7 A. That's in the 1980s.

8 Q. Yes. I'm just trying to contrast.

9 A. Yes, I know.

10 Q. In other words, there is a continuing express obligation
11 on part of the State, this case the Local Authority
12 representing the State, to satisfy itself as to the
13 safety of children and young persons in residential
14 establishments in its Local Authority area.

15 A. But the issue in 1959 is: what is meant by the term
16 "safety"?

17 Q. Yes, I have your answer on that one, and you've given
18 the answer. But I'm just trying to show how things have
19 changed in that period.

20 A. Yes.

21 Q. Of course, the aim, in 1968 -- I think it was said
22 probably in Parliamentary statements when the Bill was
23 being discussed -- was to have, as soon as practicable,
24 a single set of rules applying to all residential
25 establishments.

1 A. Yes.

2 Q. That didn't happen.

3 A. It didn't happen.

4 Q. Going back to the 1959 Regulations, if I may.

5 Another thing is, as made, they were silent on

6 a number of important matters.

7 A. Yes.

8 Q. For example -- and I think we discussed this this

9 morning to an extent -- they were silent on the

10 qualifications and criteria for selection of the person

11 in charge of the voluntary home.

12 A. Yes.

13 Q. Or Local Authority home. Nothing was said about the

14 qualifications of the staff of the homes, nor the

15 mechanisms for their selection, nor was there any

16 exclusion criteria, such as having been convicted of

17 offences against children?

18 A. There had been discussion amongst officials in draft

19 form about that, but that was kicked into the long grass

20 once discussions began to take place with voluntary

21 organisations.

22 Q. Have you been able, from your review of the files, to

23 work out why, in relation to matters such as this, there

24 might have been opposition from both the Local

25 Authorities and the voluntary organisations?

1 Because it does seem, if there's been calls since
2 the 1940s for training and selection of the appropriate
3 type of staff, a reasonable thing to agree to.

4 A. My interpretation of the material coming forward from
5 the various voluntary organisations was that they were
6 best placed to choose the appropriate staff for
7 a children's home.

8 Q. Just as they were best placed to determine how to
9 discipline children in a home?

10 A. They wished to run their home on a family basis. That
11 was, I think, part of a letter that came in from the
12 Church of Scotland.

13 Q. So it was the suggestion that it might not be
14 appropriate, if you're trying to do that, to have
15 someone who had some formal professional qualification.

16 A. They wished to run their homes on a family basis, and
17 the families are not run on a professional basis.

18 Q. Parents don't have professional qualifications --

19 A. Precisely.

20 Q. -- to be parents?

21 A. Yes, and they wished to run their homes on a family
22 basis.

23 Q. As Professor Norrie says in his textbook, at pages 263
24 to 264, and I quote:

25 "That omission [the one I have mentioned about

1 criteria and qualifications] is all the more glaring
2 given the express granting of the power to specify
3 qualifications in the primary legislation itself."

4 And he refers to section 31.1(d) of the Children Act
5 1948.

6 A. Yes.

7 Q. So it looks as if the legislation had in mind that maybe
8 it would be a good idea to look at the issue of
9 qualifications.

10 A. Yes, but that might have been primarily at the
11 employment of the chief or principal Childcare Officer
12 of a Local Authority.

13 Q. It's hard to see that is sufficient if the frontline
14 workers are dealing with vulnerable children with
15 complex needs and require special training to address
16 those needs.

17 A. I don't disagree. But I suspect the thinking was: if
18 a Local Authority Childcare Officer had to be approved
19 by the Secretary of State, which followed from that
20 particular Act, you could leave it to that particular
21 suitably qualified person to appoint suitably qualified
22 people to run voluntary homes.

23 Q. But there weren't many suitably qualified people in some
24 of these authorities, according to your researches.

25 A. Absolutely right.

1 Q. You mentioned the instance in the early 1960s of how
2 many qualified people there were in one of the
3 children's departments.

4 A. That's right, yes.

5 LADY SMITH: Of course, Professor, thinking about the
6 aspiration to run a children's home like a family home,
7 which in a way reflects the ideas that emerge from the
8 Clyde Report, the comparison quickly falls apart as soon
9 as you allow, for example, changes in staff. You don't
10 get changes in parents in the family home, and there
11 will be changes in staff in the children's home.

12 A. Yes.

13 LADY SMITH: The lack of the natural parental instinct,
14 which you cannot insert into somebody --

15 A. Or the size of the home.

16 LADY SMITH: Or the size. Yes. These are just a few
17 factors that mean, don't they, in reality you have to
18 face up to the fact that a children's home is different,
19 and there are risks. More importantly, there are risks
20 to children in the children's home that within the
21 parental home, when children are living there, don't
22 normally arise.

23 A. That's correct, but that wasn't thought through in terms
24 of implementing the Act.

25 MR PEOPLES: Well, it certainly wasn't, because without

1 trying to stray into very controversial territory, you
2 only get one set of biological parents. But, if you're
3 in a children's home, because of the high turnover of
4 staff -- which seems to have been a frequent
5 occurrence -- your parents would be changing week by
6 week or month by month. Just as your Social Worker
7 would be doing, who was the external oversight, often.

8 A. Yes, but there would be case papers, allegedly case
9 papers, that the Social Worker would hand over to the
10 incoming Social Worker.

11 Q. It doesn't make for continuity and stability of
12 relationship, which might be required to give the young
13 person, who already mistrusts authority, perhaps, or
14 adults, the confidence to have a relationship which is
15 meaningful and might allow them to disclose things they
16 would need to disclose to protect themselves from abuse
17 or abusive practises.

18 A. I agree. But if one looks at, if you like, official
19 policy of the Scottish Home Department and its Childcare
20 Inspectorate, it was to push Local Authorities to
21 develop foster care, as opposed to children's homes.

22 And I have certainly come across evidence that the
23 then principal Childcare Inspector did go around Local
24 Authorities, seeking to increase the volume of children
25 in foster care, for that very reason, as opposed to

1 children homes, ie he was opposed to children's homes.

2 Q. We're getting to the era when the trend was: we don't
3 really want people in children's homes or residential
4 establishments, unless it's absolutely necessary. Get
5 them into either foster homes or some smaller group
6 home, which is the nearest equivalent.

7 A. Yes.

8 Q. And keep children out of long-term residential care.
9 We're coming to that sort of era.

10 A. You are coming to a stage where, certainly post-1968,
11 the view was against any long-term residential care,
12 unless and except the child had special educational
13 needs, which could only be catered for in a particular
14 environment.

15 Q. Going back to the 1959 Regulations, another perhaps
16 glaring omission, some might say, was there was nothing
17 said about preparing the child or young person for
18 a return to his or her family or the community.

19 A. Correct.

20 Q. Which, of course, in recent years has become a much
21 greater focus of attention. Indeed, such that we now
22 have aftercare now for young people potentially up to
23 their mid-20s or so. Support, anyway.

24 A. I think embedded into that practice was the belief that
25 the child would not be returning to the parental home.

1 Q. Long-term care meant --

2 A. Long-term care.

3 Q. Family separation.

4 A. That's right, yes.

5 Q. And sibling separation, on many occasions.

6 A. Could be sibling separation. For some reason or other,

7 the family dissolved and, therefore, you are looking

8 after the this child for a long period of time, or until

9 such time as you could foster them.

10 Q. That may be so, and the thinking around the time of the

11 1959 Regulations, but boarding out was -- the practice

12 of boarding out was still such that many children were

13 boarded out well away from home; is that the case, even

14 in the 1950s?

15 A. I haven't looked at the issue of distance, in the sense

16 that's not necessarily in the reports I've read. But,

17 certainly in Glasgow, there was certainly evidence of

18 there being some distance from the city.

19 Q. At what point, if you're able to help us, was the

20 thinking that if there was to be boarding out, it should

21 be much closer to the community? Was that coming into

22 the 1960s or are we talking about an earlier period?

23 A. I think probably much later.

24 Q. Much later. So the idea of a child being boarded in the

25 substandard croft in the Highlands was still perfectly

1 acceptable, particularly if the alternative was a large
2 institution?

3 A. If the alternative was an overcrowded slum or
4 a particular kind of orphanage in the west of Scotland,
5 compared to a Highland croft, the position in 1950s and
6 I think early 1960s was the same it had been in the
7 1850s; it was much better to go to the croft.

8 Q. I suppose, in fairness, we should say -- and I think
9 Professor Abrams was keen to bring this out -- that you
10 have to look at the wider context; that post-war,
11 immediate post-war, there were serious housing problems,
12 certainly in the west of Scotland, particularly the
13 Greater Glasgow areas.

14 A. Yes.

15 Q. There was also, therefore, a shortage of potentially
16 suitable foster homes for children to be boarded out
17 nearer their community.

18 A. There was also a view, certainly developed in Glasgow in
19 the late 19th Century, that fostering far away meant
20 that the child would grow up in a different kind of
21 family and perhaps a more "normal" family, than they
22 would in the centre of Glasgow, where their parent or
23 parents might have a criminal or sub-criminal past.

24 Q. Time doesn't stand still. That's the 19th Century and
25 we're now well into the 20th Century.

1 A. That may well have retained its position in Glasgow.
2 And certainly if you look at the boarding out figures in
3 Glasgow, just before 1939, there's still that policy in
4 place.

5 Q. Would that maybe be evidence that -- I think one
6 inspection may have said, at some point, of people in
7 local authority positions that they weren't in tune or
8 in touch with modern childcare thinking, statements
9 along those lines were being made.

10 A. You could say that. You can say that, but I think,
11 actually, Glasgow had looked at the issue of a statutory
12 power to remove a child permanently from a domestic
13 home. And it was approved within the then Scottish
14 Government or Scottish Officials said, under, I think,
15 vagrancy laws, you could do that --

16 Q. And --

17 A. -- remove a child from its natural parent or parents --

18 Q. And --

19 A. -- and stop them accessing that child.

20 LADY SMITH: We certainly have seen examples, and thinking
21 of Glasgow, of a deliberate decision to place a child
22 well away from Glasgow, to make it difficult, perhaps,
23 put an insurmountable difficulty in the pathway of a
24 family being able to see the child. We have seen that
25 both in placing them in boarding out, and I think within

1 the Sisters of Nazareth Order because they had four
2 different homes in Scotland and could shift a child from
3 Glasgow to Aberdeen to get them away from the family.
4 A. I'm aware of when that started, in 1884, and Glasgow,
5 then parish council, sought legal opinion from the then
6 board of supervision, in Edinburgh, which was
7 responsible for the Poor Law. The legal decision was:
8 yes, you have a right under the vagrancy laws to prevent
9 that mother, and it was generally mothers, from
10 accessing the child.

11 That policy led to a substantial increase in the
12 number of children separated from their parent or
13 parents. And the figures I've seen is that continued
14 right the way through, certainly until 1948.

15 LADY SMITH: Mr Peoples.

16 MR PEOPLES: Going back to the 1959 Regulations, if I may.

17 On punishments, the rules, I think I'm right in saying,
18 required that all punishments be recorded.

19 A. Yes.

20 Q. That was the rule?

21 A. Yes.

22 Q. On corporal punishment, the rule was that corporal
23 punishment was permitted exceptionally.

24 A. Yes.

25 Q. And could only be administered by a person who had been

1 specifically empowered by the administering authority,
2 the care provider, to do so.

3 A. Yes, usually the Board of Governors.

4 Q. Board of Governors?

5 A. Yes.

6 Q. "Administering authority" is the term used, but it's
7 usually a voluntary board of management of homes, or the
8 Local Authority committee that was responsible for the
9 management of a Local Authority home.

10 A. Yes, yes.

11 Q. The rules themselves, the regulations, were, as I think
12 we are agreed, far less specific than for approved
13 schools and, as we say, unlike the rules for approved
14 schools, made no distinction between boys and girls.

15 A. Yes.

16 Q. If I was the child in that era, when there were two sets
17 of regulations, I could be a bit perplexed, if I thought
18 about the matter, about what was going on.

19 A. You could certainly, if you were under 10 and had been
20 in girls' children's homes and had suffered corporal
21 punishment and then going to an approved school find
22 less evidence of corporal punishment and be perplexed as
23 to why you had suffered corporal punishment in
24 the children's home, but did not appear to be suffering
25 corporal punishment in an approved school.

1 Q. You might be like that. But I suppose, in reality, if
2 what happened in fact in the approved school was no
3 different to what happened in your earlier
4 establishment, you might think: oh well, this is much
5 the same as before.

6 A. For girls, the use of corporal punishment was much less
7 in an approved school. In terms of the figures that
8 were registered.

9 Q. So, in the case of a girl, there would be a distinction?
10 A. Yes.

11 Q. In the case of a boy, there might be no distinction in
12 practice, except --

13 A. Yes.

14 Q. More of the same.

15 A. More of the same, or more differences in the application
16 of the punishment.

17 Q. Yes, because the children's home rules really were quite
18 unspecific about what implements could be used, where
19 they could be used, how they could be used, in what
20 circumstances and so forth.

21 A. And its frequency.

22 Q. And its frequency. So, yes, you could see
23 a distinction.

24 A. Yes, yes.

25 MR PEOPLES: I see the time, it's 3 o'clock. That would be

1 a good point.

2 LADY SMITH: Let's stop now for the afternoon break then,
3 Professor.

4 (3.02 pm)

5 (A short break)

6 (3.15 pm)

7 LADY SMITH: Professor Levitt, are you ready for the last
8 stretch for the day?

9 A. Thank you.

10 LADY SMITH: Thank you. Mr Peoples.

11 MR PEOPLES: Can I leave the 1959 Regulations behind?

12 I'll come back to them when we look at section 3.

13 Just taking the matter through, because we were
14 talking about the 1950s and perhaps the watershed
15 towards the end and so forth, but if we look briefly at
16 the 1960s.

17 In the 1960s, largely I think as a result of the
18 Kilbrandon Report, there was a major change in thinking
19 in relation to the purpose of residential care?

20 A. Yes.

21 Q. I think it can be captured in this way, I should make
22 grateful thanks to Professor Norrie, because I have
23 taken a lot from his chapter on institutional care, so
24 I should give him credit at this point.

25 Residential care was not to be seen as a permanent

1 solution to the difficulties faced by a child or young
2 person, but rather as a temporary measure during which
3 intensive education and training could be given to the
4 child or young person at the same time as offering
5 support to the parents in order to increase the chances
6 that the child's or young person's return home would be
7 successful.

8 That was the shift in thinking, in mindset.

9 A. That certainly underpinned, really, the deliberations
10 that followed the Kilbrandon Report.

11 Q. I think Professor Norrie would say that was a kind of
12 thinking that the committee itself came to which maybe
13 influenced they way they presented the report.

14 I know the report wasn't slavishly followed in terms
15 of what was put in place, but that was the broad thrust
16 of what was appreciated by the committee, at least
17 according to --

18 A. It was embedded in a sort of codicil attached to
19 establishing Kilbrandon. If you look at the memorandum,
20 which went to the Secretary of State, it indicated,
21 looking at juvenile courts, et cetera, and then there
22 was a final section -- paragraph on the Kilbrandon --
23 should perhaps consider alternatives to institutional
24 care, and that was underlined in early 1962, when Jack
25 Maclay authorised that Kilbrandon should be informed to

1 go ahead with radical alternatives.

2 Q. And Jack Maclay was the Secretary of State at that time?

3 A. Yes, Jack Maclay.

4 Q. And I should have said this -- I don't know if

5 I mentioned it. I think you have told us in your report

6 or -- I believe that the Kilbrandon remit did not extend

7 to approved schools as such.

8 A. The deliberate decision of officials in 1960s, that is

9 David Cowperthwaite, who was largely responsible for the

10 early part of oversight of Kilbrandon, and

11 Norman Walker, who was the then in charge of SED,

12 deliberately sought to ensure that the -- Kilbrandon did

13 not review approved schools; its management, its

14 regulations, anything to do with that.

15 The principal function of Kilbrandon was to look at

16 the issue of juvenile courts. And that is why

17 Kilbrandon sat within the juvenile court brief within

18 the SHD and then SHHD until I think January 1996.

19 Q. So although the juvenile courts could send children to

20 approved schools, that wasn't an aspect that he was

21 asked to look at as such?

22 A. The primary purpose of Kilbrandon was to look at the

23 functioning and the purpose, and any possible reform of

24 the juvenile courts, in relation to juvenile

25 delinquency. And alternative measures that might be

1 thought advisable.

2 Q. I think, as we know, there was a White Paper, as you
3 told us in 1966, and ultimately the Social Work
4 (Scotland) Act 1968.

5 Apart from this shift in thinking about the purpose
6 of residential care and how it should be used, another
7 major change -- and I think you touched on it this
8 morning, in relation to Local Authorities resenting
9 interference from Scottish Central Government -- another
10 major change in the 1960s, late 1960s, was the creation
11 of generic Social Work Departments by the 1968 Act.

12 A. That's correct, yes.

13 Q. The first steps towards -- and I use that advisedly --
14 putting in place, in all Local Authority areas,
15 professional Social Workers.

16 A. Yes.

17 Q. Because I think you've told us that didn't happen
18 overnight?

19 A. It didn't happen overnight. It was a period of at least
20 10 years before the Scottish Office could issue
21 regulations which said a Chief Social Work Officer for
22 the Local Authority must be professionally trained.

23 Q. So they refrained from stipulating that in the
24 beginning?

25 A. It was within the regulations that they could, but they

1 didn't actually apply it for 10 years.

2 Q. Now, henceforth, after the Act, each child or young
3 person in care would have his or her own designated
4 Social Worker, who would work with both the child and
5 the family while he or she was in residential care; that
6 was the thinking?

7 A. Yes, yes.

8 Q. This is the generic Social Worker? The field Social
9 Worker.

10 A. Yes, the field worker.

11 Q. The idea was -- the broad idea was that residential care
12 provision, whether schools or children's homes, much of
13 which was provided by voluntary organisations, would
14 have much closer links with the new Social Work
15 Departments and in time -- again, I stress: in time --
16 would form part of a range of provision available to
17 Social Workers and the new Children's Hearing System to
18 ensure that a child or young person would -- who was in
19 need of care and protection, would be placed in the care
20 setting best suited to meeting his or her particular
21 needs. That was the general idea.

22 A. The thinking behind the Act was that any child in need
23 of care, attention and support would fall within the
24 ambit of a local Social Work Department and that the
25 role of voluntary organisations would no longer be

1 central.

2 A voluntary organisation might be brought in, in
3 terms of the support given to a child, whether it was in
4 a residential home or another form in the community.
5 But I think the key thing about the 1968 Act was that it
6 was pushing to one side non-statutory support for
7 children in need.

8 Q. Save that the non-statutory support was available, or
9 ought to be available if an appropriate provision for
10 the child under the care of the Social Work Department.

11 A. If it was commissioned.

12 Q. If commissioned.

13 A. The key thing was that support would be commissioned,
14 and therefore there would be a complete record of
15 childcare, as it was then called, within the Local
16 Authority Social Work department.

17 Q. But I think -- and I'm just quoting something from the
18 1966 White Paper, which was the response to Kilbrandon
19 and I quote, it said:

20 "The different forms of provision should be fitted
21 to the needs of the users and not the other way round."

22 A. Yes, yes.

23 Q. Because I think what was described were the -- the other
24 way round was status quo.

25 A. The other way round was there was a set number of

1 institutions available and the child had to fit in,
2 rather than the Local Authority Social Work department
3 developing provision to meet a variety of needs as then
4 existed.

5 Q. If necessary, would approach or commission services from
6 voluntary organisations. They weren't expected to do it
7 all themselves.

8 A. If necessary, they would engage with voluntary
9 organisations, such as Abelour for instance, and say:
10 what we're looking for is a provision which would
11 include this and that, and not what you already are
12 providing; can you possibly change the scope of your
13 activity?

14 Q. So they would determine the provision they wanted?

15 A. Yes.

16 Q. They would approach, for example, a major provider of
17 services for children --

18 A. Yes.

19 Q. -- explain their requirements and either the provider
20 said: yes, we can. Failing which, the authorities
21 potentially could walk away.

22 A. Could walk away.

23 Q. Although, in practice, because of scarcity of resources
24 at times, some of the authorities would resort to
25 voluntary provision, even though they thought it was not

1 particularly suitable.

2 That happened, did it not? Because I'm thinking of
3 Strathclyde, for example, who -- Fred Edwards, the
4 Director of Social Work, had some harsh words to say
5 about Quarriers. But, in the end, his council still
6 used Quarriers because they needed to, because they
7 didn't have sufficient provision to fit everyone where
8 they wanted to fit them.

9 A. The volume of need exceeded the availability of the
10 range of accommodation that Local Authority Social Work
11 Departments required. So you still had children's
12 homes, even small children's homes. And I think my
13 second report gives an indication of one in Dumfries and
14 Galloway which was clearly unsuitable, but was still
15 being used because there was no alternative.

16 LADY SMITH: I think the point Mr Peoples is making is: it's
17 wonderful, in theory, to say that you start with the
18 child; what you need for the child, you go to the
19 voluntary home and you order what's needed for the
20 children. But, if the voluntary home says it can't do
21 it, you are stuck, and your choice is what we used to
22 call Hobson's Choice; is that right?

23 A. I think if one looks at the remaining Social Work
24 Service Group annual reports, there is consistent calls
25 and encouragement to develop more specialist provision

1 over the period of time. It was a game that was to
2 develop, but in terms of the provision, rather than
3 saying, in 1968, that it all has to change.

4 Q. The point I'm making is: that may well have been the
5 case.

6 And, indeed, I think you've just made the point
7 I was going to put to you, that translating this idea
8 into practice would take time.

9 A. Yes.

10 Q. While that time was having to be occupied in doing so,
11 you didn't hold all the cards, and you couldn't just go
12 and say: these are our terms, take them or leave them.

13 A. I've come across a comment in a 1967-file, Scottish
14 Office comment, where an official says: it will take
15 20 years.

16 And that would be my answer to your question. There
17 was a realisation at the centre that it would take
18 a considerable period of time for the Social Work Act in
19 all its ambience to be fulfilled.

20 Q. Were we still some distance way from -- I think there
21 came a time when Local Authorities purchased services on
22 a kind of rolling basis, and dictated terms and entered
23 into agreements, formal agreements -- I think that was
24 in the era of the regional councils.

25 A. Yes.

1 Q. I don't know if you can help us when, roughly, that way
2 of doing things took hold or started to develop?

3 I think it was post-1975.

4 A. Certainly by the beginning of the 1980s. From my own
5 professional experience in a completely different
6 setting, in a complete different area, the agencies were
7 beginning to commission according to the criteria they
8 actually wanted, on the basis that the number of
9 children requiring residential care had significantly
10 reduced because foster care had actually increased.

11 Q. And they would have staff, certainly by the 1980s, whose
12 responsibility was commissioning services and they were
13 influenced by, I think, if I remember correctly,
14 considerations of value as well. We were in the era of
15 legislation about value and so forth.

16 A. Yes.

17 Q. So that was a wider context as well; that they had to
18 have a more elaborate mechanism for provision.

19 A. Also, you had to ensure -- going back to a point you
20 made earlier -- that the quality of staff was at the
21 right specification to meet the specific needs of the
22 children, whether they were autistic, for instance, or
23 in some way, shape or form other special needs.

24 Q. Therefore, in terms of your contract, if you like, with
25 a service provider, you could stipulate in some detail,

1 like a lengthy commercial contract, various
2 requirements, including perhaps the qualifications of
3 staff and the range of services that you expected as
4 part of the contractual arrangement?

5 A. Yes.

6 Q. It wasn't really one child being placed. It was
7 an arrangement that would operate over time in relation
8 to any child that the authority might want to place with
9 that provider.

10 A. I think, looking at it historically, it took time for
11 potential providers to realise that what they could do
12 is establish a residential home and offer their services
13 to a number of local authorities.

14 In my second report, I do mention a brief attempt at
15 one in Fife, in the 1970s, which came awry.

16 But then a similar establishment was established in
17 Dumfries and Galloway, to meet those particular needs of
18 those particular children, and I think it took time,
19 really, for new providers to emerge.

20 Q. And it took time for this practice of contractual
21 arrangements, say over a two or three year period, to
22 kick in?

23 A. Yes.

24 Q. Translating the idea into practice would take time, as
25 you've said. Of course, time would be needed both on

1 part of Local Authorities or on part of voluntary
2 organisations to put in place the range of provision
3 needed for the general aim to be achieved?

4 A. You would also have to have staff within the Local
5 Authority who were established to seek out providers and
6 engage with potential providers, and set out the
7 specifications and indicate the inspection of their
8 establishment that would take place to ensure that
9 provision met the needs.

10 So one would want to look at, say, Strathclyde and
11 look at how its organisation was divided between field
12 services and residential services, and the commissioning
13 side of that Local Authority.

14 Q. There's quite a lot of things that have to be thrown
15 into the mix to achieve the result.

16 A. That's why I think my official said it would take
17 20 years.

18 Q. It's probably a good prediction --

19 A. Yes, yes, yes.

20 Q. -- to make.

21 A. He was correct in terms of List D schools.

22 Q. I was going to say that one of the difficulties was that
23 following the introduction of the Children's Hearing
24 System, which replaced most young people going to the
25 courts, there was an increased demand for List D

1 schools. They seemed to be overcrowded and, indeed, the
2 numbers committed rose for a time; is that correct?
3 I think in the early 1970s.
4 A. Until 1974, until there was a bit of a stramash.
5 Q. Yes, because I think it was pointed out, perhaps, that
6 for a variety of reasons, children are getting sent to
7 these schools who perhaps ought to be sent somewhere
8 else, either by the panel or by the courts and there was
9 a feeling, was there not, in some quarters, that the
10 panel was too ready to send or commit children on the
11 recommendation of the Social Work Department --
12 A. But you must remember the majority of Social Work
13 Officers in 1970 were not qualified professionally under
14 the new regime.
15 Q. But what they were doing was saying: well, we have to
16 look at the situation and make a recommendation to the
17 panel, and too often the recommendation was a List D
18 school?
19 A. If the recommendation was coming in from the Local
20 Authority Social Work Department, the same Childcare
21 Officers who were in place before 1967 were still in
22 place in 1971/1972 and only gradually being replaced by
23 those coming out of the new training schools that
24 existed in Edinburgh, Glasgow and I think Dundee and
25 Aberdeen.

- 1 Q. I suppose the other consideration was that even those
2 that were more enlightened and were looking for
3 community-based alternatives such as intermediate
4 treatment centres mentioned this morning, that's all
5 very interesting as long as you've got them to send them
6 to and it would take time to build up that provision and
7 maybe for a time the halfway house was: turn a remand
8 home into an assessment centre or call it that?
- 9 A. What perhaps the Inquiry needs to look at is what sort
10 of education was being provided to the new brand of
11 Social Workers and what sort of skills were they
12 learning to develop intermediate treatment, as the
13 thrust of the education side of CAS was very much
14 towards that.
- 15 Q. You still need the places there, you need the staff in
16 them, including the trained Social Workers who know what
17 to do, but also the staff who are at the centre or
18 assessment centre who could carry out, I think as we
19 discovered, a rigorous and thorough assessment of need?
- 20 A. You need a thorough assessment of need. You also need,
21 following on from that, a complement of staff who can
22 develop and maintain intermediate treatment in the
23 community which was a mixture of local day centres, plus
24 family support.
- 25 Q. So that is the continuing support services once you've

1 carried out the assessment of need at the appropriate
2 place?

3 A. Right. And said to yourself: right, I'm reasonably
4 assured that this particular child will be better placed
5 with a recommendation to a children's hearing panel,
6 intermediate treatment, than seeing a List D school.
7 And the issue in the early 1970s is you were dealing
8 with the same staff by and large within the Local
9 Authorities, who had existed before 1968 and therefore
10 their culture was very much: right, we have a juvenile
11 delinquent, List D school.

12 Q. I accept entirely what you are saying, but I'm also
13 saying that if you want to get rid of List D schools, if
14 that was the broad intention, you have to have some
15 other perhaps facilities, not necessarily residential,
16 that will provide the sort of support that the
17 enlightened Social Workers coming through want to see?

18 A. But you have to have the staff coming through, who have
19 the competent skills to be able to develop that and
20 that's what I'm saying is that you cannot rely
21 necessarily on the existing staff to have that set of
22 skills. That is a different set of schools to actually
23 have the confidence to say to a children's hearing: we
24 don't think a List D school is acceptable. I have
25 a better alternative. My Local Authority's developing

1 intermediate treatment and I have a team ready to accept
2 this particular child.

3 Q. If you wanted a local community where there were social
4 problems, you wanted to develop the community
5 alternative, including intermediate centres, first of
6 all, even if you have the staff who want to do that and
7 they've not the necessary skills to see that that's the
8 right thing for the child you still have to identify in
9 the local community a place where that treatment centre
10 can be located?

11 A. Yes.

12 Q. You have to then staff it with the right people. You
13 can't just say: oh, well, just take the old remand home
14 and send them there, and say they're going to be
15 assessed. Because I think we've heard evidence that
16 people who were sent to the new assessment centres were
17 often stuck in there, they weren't assessed and spent
18 far too long in them?

19 A. I'm not disagreeing with that. All I can say is that
20 the annual Social Work Services Group placed great
21 stress on new developments and indicates examples from
22 certainly 1974, once a hiatus was actually reached and
23 policy said: right, we must seek to develop
24 community-based programmes, and a lot of money was
25 invested in that.

1 LADY SMITH: I think we can also add to your summary,
2 Mr Peoples, we know from evidence this Inquiry has that
3 some youngsters placed in assessment centres were abused
4 in those centres.

5 MR PEOPLES: That is the other aspect to it.

6 And the List D schools, as they remained popular,
7 could not accommodate people who were supposed to spend
8 a certain time in remand, but then go to a List D
9 school. They stayed in the remand centre and as the
10 chair has said some were abused?

11 A. Certainly, there is evidence of that in Glasgow.

12 Q. Many were not assessed?

13 A. Yes, yes. But you also need to make sure the assessment
14 centre was appropriately staff.

15 Q. Yes. Then again, you could say that if you've got
16 a childcare system in the 1940s, after the 1948 Act, you
17 should have seen that the residential establishments
18 were properly staffed with suitably qualified people,
19 but it's taken how many years to get close to that
20 point?

21 A. Yes.

22 Q. It doesn't say very much for those that were --

23 A. In the system.

24 Q. -- in the system or those seeking to improve the
25 system?

1 A. Yes.

2 Q. I suppose going back to my child in residential care in
3 this time, if I use that again, they would probably be
4 saying that official was right when he said it would
5 take 20 years to change?

6 A. Yes.

7 Q. It's not going to help me because I'll be out of here by
8 then?

9 A. Yes. A sad reflection.

10 Q. A number of children, generations, would have
11 experienced no difference in treatment, because of the
12 failure to make the changes needed in a reasonable time?

13 A. You could argue that changes should have occurred
14 following the 1948 Act, but I've already stated that
15 there were structural issues impacting on developing
16 appropriate provision.

17 Q. The problem with someone looking in from the outside,
18 the member of the public, I suppose the person in the
19 home who experiences real life, they were reading all
20 the glowing reports about these places and how wonderful
21 they were and how well the children were treated, but
22 the officials, the Ministers, the Inspectors, knew
23 differently?

24 A. Certainly, the officials and Inspectors knew differently.

25 Q. Insofar as they conveyed it to the Ministers, they've

1 got some idea of what's going on?

2 A. Clearly, some Ministers were appalled by certain
3 provisions. Some other Ministers, I think, as
4 I've indicated to you in report, were quite happy to
5 turn up to approved schools and indicate that provision
6 was wonderful, as in 1954.

7 Q. You have a section on visits by officials and Ministers
8 and I will touch on it, but I don't plan to spend long,
9 because can I put a point to you that these visits would
10 be very much stage-managed, most of the time. They
11 don't turn up, Ministers, unannounced?

12 A. No, no, no. Visits would be planned, a briefing would
13 be given to Ministers and a minister could decide to
14 deviate from the brief if they wished or not, or stick
15 closely to the brief. There is something evidence that
16 some Ministers were aghast what the they saw.

17 Q. But did they make public statements to that effect?

18 A. No.

19 Q. No. So whatever they saw they kept to themselves?

20 A. They indicated their disquiet to officials and that is
21 in the official minutes.

22 Q. On these occasions there would be quite a great deal of
23 preparation done by the home or school being visited to
24 ensure that it was a very smooth visit, where nothing
25 went wrong and I suppose if any child stepped out of

1 line, woe betide?

2 A. I think if you are looking at Ministerial visits you are
3 probably correct. But official visits, there is some
4 evidence from the reports that whatever was actually put
5 in place the officials did not like what they saw.

6 Q. But they probably knew that anyway. They didn't need
7 visits to tell them that?

8 A. It confirmed their view.

9 Q. Because their eyes and ears, to a large extent, were the
10 Inspectors, and they knew exactly what was going on, on
11 the ground, in reality in these places, in general
12 terms?

13 A. In general terms, right, but I think the aim of a visit
14 and the evidence suggests that if you took over as
15 Assistant Secretary for approved schools one of your
16 first tasks to come your way would be to visit
17 an approved school and usually that was Dr Guthrie's
18 Boys and Dr Guthrie's Girls or Wellington within easy
19 distance of Edinburgh and certainly the evidence is that
20 when one official turned up at Dr Guthrie's they were
21 appalled.

22 Q. Okay, well if I can go to section 3. I'm not planning
23 to look really at section 3(a) because it's really
24 looking at the position of the 1933 regulations and the
25 1947 regulations which I think we have discussed at some

1 length today and also the implicit presumptions that
2 underlie the regulations and the difference between that
3 and what happened in practice.

4 I'm not really wanting to perhaps take too much time
5 on that section.

6 A. The context --

7 LADY SMITH: Could we have a page number?

8 MR PEOPLES: Page 28. It's the first part of section 3 of
9 report. It's headed:

10 "The Childcare and Approved School Regulations in
11 1947."

12 I think what you do there is to set out the 1933
13 Regulations and then the 1947 regulations and the extent
14 to which they applied to children's homes?

15 A. I was certainly aware that the Inquiry were aware of
16 these regulations but what I wanted to do is make sure
17 that you understood that officials also read these
18 regulations and these were the parameters under which
19 they operated. You might object to an approved school,
20 but the issue was were they following regulations or
21 deviating too much and the evidence is that when they
22 saw infractions they certainly brought that to the
23 attention of the authorities concerned.

24 Q. I think it's important background to what happens next,
25 but all I'm saying today -- (overspeaking) -- perhaps

1 what might be said of the criticisms that could be made
2 of their content or how they deal with certain matters
3 or not, as the case may be.

4 You move on from there to another section,
5 section 3(b), which starts on page 44 of your report,
6 which is headed:

7 "Formalising the Regulations for Children's Homes
8 and Boarded-out Children, 1959."

9 I would like to perhaps cover that in a little more
10 detail with you.

11 We have already discussed what the final product was
12 and what might be termed the deficiencies of the final
13 regulations in terms of what they covered or didn't
14 cover, but there is the issue of delay?

15 A. Yes.

16 Q. Particularly given what was happening down south, which
17 seemed to be much more prompt once the 1948 Act was
18 passed and it was a general statute that applied across
19 the UK, was it not?

20 A. It was, yes.

21 Q. My first impression from reading your report is that to
22 the outsider matters seemed to have proceeded at what
23 could be described as a leisurely pace?

24 A. You might wish to say that, yes. I think it's probably
25 correct to say that Scottish provision in terms of

1 introducing regulations was rather slow.

2 Q. Can I just ask a question at this stage partly for the
3 benefit of the Foster Care Study. Two sets of
4 regulations appeared in 1959, one applying to children's
5 homes and the other applying to boarding out?

6 A. Yes.

7 Q. You will tell us in due course what the general reasons
8 for the delay was in producing these regulations. What
9 I was wondering is why was it necessary at the end of
10 the day that both had to come out at the same time.

11 Is there a reason why they had to be considered
12 together and produce two sets of regulations in the same
13 year?

14 A. Within the Civil Service language, there was
15 embarrassment that the Home Office had got there well
16 ahead. Very simple explanation.

17 Q. But if, for example, and I get the impression that the
18 Boarding Out Regulations were less controversial to the
19 organisations and the Local Authorities than the
20 Children's Homes Regulations?

21 A. Yes.

22 Q. And that, generally speaking, there was not the same
23 level of resistance to the suggestions. If that be the
24 case and if they were considered first, which I think is
25 what your report suggests, why couldn't they have been

1 issued much quicker than 1959, even if there is
2 an embarrassment that: gosh, we've even got to 1955 and
3 the Home Office is three years ahead or four or
4 whatever?

5 A. I think I would fall back on the issue of the division
6 of labour within the then decision office between the
7 different departments. You are looking at a branch
8 initially within that department that looked-after
9 children in care, initially termed homeless children,
10 then became children in care. You are looking at
11 a branch principal.

12 Q. And the branch is responsible for both the boarded out
13 regulations and the children's homes?

14 A. Initially.

15 Q. Initially.

16 A. Initially, yes. It's difficult within the files that
17 exist and with the staff directories to work out who was
18 exactly responsible for what, but I think that another
19 branch emerged within that particular division and so
20 there were two sets of principles working on the general
21 area of childcare towards the latter end of the period.

22 Q. That may be so, but --

23 A. If you want a simple explanation, it was overwork. They
24 had --

25 Q. -- it was put on the back burner?

1 A. It was put on the back burner because there wasn't the
2 staffing available.

3 Q. For long periods at times?

4 A. For a sufficiently long period of time until it became
5 necessary --

6 Q. You have to say that things can be crystallised by
7 events and I think that is what happened?

8 A. Yes, certainly by 1958 it was recognised that the grant
9 aids to Local Authorities were changing and therefore
10 they needed to shift from the existing format of
11 corresponding with the Local Authorities to new
12 regulations.

13 Q. I will come back to that, if I may, because if I can
14 take you to the start of the period, the 1948 Act is
15 passed and as your report tells us, on page 44, the
16 Scottish Advisory Council and Childcare, which was
17 an advisory council set up under the 1948 Act, submitted
18 four reports to Scottish Home Department?

19 A. Yes.

20 Q. And one of which dealt with boarding out and another
21 with children's homes?

22 A. Yes.

23 Q. So that was in 1950?

24 A. Yes.

25 Q. These reports were submitted. They were suggesting

1 quite significant change, were they not, to the existing
2 system of regulation?

3 A. I think the assumption was that the regulations that
4 eventually saw the light of day would appear some time
5 in 1952 but at the same time as the Home Office.

6 Q. It had already produced what I think you describe as
7 a report, certainly reached the homes which was, as you
8 put it effectively, the second last paragraph on page 44
9 effectively a memorandum and guidance and the standard
10 of case that each home should provide?

11 A. Yes.

12 Q. So they were giving plenty of suggestions to those that
13 might be drafting regulations?

14 A. That would soon to be the template for officials to then
15 consider the regulations.

16 Q. It's like the Law Commission giving us a draft Bill.
17 They weren't necessarily asked to take a blank sheet of
18 paper and draft new regulations without the benefit of
19 a lengthy report and detailed recommendations from
20 an advisory council who presumably knew something about
21 the subject?

22 A. The Advisory Council was not representative in
23 a statutory sense, but had representation on it from
24 a variety of organisations, including, I think,
25 representatives from trial guidance clinics as then

1 existed in Scotland.

2 Q. There was a degree of professional expertise on the
3 Council?

4 A. And official expertise from the various Local
5 Authorities. That's what one would expect, certainly at
6 this time, there would be an official committee
7 reviewing the issues and then setting out perhaps in
8 long-winded ways what they thought as desirable in terms
9 of possible regulations.

10 Q. Obviously if I jump too quickly in the sequence of
11 events let me know.

12 First of all, I see that you say on page 46 that in
13 response to the report, I think you make the point
14 that -- there's a quote two-thirds of the way down that
15 the SHD, in response in 1950 or thereabouts, I think are
16 saying that there are difficulties in giving effect to
17 the committee's recommendations?

18 A. Yes.

19 Q. Is that civil servant speak for saying: we can't get
20 round to this at moment, please wait another eight
21 years?

22 A. No, what it means is the next stage would be developing
23 a set of regulations for circulation round Local
24 Authorities and interim bodies.

25 What it is saying here is we have problems trying to

1 insist on a standard of accommodation and adequate
2 staffing and would run into trouble if we issued draft
3 regulations which insisted on meeting certain standards
4 in terms of accommodation and staffing.

5 Q. We can't say that although this is what you should have,
6 that that can't happen overnight. It takes time?

7 A. What they're saying is they might well find that Local
8 Authorities and interim bodies would reject the draft
9 regulations completely and the Minister would come under
10 some embarrassment.

11 Q. They wanted to protect him from that?

12 A. The aim was to make sure that regulations passed without
13 too much controversy.

14 Q. This was 1950?

15 A. Yes.

16 Q. I suppose we can note in passing, because sometimes
17 these things are significant, that we have the advent in
18 1951, I think, of a new Conservative Government after
19 a period post-war Labour administration?

20 A. That's right, yes.

21 Q. I don't know whether that could at least explain
22 a degree of the delay, why there's a changeover and
23 perhaps a change over and a change in general policies
24 in a number of areas and priorities and so forth.

25 A. I think probably, at a political level, you could argue

1 or suggest that the incoming administration would be
2 even more reluctant to engage with Local Authorities
3 than the previous administration.

4 Q. I get the impression throughout your report, and indeed
5 it may be a situation that pertains today, that there is
6 always a tension between the Local Government and the
7 Central Government, sometimes it's there's a territorial
8 issue.

9 A. Yes.

10 Q. Or a vires issue, or this is my turf and not your turf.
11 That is maybe a kind of situation that we're all
12 familiar with, that it can create difficulties in
13 getting things changed.

14 A. The aim of issuing regulations was to get them passed
15 without too much difficulty.

16 Q. But to make sure they're effective, otherwise the
17 Minister gets egg on his face.

18 A. They might have trouble in Parliament when these
19 regulations were to be presented.

20 Q. They might expose the fundamental deficiencies of the
21 system if the regulations, which are good practice,
22 can't be achieved by the existing arrangements.

23 A. More like the various bodies would indicate, as
24 subsequent events suggested, that they were best judged
25 to adjudicate on family issues within children's homes.

1 Q. They might also say: we don't have the money. If you
2 want to change it, give us more money.

3 A. That is a possibility, and that was certainly an issue,
4 perhaps, in the early 1950s, that the grant aid for
5 childcare was actually halved.

6 Q. I'm just trying to understand this process. We had the
7 SACCC Report On Homes and Boarding Out.

8 A. Yes.

9 Q. And they had a series of recommendations, memoranda for
10 both boarding out and for homes?

11 A. Yes.

12 Q. When were the first departmental drafts put into
13 circulation following the reports?

14 A. I think 1954 was the beginning of the first drafting.

15 Q. So the initial draft didn't see the light of day until
16 1954?

17 A. That's correct, yes. I think they had to make sure --
18 and I think the draft indicates that -- the report
19 indicates they had to ensure that the SACCC was
20 reappointed.

21 Q. Yes, I wasn't quite sure, did the SACCC have a finite
22 life and had to be --

23 A. The Chair had to be reappointed. You had to have a new
24 Chair, and you had to make sure that the representation
25 reflected current opinion and that meant, of course, if

1 that -- those on the committee resigned or changed, that
2 you had to appoint new members.

3 Q. It could be argued that the council had already done
4 their work. They'd virtually written the regulations
5 for the officials, and what more needed to be done that
6 a new Chair --

7 A. Not quite.

8 Q. Okay.

9 A. No, no, no. The issue of retaining that particular body
10 was you would sound them out.

11 Q. Sound out the draft regulations?

12 A. Sound out possibilities of what might be in the
13 regulations, and you then -- when it went to the
14 Minister later on, it would say, "This is endorsed by"
15 or it's endorsed by the majority, with this reservation
16 by one or two members.

17 LADY SMITH: If we try to understand the timeline here.
18 I see we have the first meeting of this committee,
19 SACCC, in 1948?

20 A. I think towards the end of 1948.

21 LADY SMITH: Minutes, I think it's your footnote 143,
22 22 April 1948, the minutes of their first meeting you
23 quote from there. It doesn't matter precisely when, but
24 1948.

25 A. It was set up. But didn't begin work, really, until

1 1948/1949.

2 LADY SMITH: So they've started then. They report in 1950.

3 A. Yes.

4 LADY SMITH: Quite an extensive report.

5 A. Very extensive report.

6 LADY SMITH: Of great value.

7 A. Of considerable value, it was thought of at the time.

8 LADY SMITH: Then drafting doesn't start until 1954.

9 A. Drafting doesn't start until 1954 because my reading is

10 the existing chair retired or resigned and a new one had

11 to be appointed and, as the Government had changed, you

12 had to then ensure that the Secretary of State approved

13 the new Chair.

14 MR PEOPLES: Can I just go back to the process? Because

15 what is troubling about this process is that they

16 prepare a report, they submit it, they've done a lot of

17 the hard yards, there's then a delay. But, ultimately,

18 by 1955, it appears that there's been a general

19 consensus at Council level as to the terms acceptable

20 from the Council's point of view to include a new

21 regulation.

22 A. Yes.

23 Q. But then having come to that stage --

24 A. Nothing happening.

25 Q. -- nothing happens. But, also, while they have

1 representation from Local Authorities, perhaps voluntary
2 organisations, professionals and so forth, why did they
3 not then put the whole matter out to consultation to the
4 Local Authorities and the voluntary organisations if
5 they felt that that was another step before the Minister
6 could even consider approval of new regulations? Why
7 did that not happen until the late 1950s?

8 A. Why did it take three years delay between 1955 and round
9 about September 1958?

10 Q. Yes.

11 A. The file isn't very clear on this one. Except that my
12 assumption is that they felt there would be some
13 difficulty getting the draft regulations through the
14 next stage of consultation with Local Authorities and
15 voluntary bodies. That is, if you like, deeply embedded
16 in some of the internal discussions taking place
17 throughout September, October and November 1958.

18 Q. So whatever success they had achieved with the Council
19 in getting broad acceptance to the way forward, they
20 were nervous because they didn't think that it would be
21 a smooth passage when they came to consult directly with
22 the Local Authorities and the voluntary organisations;
23 is that what you're saying?

24 A. And they had to be assured that the Ministers concerned
25 would support the draft regulations after they had been

1 considered by the various organisations.

2 Now, the reason why they suddenly decided, in
3 September, October 1958, is because Local Government
4 funding was changing and, therefore, they had to sort of
5 bite the bullet, so to speak. They had to get these
6 regulations through in some form or other.

7 Q. I would like to come to that. But, before we even get
8 there, can I just establish that before we get to this
9 point of crisis, if you like, we must do something
10 before this matter, the funding issue, is in play?

11 Were there not concerns, well before 1958, about how
12 Local Authorities were discharging their obligations in
13 relation to boarding out and voluntary homes under the
14 existing regulations?

15 A. Yes.

16 Q. There were concerns --

17 A. There were concerns.

18 Q. -- but they still held back.

19 A. There were concerns, but they held back. But, certainly
20 by October 1958, when the papers that has been drafted
21 in 1958 were brought back from the registry to look at
22 by a different set of principals, branch heads and
23 assistant secretaries and Under-Secretaries, they knew
24 that they had to get them through in some shape or form.

25 Q. Going back to -- they achieved a certain amount in 1955

1 with the Council --

2 A. Yes.

3 Q. -- and they had concerns about the Local Authority in
4 the way they were discharging their functions and
5 clearly they still had to have the conversation with the
6 Local Authorities and the associations before they would
7 present something to the Minister to say it's a done
8 deal or whatever, or these are the problems.

9 A. Yes.

10 Q. Yet there seems, despite the concerns, to have been
11 an apparent hesitance on the part of the officials, who
12 had all these concerns, to begin the discussions even;
13 why was that?

14 A. They knew they had to get certain regulations through.
15 I'm not certain that they were certain they would
16 actually get them through.

17 Q. Why the reluctance to talk? It's good to talk. Even if
18 they had concerns, they're not going to get anywhere by
19 saying: oh, gosh, we can't start a dialogue with the
20 local authorities and organisations.

21 Why did they stop in 1955?

22 A. I'm trying to think as an official would think in
23 October 1958, having read so many of their papers.

24 I think that their ultimate push against the
25 Minister was: look, the regulations for local government

1 funding are changing, we must get something in place.

2 So whatever rough ride we have, we have to take it.

3 Q. I see that from 1958. My problem is 1955 to 1958.

4 A. They didn't want --

5 Q. It doesn't seem much is happening at all.

6 A. Nothing is happening at all.

7 Q. Basically.

8 A. Basically, yes. Because they weren't sure they would
9 have ministerial support to pursue the regulations as
10 they were then drafted.

11 By 1958, they had extra armour behind them, which
12 said that the regulations governing Local Government
13 funding were changing and, therefore, we need this body
14 of armour, if you like, in its place.

15 MR PEOPLES: That's maybe a convenient point to continue the
16 story tomorrow?

17 LADY SMITH: The next episode in the morning.

18 A. That would be my explanation, really, as to why it took
19 so long.

20 LADY SMITH: Please do.

21 You are going to save that for tomorrow morning?

22 I thought you were offering something as a sweetener
23 now.

24 We'll leave that until the morning. Thank you very
25 much. We will see you tomorrow morning at 10 o'clock.

1 We're on tenterhooks until then.

2 (4.06 pm)

3 (The Inquiry adjourned until 10.00 on Friday 2 June 2023)

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20

21

22

23

24

25

	INDEX	
		PAGE
1		
2		
3	Professor Ian Levitt (continued)	1
4	Questions from Mr Peoples	1
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

