

Friday, 2 June 2023

1

2 (10.00 am)

3 LADY SMITH: Good morning, and welcome back,
4 Professor Levitt.

5 Professor Ian Levitt (continued)

6 A. Good morning.

7 LADY SMITH: Are you ready for the last day of this stint of
8 you giving evidence?

9 A. Yes, I am.

10 LADY SMITH: Ready to start?

11 A. Yes.

12 LADY SMITH: Thank you very much.

13 Mr Peoples, when you're ready, I'm ready to go.

14 Questions from Mr Peoples (continued)

15 MR PEOPLES: Good morning, Professor Levitt.

16 We were discussing the run-up to the 1959
17 Regulations applying to children's homes and I would
18 like to complete the story.

19 Just before we go to the end of that period, just
20 before the regulations themselves appeared, I wanted to
21 go back, very briefly, to pick up some things that were
22 said in the Advisory Council Subcommittee Report On
23 Homes.

24 If we go to page 45 briefly. The report, the SACCC
25 Homes Report is referred to there. Just at the top of

1 the page, there is a quote. Perhaps if we just start
2 with the preceding page, to see the whole quote. It
3 says that those on the committee had visited a number of
4 homes, it seems, and concluded that they saw nothing to
5 cause them grave concern at that stage. That is the way
6 they expressed it.

7 A. Yes.

8 Q. Conditions, they said, in some cases were worse than
9 expected and often could have been considerably improved
10 at no great cost. Lack of money was not the only cause
11 of low standards where they existed. So they were
12 conceding that perhaps a lack of money, or lack of
13 investment, was perhaps in part responsible for the
14 state of affairs they encountered.

15 A. Yes.

16 Q. They go on to say:

17 "And we formed the opinion that the right perception
18 of childcare on part of the Local Authority or voluntary
19 organisation responsible for the home, given effect to
20 in the home by a trained staff with a love of children
21 and an aptitude for childcare work, would do more than
22 anything else to make the home satisfactory."

23 I suppose we see, again, the need as an essential
24 component for trained staff along with other qualities,
25 no doubt. So we're seeing that again. Clyde said that,

1 and I think we spoke about that yesterday. So there is
2 this highlighting yet again of the need for a trained
3 workforce. Although it might be said by some that
4 that's a rather optimistic formulation and, perhaps,
5 even on the naive side.

6 A. Yes. The way I read this, I took out the word "grave"
7 and "nothing" and then inserted:

8 "We saw certain things to cause us concern."

9 It's a polite way of saying they saw something of
10 concern without being over the top about it.

11 Q. They didn't want to set alarm bells ringing?

12 A. Precisely. But what they are saying here -- and I think
13 is quite correct -- was that investment should take
14 place in training house staff.

15 There was a small training budget at the time.
16 I can provide details, if the Inquiry is interested in
17 that. It was extremely small, but it did expand
18 gradually towards the end of the 1950s.

19 Q. We are getting, again, this clear message, in 1950,
20 about the need for trained staff?

21 A. Yes, in children's homes.

22 Q. In children's homes.

23 A. Yes.

24 Q. Although it's been said the need for trained staff in
25 other settings as well, such as the special schools, the

1 approved schools. So it's a continuing theme across
2 sector.

3 A. I read that in terms of saying: yes, we recognise there
4 is an issue and we want to flag this up, so the training
5 for house parents would not be removed, in terms of the
6 vote.

7 Q. Maybe we'll come on to this shortly.

8 Just to follow on, you go on to say in the next
9 paragraph that the report endorsed the earlier Clyde
10 Committee report on homeless children and recommended
11 that to avoid institutionalisation no home should
12 accommodate more than 30 children and, where possible,
13 dormitories should be subdivided into smaller rooms. It
14 was particularly concerned about the level of
15 overcrowding in the majority of homes, as it believed
16 this lowered the general standard of care.

17 We're getting reference, again, to some of the
18 problems that the overcrowding -- reducing the size of
19 the institution and so forth. They're not saying that
20 in terms of a direct relationship between large homes
21 and mistreatment or abuse of children, but they're
22 certainly saying that the way forward is to make them
23 smaller.

24 A. That's a polite way of avoiding saying what you've just
25 said.

1 Q. One could infer that they don't want to be as explicit,
2 but there is concern.

3 A. Yes. It's an implicit criticism of the large
4 institutions that then existed.

5 Q. I suppose the nearest we might get to a more direct way
6 of saying what I've just said, if we look at the next
7 quote that you refer to, which is:

8 "Following a visit to one cottage-style home [it
9 says] where 26 children were being looked after by
10 a house mother and a young trainee, it was stated in the
11 report it's clear that an inadequate staff must lead to
12 neglect of some part of the care and training which the
13 children acquire to the overworking of the children in
14 domestic duties or to the overworking of the existing
15 staff with an inevitable falling off in the standards of
16 the work and the consequence loss to the happiness and
17 well-being of the children."

18 Perhaps that is getting a little closer to what
19 I just said.

20 A. Yes, that's pretty close, I think, to the reality in
21 many children's homes in 1950; that the children were
22 supervised by very small number of staff; the quality of
23 accommodation was deficient, to say the least, and there
24 was an expectation that they were engaged in work around
25 the house, if not, as we have seen in Lochburn, in

1 commercial work.

2 Q. Yes. I'm not going to take up too much time with this,
3 but clearly specific matters that were highlighted
4 related to matters such as diet.

5 A. Yes.

6 Q. Provision or lack of provision for recreational
7 activities, and a concern over the employment of
8 children in domestic duties. I think we'll see, when we
9 look at section 5, that these were matters that the
10 Inspectors were picking up on as well?

11 A. Yes, yes. So they're flagging issues for the
12 Inspectorate to pick up.

13 Q. And they did.

14 A. Yes, yes.

15 LADY SMITH: And you mentioned Lochburn in relation to work,
16 because that was where the girls were having to work in
17 a laundry that was a commercial laundry; is that right?

18 A. Yes.

19 MR PEOPLES: If I can move swiftly on towards the end of the
20 period, we had come I think to the period when there had
21 been a bit of hiatus between 1955 and 1958. I think
22 that's where we left the story yesterday afternoon --
23 that nothing much was happening in that period. But
24 then it seems that things pick up again, because we're
25 getting closer to the actual date of the regulations.

1 I just wanted to be clear, you mention the Lochburn
2 girls' home, in September 1958, there were disturbances.
3 First of all, Lochburn girls' home was a children's
4 home, but it also accommodated a certain number of
5 approved school pupils.

6 A. More than that.

7 Q. You tell me.

8 A. It was registered both as a voluntary home and
9 an approved school.

10 At the time of the disturbance, there was apparently
11 no approved schoolgirls there in terms of actual
12 committals, but there were girls committed to Lochburn
13 under voluntary agreement with their parents.

14 Q. It was similar, in a way, to Nazareth House in Aberdeen,
15 which was a children's home, but had a component or part
16 that accommodated approved school committals.

17 A. Yes, yes.

18 Q. That would be a -- that wasn't the norm. The norm was
19 usually an approved was an approved school, full stop.

20 A. Not necessarily. An approved school could take
21 voluntary cases, as we see, perhaps later, at
22 Balnacraig; that is where the Local Authority agree with
23 the parent and the court that the child, young person,
24 is committed to that institution on the same terms as
25 a pupil committed -- formally committed. But the issue

1 explained to parents at the time was that there would be
2 no record kept of that committal in St Andrews House.

3 Q. You didn't have a formal order of committal. But the
4 effect was the same, you ended up in an approved school
5 environment?

6 A. The issue is -- and I think we've talked about this
7 issue of bed bureau -- the allocation was not via
8 St Andrews House, the allocation was direct. Therefore,
9 not only did the child's name not appear in the
10 register; there was no funding attached to it.

11 Q. Who was --

12 A. There was no central funding attached to that committal.

13 Q. Who was funding that?

14 A. It was between the Local Authority and the child's
15 parents.

16 Q. So that was at least an example of where the Local
17 Authority, so far as the State was concerned, would have
18 to bear the financial cost in the absence of parental
19 contribution?

20 A. Yes.

21 Q. Would they normally only agree to an arrangement of that
22 kind where they thought there was realistic prospect of
23 some parental contribution?

24 A. I tried very hard to find further details of this group
25 who had -- who are under voluntary --

1 Q. "Voluntary admission", can we say?

2 A. Voluntary admission. There is very little evidence of
3 it, because there was no official record kept in
4 St Andrews House. Therefore, there was no official file
5 kept of the numbers.

6 My best estimate is that 10 per cent of approved
7 school admissions were via voluntary admissions.

8 Not only that, those figures did not appear in any
9 statutory return. So whatever figures we have of
10 approved school numbers relate to the financial side of
11 Treasury contributions, so whatever number we have in an
12 approved school, we add 10 per cent.

13 Q. And that would no doubt make even more pressure on the
14 system, if there was this 10 per cent.

15 A. Way more pressure on the system. So that whenever
16 an approved school Headteacher reported, "Yes, we can't
17 take this particular person".

18 "Why not? We see you only have X."

19 "Ah, yes, but I have X, Y and Z", and whatever.

20 Q. Just going briefly on that matter, these admissions, who
21 was instigating the voluntary admission as an
22 alternative to the formal order? Was it the parents or
23 the Local Authority, or both?

24 A. The inference -- and it's very scant material -- and,
25 actually, the best evidence is an article that appears

1 in the Glasgow Herald by a rather irate parent, which
2 indicates they were told a fib, basically, that Lochburn
3 House was a good place for training, without realising
4 of the circumstances of what that training meant, and
5 the contribution.

6 So the voluntary agreement was that this is a better
7 way of dealing with the minor misdemeanors that your
8 daughter has --

9 Q. Because it was a girls' home?

10 A. Girls' home, but it was also an approved school, and it
11 was run -- managed as an approved school. So all the
12 voluntary cases, plus all the other child in care cases
13 that were being sent there were being managed and run as
14 an approved school.

15 Q. So, even if you had the approved school regime, even if
16 it was also functioning as a children's home for young
17 girls?

18 A. That's right, yes.

19 Q. Can I say this: is it true to say that in the 1950s
20 Lochburn had a bit of a reputation?

21 A. It had a bit of a reputation for -- I think we'll call
22 it exploitation now, in that these girls were basically
23 being used as cheap labour for a commercial laundry.

24 Q. Was it also considered that the type of girl that would
25 be accommodated, to use an expression, was one of the

1 very difficult type, with very challenging behaviour or
2 was it a school of that type?

3 There were some that obviously were in that
4 description. Rossie had a reputation that they took the
5 ones that other schools couldn't cope with.

6 A. I think it was considered to be an intermediary approved
7 school. There is some discussion -- I can then point
8 you in the discussion that HMI and Macpherson had about
9 using Lochburn to alleviate some of the strain --

10 Q. On Dr Guthrie's Girls?

11 A. On Dr Guthrie's Girls.

12 Q. Which did have a reputation for taking very difficult
13 girls, and we'll come to that in section 5. I'll save
14 that for later.

15 A. One other issue concerning the Lochburn disturbance is
16 that the Inspectorate that was sent in was the Childcare
17 Inspector, the chief Childcare Inspector. It wasn't
18 an Approved School Inspector.

19 The papers that surround that particular disturbance
20 were not retained -- have not been retained, so we don't
21 know the submission that went to Ministers. There are
22 fragments of material which indicate considerable
23 concern by Ministers, and the quote I have here
24 somewhere indicates that the Secretary of State, after
25 receiving it, said closer attention should be given --

1 closer vigilance should be given on children's homes.

2 What that meant was the vote was increased in the
3 next two years to double the number of HMIs for approved
4 schools and also increase the number of Childcare
5 Inspectors. So what you have, perhaps instead of very
6 strict guidelines, rules and regulations for children's
7 homes, was: we'll police them more rigorously than we
8 have in the past.

9 Q. And provide more money?

10 A. Provide more money, yes.

11 Q. For more Childcare Officers and more Inspectors?

12 A. And also provide greater capital support for those
13 particular homes.

14 Q. I suppose the disturbances did serve a purpose.

15 A. The disturbances came at a particular time, and it's
16 certainly the case, when one looks at the draft
17 considered by the branches concerned, that they inserted
18 issues relating to the Lochburn disturbance, which
19 concerned the issues of dress and punishment.

20 Q. I suppose it could be said that even if children's homes
21 were not getting a high priority for most of the 1950s,
22 the coverage about Lochburn and the concerns were such
23 that it did give it a much higher priority.

24 A. It did, yes, in a sense of additional capital support,
25 additional officers to police, through inspection, these

1 particular homes.

2 Q. Because one thing the politicians would not like is
3 publicity about disorder in children's homes or approved
4 schools.

5 A. Precisely.

6 Q. They would be concerned that the reaction would be such
7 that it would come back to haunt them?

8 A. It would come back to haunt them.

9 And I think reading between the lines, it would
10 appear that Ministers decided that the best way forward
11 was increased funding for capital investment, increased
12 policing of these children's homes, but: we will not
13 take a strong line if we come under attack from the
14 voluntary sector, in terms of the regulations.

15 Q. I understand what you're saying. However, in terms of
16 the timing of the regulations, this gave an increased
17 impetus to get the regulations finalised and made after
18 a long period of consideration and discussion. So can
19 we say that Lochburn, to some extent, brought matters to
20 a head in terms of getting the regulations in place?

21 A. The file indicates that the regulations were brought up,
22 if you like, from registry at the beginning of 1958 and
23 were being moved around officials.

24 Lochburn disturbance occurred in the beginning of
25 September. Evidently, the Ministers were informed very

1 quickly about the disturbance. We don't know what was
2 said exactly, but we know that officials began to insert
3 various draft regulations which reflected Lochburn;
4 right?

5 The decision of Ministers was very clear that they
6 accepted that the regulations would have to be
7 introduced for -- not to be seen to be out of line with
8 the Home Office and because -- and I think if you look
9 at the way the Under-Secretary at the time handled the
10 brief, he indicated that given that grant aid was being
11 withdrawn, in terms of general childcare, and therefore
12 was part of the general grant to a Local Authority,
13 there must be some leverage that Central Government had
14 to have to ensure that quality of childcare did not
15 decline.

16 Q. Can I ask you two things arising out of that?

17 Before I go to the grant aid and its significance
18 and the changes you mentioned yesterday that we've not
19 really explored so far, there was another matter that
20 there had been, as you referred to on page 49 of your
21 report, an earlier death of what is described as
22 a fostered Argyle child.

23 I think that was in fact a child who was in a small
24 group home, not in what we could consider foster care as
25 such. But the small group home was, in terms of the

1 1947 regulations, treated as a foster home --

2 A. Yes.

3 Q. -- rather than a children's home.

4 A. That's right, yes.

5 Q. So there had been something there; did that also play

6 a part in focusing the minds of the officials and

7 Ministers?

8 A. I think it meant that the Boarding Out Regulations went

9 through without too much comment from Local Authorities.

10 Q. Also, though, that they had to be put in place fairly

11 quickly?

12 A. They had to be put in place very quickly, because under

13 the changes in financial -- under the financial regime

14 it was no longer the responsibility of the Secretary of

15 State to look after these children; it was the

16 responsibility of the Local Authority. And, therefore,

17 how could the Secretary of State maintain oversight of

18 general provision, unless there were some form of

19 regulations?

20 Q. Because until then, as we discussed yesterday, he didn't

21 have any oversight in terms of general regulations

22 because there weren't any.

23 A. But he had control through the purse.

24 Q. Yes.

25 In terms of the grant -- the other matter I would

1 like to be clear about -- I think you say in your
2 report, at some point, that there was a change in the
3 method of funding Local Government services from
4 specific grants for various services within Local
5 Authority to a move to a general grant that they had to
6 use to fund or partially fund --

7 A. At their discretion.

8 Q. So, therefore, in the past or up until that change,
9 effectively what happened is that the Central Government
10 allocated a certain amount of money to Children's
11 Services --

12 A. Yes.

13 Q. -- by way of specific grant --

14 A. Yes.

15 Q. -- through the relevant department.

16 A. Yes.

17 Q. Whereas the new system was such that they simply had
18 a general allocation of money and the Local Authority
19 would have a discretion as to which service would
20 benefit from that allocation and in what amount.

21 A. That's correct, yes. It was called a general grant, as
22 opposed to specific grants.

23 Q. Why was that significant in this context, in terms of
24 the shift? Why did that require either an acceleration
25 of the passing of the regulations, or how did it give

1 one party or the other a lever?

2 A. The briefing going to Ministers indicated that the
3 Secretary of State was ultimately responsible for
4 children in care under the existing regime. Under the
5 new regime, they would cease to have responsibility
6 because they would no longer be funding specific
7 services for childcare.

8 Therefore, if you are looking at the generality of
9 the Secretary of State's responsibility under the 1948
10 Children's Act and the 1949 Criminal Justice Act, which
11 contained approved schools, what was the position of the
12 Secretary of State in regard to the oversight of these
13 institutions and Local Authorities if they had no
14 financial clout to withdraw funding?

15 It's the withdrawal of funding that was the sort of
16 nuclear option, really, that the Secretary of State
17 would have if there were serious concerns. What happens
18 now if there is a serious concern? What position --
19 what power has the Secretary of State got to insist on
20 changes?

21 Q. So this was a tool, the financial tool, that could be
22 used, to some extent, to apply pressure --

23 A. Yes.

24 Q. -- beyond the pressure of officials and Inspectors and
25 so forth.

1 A. That was being withdrawn.

2 Q. That lever was not available?

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

4 Q. There was a concern. Was there also a concern perhaps

5 for a different reason; that whatever became the

6 regulation the Secretary of State and his officials did

7 not want, post-1959, to be seen in any way as directly

8 responsible for the welfare of children in children's

9 homes?

10 A. Did want to be seen as responsible?

11 Q. Directly responsible for individual children.

12 A. That's correct.

13 Q. So they were anxious not to be seen to be doing anything

14 in terms -- they saw themselves as having oversight, but

15 not direct responsibility.

16 A. Oversight of policy and practice.

17 Q. So any regulation that might appear in the 1959

18 Regulations that even suggested that the Secretary of

19 State had more than general oversight and, in fact, had

20 direct responsibility, was basically something that the

21 Minister certainly wouldn't want to see and some of the

22 officials perhaps recognised that.

23 A. The officials recognised that the Secretary of State

24 would not have that responsibility and, therefore, what

25 would take its place, given the existing legislation?

1 Q. I follow that. But they also recognised, did they not,
2 that when they wanted to put in a lot of detail into the
3 regulations, there was a concern that the more detail
4 they put in and the more that the Secretary of State
5 controlled how these homes were run, the less easy it
6 was to say, "We have oversight", and the easier it was
7 to say, "We have direct responsibility for these
8 children, because we are telling the homes how to run
9 their homes"?

10 A. Right. Let me put it slightly differently.

11 The draft regulations were quite tight. The
12 Under-Secretary at the time, when they -- when he
13 received the draft regulations, realised that it was
14 perhaps going over the top and so they were amended.

15 My view is, reading the material in detail in the
16 way that the civil servant at the time would, they were
17 not sure the regulations would actually get through the
18 Ministers. Because I've not seen it, really, before and
19 since, but the Parliamentary Under-Secretary of State
20 went through the regulations, tooth and nail, and
21 deleted bits he didn't want.

22 And certainly I think, in January and February in
23 1959, when the final decisions were being taken,
24 officials were concerned that the Parliament
25 Under-Secretary of State would simply send them back.

1 Q. The officials below that level?

2 A. No, the Under-Secretary.

3 Q. The Under-Secretary was concerned?

4 A. That they would not get passed, and you can see very
5 clearly that the Parliamentary Under-Secretary is being
6 reminded that the Home Office have similar regulations,
7 that the grant power is being withdrawn, and the
8 Secretary of State still has oversight under the 1948
9 and 1949 Acts, and that SACCC had indicated its support
10 for some form of regulation. You can see there's
11 a reluctance by the Parliamentary Under-Secretary of
12 State to sign them through.

13 Q. Perhaps I can follow that up with looking at the report,
14 so we can pick up what you've just said.

15 If we look at page 49 to begin with, that's where we
16 have a reference to the disturbances at the top of that
17 page, at Lochburn. You say in your report that led the
18 Secretary of State, Jack Maclay, to direct that the
19 Childcare Inspectorate undertake closer vigilance of
20 residential homes. So that's coming straight from the
21 top --

22 A. Yes, yes.

23 Q. -- because of what is happening.

24 Then it appears -- just before we go on to consider
25 how the department reacted, you have another paragraph

1 that says:

2 "The new policy towards children's homes and the
3 earlier death of the fostered Argyle child resulted in
4 the SHD bringing forward the children's homes and
5 boarding out draft regulations for official and
6 ministerial consideration."

7 Just pausing there; what do you mean by the "new
8 policy towards children's homes"?

9 A. Closer vigilance.

10 Q. Right. Okay. I get that. I follow that.

11 Then we see some of the things that the officials
12 were looking to include in the new regulations.

13 A. Yes.

14 Q. I don't want to go through them in detail. We can read
15 them for ourselves, but maybe we'll take for example the
16 punishment regulations. That's probably a good example
17 of how things evolved.

18 When it came to the punishment and discipline
19 regulations in relation to corporal punishment, if we go
20 over the page, to page 50, we see that the use of
21 corporal punishment was required according to the way
22 they were looking at it at that time to confirm to rules
23 of the provider, if you like, the administering
24 authority. But then it went on to restrict the degree
25 of discretion and autonomy of the authority by then

1 saying that they wanted inclusion of -- and I take bit
2 after -- I'll just read it:

3 "Specifically the draft stated it was prohibited to
4 inflict corporal punishment on a girl over ten years of
5 age or a boy over the age at which he was no longer
6 required to attend school [that was 15 at the time],
7 using anything except the bare hand and punishing a
8 child under 10 years of age [that could be a boy or
9 girl] and prohibiting the striking of any child on the
10 head."

11 Then it says:

12 "In addition, it was prohibited to use corporal
13 punishment on a girl except by a woman and that no
14 corporal punishment should be inflicted in the presence
15 of another child."

16 So what the officials are suggesting by way of
17 tighter regulation on that matter is we'll have a regime
18 where we'll tell you what you can do with boys between
19 10 and 15 --

20 A. Yes.

21 Q. -- you've not to have corporal punishment for boys over
22 15. We'll tell you to what to do children under 10,
23 boys and girls, and we'll put a ban on corporal
24 punishment of girls over 10.

25 A. Yes.

1 Q. That's what they wanted.

2 A. Yes. What they were doing was looking at the approved
3 school regulations and saying: right, we ought to have
4 similar codes.

5 Q. Yes, because they were quite specific about how girls
6 and boys should be treated and quite prescriptive, and
7 that was from 1933 onwards.

8 A. Yes.

9 Q. We see that was there, and that's what the officials did
10 at that point. They also had other things they wanted
11 to put in about space and diet and recreation. But
12 let's stick with corporal punishment, by way of example.

13 We see that and then what happens is, I think, the
14 matter goes up to the Minister, does it, at one point?

15 A. It does, yes.

16 Q. He seems to be having some concerns about this approach;
17 is he not?

18 A. Yes.

19 Q. He has some difficulty with the degree of prescription
20 on discipline.

21 A. That's right, yes.

22 Q. He's putting a marker down, he's not comfortable?

23 A. He's gone through every single draft regulation,
24 indicating his consent or his concern.

25 Q. I think at one point, if we go to page 51, the

1 Under-Secretary, the official, who has oversight of the
2 Division, he was also a bit unhappy about certain
3 aspects of the draft, including trying to impose
4 a criminal sanction in relation to certain breaches of
5 the regulation.

6 A. That's correct, yes.

7 Q. Indeed, he says in the quote on page 51, four lines
8 down:

9 "The real sanction is the power to strike the home
10 off the register."

11 Let's keep it at that. Let's not get the criminal
12 law involved.

13 A. I think I said that yesterday, one must understand the
14 position of an Under-Secretary was that of policy
15 control. His job was to get the regulations through the
16 Minister. I think my reading of it is he sees that as:
17 there's absolutely no way we're going to get this
18 through the Minister.

19 Q. He's worked out what he thinks the Minister will wash,
20 and he'll say: let's not go that far.

21 A. Yes. Usually it's the case, when one looks at other
22 regulations previously and following, where they
23 existed, that the Minister basically is assured that
24 consultation is taking place, there have been some
25 objections, but, generally, there is consent and

1 therefore you can tick off the regulations.

2 In this case, he's not sure that this particular
3 minister will actually follow that.

4 Q. But he dresses it up in a way to say -- he finishes
5 after the real sanction:

6 "It would be a slackening confession of weakness if
7 we let things reach such a step in any house that the
8 criminal authorities had to prosecute."

9 Now, no doubt that was a nice way of putting the
10 matter. But, basically, it was he had understood that
11 introducing this criminal sanction for breach of
12 regulations was unlikely to find favour with the
13 Minister.

14 A. He understood that the Minister wished closer vigilance,
15 but that wasn't the same as instigating a criminal
16 action.

17 Q. That would be quite a big step.

18 A. It would have been an extremely big step, and I read
19 that and said: interesting.

20 Q. Because the regulations normally, for these homes and
21 I think approved schools, didn't involve criminal
22 sanctions, other than the general criminal law if
23 someone assaulted a child in a home.

24 A. That's right.

25 Q. Or an approved school. So it was a significant --

1 A. It was a significant proposal.

2 Q. -- proposal.

3 At that stage, their general detailed proposals
4 hadn't yet been tested by discussion with the Local
5 Authorities and voluntary organisations.

6 A. No.

7 Q. So this was internal?

8 A. Yes.

9 Q. It would seem that before it came to the external
10 consultation -- if we read on page 51, that as usual
11 there are meetings internally between all sorts of
12 people, the Chief Inspector of Childcare and Probation,
13 the Division's Assistant Secretary, the Principal and so
14 forth, and the Under-Secretary. It appears the upshot
15 of the discussions -- we see halfway down page 51 -- is
16 that at least in relation to corporal punishment, the
17 Under-Secretary decided against the draft regulation
18 permitting only the use of a light tawse on children
19 upwards of 10 years of age.

20 A. Yes.

21 Q. He wasn't in favour of such a restriction?

22 A. Again, I go back to the issue of policy control. His
23 prime function at this stage was to get these
24 regulations through. His job was, therefore, partly to
25 anticipate problems that might incur -- occur when the

1 draft was circulated to interested bodies and then the
2 comments of interested bodies went to the Minister.

3 Q. Let's just move on a little bit against that background
4 and understanding of how these things work.

5 Go to page 52, halfway down, we see that the SHD
6 Secretary, that's the top official in the department --

7 A. Yes.

8 Q. -- has taken on board what is being said by his
9 Under-Secretary, and it's agreed that the draft should
10 be circulated to Local Authorities and leading voluntary
11 organisations for comment. This is the external
12 consultation.

13 A. This is the Scottish Home Department Secretary, because
14 that's where childcare was located.

15 Q. Yes, sorry. Did I not say so?

16 Ahead of a formal submission for approval to the
17 Minister and the Secretary of State. So that was the
18 next move. They've had this discussion, the
19 Under-Secretary has gauged what he thinks the Minister
20 might be prepared to accept --

21 A. Yes.

22 Q. -- and then they go to see what the reaction of the
23 Local Authorities and the voluntary organisations --

24 A. No, there is a step before that. He seeks the support
25 of the departmental Secretary before the draft is issued

1 to Local Authorities. So, in fact, the draft has the
2 full support of the department.

3 Q. Of the department. But he's keeping it back from the
4 Minister in the meantime.

5 A. At this stage, it's the normal process.

6 Q. I'm not suggesting it isn't.

7 A. So he has the support of the department's head in
8 circulating what he thinks will get through the
9 Minister.

10 Q. Okay. The next stage -- if we go down to the bottom of
11 page 52 -- is by early December 1958 -- is it?

12 A. Yes.

13 Q. The Scottish Home Department had received comments from
14 external organisations, as well as some other Government
15 departments, that is what we're told.

16 A. Yes.

17 Q. There seem to be a number of comments made. I think,
18 broadly speaking, there are some concerns on the
19 proposed discipline regulations, to put it shortly.

20 A. Yes.

21 Q. Just halfway down page 53 -- I'll come to where this
22 arrives at, but we see a sentence which reads:

23 "Macpherson also expressed his concerns with the
24 draft Discipline Regulations certainly as it affected
25 voluntary homes."

1 A. That's right.

2 Q. And Regulation 11 is the proposed detailed Discipline
3 Regulation.

4 A. That's right, yes.

5 Q. What he says, and comments at the time, having -- this
6 is after the process of consultation.

7 A. Yes.

8 Q. "At first sight it does not seem to me that
9 Regulation 11 is either reasonable or enforceable.
10 Surely this is a matter which should be left to the
11 discretion of the authority and the ordinary law of the
12 land. Schools are not tied down in this way and I see
13 no reason whatever why voluntary homes should be.
14 I apprehend that this provision is more likely to lead
15 to trouble and some ridicule than otherwise. It seems
16 to conflict with the wisdom of Solomon."

17 So he's siding with the -- those -- the external
18 bodies who were expressing opposition.

19 A. It's the previous paragraph there, the quotation from
20 the Church of Scotland, which is: okay, serious
21 offences, but we should be left to run our homes and
22 discipline our children in any way we see fit.

23 Q. There is another response that perhaps kills off
24 prescription, and we'll just come to that in a moment.

25 A. Yes.

1 Q. But, of course, the SHD don't give up without a little
2 fight, because they say: well, we're just reflecting
3 what our Advisory Council have said is required and,
4 indeed, the Church of Scotland at that point seems to be
5 the only one that has trouble with what we're
6 suggesting.

7 A. Yes.

8 Q. By way of justification, or perhaps persuasion, they
9 say -- and you quote this at the bottom of page 53,
10 going on to page 54:

11 "The department added there was a danger that the
12 voluntary body administering a home may leave too much
13 to the person in charge and may not exercise sufficient
14 supervision, compare Lochburn. It seems desirable to
15 place responsibility for considering the welfare of
16 a child who is proving very difficult firmly on the
17 shoulders of the governing body: otherwise the staff at
18 the home may resort to oppression as the only
19 expedient."

20 There is a concern that if you give them a free
21 hand, basically, also if you have a strong headmaster,
22 you are probably unlikely to be able to control what he
23 does, or she does.

24 A. That's right, yes. Given the interdepartmental
25 conversations taking place, looking at 196, it's coming

1 in from an executive officer. That particular person
2 would have been a Private Secretary. It reflected, if
3 you like, the consensus view between SED and SHD, and
4 of course at that stage SED were fully aware of issues
5 of punishment regulations in approved schools.

6 And I suspect that that was probably nudged by SED,
7 in the sense: do we really want to leave it --

8 Q. To see if we can get this through.

9 A. Tighter.

10 Q. Tighter.

11 A. Correct.

12 Q. Let's see how the story unfolded further. Because the
13 Minister didn't have any problem with making it clear
14 that the person in charge of the home would be
15 responsible, and responsible solely, to the home's
16 administering authority. He seemed to accept that
17 corporal punishment should be kept within reasonable
18 limits.

19 There's nothing particularly controversial about
20 that, I suppose?

21 A. No, no.

22 Q. But, when it came to just how that would be done, this
23 is where he and the officials parted company?

24 A. Yes.

25 Q. Because of a suggestion or proposal which the

1 association of County Councils, the Local Authorities'
2 representative body, they put forward -- in response to
3 the departmental approach, they suggested: well, why
4 don't we have a regulation that says the administering
5 authority shall specify the persons empowered to
6 administer corporal punishment.

7 And added that -- and the nature of permissible
8 corporal punishment. In other words: we'll say who can
9 do this and we will spell out what they can do by way of
10 punishment.

11 A. Yes.

12 Q. And: if we have a regulation of that kind, that's
13 sufficient. Don't tell us what happens with a boy over
14 10, or girls and boys under 10, or older girls. Leave
15 it at that.

16 A. Yes.

17 Q. Trust us.

18 A. Yes.

19 Q. That's basically what they were trying to sell to the
20 officials and, ultimately, to the Minister.

21 A. That's right, yes.

22 Q. And the Ministers bought that one, essentially?

23 A. He decides he doesn't want full confrontation with the
24 Church of Scotland and the Association of County
25 Councils.

1 Q. He was aware, presumably, of the difference of approach
2 of the officials on the one hand, and the Local
3 Authority and voluntary organisations on the other? He
4 knew that from the submissions.

5 A. He knew that from the submissions. What I don't know,
6 and what we don't know, is the extent to which this
7 particular Minister had any dealings with childcare
8 provision before that. It's unclear whether or not he
9 received any submissions relating to any issue
10 concerning childcare in a voluntary home before
11 Lochburn.

12 My reading of the file is he was quite new to all
13 this.

14 Q. He might not have known the history to the fullest
15 extent?

16 A. He was aware, certainly, of approved schools, and the
17 regulations and issues on approved schools, but there is
18 no indication from the retained files that any of the
19 issues -- what we'll see later -- affecting voluntary
20 homes, in the mid to late 1950s, ever reached
21 a minister. So I suspect this was completely new
22 territory to him.

23 Basically, he saw: I have the Church of Scotland at
24 me and the Association of County Councils; what can
25 I do?

1 LADY SMITH: And they're saying: we're the people who are
2 directly involved in this provision, trust us. Don't
3 tell us how to do our job.

4 A. "Trust us to manage the staff in the home."

5 MR PEOPLES: In taking that approach -- and no doubt the
6 Under-Secretary appreciated how the Minister was
7 thinking -- the Under-Secretary was to some extent
8 giving the Minister support for an approach of that
9 kind, because he was saying, in minutes, that there are
10 lots of things that you have to leave to the authority,
11 the administering authority and their judgment.

12 A. It's that balance between an official's responsibility
13 and a minister's responsibility and, at that stage,
14 I think that particular Under-Secretary understood it
15 would be extremely difficult to get these regulations
16 through, unless he uttered the same language as the
17 Minister.

18 Q. If we just go through this, the upshot was that the
19 proposal by the Association of County Councils
20 prevailed.

21 A. Yes.

22 Q. If we go to page 59; do we see there that having -- the
23 final position that was reached, essentially, is
24 captured in the quotation from the Minister, his
25 comments on the regulations, and he says:

1 "The principle that should guide us throughout in
2 both these sets of Regulations [that's children's homes
3 and boarding out] is that the person or institution in
4 charge of the children should be permitted the greatest
5 amount of discretion and initiative compatible with the
6 welfare of the children and with the 1948 Act."

7 So he's endorsing that as the principle.

8 A. He's endorsing that as the principle, having started off
9 at a position, I suspect, where he was unsure and
10 unaware of the situation in voluntary homes.

11 Q. But one thing he was aware of was the opposition to more
12 detailed regulation by those who were providing the
13 service.

14 A. Yes. He may well have been informed through indirect
15 contacts that there was significant opposition from the
16 Church of Scotland, and he was certainly aware of
17 opposition from the -- and County Councils, and it's
18 clear that he went through the regulations tooth and
19 nail in a way which I've not really seen.

20 Q. If we go on to see how this ended, at page 60, we see
21 that the two sets of regulations for homes and boarding
22 out were formally approved by the Minister,
23 Mr Macpherson and also the Secretary of State,
24 Mr Maclay, as he then was, in May 1959.

25 A. That's right, yes.

1 Q. But they were accompanied by some notes to describe, as
2 you say, the intention of each of the regulatory
3 sections. Certain provisions in the 1947 Regulations in
4 relation to boarding out were removed, and there was
5 a statement to the effect: it would appear that the
6 Secretary of State was confident that Local Authorities
7 and voluntary organisations can be relied on to exercise
8 a proper discretion.

9 This was in the context of the foster care and the
10 number of children that could be placed in foster care.

11 A. Yes, yes.

12 Q. There was an issue about that as well. But it's
13 a reflection of the general public message: we have
14 confidence in those who are providing the service to do
15 the right thing and to exercise the right judgment in
16 how to deal with the matters, such as the number of
17 children, the approach to discipline and so forth.

18 A. Yes.

19 Q. How they're fed, what exercise they get, and so forth.
20 That was the broad thrust of that public message?

21 A. The broad thrust that there were general regulations,
22 but it was to be left to the Local Authorities and the
23 voluntary home managers to manage.

24 Q. Perhaps, to some extent as a consolation prize for the
25 officials, and the Scottish Advisory Council On

1 Childcare; do we see that on page 61 that there was
2 a memorandum, I think for both sets of regulations?

3 A. Yes.

4 Q. It seems to me that what they're doing there is: well,
5 we'll try and put into the memorandum all the things
6 that we think are good practice; we're not going to
7 require you to do, but we'll tell you this is a good
8 idea to do.

9 So they used the technique or device of a memorandum
10 to put in there what they were not prepared to put in
11 the regulations.

12 A. Yes.

13 Q. That seemed to be the favoured approach.

14 A. It seemed to be the way forward if in fact you were
15 increasing the policing of the sector, because the
16 Inspectors could have regard to the memorandum in
17 discussion with the Local Authorities and voluntary home
18 managers.

19 Q. But what they couldn't see, and didn't see, as we'll
20 see, in section 5, is that when they spotted something
21 that might have been against the spirit or letter of the
22 memorandum, they could say: you're in breach of the
23 regulations.

24 A. Yes.

25 Q. So it wasn't quite the same.

1 A. It wasn't quite the same power, no.

2 Q. No.

3 They were hoping, by that sort of softer means, to
4 achieve the aims that the Scottish Advisory Council on
5 Childcare were looking to improve the overall quality of
6 care and the approach to discipline and punishment?

7 A. Yes, more regular inspection, more regular reviews of
8 the state of the home, with the expectation that the
9 quality of care would improve in that way.

10 Q. Before we leave this section, I will just go to
11 something that is said on page 63 of your report.

12 It's a minute by the Scottish Home Department's
13 Childcare Division Assistant Secretary.

14 A. Yes.

15 Q. I'll just quote -- which was said in 1958 before the
16 regulations were made:

17 "There are special dangers of what the Americans
18 term mass congregate care, the growth of ill practises
19 within separate communities, such as are found in the
20 larger homes: harsh punishment becoming part of
21 a tradition. A regulation safeguards the child against
22 harsh treatment and protects the superintendent who
23 administers a reasonable punishment for a charge of
24 cruelty or assault."

25 That was trying to make the case for more

1 prescriptive regulations.

2 A. Yes.

3 Q. It might have been slightly aspirational in terms of the
4 effect that the regulations could have if they were in
5 more detailed terms, but at least that official was
6 pointing out the dangers of giving a pretty unfettered
7 discretion to those who were providing the care and
8 those they were employing to discharge the provision of
9 care.

10 A. What I thought was significant was that this particular
11 official was the head of the branch of the Childcare
12 Section in the Scottish Home Department. And he's
13 taking on board, if you like, what might be termed
14 informed opinion in academic circles, about the issue of
15 large-scale homes and recognising the discussions that
16 might have occurred before, had some verity, that the
17 way forward was to disaggregate large homes.

18 Q. It's not just taking on board informed academic opinion,
19 he knows from what Inspectors have been telling him over
20 the years what the true situation is in homes and no
21 doubt other settings. So there is a certain reality to
22 this, isn't there? He realises the fundamental problems
23 with the system and he's putting them on paper.

24 A. My understanding, he was relatively new to the brief,
25 and he was learning the brief as he was going along.

1 Therefore he would not -- unless he chose to read the
2 previous reports on children's homes -- have detailed
3 knowledge.

4 So he was actually catching up with opinion within
5 the department as it had evolved and recognising that
6 the way forward was not to have large-scale homes.

7 Q. But he must have been aware of the opinions that were --
8 collective opinion within the department, which no doubt
9 was informed by the Inspectors and the various minutes
10 that went through the system, and all the discussions
11 that had happened in the 1950s.

12 So whatever he actually knew personally, and however
13 much reading he had done, he had a good sense of what
14 the situation was like?

15 A. I read that as indicating that the departmental view was
16 being validated by informed opinion, and that was
17 opinion beginning to be widely shared within academia,
18 that institutions, as such, were not a particularly good
19 place to house anybody.

20 Q. So we can say perhaps then that by this stage of this
21 minute the department has a certain view about large
22 institutions and the consequences of that system?

23 A. Yes.

24 Q. And that was now being shared, and similar opinions
25 being expressed in academic circles.

1 A. Yes.

2 Q. But the Minister was swayed by the views of those
3 providing the care?

4 A. Yes. So you have a disparity of views.

5 Q. Can I turn to your next section?

6 I'm perhaps going to deal with this more briefly,
7 because, in a way, it reflects the same again, of a long
8 process to revise the Approved School Rules, and I think
9 you almost summarise the whole section -- well, you do
10 summarise it, in effect, at page 65, which starts at
11 section 3, which is the Approved Schools Scotland Rules
12 1961, which you say the section covers discussions and
13 decisions that led to publication of the Approved
14 Schools Scotland Rules 1961.

15 This was the replacement of the Care and Training
16 Regulations 1933, part A.

17 A. Yes.

18 Q. Then you go on to say: "It begins in 1948 with the
19 [Department] SED's consideration of a report from the
20 Scottish Advisory Council On Childcare and the Scottish
21 Advisory Council On the Treatment and Rehabilitation of
22 Offenders, as well as the Select Committee On the
23 Estimates On Approved Schools, and their criticism of
24 current institutional provision."

25 A. Yes.

1 Q. "It then discusses the SED's preparation of new Approved
2 School Regulations, which covered education and
3 training, discipline, and recreation, and the opposition
4 from approved School Managers ..."

5 Perhaps I can add, "and heads"?

6 A. Yes, yes.

7 Q. "... that the changes entailed. The section reviews the
8 impetus for the resubmission of the proposals in the
9 late 1950s, which stemmed from issues of the maintenance
10 of control of pupils and the view of the SED on the
11 necessity to introduce rules based on modern ideas of
12 child development."

13 "It ends with the political decision of Ministers,
14 in the light of the objection of the approved School
15 Managers to support only a limited amendment of the
16 rules on discipline."

17 A. Yes.

18 Q. It has some striking similarity to the 1959 Regulations.

19 A. Yes. "Modern views" reflects that comment by that
20 principal in SHD about the issue of mass congregate
21 care.

22 Q. I'll discuss a few things here, but I think we can all
23 read it. The report is published. I would like to get
24 on to section 5. Before I do so, can I just raise one
25 or two points that we can keep in mind here?

1 On page 66 of the report, in this section, we see
2 that something that is beginning to get discussion is
3 the issue of proper assessment.

4 A. Yes.

5 Q. It's being discussed in the early 1950.

6 A. Yes.

7 Q. It seems that it's thought that it might be a good idea
8 to have what was described as a classifying school for
9 boys to improve the assessment and allocation of boys to
10 approved schools.

11 A. Yes.

12 Q. Is that, to an extent, a forerunner of assessment
13 centres as they were envisaged in the 1968 Act? Is it
14 an early idea of something similar?

15 A. It's an early idea that in fact there should be some
16 medical assessment.

17 Q. Medical.

18 A. Medical assessment.

19 Q. Rather than a broader assessment?

20 A. A psychological medical assessment of a young person
21 before they were admitted to a particular approved
22 school, to establish whether or not the regime of that
23 particular approved school would match their needs.

24 Q. Or be detrimental to them?

25 A. Or be detrimental.

1 Q. So it wasn't really an assessment centre of the later
2 type, which was probably a broader process of assessment
3 to find the right provision, rather than -- this is in
4 the context of approved schools --

5 A. This is the context of: can we actually divide our
6 approved schools up into particular kinds of centres?

7 Q. And possibly get a better classification than the basic
8 one we spoke about yesterday?

9 A. Yes, yes.

10 Q. This is against a background, as we saw from your
11 opening paragraph -- that against critical reports by
12 the Advisory Councils, and indeed the Select Committee,
13 I think, in 1948 or 1949.

14 A. That's right, yes.

15 Q. Was a subsequent Secretary of State on that select
16 committee?

17 A. Yes.

18 Q. Who was that?

19 A. That was Willie Ross, who had been a school teacher in
20 Glasgow before the war.

21 Q. Let's just see briefly what happened with this idea of,
22 indeed, an interdenominational classifying schools. It
23 was abandoning the old way of denominational schools.

24 A. Yes.

25 Q. Which was one of the features of the approved school

1 system.

2 A. Since its inception in Scotland.

3 Q. Yes. So the first thing seems to be -- I suppose at
4 least one could say this is an improvement on the other
5 process; they actually go and talk to the headteachers
6 at an early stage.

7 A. Yes. There was -- one must realise that because of the
8 registration issues, there was a much more direct
9 relationship between the SED and the approved schools,
10 and you also had a system of allocation.

11 Q. Which heavily involved the SED?

12 A. Which involved the SED in constant discussion with
13 headteachers on allocations.

14 Q. This wouldn't be surprising then?

15 A. So everybody knew each other.

16 Q. So they're testing the water on this idea?

17 A. Yes.

18 Q. So they have a meeting in 1951, in June 1951, on this
19 matter, the SED with the headteachers, and explain the
20 nature of the idea and what's proposed.

21 A. Yes.

22 Q. I think, at the top of page 67, it's indicated that the
23 principal purpose of this classifying school would be to
24 provide a diagnosis, so it's a slang or medical
25 language, rather than assessment.

1 A. Yes.

2 Q. "Diagnosis of a child's circumstances, symptoms and
3 needs, and allocate the child to the school most nearly
4 corresponding to his needs. To facilitate the
5 assessment of the pupils the department announced the
6 educational psychologist should aim to give guidance to
7 headteachers in particular cases of difficulty and
8 coordinate with the existing Local Authority services."

9 This seems to be an early attempt to get the sort of
10 thing that the 1968 Act was eventually trying to
11 achieve?

12 A. Yes.

13 Q. And it took time.

14 A. And it took time to fully implement.

15 Q. There seemed to be a particular concern at this time on
16 the use of corporal punishment for older girls?

17 A. Yes.

18 Q. That was also a feature of these discussions?

19 A. Yes.

20 Q. We see, on page 67, the reaction of the headteachers was
21 mixed, as you described it?

22 A. That is a polite way of reading that particular --

23 Q. If we go on, we see it indicated a preference for
24 continuation of the pre-trial and remand home system of
25 assessment, albeit they were welcoming, perhaps, the

1 development of the input of an educational psychologist
2 into the process.

3 A. Yes.

4 Q. So they were prepared to tolerate that, but they weren't
5 really keen on anything that went beyond that?

6 A. They weren't particularly keen on any interference with
7 their management of the school, to put it bluntly.

8 Q. Because that would be outside interference or it would
9 bring in outside parties?

10 A. Outside parties, reviewing their internal management of
11 the school and suggesting what they should be doing.

12 Q. I suppose if you are focusing on a child's needs, and
13 you are comparing it with the services available at
14 particular schools, to an extent it's implicit that
15 you're going to be commenting on the regime of the
16 school and the extent to which it can cater for
17 particular children with particular problems?

18 A. That's right, yes.

19 Q. That could be a critical -- if you decided they couldn't
20 match, that could be a criticism of the school.

21 A. It could be a criticism of the school.

22 Q. And lead to less pupils going there.

23 A. It could lead to pupils going there. But, also, could
24 upset your regime, in the sense of the way you ran that
25 particular school; someone coming along who was

1 an educational psychologist and saying: this particular
2 child should have this particular care package, care
3 plan, as we now call it.

4 Q. We saw that even later on there was some difficulty
5 getting that sold to the providers.

6 A. Yes.

7 Q. In the 1960s and 1970, even.

8 A. Yes.

9 Q. Until, finally, I think, it achieved some degree of
10 success after regionalisation.

11 A. That's right, yes.

12 Q. So we are seeing this reaction.

13 On the punishment matter, on the regulations, they
14 say there was no comment on the regulations that
15 affected girls.

16 But, in the case of corporal punishment of boys,
17 some clarification was sought at this meeting on
18 delegation by headmaster to any certified teacher.
19 Taking that short, it seems to be that the Headmasters
20 seemed to be wanting more staff to be able to administer
21 corporal punishment?

22 A. Yes.

23 Q. Is that a reasonable --

24 A. It's a reasonable position to take, yes.

25 Q. Whereas the SED no doubt attempted to reflect more

1 modern childcare thinking says:

2 "The climate of opinion in this matter tended to
3 favour restriction rather than extension of corporal
4 punishment and that the Department were not anxious to
5 invite too much publicity to the existing rules such as
6 they would receive ..."

7 So there is a bit of a mixed message there. They
8 don't want to draw attention to corporal punishment,
9 but, at the same time, they don't want to be extending
10 the permission.

11 A. An extension of the permission might lead to
12 considerable extension of the use of corporal punishment
13 throughout the school for a whole variety of offences by
14 junior staff.

15 Q. I suppose officials, and no doubt Ministers, as we'll
16 see, were in between a rock and a hard place, because in
17 one sense they want to, broadly speaking, reduce
18 corporal punishment, or indeed some might want to
19 eliminate it; but, at the same time, they're conscious
20 that the public opinion might well be that we have to
21 have that type of discipline remaining and, indeed, if
22 anything went wrong if you removed it, it would come
23 back to haunt the Minister.

24 A. But it should not be delegated from --

25 Q. It certainly shouldn't be delegated to a more junior

1 member of staff.

2 A. Yes.

3 Q. I think as we'll see, that maybe reflected an assumption
4 that you could trust the headteachers?

5 A. Yes.

6 Q. I think in the event, there are many examples where that
7 was misplaced trust?

8 A. There were certainly examples where in fact infraction
9 of the regulations occurred.

10 Q. We'll come on to that in section 5.

11 So that's the start of this process and
12 a consideration -- I think it's a stage of
13 consideration, rather than the drafting of any
14 regulations?

15 A. Yes, yes.

16 Q. At that stage, basically, the idea seemed to be: we'll
17 stick with the punishment rules we already have, broadly
18 speaking?

19 A. We'll stick with the system we already have. We will
20 not seek any drastic changes, other than the use of
21 educational psychologists.

22 Q. Although there seemed to be a desire, at least within
23 the department, to make more specific provision on
24 matters such as recreation and educational provision?

25 A. Yes.

1 Q. Because there was a concern, I think, about the quality
2 of the educational provision and the lack of
3 recreational facilities in many schools.

4 A. It was easier to deal with that than to deal with the
5 issue of punishment.

6 Q. Well, it was too. But, also, I suppose if you had
7 regulations on these matters the Inspectors had more
8 power to change at least the educational provision and
9 the amount of recreational provision that was being
10 provided.

11 A. Given that HMI could conduct a thorough educational
12 inspection, it was much easier to --

13 Q. They could still --

14 A. -- deficiencies in the teaching staff. And as for
15 recreational facilities, of course there was grant aid
16 available if you felt that a particular approved school
17 was in an overcrowded site, moving -- and I think there
18 is an example of one being moved here to provide better
19 facilities.

20 Q. Just, on the recreational side, just by way of an
21 example of just how they retreated from being
22 prescriptive about recreation, on page 69; do we see
23 that they tested the waters with the schools on the
24 possibility of extending recreational activities to
25 include pupils' involvement with local festivals and

1 other bodies? Which had been something that I think was
2 favoured by the Advisory Council reports about providing
3 a much wider range, basically getting them more involved
4 with the local community.

5 A. Yes.

6 Q. Although some of the schools weren't particularly well
7 located do that.

8 But it seems that that idea didn't meet with much
9 favour with the Approved Schools Association,
10 a representative body.

11 A. The issue was maintaining the discipline and the nature
12 of the regime. And if you mixed your approved
13 schoolboys in a football match with the local school,
14 you might result in considerable disturbance, shall we
15 say.

16 Q. It might also be a bit like the introduction of external
17 professionals?

18 A. Yes.

19 Q. You lose your control over the whole situation.

20 A. If you have football matches simply between boys from
21 different approved schools, that is different from
22 having boys from the local secondary school turning up,
23 or going to their playing fields and playing.

24 Q. Particularly if all the approved schools, or most of
25 them, have the same regime?

1 A. Yes, yes.

2 Q. You are not getting boys from one school saying: guess,
3 what happens in my school? It's much better than your
4 school.

5 A. Yes.

6 Q. If we go to see how this unfolds -- I'm just going to
7 take this quickly -- page 69, the final paragraph, we're
8 now in 1953, and the years are flying by again. But the
9 department has come to the view that there should be
10 very little change in punishment regulations, except
11 those that might cover the older girls.

12 So that issue is still on the table?

13 A. Yes.

14 Q. It would appear that there's some reluctance to proceed
15 further with the classifying school proposal in light of
16 the reaction of the schools themselves.

17 A. That's right, yes.

18 Q. So it's kind of being held back at that stage, and it's
19 said in terms it's because of resistance by headteachers
20 to structural change.

21 We go on to 1955 -- over the page, page 70 -- and we
22 see the results of this exercise that in 1955 a circular
23 is issued, circular 317, 13 October 1955, which makes
24 clear that the Secretary of State would not be pressing
25 the issue of classifying schools for boys, or classified

1 school for boys.

2 A. Yes.

3 Q. So there is no desire to take on the schools on this
4 matter?

5 A. There's no desire to take on the schools, because if you
6 go down the route of classification, then you're almost
7 certainly in the route of developing new schools.

8 And the issue in Scotland was that the volume of
9 approved school committals did not seem to indicate you
10 would have sufficient numbers in the same way as happens
11 south of the border.

12 Q. For schools that would be seen as suitable by
13 a classifying school regime?

14 A. Yes. You couldn't install a classifying school system
15 in Scotland, given the number compared to England and
16 that's why I think the SED advised Scottish Ministers to
17 retreat.

18 Q. Are you saying that -- was the idea that there would be
19 one classifying school that would be a hub for looking
20 at boys and then deciding where they go from there?

21 A. Yes. But, in addition, there would be different schools
22 catering for a different set of needs.

23 Q. They didn't have that?

24 A. And there weren't sufficient pupils.

25 Q. What, to justify?

1 A. To justify the capital expenditure.

2 Q. For that range of school?

3 A. To compare to the position south of the border.

4 Q. Because classifying schools were by then established,
5 were they, south of the border?

6 A. Yes.

7 LADY SMITH: As you point out, in Scotland, we already had
8 classification between boys and girls, age groups and
9 also religion.

10 A. Yes.

11 LADY SMITH: Which led to about 11 in the country as
12 a whole; is that right?

13 A. I think slightly more than that. But that was what the
14 system preferred. It wanted to keep things as they
15 were.

16 LADY SMITH: 11 categories overall.

17 A. Sure.

18 LADY SMITH: As between 20 and 30 schools, I think at that
19 time.

20 A. That's right.

21 Q. It was pretty primitive classification?

22 A. Extremely primitive, and really no different from the
23 position in the 1930s. So there was no change.

24 Q. What is your age? What is your sex? And what is your
25 denomination?

1 A. That's right.

2 Q. So we'll give you a choice -- there are five potential
3 schools available, say out of 20, we'll see if there's
4 any places there --

5 A. Just one.

6 Q. There might be one.

7 A. One, and they don't want you because you've been in
8 trouble before.

9 Q. So where do we put you?

10 A. Yes.

11 Q. I think we understand how it is working. But, at any
12 rate, the Scottish Education Department issue this
13 circular.

14 A. Yes.

15 Q. There's not going to be any major change to the approved
16 schools system, and there certainly won't be
17 a classifying school set up.

18 A. Yes.

19 Q. The idea of using an educational psychologist as part of
20 the approved school system service was maintained?

21 A. Yes.

22 Q. Although, I think at that stage -- and you may have said
23 this in your report, or at least I may be aware of it
24 somewhere -- that it wasn't a very large service, was
25 it, at that time?

1 A. It was a primitive service, in that they had appointed
2 an educational psychologist to work with approved
3 schools.

4 That person, from the material I've read, the
5 principal duty was to run through the committal papers
6 that had been sent in to St Andrews House and, from
7 those papers, give an indication of what school would be
8 most appropriate, given their sort of hands-on knowledge
9 that Wellington was a hard school, and Rossie was
10 perhaps less hard and so on.

11 Q. Ultimately, whatever the psychologist said, it would
12 still turn on availability?

13 A. It would turn on availability, yes.

14 Q. If we move on to page 71, following the 1955 circular,
15 formal consideration of the 1933 Regulations on approved
16 schools, I think you put were placed in abeyance until
17 September 1958?

18 A. Yes.

19 Q. Then the matter resurfaces, really against a background
20 of a spate of absconding at certain schools, a concern
21 about maintaining order, a need for a particular form of
22 provision in the form of some sort of secure unit or
23 section. So there are a number of things coming
24 together?

25 A. Yes. One could possibly call it parasecure

1 accommodation.

2 Q. Indeed.

3 Is this in the late 1950s?

4 A. Yes.

5 Q. Really, the beginnings of the discussion about secure
6 care?

7 A. Yes.

8 Q. We know that the first secure wing was opened at the
9 MacDonald wing in Rossie, in around 1962.

10 A. Right.

11 Q. But, clearly, leading up to that, as we'll see, some of
12 the headmasters were saying: we do need to have places,
13 segregation, secure areas, within our schools --

14 A. Yes.

15 Q. -- to deal with certain types of pupils?

16 A. That's correct, yes.

17 Q. So we see, in fact, that they feel that their powers of
18 punishment -- they're seeing it as a punishment power --
19 are limited. We see in the quote, do we not, on
20 page 71, that it says:

21 "The powers of punishment other than corporal
22 punishment conferred on a Headmaster are no longer
23 sufficiently wide or severe to enable the type of boy
24 who ... committed to the institutions to be effectively
25 controlled."

1 There seems to be a suggestion that: well, we can
2 administer, sometimes brutal, punishment in the form of
3 corporal punishment, but we need another weapon as well.

4 A. And they only had detention for 24 hours.

5 Q. Yes, and a limited form of power of detention, temporary
6 detention. So they wanted more?

7 A. They certainly wanted more in relation to what they term
8 as persistent absconders.

9 Q. This isn't really the later notion of having an area
10 where you can remove a child for their own safety, or
11 the safety of others, following them perhaps "kicking
12 off", I think is the expression often used. This isn't
13 the scenario they have in mind.

14 They want to simply say: we have a child, for
15 example, who runs away all the time. We want to --

16 A. Additional punitive.

17 Q. -- have an additional punitive sanction and lock them
18 up for longer.

19 A. Yes.

20 Q. It's not really reflecting some form of therapeutic
21 treatment or concerns for the child's safety?

22 A. There is no indication that these early discussions
23 concerned the introduction of educational psychologists
24 to discuss the issues that a persistent absconder might
25 have had, discussing the care regime within the

1 institution and so on. It's simply an issue of: what
2 further punitive measures can we have to try to control
3 the behaviour of this particular individual?

4 Q. There were a number of requests, were there not, for
5 having this additional weapon, if you like, at their
6 disposal?

7 A. Yes.

8 Q. I think we see that the Thornly Park headmaster was
9 making representations along those lines?

10 A. Yes.

11 Q. And a similar request was coming in from Wellington Farm
12 School as well?

13 A. Yes.

14 Q. I think they were both keen on identifying places within
15 their schools that could be used, effectively, as
16 detention cells?

17 A. That is right, yes.

18 Q. The language is no doubt confirming what we have just
19 said?

20 A. Yes.

21 Q. Interestingly, it does say there, at the bottom of
22 page 71, that the schools that were making these
23 representations were told that there was likely to be
24 some delay in revising the 1933 Regulations due to the
25 present pressure of work.

1 A. Yes.

2 Q. I think that may be echoing something you said
3 yesterday, about pressures and priorities, and this
4 wasn't being given the highest priority?

5 A. This is 1958, and the consideration at the time,
6 I think, was on the regulations for voluntary homes and
7 boarding out. I suspect they didn't want to bother the
8 Ministers with regulations at the same time for approved
9 schools.

10 Q. I suppose at least there was some consolation given to
11 those requesting these facilities. It seemed to be that
12 the view was taken it wouldn't necessarily be essential
13 to change the regulations to allow them to create these
14 special areas?

15 Was that a view at least that was being suggested?

16 A. I think it's slightly deeper than that. Officials
17 realised that Thornly Park, Rossie, Wellington and
18 Dr Guthrie's Girls could simply lock up a pupil for
19 24 hours, release them for an hour, and put them back in
20 and carry on indefinitely.

21 Q. So there was a way, if they wanted to use it that way,
22 to get round the spirit of the regulations?

23 A. To get round the spirit of the regulations, the
24 headteachers and these institutions could simply lock
25 up, in a cell, a cupboard or whatever, for 24 hours,

1 release them for an hour, get them to walk round the
2 grounds and put them back in for another 24 hours, until
3 such time as their behaviour was felt to have altered.

4 Q. Look at page 72, perhaps, halfway down. I think at the
5 stage of the 1933 Regulations the maximum period was six
6 hours?

7 A. Yes.

8 Q. I think what was being proposed, and eventually agreed
9 to by department, is: they would amend the regulations
10 to permit isolation in a detention room for up to
11 24 hours, so they were agreeable.

12 A. Yes.

13 Q. But what you described is still a way of dealing with
14 it. You lock them up for six hours, you take them out
15 and put them back in.

16 A. I think the response of the SED was: how do we control
17 this? How do we control a Headteacher going down the
18 route of deciding themselves and keeping within the
19 spirit of the regulations, but nevertheless causing all
20 sorts of issues in relation to the management of the
21 school and the ability of the SED to maintain oversight
22 of the regime?

23 Q. But the concern, ultimately, that drives this is that,
24 for example, there is a lot of over-absconding, and it's
25 nothing to do with being a development for welfare

1 purposes?

2 A. It's more than just absconding. If one looks at the
3 material in depth, it was: any unruly behaviour,
4 consistent unruly behaviour, we'll lock you up.

5 Q. Yes, anything within the institution or as a punishment
6 for running away.

7 A. Yes, yes. And the issue -- I think the SED said: look,
8 we have to introduce some new form of set of regulations
9 that will be legal.

10 Q. It's true to say, is it not, that around this time, and
11 I think there were examples in the 1950s, there were in
12 some schools a spate of abscondings from time to time?

13 A. I think absconding was a regular occurrence at many of
14 these schools.

15 Q. What doesn't seem to be really apparent in any of these
16 records that you're looking at is that someone is
17 sitting down and saying: I wonder why?

18 A. Yes and no.

19 Q. What do you mean by that?

20 A. Well, I mean -- what I mean is they accepted there was
21 a high level of absconsion(sic), there was acceptance
22 that unruly behaviour was common. And the issue was:
23 how do we respond within a particular kind of regime to
24 dealing with the issue of care and welfare?

25 The issue, as we'll see as we go on further on, is:

1 we can't within an existing system.

2 Q. What I probably was driving at was: they may well know
3 the regime, but one of the consequences of the regime
4 might be mistreatment and abuse.

5 A. Yes.

6 Q. One of the reasons a person might runaway -- not
7 necessarily the sole reason, because there could have
8 been many -- would be because of that treatment; not
9 just the regime itself, but particular treatment. Yet
10 there's no sign that someone's picking up: one way we
11 could reduce this problem, which no doubt people will
12 complain about generally if they think it's happening
13 all the time, is maybe to look at other reasons why, and
14 maybe if we understood the reasons why we could reduce
15 the incidents, and we would have a much better system.

16 That process of thought doesn't seem to be apparent
17 at this time.

18 A. I think by 1959/1960, if you like, opinion within the
19 department had shifted: we need something different from
20 an approved school.

21 Therefore: we have to continue to manage the
22 approved school regime in the best way we can. We have
23 an additional Inspector coming in, but we need to
24 perhaps flag up to Ministers the necessity to consider
25 whether or not the approved school regime is suitable

1 for the reasons you are actually suggesting; that it's
2 about moral training, rather than care and welfare.

3 Q. In the end, it took another 37 years to get rid of the
4 system?

5 A. It took a considerable period of time.

6 Q. I'm thinking from 1959 to 1987 or 1986 because List Ds
7 were, albeit with a different name, effectively approved
8 schools in many respects.

9 A. I would put the marker at some time around 1975. After
10 that, the usage of List D schools began to decline and
11 at an increasing rate, as alternative provision emerged,
12 whether it was in other institutions, not List D schools
13 or in the community.

14 Q. But the system remained at least until 1986?

15 A. The system remained that enabled a recommendation from
16 Local Authority Social Services to a children's panel to
17 commit to a List D school.

18 Q. I don't suppose it would help me if I was one of the
19 unfortunates who continued to be sent there, but others
20 were not.

21 A. No, but --

22 LADY SMITH: Is that a good point to break, Mr Peoples?

23 We'll take the morning break just now,
24 Professor Levitt and sit again in about a quarter of
25 an hour.

1 (11.30 am)

2 (A short break)

3 (11.49 am)

4 MR PEOPLES: Professor Levitt, if I just go back to page 72.

5 I think we had really reached the stage where we were
6 looking at the question of some form of secure section
7 or room, or detention, and there were a number of ways
8 you could describe it.

9 We see that there was a meeting between the
10 department and the associations. I think that is
11 a reference to both the Approved Schools Association,
12 which represented the managers effectively, and then the
13 Approved School Staff Association, which would represent
14 the whole body of the staff.

15 A. That's right, yes.

16 Q. They were the sort of representative bodies that were
17 often in dialogue with --

18 A. I think the Staff Association was primarily teachers.

19 Q. I see.

20 Then we see, though, as at February 1960, the
21 department agreed that it would seek to amend
22 regulations to make isolation and detention for up to 24
23 hours. It doesn't detract from the point you made
24 earlier; it's just the number of hours before you had to
25 let them out to use the --

1 A. Yes, yes.

2 Q. A means that would comply with the existing regulations.

3 It's the same point.

4 A. It's the same point, yes.

5 Q. It is said that outside the regulations, as they put it,

6 the department would consider a separate school for

7 difficult pupils. So that was maybe being given

8 thought, but no more than that.

9 Then, as you tell us on page 72, the further

10 discussion on these proposals were effectively taken by

11 the Home Office's publication of "The report in the

12 Carlton Approved School ... in January 1960."

13 That is the Durand report?

14 A. Yes.

15 Q. The upshot of that was, certainly in Scotland, that the

16 department agreed there should be consultation with the

17 Approved Schools Associations on the report and its

18 implications for Scotland. So that's not an unusual

19 thing to happen.

20 A. Yes.

21 Q. Because it was quite a significant report and issue.

22 Then there was a further meeting, in 1960. If we go

23 over to page 73, with the Approved Schools Association

24 and the SED, look at the top paragraph, first paragraph:

25 "it was agreed that a special section -- [and I think

1 the words are carefully chosen] (not a closed block with
2 all the connotations that might arise) should be
3 established that Rossie Boys' Approved School to cater
4 for persistent offenders, those presenting disciplinary
5 problems and "to meet the needs of the highly
6 disturbed". You add there:

7 "... did not require legislation, but required the
8 consent of the Secretary of State due to the costs
9 involved."

10 This may have been an attempt to do something
11 without regulation by not calling it a separate unit,
12 but simply a section within a school, provided the
13 Secretary of State was prepared to fund --

14 A. Provide within the vote that funding would be provided
15 for such an establishment.

16 I think the important thing here is the SED actually
17 broadening the definition from "absconders" to the
18 "needs of the highly disturbed", and that has
19 a different connotation from simply "absconders".

20 LADY SMITH: Do you know where that phrase came from?

21 A. The -- what?

22 LADY SMITH: The "highly disturbed", what its genesis was?

23 A. I would have to look back at the papers. But it was
24 a -- Civil Service language indicating that those
25 particular young people had complex needs and,

1 therefore, they exhibited their behaviour in a way in
2 which could be considered disturbing to others. And
3 therefore, perhaps on reflection they needed some form
4 of special care.

5 LADY SMITH: Thank you.

6 MR PEOPLES: But, at this stage in the development of that
7 idea, it would have to be within the approved schools
8 setting, rather than a specialist provision that dealt
9 with children and young people with complex needs.

10 A. Yes. This was a block for those who were committed to
11 an approved school, who were not just absconders, but
12 exhibited particular behaviours beyond that which was
13 seen as -- "normal" is not the right word, but within
14 the range.

15 Q. Because in a way we'd already had a report, in 1952,
16 about maladjusted pupils.

17 A. Yes.

18 Q. So we're starting to get the idea that you could have
19 an approved school-type pupil and a facility for
20 maladjusted. But, unfortunately, as I understand it,
21 there weren't the facilities to separate that group, and
22 you might find both types, if you like, would end up in
23 one place, an approved school?

24 A. You might find that after representation from the Local
25 Authority and Probation Officers that the Juvenile Court

1 or the General Court had committed that young boy,
2 basically, to an approved school, without any further
3 consideration as to their complex needs.

4 Q. I think another expression that's used sometimes -- as
5 well as "highly disturbed" was when -- "very difficult
6 girls".

7 A. "Very difficult girls".

8 Q. It's no doubt Civil Servant speak for something a bit
9 more significant than that at times?

10 A. Yes, yes. Again, complex needs. I don't like using the
11 word "maladjusted".

12 Q. No, I know you don't. But they had a report on what --

13 A. Yes.

14 Q. And it was a term in use at the time.

15 A. It was a term in use at the time.

16 Q. So we have to understand that.

17 A. But it had moved on from using the word "maladjusted" by
18 1960. They're talking about "highly disturbed",
19 "particularly difficult behaviours from girls". That's
20 quite significant. It had moved on. And there was
21 a recognition within the SED that: okay, within the
22 scheme of things as we are, we cannot engineer the
23 courts to commit a child to a specialist hospital, for
24 instance, or a specialist residential unit because of
25 their maladjustment. We have to do it within the

1 approved schools system.

2 Q. Then, in August 1960, the proposals on approved schools
3 and revision were submitted by department, SED, to the
4 Minister and that's Mr Macpherson, Niall Macpherson and,
5 the Minister was advised that the proposed special
6 section established at Rossie for 25 boys over the age
7 of 13 did not require legislation, but that this, and
8 the addition of isolation rooms in other schools, would
9 require some amendment to the regulations.

10 He was informed that -- at least the department's
11 proposals endorsed the use of isolation rooms for the
12 detention of disturbed pupils for up to 24 hours,
13 providing it was regarded as:

14 "A cooling-off period or as a temporary means of
15 security, rather than as a punishment."

16 This is at least the department's way of looking at
17 this development?

18 A. Yes, to bring the behaviour of managers within the
19 approved school within the regulations, and within
20 something they could oversee in terms of inspection.

21 Q. Now, on the other matter that was under discussion,
22 corporal punishment, the Minister was advised that the
23 approved schools association had sought a relaxation of
24 the regulations to permit its use by classroom teachers
25 as in day schools.

1 A. Yes.

2 Q. In response to the request, department informed the
3 Minister:
4 "As there have been occasional cases of abuse in the
5 past ..."
6 See the word "occasional"?
7 A. Yes.

8 Q. "... and approved school pupils do not have the same
9 parental protection as day school pupils, we have
10 thought that present regulations should not be
11 materially relaxed, except to the extent that managers
12 might be empowered to delegate power to award corporal
13 punishment to individual teachers other than the
14 headteacher. We also propose [going over to page 74]
15 that the regulations should be amended to preclude the
16 corporal punishment of girls over 15 as in England and
17 Wales."
18 A. Yes.

19 Q. So that was the position presented to the Minister.
20 Am I right in thinking there was a further
21 consultation and discussion exercise after that?
22 A. The Minister was being asked to approve a consultation
23 exercise.
24 Q. Yes, so there was to be a further discussion?
25 A. The Minister had approved, and I think they needed

1 ministerial approval before consultation.

2 Q. So they could now say: this is what has the endorsement
3 or approval of the Minister that we're looking to do --

4 A. That's right, yes.

5 Q. You tell us that the department began the actual process
6 of revision of the regulation themselves; this is the
7 stage beyond consideration, I suppose?

8 A. They seek to develop their own proposals, which they put
9 forward to the association.

10 Q. Just in passing there, we see that in relation to the
11 matter of diet the Assistant Secretary who covered
12 approved schools, you tell us, commented he had recent
13 visited Dr Guthrie's Girls and whilst the potatoes for
14 the staff "looked palatable [as he put it] those for the
15 girls were fit for hens."

16 A. That's right, yes. That was from Norman -- later
17 Professor Walker who became a very noted criminologist.

18 Q. So he wasn't impressed by the diet?

19 A. He certainly wasn't impressed by the diet.

20 Q. I think there was some attempt then to try to introduce
21 regulation on diet?

22 A. Yes.

23 Q. At this stage.

24 A. Yes.

25 Q. There was also regard being had to recent revision of

1 equivalent rules in England, to see what they were
2 doing?

3 A. Yes.

4 Q. Because they had made quite detailed provision on
5 a number of areas, as I think you told us earlier today?

6 A. Yes, yes.

7 Q. Then, just looking at the question of diet briefly, on
8 page 75, it looks like we see again the suggestion that
9 came from HM Inspector of School Meals Services, that
10 perhaps rather than using regulation to deal with diet,
11 a memorandum of guidance on diet might be a better
12 alternative.

13 A. Yes.

14 Q. Is that basically what was being told?

15 A. Yes.

16 Q. The department seemed to go along with that suggestion.

17 A. Yes.

18 Q. And we saw that with the memorandum idea for boarding
19 out and children's homes, that memoranda were used
20 alongside --

21 A. I read that as fairly standard practice. This was the
22 person who inspected school meals generally. And,
23 basically, that was the procedure adopted for ordinary
24 day schools.

25 Q. I suppose, perhaps defending this suggestion, there

1 could be reasons why, on some matters, a memorandum is
2 easier because you can amend the memorandum or issue
3 another one. The process of changing regulations is
4 a bit more elaborate and complex, and so perhaps it
5 gives that flexibility if there is, say, a further
6 development in relation to a particular matter, that you
7 can easily change the message?

8 A. Yes. I think I would want to look at how the ordinary
9 school meals procedure was, but I'm pretty sure it
10 wasn't by specific regulation; it was by similar
11 memoranda.

12 Q. The point I'm putting, I suppose -- and I don't think
13 you disagree -- it might be in some circumstances
14 a reasonable alternative to making it a matter of
15 express regulation?

16 A. Yes.

17 Q. Because of the flexibility built into that?

18 A. Yes.

19 Q. On corporal punishment, that matter continued to be
20 subject of discussion and, indeed, I think we have, on
21 page 75, in the third paragraph or so, there is
22 an internal meeting; is it in late 1960?

23 A. Yes.

24 Q. That discusses proposed changes to the regulations on
25 corporal punishment. We see from that, do we, that at

1 that meeting, internal meeting, there is at least
2 consideration to whether corporal punishment should be
3 abolished, full stop?

4 A. Yes, yes.

5 Q. But, after considering the pros and cons, it was decided
6 to recommend that it should be permitted for all boys
7 under the age of 15 years and 4 months, and that was,
8 effectively, the school leaving age --

9 A. Yes, that's right.

10 Q. -- at that time.

11 Do we see that within the classroom it was suggested
12 that they recommend a maximum of three strokes of the
13 tawse on the hand by the teacher in the classroom?

14 A. Yes.

15 Q. That would have been a development of the previous
16 regulations, would it?

17 A. It would have been, yes, yes.

18 Q. So they were prepared to accede to some extent to the
19 idea of the headteachers that give the classroom
20 teachers some authority?

21 A. I assume that was on the basis that that was ordinary
22 practice in --

23 Q. In day schools?

24 A. In day schools.

25 Q. It says:

1 "Outside of the classroom it was to be restricted to
2 the Headmaster or deputy with a maximum of six strokes
3 of the tawse with punishment on the posterior to be
4 dropped."

5 A. Yes.

6 Q. So they were keen to get rid of that?

7 A. That's right. Any other punishment, except on the hand.

8 LADY SMITH: That was in the draft that was abandoned for
9 the 1959 Regulations, wasn't it, restricting corporal
10 punishment to tawse on the hands and not on the
11 posterior at all?

12 A. Yes, yes.

13 MR PEOPLES: I suppose at that stage, as you've just said,
14 it was trying to reflect what might be happening in the
15 ordinary day schools; that you couldn't, by the rules,
16 administer corporal punishment whether with or without
17 ordinary cloth trousers on the posterior.

18 A. That's right.

19 Q. It was also to be recommended in the case of girls that
20 it should be permitted, corporal punishment, only in the
21 case of girls who were under the age of 13, so the older
22 girls should not be --

23 A. That's right, yes.

24 Q. -- given corporal punishment.

25 So that's where matters stood at that point, in late

1 October 1960.

2 I think you tell us that draft regulations were
3 issued to the associations in December of that year,
4 which reflected the department's consideration of
5 current English rules? The representations had already
6 been made by the various interested parties and the
7 recent internal discussions that we just looked at.

8 A. Yes.

9 Q. So we see that. At the moment, we have a situation
10 where there's a bit of detail on a number of matters,
11 diet, education -- not diet, because they were going to
12 use a memorandum. Education, informative pupils,
13 corporal punishment and, indeed, they were going to
14 build in the new provision on segregation.

15 A. Yes.

16 Q. They were certainly wanting to address the question of
17 employment of pupils. You tell us, on page 76, the
18 draft was to the effect that employment of pupils would
19 be prohibited for all those under 13 years of age, at
20 school age, other than light work, such as the pupil
21 making his or her own bed?

22 A. Yes, yes.

23 Q. For those between the ages of 13 and 15 years and 4
24 months, that's while they're still at school or should
25 be getting school education, it would be restricted to

1 a maximum of one hour per day?

2 A. Yes.

3 Q. But they were prepared to allow those who were over that
4 age to be employed, but on the basis that it should not
5 interfere with any further education or with any later
6 recreation that they should be receiving.

7 A. They were highlighting education and recreation, and
8 this contrasted with the situation that occurred at
9 Rossie earlier in the period, where tattie howking was
10 permitted.

11 Q. Can I just pause there and go back to one thing I don't
12 think I covered with you for the Children's Homes
13 Regulations?

14 A. Right.

15 Q. Just to get it into the record. Before the 1959
16 Regulations were finalised and made, there was
17 an attempt, was there not, by the officials, to require
18 that children in homes should not be required to wear
19 a uniform or clothing that would show where they came
20 from?

21 A. Yes.

22 Q. To address issues of stigma.

23 A. That's right.

24 Q. That was dropped?

25 A. That was dropped.

1 LADY SMITH: Quarriers had challenged it, hadn't they?

2 A. Quarriers had challenged it, and that was, if you like,
3 inserted in the draft as a result of the Lochburn
4 disturbance, as the Lochburn girls all had to wear a
5 blue uniform, and that was felt to be extra
6 discriminatory.

7 MR PEOPLES: There was a recognition by the officials that
8 there were things, such as clothing, that would perhaps
9 raise the issue of stigma of where people were from?

10 A. That's right, yes.

11 Q. And that they wanted to avoid, so far as possible, that
12 situation arising, by saying that they should really be
13 wearing ordinary clothing, that any child would perhaps
14 wear?

15 A. If those girls, pupils, went outside on a trip, they
16 would be undistinguishable, really, from other girls of
17 their age.

18 Q. There is a recognition there that there is
19 a stigmatising effect --

20 A. Yes.

21 Q. -- of certain features, traditional features, of a home?

22 A. There is a recognition that instead of ensuring adequate
23 clothing, which a uniform provided, that in fact by the
24 1950s that was recognised outside as a sign of stigma
25 and, therefore, you were perhaps, as a child, less

1 eligible within mainstream community.

2 Q. The children in most cases in children's homes would be
3 going to local schools?

4 A. Yes, yes.

5 Q. They weren't getting schooled within the home?

6 A. They weren't getting schooled in the home.

7 Q. Can I go back to -- I digressed, but I wanted to deal
8 with that, because I don't think I covered it earlier
9 on.

10 A. Fine.

11 Q. If we go back to page 76, I think we see that the draft
12 rules that were produced included special rules relating
13 to the use of a segregation room for pupils who were
14 violent or unmanageable. So that was taking forward the
15 idea of providing this special section or room?

16 A. Yes.

17 Q. But they tried to stipulate that obviously it shouldn't
18 be too much like a cell and should have natural light,
19 be kept light at night, and have good natural
20 ventilation, and that no pupil under 13 should be
21 detained in such a place.

22 A. Yes.

23 Q. And the maximum period of detention should be 24 hours?

24 A. Yes. What they were seeking to do was to regulate the
25 issue of the Dr Guthrie's Girls being locked in

1 a cupboard without any ventilation or light and,
2 therefore, yes, you can detain, but within these
3 regulations. If you fail to do so, then you're in
4 breach of the regulations and may face sanctions.

5 Q. It may reflect, obviously, a knowledge of the fact that
6 children were locked up, but the places they were being
7 locked up were totally unsuitable for any form of
8 detention of this kind.

9 A. They wanted to regulate that behaviour by approved
10 school teachers, headteachers.

11 Q. The reason they regulated it in that way is they
12 recognised that things were being done in practice --

13 A. Yes.

14 Q. -- that they had to stop?

15 A. They --

16 Q. Or try to stop.

17 A. They had to prevent that and ensure that it was logged
18 for a start, the name of the girl or boy, the length of
19 period and how often, and for what reasons they were
20 being detained, within the school logbook.

21 Q. What they sought to do also, as we see at the top of
22 page 77, is if use was required for the same pupil for
23 longer, the managers and the department were to be
24 informed.

25 A. Yes.

1 Q. So they wanted to have a continuing involvement if that
2 situation arose?

3 A. Yes.

4 Q. But nothing is ever simple because there is a further
5 meeting between SED officials and the associations
6 representing approved schools and approved school staff
7 in February 1961, as a result of which there were some
8 significant changes, I suppose, to the draft on the
9 table?

10 A. Yes, yes.

11 Q. Despite attempts, it would appear, by those representing
12 the department to justify the rules on the table as
13 a revision to reflect modern ideas.

14 A. Yes.

15 Q. But the managers -- or the representatives of the
16 managers and staff seemed to be putting up all sorts of
17 reasons why none of this would work.

18 A. They basically reiterated the position they'd taken in
19 the early 1950s.

20 Q. Yes. They were trying to dress it up as: well, there
21 are practical problems with what you're suggesting?

22 A. Yes. The text may appear to be different, but it is the
23 same view, that they were managers and, therefore, it
24 should be left to their authority and discretion to
25 manage the school as best they saw fit.

1 Q. Because if one looks at -- for example, if we take
2 the -- you tell us, halfway down:
3 "The draft rule on a member of staff sharing meals
4 with pupils was deleted after discussion."
5 A. Yes.
6 Q. One can see there is no practical difficulty in that, is
7 there?
8 A. No, no.
9 Q. "But we want to have the choice", say the managers --
10 A. Yes.
11 Q. -- and staff?
12 A. Yes, yes.
13 Q. I suppose if you were at Dr Guthrie's you would rather
14 eat with the headmistress than the pupils?
15 A. In the staff dining room.
16 Q. In the staff dining room. Particularly if you were
17 having potatoes.
18 A. Absolutely, yes.
19 Q. There was, again, another attempt at this meeting to
20 persuade the managers and staff about the changes being
21 proposed to corporal punishment.
22 Do we see that resort was had to the argument that
23 in view of the abolition of punishment in Scottish penal
24 institutions the Assistant Secretary was saying he would
25 find no difficulty in putting proposals forward to

1 Ministers which showed no change in a 27 -- he would
2 find differently on putting forward proposals which
3 showed no change in a 27-year rule applying to approved
4 schools?

5 A. Yes, yes.

6 Q. If there had been an advance, it should be possible to
7 (inaudible) the rules. So he's trying hard?

8 A. Yes, Norman Walker is trying very hard.

9 Q. But, of course, the managers always have a response to
10 these things, and perhaps they attempt to take the sting
11 out by say: well, they agreed with the general trend
12 towards trying to abolish corporal punishment and indeed
13 were seeking to work to that end; that is the message?

14 A. Yes.

15 Q. But the different age range in schools meant there would
16 be practical issues in the rules' implementation. That
17 might be: no, we're not going to agree to that at this
18 stage?

19 A. Yes.

20 Q. But maybe giving the impression that they would do all
21 they could to reduce and ultimately, hopefully,
22 eliminate corporal punishment? Giving the impression.

23 A. Giving the impression that they were moving towards it.
24 But I think last sentence in the quote, 331, is highly
25 pertinent.

1 Q. I'm going to come to page 78 and what is quoted because,
2 first of all, I think there was an attempt to
3 distinguish penal institutions from approved schools.

4 A. Yes.

5 Q. That was one argument?

6 A. Yes.

7 Q. The minute of the meeting noted:

8 "The approved schools were said to be quite
9 different from borstals, being much more of a family
10 community. The Headmaster in a senior approved school,
11 however, was very much in charge because of his power to
12 punish. Retribution needed to be swift for bullying,
13 violence, or threat of the violence; and immediate
14 corporal punishment was the only real remedy. The
15 personal relationship between the boy and the Headmaster
16 would stand up under a thrashing [and we note the word],
17 but would probably break down under detention
18 centre-type of punishment. The stopping of the home
19 leave as a punishment could easily put back the work of
20 rehabilitation. A good beating given immediately was
21 far kinder than the stopping of home leave."

22 A. Yes.

23 Q. It's quite surprising to read that being put quite in
24 those terms --

25 LADY SMITH: And it's recorded in the minute.

1 MR PEOPLES: I'm going to say: is the case the department
2 wanted to record that?

3 A. I read that minute and my view is that Norman Walker
4 wanted that fully recorded, his absolute objection to
5 continuing with corporal punishment. But wanted to make
6 it clear in the minute for posterior(sic) that this the
7 view of managers of approved schools.

8 Q. Yes, so he was putting it down, on the record.

9 A. He was putting it down on record for our benefit,
10 really.

11 Q. Fortunately, as it turns out, the record was retained.

12 A. The record was retained, yes.

13 Q. So we have that. Of course, the upshot was that in
14 light of what was being said the Assistant Secretary
15 agreed to report back to the Ministers the views of the
16 associations that existing corporal punishment rules
17 should be maintained.

18 A. Yes.

19 Q. So it went back to the Minister. He's told that broadly
20 speaking there seems to be a consensus on most matters,
21 but that the department could not reach any agreement
22 with the associations on the matter of corporal
23 punishment.

24 As you put it:

25 "They stated in defence of the department's proposed

1 rule that corporal punishment was abolished some time
2 ago as a sentence of the courts and, as a method of
3 enforcing discipline in penal institutions, is allowed
4 only in remand home and English prisons. No form of
5 corporal punishment is permitted in borstals or
6 detention centres, that's for the young people."

7 And:

8 "The Scottish Home Department says that this causes
9 no disciplinary difficulties"

10 "On the other hand, the use of the tawse on the hand
11 is now an accepted instrument [going to page 79] of
12 discipline in the Scottish Education System (of which
13 the approved schools are part) although it's not
14 generally considered appropriate in the case of older
15 pupils, especially girls."

16 So that was what the Minister was being told?

17 A. Yes.

18 Q. Does that, to some extent, attempt to continue to press
19 the argument? Is that being driven by Norman Walker?

20 A. He would have drafted -- his division would have drafted
21 it. It went to the Department Secretary, Mr Arbuckle.

22 Q. It's not Arbuckle's draft?

23 A. No, but the fact is he submitted it, therefore he's
24 agreeing with it. I would like to make a distinction
25 now between official policy, that is the policy of

1 officials, and policy of Ministers. And what we have
2 here is the policy of officials within a department,
3 which is against the use of corporal punishment in
4 approved schools.

5 Q. We see, in the same submission to the Minister, that it
6 sets out what appears to be the basis of opposition by
7 the associations to the proposed rule that is being put
8 forward by the department.

9 A. Yes.

10 Q. And I quote:

11 "In the first place, it is considered that until the
12 approved numbers to be accommodated in each school are
13 reduced to manageable proportions, whereby the
14 Headteacher and the staff of the school will be in
15 a position to deal with the pupils committed as
16 individuals and not as groups, or even as a mass, as
17 must needs be the case at present, it would not be in
18 the best interests of the school, staff or pupils to
19 attempt to maintain discipline under the new rule ...
20 the association ... will make every effort to work
21 toward the desired end provided there is no change in
22 regulation 31, until some action has been taken in the
23 roles and specialisation."

24 So there we see, do we not, that the schools,
25 approved schools, are invoking, firstly, overcrowding --

1 A. Yes.

2 Q. -- and the existing approved number of places as
3 a reason not to introduce these new rules?

4 A. I think what is also significant is that the submission
5 included that particular text, which came from the
6 association direct to the Minister. So what department
7 is saying is: look, our view is different. It's up to
8 you, Ministers, to decide.

9 Q. So he knows there is a clear division --

10 A. Yes.

11 Q. -- on the matter?

12 A. Yes.

13 Q. Although he may have taken comfort, and probably did
14 take comfort, in the last part of that quote; that
15 they'll make every effort to address the situation?

16 A. Well, they said that in the early 1950s.

17 Q. Well, indeed.

18 A. Yes.

19 Q. But they're saying it again here.

20 A. Yes.

21 Q. I think, as you'll tell us, broken promises?

22 A. Broken promises, yes.

23 Q. In the 1960s.

24 Now, the Ministers view now we see, do we not, he
25 accepts the submission on the issue of corporal

1 punishment, and, again, I think we should just quote
2 this:

3 "I can't see much importance in the suggestions
4 about the number of strokes or portions of the anatomy."

5 So he's not concerned too much about the posterior
6 of corporal punishment:

7 "Nor do I feel too worried about not changing our
8 attitude until we have adequate facilities to do better.
9 If we act against the advice of the approved school
10 association ... and they have trouble, we will feel very
11 silly indeed. I am in favour of the continuation of the
12 1993 rules and of leaving the present situation alone
13 until the schools are in better shape."

14 That is the political judgment.

15 A. The political judgment is no change.

16 Q. He sides with the association?

17 A. Like on the rules and regulations for children's homes.
18 He recognises that there is substantial opposition.

19 Q. Perhaps we get another reason that is perhaps not
20 uncommon one in this sort of situation; when the matter
21 comes before the Secretary of State, Jack Maclay, then
22 it's noted that:

23 "Ministers stressed the political awkwardness, at
24 the present moment, of changing the present rules in the
25 face of opposition from the Approved Schools Association

1 themselves, although the Secretary of State was prepared
2 to give further consideration to minor changes, such as
3 restricting corporal punishment in girls' schools to the
4 junior schools."

5 A. Yes.

6 Q. Political awkwardness wasn't just the opposition of the
7 association, was it? It was a wider --

8 A. There was a significant movement amongst the
9 Government's backbenchers led by the Scottish MP for
10 eight burghs.

11 Q. So he had his backbenchers --

12 A. Proportion of the backbenchers who were not in favour of
13 any relaxation within the area of the criminal justice
14 system.

15 Q. They were the "spare the rod, spoil the child" faction?

16 A. Yes, yes.

17 Q. So are we seeing, essentially, political considerations
18 being put first, rather than the best interests of
19 pupils?

20 A. Yes.

21 Q. The Secretary of State then, if we go to page 80, adds
22 that he wishes to discuss the existing and the proposed
23 rule with the Home Secretary, to ensure that the regimes
24 north and south of the border should be in step?

25 A. Yes.

1 Q. He signs a letter to Rab Butler?

2 A. That's right.

3 Q. Who was the Home Secretary of the time. In which he
4 says he wished to see a reduction of the use of corporal
5 punishment, especially in girls' schools. But wanted to
6 avoid a public disagreement with the Staff Associations,
7 such, he noted, might focus attention on one limited and
8 controversial aspect of Approved School management.

9 A. Yes.

10 Q. So he's certainly making his views clear as to what he
11 would like the reply to say.

12 A. He's indicating: please get me out of this difficulty.
13 Knowing that Rab Butler was perhaps a more liberal
14 politician in his views on such matters.

15 Q. He is certainly saying: I don't want to get into
16 a public spat?

17 A. I don't want to get into a public spat, yes.

18 Q. For lots of reasons, no doubt. As you tell us, you say
19 there indeed what the political awkwardness was, and
20 you've told us about that on page 80.

21 Indeed, at that stage, there were a number of MPs,
22 backbenchers, who were wanting to introduce judicial
23 corporal punishment into the system?

24 A. That's right. Re-introduce it.

25 LADY SMITH: Back to birching.

1 A. Yes, yes.

2 MR PEOPLES: He was facing quite a different situation at
3 the time?

4 A. Yes.

5 Q. So we see then that when the reply comes back from the
6 Home Secretary, Rab Butler, foot of page 80, he agreed
7 with Maclay that any change to the corporal punishment
8 rule of Scotland should seek to avoid public
9 controversy, so he gives them what he(sic) wants.

10 A. Yes, yes.

11 Q. And the basis that it did not command public sympathy?

12 A. Yes.

13 Q. But noted that corporal punishment in Scottish approved
14 schools was substantially greater than in England.

15 So he's still drawing attention to a concern he has
16 about the incidents in Scotland, but he seems to be
17 prepared to live with the Secretary of State taking the
18 course that he wanted to take.

19 A. I think he's pointing out that the regime in Scotland
20 was significantly, shall we say, harder.

21 Q. If we go over the page, we see why he says that. At
22 page 81, there is a table. If we look at the relative
23 figures of corporal punishment per 100 boys and girls,
24 it's quite a difference in terms of the numbers. If we
25 take, for example, in 1960, for boys in all schools in

1 England and Wales, the total is 57.

2 A. Per 100 boys.

3 Q. Per 100.

4 A. Yes.

5 Q. In 1960, the equivalent for all schools?

6 A. In Scotland, was --

7 Q. It says 203, so is it the numbers, rather than the --

8 A. It's the number. It's 203 incidents of corporal
9 punishment per 100 boys.

10 Q. It's the number of incidents per 100.

11 A. Yes.

12 Q. I see.

13 A. The application of corporal punishment is four times
14 rate of England for boys.

15 Q. For every 100 boys, there's four times as many incidents
16 of administration of corporal punishment?

17 A. Yes, being entered into the register of corporal
18 punishment.

19 Q. That's what is entered into the register and,
20 presumably, what's entered into the register would
21 normally, at least on the face of it, be a punishment
22 that would comply with the rules in terms of six strokes
23 on the posterior?

24 A. That's right.

25 Q. Three strokes on the hand?

1 A. Yes.

2 Q. And whatever. That would be the normal entry?

3 A. But what that's indicating is that the boys were
4 significant -- were being punished more frequently in
5 Scotland than in England.

6 Q. If we go on -- and this is another interesting minute
7 that's survived:

8 "The Secretary of State noted the Home Secretary's
9 reply and minuted ..."

10 It's interesting language:

11 "... I am reluctant to alter anything against the
12 views of those responsible for looking after the inmates
13 (little brutes) except that it must be wrong to deal
14 with older girls in a way which may stimulate the cause
15 of their incarceration."

16 A. Yes.

17 Q. It's quite a strange comment to make.

18 A. I -- that particular quote has been known for some time,
19 since actually this record was opened, way back in the
20 1990s. I take it that was designed to quell any
21 rebellion.

22 Q. It's what the rebels wanted to hear.

23 A. It's what the rebels wanted to hear. But he insisted
24 that older girls should be treated differently.

25 Q. What do you think he was trying to convey by

1 "stimulating the cause of their incarceration"?

2 A. I'm not sure. It may well be that he felt that their
3 incarceration -- this sort of form of treatment was not
4 appropriate for older girls, that greater assistance and
5 help should be given in terms of personal support,
6 rather than the continuation of, effectively, beatings.

7 Q. Is this because, at that time, many boys would go to
8 approved schools because they were young offenders?

9 A. Yes.

10 Q. But many girls would go because they were in need of
11 care and protection for various reasons?

12 A. Yes.

13 Q. So they might be in a different situation --

14 A. Completely different.

15 Q. -- and the measures that should be used for that
16 category should not be ones that would be inappropriate
17 because they're getting more of the same sometimes,
18 perhaps?

19 A. A different form of moral education was required.

20 Q. And a different form. Because one reason they might be
21 there is perhaps, also, they were seen as promiscuous?

22 A. Yes. Therefore, the approach to their care and
23 protection should take a different form than for the
24 boys concerned.

25 Q. He didn't seem to have the same sympathy for the boys

1 that were in schools.

2 A. I think he knew he couldn't get that through Parliament.

3 Q. This is an internal minute. It's not a public statement

4 or Parliamentary statement.

5 A. I think that was written in a way which it would be

6 conveyed to his backbenchers. I don't think it was kept

7 a secret at the time.

8 Q. No. Okay. I follow.

9 Now, that led to a revised proposal and, as you

10 summarise it, this effectively retained the 1933 Rules

11 for Boys on Corporal Punishment?

12 A. Yes.

13 Q. With the proviso, except in the classroom, that another

14 adult should witness the punishment and no boy should

15 assist the person inflicting the punishment.

16 These were no doubt advances and, on the face of it,

17 seemed reasonable changes, but they're not really

18 addressing the fundamental issue.

19 A. No, no.

20 Q. On corporal punishment for girls, I think they were

21 mindful, the department, of the restriction to those

22 under the age of 15?

23 A. Yes.

24 Q. The school age, effectively?

25 A. Yes, yes.

1 Q. What they said at the time, after the Ministerial view
2 was expressed:

3 "The revised rule in relation to girls, which was
4 discussed with the association proposed to abolish
5 corporal punishment for girls altogether."

6 It says:

7 "In practice it's already obsolete in Catholic
8 girls' approved schools and rare in any others except in
9 Dr Guthrie's Senior Girls' School where it has been
10 disquietingly frequent."

11 A. Yes.

12 Q. So they're probably saying it would appear that in
13 practice it's not being used a lot anyway, so it's not
14 going to create a problem to get rid of it, for older
15 girls?

16 A. You can see that from the figures. Although it was
17 for -- for all girls it was twice the rate -- just more
18 than twice the rate as in England. It was substantially
19 lower than that for boys.

20 Q. If we go over to page 82, we see that the department was
21 recommending use should be restricted to junior schools
22 where girls under the age of 13 were sent, even though
23 they could attain the age of 15 before they left those
24 schools.

25 A. Yes, yes.

1 Q. I'm not sure I follow the next bit, because why did
2 Maclay respond to this submission before the Minister,
3 Brooman-White, minuting:

4 "I think we must stop the caning of older girls for
5 the most explainable if not publishable reasons."

6 Caning wasn't permitted anyway under the 1933
7 Regulations?

8 A. I don't think he knew.

9 Q. That's not very -- that's not much confidence, that he
10 had no idea.

11 A. It goes back to what I said earlier about the previous
12 Parliamentary Under-Secretary of State. I'm not sure
13 they were really aware of the brief that they held.

14 Q. I think you're right. Because if we go to see
15 Brooman-White, does he say something:

16 "I would personally prefer to leave the Scottish
17 rules, even for the caning of girls alone."

18 So he didn't seem to be any better informed?

19 A. Yes.

20 Q. Which may bear out the point you made to me earlier,
21 about knowledge and his experience of the system.

22 A. Yes.

23 Q. Brooman-White says:

24 "As the public fuss any measure of corporal
25 punishment now arouses seems out of all proportion to

1 its intrinsic importance either way."

2 If I was in the approved school listing to that
3 statement, I wouldn't have been very happy, would I?

4 A. No. But, at this stage, in July, although the vote, the
5 backbench vote had been lost, there were still
6 rumblings. Therefore, I took that to be that he wanted
7 it completely closed down.

8 Q. If I can just say for the transcript: under the 1933
9 Regulations, corporal punishment in girls' schools could
10 only be inflicted on the hands up to a maximum of three
11 strokes, and in boys' schools it could be inflicted on
12 the hands or the posterior over ordinary cloth trousers.
13 Where it was inflicted in either case, only a light
14 tawse was to be used?

15 A. Yes.

16 Q. And the use of a cane was expressly forbidden?

17 A. Yes.

18 Q. Under regulation 14.

19 A. That's right.

20 Q. So this is where it ends up. Indeed, new rules were
21 finally approved on 17 November 1961, after perhaps
22 a process that took over 10 years.

23 A. Yes.

24 Q. From start to finish. In the end, I suppose it could be
25 said the schools largely got their way as regards

1 corporal punishment?

2 A. I think you probably have to go back to 1949 Criminal
3 Justice (Scotland) Bill. So it was -- how many years?
4 13 years of discussion on amending the 1933 Regulations,
5 which ended up with very little change.

6 Q. It seems in both the section you dealt with of
7 children's homes and Boarding Out Regulations and the
8 section dealing with approved schools that institutional
9 power was considerable?

10 A. I think that's probably a correct assumption to make.

11 Q. Can I turn to the next section very briefly? This is
12 a section headed:

13 "Children's homes and approved schools' visits by
14 Scottish Office Ministers and Officials 1973 to 1974."

15 I don't want to spend too much time here. Can
16 I maybe make point that I -- perhaps my experience from
17 another case study suggests that occasions like this,
18 generally speaking, then and now, I suspect, would be
19 carefully orchestrated and special notes would be
20 written for the Minister visiting --

21 A. Yes.

22 Q. -- to have at his or her disposal, and no doubt for
23 making any public statement they felt was appropriate,
24 if the matter was being covered by the press, for
25 example?

1 A. Yes. For Ministers, I would certainly say that was the
2 case, that everything had to be staged managed. But
3 I would draw your particular attention to page 87 and
4 the statements made by the Parliamentary
5 Under-Secretary, I think it was James Henderson-Stewart,
6 twice.

7 Q. Yes. This is from the -- Henderson-Stewart was?

8 A. The Parliamentary Under-Secretary of State, 1951 to
9 1957, who had responsibility for approved schools.

10 Q. You have a couple of quotes from him on page 87. In
11 a speech delivered early in his tenure in that period,
12 he was saying:

13 "If there is any prison atmosphere in the ordinary
14 boarding school system then it might be possible to
15 level that criticism also at the Scottish Approved
16 Schools for the atmosphere and indeed the methods are
17 very similar."

18 A. Yes.

19 Q. "There is control but also freedom; there is supervision
20 but no bolts and bars; there are rules but also
21 opportunities to develop initiative. The house system
22 is adopted in many schools, team games are encouraged,
23 youth organisation, cadets, pipe bands and the like are
24 developed."

25 It's a very mixed message that?

1 A. It is, but then you look at the next quote --
2 Q. You then say that he attends a conference for the
3 Approved Schools Association four years on, and you say
4 that the speech notes stated that his experience of
5 visiting the schools had left him with very pleasant
6 memories and he had formed a high regard for the work of
7 the staffs, who he thought were tackling the most
8 difficult problems with enthusiasm and skill. You say
9 that later, the notes commented specifically on corporal
10 punishment, and I quote:

11 "I wonder how many of the general public realise
12 that corporal punishment, for example in the approved
13 schools, is probably less frequent and certainly under
14 stricter control than in ordinary day schools. My
15 impression of the schools was that they provided
16 a stable and kindly environment in which the pupils are
17 taught to work and to play with zest and in harmony with
18 each other."

19 It's a sort of public relations statement that would
20 no doubt be issued by a children's home to try to
21 attract donations?

22 A. Yes, but it's coming from a minister who held
23 responsibility for that area.

24 Q. He seems to have been able to say that before he -- this
25 is written for him. He's not saying, on the basis of

1 the evidence over the three years, that this is
2 something that he can say is an evidence-based
3 statement. There is nothing to suggest that.

4 This is just a public statement to give confidence
5 to those in the association and anyone who hears the
6 report of the conference.

7 A. But it is written for him on the basis that it is his
8 view.

9 Q. The officials have to reflect his view?

10 A. Yes.

11 Q. Not their view?

12 A. It's not necessarily their view, because we already know
13 that they tried desperately to get passed him a change
14 in the regulations in 1953, and he's reiterating, in
15 1956, that he's quite happy with the regulations as they
16 stand.

17 Q. As you put it, towards the penultimate paragraph,
18 effectively the Minister, Henderson-Stewart gave the
19 approved school system ministerial support?

20 A. That's right, yes.

21 Q. I suppose that chimed with the 1955 circular: no major
22 change?

23 A. Yes. I think it's what I've commented on earlier, that
24 in the 1950s there was no real attempt to alter the
25 approved school system.

1 Q. At page 88, do we see, however -- which may bear out
2 what you just told us about the difference between the
3 Minister's position and officials -- the
4 Assistant Secretary of the SED Division covering
5 approved schools -- this is in Balgay twice -- one some
6 time after 1945, and the second time around 1952, on
7 both occasions he reported that he had:
8 "Formed no high opinion of the headmistress."
9 So he wasn't impressed by --
10 A. The headmistress was actually suspended and dismissed.
11 Q. Balgay was a girls' approved school?
12 A. That's right, yes.
13 Q. Page 89. We'll just see, also, another official, is it?
14 Who -- is it the same one? The Assistant Secretary; is
15 it the same person?
16 A. No, Assistant Secretary, that was a Mr Roger, the SED
17 Secretary --
18 Q. I'm looking at the passage that says in 1963 the SED
19 Principal, who covered remand homes, visited
20 Lanarkshire's remand home at Cambuslang?
21 A. Yes.
22 Q. "The home, which had a sanctioned roll of 18, held over
23 30 [ie overcrowded, substantially] and the official
24 minuted he was 'disturbed' and alarmed at the inadequate
25 staffing, the overcrowding leading to a number of

1 teenage boys 'hanging around unoccupied and bored'."

2 A. Yes. What I'm trying to bring out here is that, yes,
3 when Ministers visited it was certainly stage managed.

4 When officials visited, it was less stage managed.
5 They were there as part of their learning experience.

6 And certainly when a new Assistant Secretary was
7 appointed to oversee approved schools, one of their
8 first job was to actually visit an approved school.

9 Q. It seems to have been a sharp learning curve for
10 an official from the east in 1963?

11 A. Yes.

12 Q. To go to Cambuslang, to a remand home --

13 A. Yes.

14 Q. -- it's a bit of an eye-opener?

15 A. A bit of an eye-opener. Just to make sure they
16 understood the business of which they were engaged.

17 Q. And the problems of that business?

18 A. And the problems, yes.

19 Q. Can I turn to section 5? We have covered quite a lot of
20 the themes that I think we'll see here, and some of the
21 problems. But now we can look at some of the examples
22 and issues that are raised through inspection reports in
23 the period covered by your overall report, 1945 to 1974.

24 You have sought to identify, from the records,
25 matters such as official concerns, changing attitudes,

1 if you can, towards care and how issues that came to
2 their attention were responded to at official and
3 ministerial levels, if the matter came to the latter.

4 You describe section 5 as:

5 "Official and ministerial knowledge and
6 consideration of unsatisfactory care, neglect and abuse,
7 1945 to 1974."

8 You tell us, in the opening page, page 93 that:

9 "This section covers Scottish Ministerial and
10 official knowledge and consideration of unsatisfactory
11 care, neglect and abuse insofar as it concerned the care
12 provided within approved schools, children's homes or
13 foster care or where a child was under supervised care
14 at home."

15 So that's really the purpose of this section.

16 A. Yes.

17 Q. Can I move over to page 94? Do we see that you include
18 a comment from an SED official, in 1958?

19 A. Yes.

20 Q. This will be about approved schools, is it?

21 A. Yes.

22 Q. It says:

23 "I think we have a much higher proportion of our
24 juvenile population in approved schools than have the
25 English."

1 I think we saw the table bears that out:

2 "This may reflect greater degree of original sin or
3 merely a less efficient probation service or a greater
4 willingness by courts to have children put away."

5 A. Yes.

6 Q. You go on to say that the SED were already aware that
7 Glasgow Stipendiary Courts appeared to be ignorant of
8 the facilities offered by the city's childcare service,
9 and you say:

10 "Looked on placing in an approved school as a form
11 of childcare."

12 A. That's correct.

13 Q. I suppose that the primary purpose, even then, in terms
14 of the official legislation and regulation was education
15 and training, rather than a childcare institution?

16 A. It was education and training in a moral atmosphere.

17 Q. But it wasn't a childcare facility, in the sense we
18 might understand today?

19 A. No, no. The important thing is that minute was written
20 by the Assistant Secretary, who held the brief for
21 approved schools.

22 Q. So he was in a good position to write this?

23 A. He was in a very good position to write it. He's
24 writing a statement saying: I don't much like this
25 particular brief and the way it has developed.

1 His successor, of course, was Norman Walker, and his
2 successor was David Cowperthwaite, and the court -- on
3 page 93, which was written after he had retired, but
4 with a foreword for that book written by the then
5 Permanent Under-Secretary of the Scottish Office.

6 Q. Sir William Kerr???

7 A. Sir William Kerr, yes.

8 That is, if you like, as close as you'll get to
9 an official comment on the issues that are emerging in
10 childcare generally and also in the approved school
11 system; that there was an issue with the way that --
12 a systemic issue with the way that children in need of
13 care and treatment were looked after in Scotland.

14 He's basically saying: we are reflecting, basically,
15 what the Assistant Secretary said in 1958, that we are
16 putting far too many children in approved schools.

17 Q. And that the system that we are putting them in is
18 fundamentally flawed?

19 A. Fundamentally flawed. So what it is saying is the
20 system is, in academic language, basically abusing
21 children who need care and attention.

22 Q. Moving to page 95, you divide this section into two
23 broad parts for approved schools on the one hand,
24 between 1945 and 1961, and then you will look at them
25 for a later period, 1964 to 1974, which is the end of

1 the period you report.

2 A. Yes.

3 Q. You also do a review of children's homes from 1945 to
4 1959, and then in the period 1959 to 1974. The reason
5 you have chosen those periods is that 1961 is when the
6 new rules for approved schools come in?

7 A. Yes.

8 Q. And 1959 is the year in which the new Children's Homes
9 Regulations come in for the first time?

10 A. And, broadly speaking, corresponds with the increase in
11 the number of Inspectorates for both sectors.

12 Q. As well?

13 A. As well, yes.

14 Q. Although that was a response to disturbances and
15 problems in the late 1950s.

16 A. That's right, yes.

17 Q. Can we see, before we look at the inspection report as
18 such and what was being highlighted and brought out, you
19 have used various terms at start of the section,
20 "unsatisfactory care" and "elect abuse". I think what
21 you're trying do is to look at contemporaneous reports
22 and try to identify what constituted unsatisfactory
23 care, whether they ever used the term "abuse", whether
24 they ever used "neglect" and, if not, how they
25 formulated the matter; is that a fair description of

1 what you're trying to achieve?

2 A. For this section, what I sought to do was to look very
3 carefully at the phraseology used by officials when
4 considering particular reports that were coming their
5 way, and the extent to which they used particular words,
6 whether it was "neglect", "damage to children" or
7 "abuse".

8 Q. Can I say this -- the impression, and we can look to see
9 whether it's borne out by your section -- there's
10 a focus often in the word "satisfactory" or
11 "unsatisfactory" or "acceptable" or "unacceptable",
12 rather than the other terms, "abuse" and "neglect".
13 Often it would appear whether an institution, at that
14 time, was seen as providing unsatisfactory standards of
15 care was largely determined by reference to existing
16 regulations and what they provided?

17 A. The reason I wrote the sections on the regulations was
18 these were -- the rules and regulations and the
19 legislation were the parameters under which Officials
20 and Inspectors had to operate. Therefore, one must mind
21 that they were being careful, even in confidential
22 reports as to how they reported particular events.

23 Q. I suppose the difficulty, which has now doubt arisen out
24 of the evolution that resulted in the regulations that
25 were put in place in 1959 and 1961, is that in many

1 respects these regulations were not explicit as to what
2 would or would not constitute satisfactory care?

3 A. Yes.

4 Q. That made problems for Inspectors because if it couldn't
5 be directly linked to a regulation, or clearly linked,
6 then they had to be careful how they responded to what
7 they saw, because they couldn't just come out and say:
8 this is a clear breach of the regulation, in some
9 instances.

10 LADY SMITH: If there was no regulation.

11 MR PEOPLES: Or if the regulation was couched in broad terms
12 that didn't define what was embraced by a particular
13 requirement; is that fair comment?

14 A. That is a fair comment. Therefore we see the words
15 coming in "in modern times"; right? We have moved on.
16 And so there is an element of persuasion, once they see
17 unsatisfactory care being provided, they seek to
18 encourage the manager of the institution or the
19 Headteacher or the governor of the children's home that
20 the way forward is.

21 Q. Except -- yes, I follow that. But I suppose the
22 difficulty for them was that if you go back to the
23 Approved School Regulations and don't have any
24 sanctions, other than the ultimate sanction of closing
25 it down, for example, you've not too much at your

1 disposal, other than the power of persuasion and the
2 power of financial pressure, if you fund the particular
3 type of setting.

4 A. You have the ability to, through financial inducements,
5 to encourage a change. You have the ability to release
6 funding for teachers, as opposed to ordinary work
7 people, to provide assistance. And my reading of the
8 position after 1959 Regulations concerning voluntary
9 homes, and also certainly after 1961/1962 for approved
10 schools, that the basis of discussion with managers was:
11 well, we have moved on, haven't we?

12 So there was an element of persuasion once you saw
13 infraction, even minor infraction, which could not be
14 called infraction, but, basically, was poor care.

15 LADY SMITH: So are you saying, in a way, that even where
16 these Inspectors don't use the express language of abuse
17 as to what has happened in the past or what it will be
18 if you carry on, they may in fact be identifying
19 a problem that needed to be addressed in some way
20 because it was an abusive practice?

21 A. Yes.

22 LADY SMITH: Thank you.

23 A. There is a phrase I use later on from the
24 Assistant Secretary of Social Work Services Group
25 Childcare Section, where she talks about "damage to

1 children". She is not talking about abuse. She is
2 talking about damage to children. That is the first
3 occasion I've come across a more explicit reference to
4 abuse within the text.

5 MR PEOPLES: So if I can go on then to page 96 to start
6 looking at perhaps some of the examples?

7 A. Yes.

8 Q. The first area you touch on is the dismissal of staff by
9 managers in the approved school system, that's at the
10 top of page 96.

11 You give us examples of where that did happen, at
12 Balgay in 1945, a case involving alleged assault by
13 a gardener against a pupil. Another one at
14 Whittingehame, which was listed as misconduct by a clerk
15 towards pupils, though. You say that the SED appeared
16 to be informed verbally, that it was the result of
17 improper conduct with boys in the school?

18 A. Yes.

19 Q. So we see examples that are also coming to the attention
20 of the department. Can I say this: looking at your
21 report, there appears to have been some reluctance, and
22 we see it there with the Whittingehame example to record
23 in any detail the nature of the conduct or misconduct in
24 question of staff or employees towards pupils to spell
25 that out. Occasionally it's done, but not very often;

1 is that fair comment?

2 A. It's a fair comment.

3 LADY SMITH: Professor Levitt, I see in the footnotes that

4 the references to lists of staff dismissed for

5 irregularities; is that a heading on the list that was

6 a contemporaneous heading, or is it a heading that's

7 been added later on?

8 A. It's the list on top of the file.

9 LADY SMITH: In those cases, for instance, say it was a 1940

10 list, it would have been a 1940 file headed, "List of

11 irregularities"?

12 A. It's one big file, and all that they're doing is adding.

13 MR PEOPLES: There is an NRS file covering the period from

14 1949 to 1971 with the title "unsuitable staff".

15 A. Yes, that's right.

16 Q. Within that file -- I can't remember how many pages it

17 is -- there are a number of examples, and there are from

18 time to time handwritten lists of dismissals -- to some

19 extent, what the basis or reason was and so forth. So

20 they were keeping a file of sorts.

21 A. They were keeping two files. This file deals with

22 approved school staff. That other file is dealing with

23 teachers.

24 LADY SMITH: Who is the "they" that was keeping this file?

25 A. Scottish Home Department.

1 MR PEOPLES: And there would be a similar SED file --

2 A. Yes.

3 Q. So they had a file with information --

4 A. Yes.

5 Q. -- about dismissals that might be of interest for one
6 reason or another, whether it was to do with financial
7 mismanagement or impropriety, or conduct towards pupils
8 or residents in children's homes?

9 A. The file concerning teachers was effectively a file to
10 advise potential employers for the schools, the nature
11 of the dismissal of that person. And, therefore, it
12 could be considered to be unsuitable to be employed
13 again as a teacher. And that was the list carried on
14 throughout the period, except there's only fragments of
15 it.

16 Q. Why were they keeping the other list?

17 A. This other list, for staff, was, if you like,
18 an internal list, concerning all staff, not just
19 teachers.

20 Q. So they were keeping it as an internal list, but not
21 necessarily sharing the information with the outside
22 world?

23 A. The teachers' one was shared with potential employers.

24 Q. It's the latter one, the other one --

25 A. No, that was purely internal.

1 Q. So the one about teachers was kept and used for the
2 purposes of sharing information about unsuitable
3 teachers?
4 A. Across the whole of the UK.
5 Q. Across the whole?
6 A. Yes. Whereas this one was a purely internal Scottish
7 file, noting as to who was -- who had been dismissed,
8 basically.
9 Q. But you couldn't see any evidence that the information
10 that was collated, albeit in a somewhat -- not
11 a particularly systematic way, was necessarily being
12 shared with others?
13 A. This list for approved school staff generally, no.
14 LADY SMITH: Mr Peoples, we'll stop there for the lunch
15 break, Professor Levitt, and I'll sit again at
16 2 o'clock. Thank you.
17 (1.02 pm)
18 (The luncheon adjournment)
19 (2.00 pm)
20 LADY SMITH: Good afternoon, Professor. Are you ready to go
21 on?
22 A. Yes.
23 LADY SMITH: Thank you. Mr Peoples.
24 MR PEOPLES: Good afternoon.
25 This morning we finished, before lunch, on looking

1 at some dismissals of staff in the earlier part of the
2 period covered by your report.

3 Just before lunch, you mentioned that we were
4 discussing the topic of unsuitable staff. Just so
5 I'm clear: you were able to locate two files, an NRS
6 one, being a file relating to effectively, I think,
7 teaching staff who were considered for one reason or
8 another unsuitable, and the information collated was
9 passed to third parties?

10 A. Yes.

11 Q. In the context of teaching.

12 A. Yes.

13 Q. There was another file which was an internal file, which
14 simply related to all staff and had some information
15 about their suitability or unsuitability, as the case
16 may be?

17 A. Yes, that's correct.

18 Q. Just to follow that up, just to help me, if you look at
19 page 98, footnote 433, that's referenced to an NRS file
20 ED15/322, "List of staff dismissed for irregularities
21 1937 to 1950"; is that the teaching file?

22 A. No, that's the approved school file.

23 Q. So the other one -- there will be another NRS file?

24 A. Yes.

25 Q. Is it an ED/15 series?

1 A. It's the ED/53/200 series. If you go to -- it's
2 footnote 434. The very last.

3 Q. I see. I have you.

4 A. ED/53/200, case 243, and it's an extremely large file,
5 as it covers the UK.

6 Q. So it's not just a Scottish --

7 A. No, no. There was an agreement between the Home Office
8 in respective education departments to share the
9 information.

10 Q. Because ED/15 sees -- is essentially about approved
11 schools.

12 A. Yes.

13 Q. Whereas ED/53 is probably a different general title?

14 A. Yes. That's right, yes.

15 Q. I have you. That's fine.

16 Sometimes there was reference, I think, in files to
17 what was described as a sort of black list.

18 A. The black list is ED/53/200.

19 Q. Whenever we see something like that, that's probably
20 what they're --

21 A. Yes.

22 Q. Whereas the other one, there simply happens to be
23 information, internally, about people who were
24 unsuitable?

25 A. I took it that series, the list of irregularities, was

1 kept simply because the department had to keep a list of
2 staff for accounting reasons, as it contributed --
3 50 per cent of the cost was coming from the Government.

4 Q. Am I right in thinking that there was at least
5 a discussion about whether that information, like the
6 teaching staff arrangements, should be -- or at least
7 the teaching staff arrangements should be extended to
8 all staff, so that certain people would get to know
9 about dismissals of that kind.

10 A. That's right, yes.

11 Q. I don't think it ever crystallised ever into a formal
12 arrangement?

13 A. Not until the 1880s -- sorry, 1890s. When you saw
14 a common criminal database emerge.

15 Q. In terms of the teaching arrangements, yes, there was
16 an establish -- arranged for the UK, involving the Home
17 Office and the relevant Scottish departments?

18 A. Yes.

19 Q. But, in the case of other staff employed, for example,
20 in either approved schools or some other setting, there
21 was no equivalent arrangement around this time?

22 A. No.

23 Q. But there was discussion about the possibility?

24 A. There was discussion about the possibility, yes.

25 Q. That's fine. I think I see that.

1 I'm going to look at some of the examples that you
2 picked out. I'm going to be selective, because some
3 I'll take today, but we have the whole report, it's
4 published, so we can read them for ourselves.

5 I'm conscious of the time. That's the way
6 I probably plan to deal with it this afternoon.
7 I'll just mention briefly that you do mention a case at
8 Rossie in 1949. All I would say is that's not a case of
9 physical abuse or the equivalent, but it seems to relate
10 to manual work on farms by pupils and an issue of
11 retention of the earnings by the Headmaster?

12 A. Yes. I think it would be called abuse, because it was
13 the misuse of the funds that the boys had accumulated,
14 therefore it was abuse.

15 LADY SMITH: It was abuse of the children's trust.

16 A. Yes, that's right.

17 LADY SMITH: You record that this was in relation to work
18 the boys had done by agreement, on the basis that they
19 were going get some money for doing it.

20 A. Money for a picture show.

21 LADY SMITH: Because it would pay for something that was for
22 their benefit.

23 A. Yes.

24 LADY SMITH: That was the deal.

25 A. Yes.

1 LADY SMITH: In fact, the deal was not adhered to by the
2 Head, and he must always have known he was in debt and
3 financial difficulty.

4 MR PEOPLES: Forgive me, I think I was trying to say -- and
5 I think I did say -- it wasn't a case of physical abuse.
6 I'm not suggesting for one minute one couldn't
7 categorise it as abuse or an abuse of practice. I will
8 probably concentrate on certain types of abuse that you
9 have highlighted. So please understand that. It's not
10 because I have just chosen to say that I don't think
11 that appears to be a case of abuse.

12 LADY SMITH: I didn't think that is what you were saying,
13 Mr Peoples, that it wasn't a case of abuse.

14 MR PEOPLES: I wasn't saying that. I think I said this was
15 not a case of physical abuse.

16 I'm going to pass over really quickly. We can read
17 why you picked it out and why it was a different form of
18 abuse on that occasion.

19 I might say, however, it is illustrative of a point
20 we have discussed in general terms earlier, that
21 sometimes the most unsuitable people in these places
22 were the headteachers?

23 A. Yes.

24 Q. It's not the only example we are going to see?

25 A. No, no, no, far from it.

1 Q. If I can pass on from that case to -- I think before
2 I go to specific cases; can I say that this section
3 probably deals with a number of different situations
4 picked up by the Inspectors? This one concerned broadly
5 speaking employment of young people --

6 A. Yes.

7 Q. -- and issues arising from that, particularly employment
8 in manual or domestic work.

9 You also have cases involving what might be termed
10 either physical abuse or irregular punishment connected
11 with corporal punishment or the like.

12 A. Yes.

13 Q. You have cases on diet and dietary standards. You've
14 picked up some cases on safety, but not children's
15 safety, other than the context of, say, bathing or fire?

16 A. That's right, yes.

17 Q. And you have cases involving the concerns about the
18 adequacy of the educational provision and training in
19 the schools?

20 A. Yes.

21 Q. You also have cases involving disorder and
22 disturbances --

23 A. Yes.

24 Q. -- at the schools, and how the department and officials
25 reacted to those. So that's a broad description of the

1 categories.

2 A. Yes.

3 Q. I'll pick from those some of the ones --

4 A. What I think the report is trying to say is: these would
5 be considered abuse.

6 Q. Of different forms.

7 A. Of different forms now, yes.

8 Q. I follow that.

9 One or two schools seem to come out quite often,
10 Dr Guthrie's Girls and Dr Guthrie's Boys?

11 A. Yes.

12 Q. They appear quite frequently in your section 5?

13 A. That's correct, yes.

14 Q. If we can just turn to those. If we look at page 97,
15 you tell us that, again along the same lines, this is
16 an employment-type case, if I can call it that.

17 In 1959, the Inspector is -- in a report on Dr
18 Guthrie's Girls' School, there seems to be criticisms
19 concerning its training regime and a comment from the
20 Under-Secretary of the department that the girls should
21 not be looked upon simply as unpaid drudges.

22 A. Yes.

23 Q. "Nor should they within trained as laundry workers,
24 which few of them will be."

25 The idea seems to be here that -- it's certainly

1 essentially saying this is exploitation of children
2 either unpaid or inadequately paid for the services
3 their rendering, and they're being used not to train
4 them or educate, but simply to use them as cheap labour.
5 A. For commercial gain.
6 Q. For commercial gain.
7 A. Yes.
8 Q. It's as simple as that. That's the issue.
9 A. That's the issue, yes, yes. But I think I should also
10 add that this has been going on for quite a considerable
11 time and, therefore, if you like, the interjection of
12 the HM Inspector of Schools, talking in 1959 indicates
13 that official thinking had altered.
14 Q. It may have been tolerated in the past --
15 A. Yes, but not now.
16 Q. But not now. We have now picked this up and try and
17 change it, and point out why it's not acceptable.
18 A. Yes.
19 Q. Or satisfactory, to use the language of the day.
20 A. Yes.
21 Q. If we go back to an earlier period for Dr Guthrie's
22 Boys' and Girls' Approved Schools, you deal with that.
23 You say the detailed files are not retained for that
24 period, but you do look at 1949 to 1953. I'm interested
25 to bring out what you discovered.

1 First of all, on page 97, you talk about -- you have
2 found some record of some investigation following
3 a complaint by three teachers, at the boys' school; is
4 it?

5 A. The boys' school, yes.

6 Q. The Headmaster's discipline was, you have quoted, "bad",
7 and there was a general lack of co-operation within the
8 school.

9 So, first of all, I suppose this might be
10 a relatively rare example of serving teachers at
11 a school making complaints about the Headteacher?

12 A. Yes.

13 Q. That's not common?

14 A. It's not common on the files that I've looked at, yes.

15 Q. So they're raising an issue about the Headmaster. Did
16 you ever get a sense of in what respect the discipline
17 of the headmaster was bad? Was it spelt out?

18 A. It's rather obscure, but --

19 Q. Would it include mistreatment, or inappropriate or
20 regular punishment of pupils?

21 A. I think it related to punishment of pupils.

22 Q. That's the inference that you could see from whatever
23 evidence still existed?

24 A. Yes, yes.

25 Q. Because I think we'll see from the girls' school it was

1 a bit clearer.

2 A. Yes.

3 LADY SMITH: Because otherwise, Professor, it could be taken
4 as him being a man who couldn't keep control. His
5 ability to discipline was bad.

6 A. The inference seemed to be over-disciplinary. Excessive
7 use, and therefore not keeping control of the school,
8 except through excessive use of the tawse or whatever.

9 MR PEOPLES: While Dr Guthrie's had a girls and boys' school
10 run by the same board of management and, of course, that
11 was necessary, because approved schools were always
12 single sex.

13 A. That's right, yes.

14 Q. You refer to, indeed, the state of the school and its
15 atmosphere was picked up in a Select Committee comment.
16 I just look at the foot of 97, where part of the
17 description is:

18 "The buildings were unsuitable and gloomy, children
19 were poorly dressed, and the atmosphere was oppressive."

20 A. Yes.

21 Q. Is that the assessment of the Parliamentary Committee?

22 A. That is the Select Committee On Estimates in 1949, which
23 decided to look at Scottish approved schools and they
24 all came north.

25 Q. It sort of echoed the sort of things that Clyde was

1 saying about large institutions?

2 A. Yes. The phrase there "oppressive" I think relates to,
3 if you like, 428 in terms of the Headmaster's
4 discipline.

5 Q. That's how you were picking it up from what you saw?

6 A. Yes.

7 Q. The matter gets a bit clearer when we look at the girls'
8 school. You tell us, on page 98, about a third of the
9 way down:

10 "While the Headmaster at the boys' school managed to
11 retain his post ..."

12 From the records you have seen, the headmistress of
13 the girls' school, and we are talking about 1950 or
14 thereabouts, was eventually dismissed.

15 A. Yes.

16 Q. You then go on to say, "An HM Inspector of Schools"; and
17 that was Macpherson, I think?

18 A. Yes.

19 Q. Who had just joined the Inspectorate around that time.

20 A. Yes, yes.

21 Q. Commented that his first "main task", on appointment in
22 1950, and again I quote:

23 "... was to secure, against the wishes of the
24 managers, the dismissal of the Headmistress, whose
25 20 years of service had been marked by sadistic cruelty

1 and many other irregularities which had brought much
2 misery to two decades of girls."

3 So pretty plain.

4 A. Pretty --

5 Q. Pretty damning.

6 A. It's pretty damning, and it's annoying the actual record
7 has not been retained.

8 There are press comments about disturbances at the
9 girls' school at the time, but not sufficiently detailed
10 on the headmistress.

11 Q. But she became slightly notorious, in the sense that the
12 same Inspector -- I think I've seen a record suggesting
13 that he went to visit an approved school in England and
14 compared the Headteacher with this Teacher. He likened
15 the teacher in England to this teacher and used her name
16 as a description of the type of teacher she was.

17 A. Yes, that's right.

18 Q. She almost became an expression for a certain type of
19 teacher.

20 A. Yes, sadistic cruelty.

21 Q. We can find her name. We know --

22 A. Sure, yes.

23 LADY SMITH: Was there any available detail of how it was
24 that an Inspector of Schools achieved the dismissal of
25 the Headmistress?

1 A. Unfortunately, that file is missing.

2 The format would be very simple. He would write
3 a report. It would go into the SED's Administrative
4 Division Dealing with Approved Schools, who was under,
5 I think, a different Assistant Secretary from 1949, and
6 it would wind its way up into a submission to the
7 Parliamentary Under-Secretary of State and then the
8 Secretary of State, indicating their concerns.

9 The issue why the Secretary of State would have to
10 be informed is, any new appointment would have to be
11 approved by the Secretary of State. So there was no
12 question of suddenly sending a submission in to the
13 Secretary of State, saying, "We have to appoint a new --
14 approve the appointment of a new Headmistress", without
15 an explanation as to why this particular Headteacher was
16 replaced.

17 MR PEOPLES: Just to put this comment in context, this was
18 HMI Macpherson, maybe towards the end of his tenure --
19 I'm not sure -- in 1967, looking back --

20 A. Looking back --

21 Q. -- from the inception of his time as Inspector, about
22 the quality of the headteachers he come across in his
23 time. So it wasn't just this teacher he was critical of
24 it was quite a number.

25 A. Quite a serious number.

1 Q. It does appear from how he put the matter, and based on
2 his recollection, that whatever had to be done to secure
3 the dismissal, it seemed to meet with a degree of
4 resistance by the board of managers.

5 A. Yes.

6 Q. For whatever reason.

7 The other thing I would just like to bring out is,
8 I think, from your report, that you say the allegations
9 were first brought to light by the school's former
10 deputy and confirmed by the SED after interviewing
11 a number of girls at the school. The SED's note on the
12 dismissal gave the reason as her "general
13 unsuitability."

14 There are perhaps a few points to make there, the
15 first being that it's a former member of staff that
16 brings the matter to light.

17 A. Yes.

18 Q. We don't know precisely quite how that happened, but it
19 certainly wasn't brought to light during that member of
20 staff's period at the school.

21 A. No.

22 Q. Also, at least it shows that the SED were prepared to go
23 and talk to the girls themselves.

24 A. I assumed that was HMI Macpherson.

25 Q. On behalf of the department?

1 A. And the important issue there is, the previous Inspector
2 of Schools never spoke to pupils. Whereas this -- took
3 it on his own to interview all pupils, at any time.

4 Q. Was the previous Inspector a man called Petrie or?

5 A. No, no, no. I'm sorry --

6 Q. It doesn't matter. We can find out.

7 A. DS Petrie was the educational psychologist.

8 Q. I've the name wrong.

9 There are two other points that might be raised from
10 this. As we discussed this morning, the note or the
11 record of the reason for the dismissal is put in
12 somewhat cautious terms.

13 A. Yes.

14 Q. So it doesn't really reveal the full extent of the
15 problem.

16 A. No, no.

17 Q. The third point that may be said, and it's a point that
18 Professor Abrams made when she was giving evidence to
19 the Inquiry last week, about how allegations come to
20 light.

21 We have seen here that this was a former member of
22 staff, but she said, in relation to looking at the west
23 of Scotland -- and this is in the east of Scotland --
24 that what was striking was that on many occasions when
25 matters did come to light, it was through some external

1 party, a parent or some other person, perhaps a former
2 member of staff on some occasions, but it didn't come
3 normally through the mechanisms for oversight of these
4 schools. It didn't come from something discovered by
5 the mechanisms themselves.

6 A. Yes.

7 Q. Is that what you tended to see in your review?

8 A. I think you could -- I could probably confirm that.
9 That whatever allegations were made generally came
10 from -- in some cases from the pupils themselves, but
11 generally from external sources.

12 Q. But, also, when the pupils made the allegations very
13 often it was after they left that particular
14 institution?

15 A. Not in the next case.

16 Q. No, not in the next. But there are quite a few examples
17 where it only came to light once they had left.

18 A. Yes.

19 Q. Perhaps for obvious reasons.

20 A. Obviously.

21 Q. The other thing is, I suppose, that this is another
22 example of allegations against the person in charge, in
23 the key role of Headmaster or Headmistress?

24 A. That's right, yes.

25 Q. The one whose personal influence is supposed to be the

1 way in which the requirements of the regulations were to
2 be maintained?

3 A. Yes.

4 Q. So the unfortunate implicit assumption of the
5 regulations proved to be rather a pious hope in many
6 cases?

7 A. The regulations indicated a high degree of trust in the
8 Headteacher.

9 Q. Misplaced trust, it would appear, on a lot of locations?

10 A. Certainly in Dr Guthrie's.

11 Q. And in other schools?

12 A. And in other schools, yes.

13 LADY SMITH: Professor Levitt, given the lack of all the
14 files -- or given the missing files in relation to this
15 matter of the Headmistress; would I be right in thinking
16 that the story ends with just knowing she was dismissed
17 for general unsuitability, and that I suppose would
18 leave her free to apply for another job in
19 an organisation that looked-after children, would it?

20 A. There was no criminal conviction.

21 LADY SMITH: No. There was no register that she would have
22 been taken off.

23 A. I looked at the register, which is ED/53/200, and her
24 name does not appear.

25 LADY SMITH: Ah.

1 A. Sorry, that's at 434, footnote 434, which is the general
2 Home Office Education Department's records --

3 MR PEOPLES: The file you mentioned --

4 A. Yes.

5 Q. -- where the information should be shared?

6 A. Yes. It may well be that in fact she was retired.

7 Q. She had been there for 20 years.

8 LADY SMITH: Could be.

9 Q. That could be the explanation that might at least have
10 saved her from this being made more widely known.

11 A. That's right, yes.

12 Q. Whereas if she had gone to another, or tried to apply
13 for a post, at least within the UK, if the arrangements
14 worked as envisaged with this sharing system, her name
15 should have come to the attention of the potential
16 employing authority.

17 A. That's right, yes.

18 Q. That's what was supposed to happen.

19 A. And, also, in Scotland the SED, and in England the
20 Education Department.

21 Q. Can I move on to another case? This time involving
22 another Headteacher at Wellington Approved School in the
23 early 1950s, relating to a form of punishment which was
24 known as the "track system".

25 You tell us the system was based on defaulters,

1 doubling round the yard until they were ready to drop,
2 which some apparently did.

3 As you say, quite rightly, that the punishment
4 itself, as described, was not permitted within the 1933
5 Approved School Regulations. The issue had been
6 revealed by a boy at the school. This is the boy who
7 travelled from Penicuik to St Andrews to complain in
8 person and was interviewed by the Under-Secretary of the
9 department?

10 A. The Under-Secretary, whose divisions including approved
11 schools.

12 Q. But what you do say -- which I don't think we brought
13 out at footnote 435 -- is that the boy who travelled to
14 St Andrews House was not the victim, but another who had
15 disliked the Headmaster for other reasons. So he
16 shopped in the Headmaster because he didn't like him.
17 But he was telling the department's Under-Secretary what
18 was happening to another boy, and told them about the
19 system.

20 A. That's right. It would appear there was some
21 consternation at St Andrews House as to what to do with
22 the boy who turned up to complain and, eventually, it
23 was decided the appropriate mechanism was a formal
24 interview with the then Under-Secretary.

25 Q. This is an example, in early 1950s, of an abuse of

1 practice that was contrary to the relevant regulations.

2 Because just to remind ourselves, the regulations
3 permitted corporal punishment, which this was not. It
4 also permitted forfeiture of privileges, or rewards,
5 which this was not?

6 A. Yes.

7 Q. Loss of conduct marks, which this was not?

8 A. Yes.

9 Q. Loss of recreation or liberty?

10 A. Yes.

11 Q. Which this wasn't. And degradation in a rank which had
12 been applied to the boy in question.

13 A. That's correct, yes.

14 Q. Which this, again, was not.

15 A. Yes.

16 Q. I suppose it might also be added that even in the case
17 of permitted punishments, the regulations provided that
18 in no case was the nature or the extent of the
19 punishment to be such as might be injurious to either
20 the physical or mental health of the child concerned.

21 A. That's correct, yes.

22 Q. So he wasn't complying with the regulations. But, even
23 if he had been authorised, he would still have been in
24 default or non-compliance?

25 A. Yes, that's right.

1 Q. Just by way of a further piece of information, which you
2 discovered, which is mentioned in 434, that the HMI, in
3 1959, which was some year afterwards, states or comments
4 that the Headmaster in question appeared in court for
5 indecent conduct, but received what is said to be a Not
6 Proven verdict.

7 So there was a bit more to this?

8 A. There was a bit more, and I did try to locate the case,
9 but was unable to do so.

10 I know that the -- I now know, because I've looked
11 again at the newspaper archive and I can inform the
12 Inquiry that this headmaster was suspended from
13 Wellington in February 1954.

14 Q. Presumably, with, perhaps, some relationship to this
15 other matter, the conduct, towards pupils on the track
16 system?

17 A. Yes. It's not clear from the very short press report as
18 to the reasons why.

19 Q. But that's the likely reason?

20 A. It's the likely reason, yes, that he was suspended.

21 Q. Do you know: did this headmaster -- was he -- did he
22 resign or was he dismissed around that time or replaced?

23 A. It's not clear what happened after the Not Proven
24 verdict, but the notes do indicate he was dismissed for
25 excessive punishment of boys. That's the note attached

1 to ED/53/200.

2 Q. I think you say that in footnote 434. So there was
3 a dismissal and it was related to excessive punishment
4 for boys?

5 A. Yes.

6 Q. But whether that involved something of a sexual nature
7 is not entirely clear from the records, but he certainly
8 had to face a charge?

9 A. He certainly had to face a charge. I think if it had
10 been indecent conduct, I think HMI Macpherson would have
11 probability indicated that. But I think the indecent
12 conduct related to the fact that he was ensuring that
13 defaulters basically collapsed after going around the
14 yard many times.

15 Q. The excessive punishment could be the track system?

16 A. Yes.

17 Q. Indecent conduct could be something else that was also
18 abuse. Because he didn't stand trial for excessive
19 punishment of boys using the track system; he stood
20 trial for indecent conduct.

21 A. I'm not sure whether -- how far the two were connected,
22 because it's not stated.

23 Q. I know. I think we can disconnect the two. You have on
24 the one hand a system which was against the rules and
25 involved injury or excessive punishment in the general

1 sense, but you also have another matter of indecent
2 conduct which was considered -- there was sufficient
3 evidence to bring a criminal prosecution.

4 A. Yes.

5 Q. Albeit the ultimate verdict was not proven.

6 A. Yes, yes.

7 Q. Now, if we go on --

8 LADY SMITH: And that verdict was in 1967?

9 A. No, no.

10 MR PEOPLES: I think it was earlier.

11 LADY SMITH: The minutes are 1967.

12 A. It was clearly around about -- towards the end of 1954.
13 If he was suspended in February 1954, then presumably
14 the case would take some months to come to court.

15 MR PEOPLES: And come at some point in the 1950s or perhaps
16 a little bit after that time.

17 A. I think that note, case 243, is in 1954.

18 Q. Moving on. We have another case, this time involving
19 excessive punishment, that you make reference to at
20 page 99, at Balgay Girls' Approved School, which was
21 drawn to the attention of Niall Macpherson the Joint
22 Parliamentary Under-Secretary of State, of which we
23 heard some evidence earlier today.

24 A. Yes.

25 Q. By two MPs?

1 A. Yes.

2 Q. So it was certainly going to get his attention in that
3 way.

4 A. Automatic attention, I think, is the case.

5 Q. That's the way these things work?

6 A. Yes.

7 Q. So what -- the result of that way in which the matter
8 came before him was that he instructed the HMIs to
9 conduct a special inquiry into the matter --

10 A. Yes.

11 Q. -- that had been raised.

12 On this occasion, in 1957 or thereabouts, it appears
13 that the investigating Inspector -- this will be the HMI
14 for approved schools?

15 A. Yes.

16 Q. The HMI talked to pupils and also consulted the school's
17 punishment log, which they were required to maintain --

18 A. Yes.

19 Q. -- under the regulations, and confirmed or concluded
20 that a number of girls had been subject to corporal
21 punishment beyond that which was permitted by the 1933
22 Regulations.

23 When it says "beyond that"; does that tell us
24 anything? Does it look as if the question was whether
25 more strokes, for example, or was it in the wrong part

1 of the body? Or does it tell us anything about --

2 A. It doesn't state. It simply -- I assumed it was

3 excessive use.

4 Q. Excessive use?

5 A. Yes.

6 Q. Too frequent use of -- or too many strokes?

7 A. Too many strokes on the occasions it was applied.

8 Q. Because I think we discussed, either earlier today or

9 yesterday, that the degree of force applied, you could

10 get six strokes applied or three strokes with

11 considerable force, but that would be, on the face of

12 it, within the regulations if you didn't know anything

13 more?

14 A. Yes.

15 Q. Unless you knew it caused injury.

16 A. Yes.

17 Q. But, if you had eight strokes, even if it was the

18 lightest force used, it would be contrary to the

19 regulations?

20 A. That's right.

21 Q. And go beyond them.

22 A. Yes, but it would appear it wasn't just on one occasion.

23 Q. No, no. No. Because it said "a number of girls" as

24 well.

25 A. Yes.

1 Q. It says that the School Managers were made aware of the
2 Minister's concerns. You tell us that towards the end
3 of page 99, and that they informed the department, the
4 SED, that they had given the headmistress a formal
5 warning on the need to "stick to the regulations".

6 Well, one can speculate on the effectiveness of that
7 sort of censure.

8 A. I think, in this case, the headmistress eventually
9 resigned.

10 Q. Because of this or because of subsequent misdemeanors?

11 A. She had lost the trust of the governors.

12 Q. If she did receive a formal warning, as the record
13 suggests, that the managers gave, it certainly resulted
14 at some point in her resignation?

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

16 Q. Do we know how long this individual had been in post?

17 A. Certainly for a few years.

18 Q. So it could be perfectly possible that what she was
19 found out to be doing had been happening for
20 a considerable period of time?

21 A. I think that would be a reasonable assumption.

22 Q. Now, going back to Dr Guthrie's Girls again -- and we're
23 up to 1958 now, rather than in the earlier period -- the
24 former headmistress, who -- in 20 years sadistically or
25 cruelly behaving towards girls -- had disappeared by

1 now.

2 A. Yes.

3 Q. But there was a complaint, in 1958, by the parent of

4 a girl and, again, that is someone not part of the

5 official mechanism.

6 A. Yes.

7 Q. About an irregular punishment.

8 A. Yes.

9 Q. Which would be presumably contrary to the rules?

10 A. Well --

11 Q. If she was subjected to a dietary punishment after

12 absconding -- which I think was what gave rise to the

13 complaint -- the rules didn't permit that?

14 A. The rules did not permit that, no.

15 Q. You tell us, at the top of page 100, that the HMI, in

16 his subsequent report, noted the "unwise treatment of

17 the girl on her return to school after absconding". But

18 it seems another matter was picked up of an alleged

19 irregular attack on another pupil, some months

20 previously?

21 A. Yes.

22 Q. Leaving the girl who had been subject to the attack

23 marked in a number of places and the blows did not

24 appear to have been accidental; yes?

25 A. Yes.

1 Q. Now, I take it that the way this is expressed is that
2 this was an attack by a member of staff?

3 A. Yes.

4 Q. Not by another pupil?

5 A. No.

6 Q. And there seems to have been an investigation. So far
7 as the dietary punishment is concerned, the HMI comments
8 that the ladies in question, who may have been involved
9 in this sort of punishment, have probably learned their
10 lesson and that a repetition of that form of punishment
11 was unlikely to recur.

12 A. Yes.

13 Q. Do we know about the other matter; how it was viewed and
14 how steps were taken to make sure that was not likely to
15 recur? Is that not clear from the record?

16 A. It's not absolutely clear from the record. But I think
17 I would want to point out: if one looks at the
18 sequencing of the minutes, that the confidential note by
19 Mr Macpherson, 5 October 1958, occurred at the same
20 time, or shortly after, the Secretary of State had
21 issued instructions that residential schools should be
22 subject to closer vigilance.

23 Q. So he picked up some of the information that would give
24 effect to that instruction?

25 A. He picked up that if the Minister, the Secretary of

1 State, had indicated closer vigilance when something
2 like that came along, it required deeper investigation.
3 So you end up with a 33-page memorandum.

4 Q. A large report.

5 A. A very large report, indeed.

6 Q. However, it is not satisfactory reading, is it?

7 It dealt with the use of corporal punishment and
8 recorded 136 instances in the previous 12 months.

9 I think that reflects comments that were made in other
10 contexts about the high frequency at this particular
11 school.

12 A. That's right, yes.

13 Q. It says that -- and the general nature of the
14 disciplinary regime. It says in response to the report,
15 the school itself refused to reconsider its use of
16 corporal punishment believing it was the only method of
17 control:

18 "... to control some of the very lowest types any
19 institution has had the misfortune to receive."

20 A. Yes.

21 Q. That is not language which -- well, perhaps displays
22 an attitude towards those being cared for.

23 A. By 1959 it was considerably out of date, reflecting --

24 Q. But they were quite prepared to say that.

25 A. They were very prepared to say that to an HM Inspector

1 and a number of SED officials who attended the school.

2 Q. If we go on -- and I think we see that the
3 Under-Secretary of the department, I think in response
4 to a letter that used the term "psychopath" in relation
5 to a group of the girls at the school, he commented, you
6 say, Reilly:

7 "On the school belief that psychopaths should not be
8 admitted to approved schools."

9 And you quote:

10 "The managers' letter shows that in their view the
11 removal of psychopaths from the schools is essential for
12 the schools to run efficiently. It's doubtful whether
13 the use of the word 'psychopath' is strictly justified;
14 in any case, the words 'psychopathic' and 'psychotics'
15 have no generally agreed meanings and possibly the
16 Guthrie managers are referring all the time to 'very
17 difficult girls'."

18 A. It's an indication that the SED thought that the
19 managers of this particular school were out of touch
20 with instituting a regime which could cope with the
21 issues surrounding the girls.

22 Q. Could cope with "very difficult girls", to put it that
23 way.

24 A. Yes.

25 Q. They didn't have the regime or the skills to deal with

1 that category of girl.

2 A. That's right, as a governing body.

3 Q. Perhaps one could say, at that time, very few of any of

4 the schools would have the capacity, for the same

5 reasons.

6 A. Yes.

7 Q. Because there weren't the sort of special schools that

8 might cater for this type of child or young person, if

9 they were thought to have serious emotional, behavioural

10 or social problems.

11 A. Yes, yes.

12 Q. Am I right in thinking that Dr Guthrie's School, at this

13 time, was trying their best to get rid of these girls

14 and was trying to offload them to perhaps another school

15 that might take them?

16 A. There was some discussion, in the middle of 1958, about

17 moving some of the girls to Lochburn.

18 Q. I don't think Lochburn wanted to entertain that.

19 A. No.

20 Q. No. Now, going back to Wellington, where we discussed

21 the track system in the early 1950s. We're now up to

22 1959 and there is a new headmaster at Wellington now,

23 but it seems that old habits die hard.

24 A. Yes, yes.

25 Q. It's fair to say that the Inspector uncovered that the

1 headmaster was instituting what you describe as
2 a modified track system as a form of punishment, where
3 boys were made to stand by a bench for a period of time
4 while other boys could sit and talk.

5 A. Yes.

6 Q. The Medical Officer of the department, when consulted,
7 indicated that given the age of the boys, any form of
8 prolonged standing without movement after a meal was
9 likely to be harmful to the growing boys.

10 A. Yes.

11 Q. An additional form of punishment discovered centred on
12 boys scrubbing the large hall's floor until it was clean
13 and repeating the exercise, even though it was already
14 clean. That's not an unfamiliar situation or practice.
15 We have heard about this in other contexts.

16 A. I'm sure you have.

17 Q. But what we can say is that neither of these punishments
18 were permitted under the 1933 Regulations.

19 A. That's correct.

20 Q. So there was a clear breach.

21 A. A clear breach, yes.

22 Q. The response of the Chairman of the Board of Governors
23 was to give an undertaking that the system would be
24 discontinued, and the matter was put before the
25 Secretary of State. I think he was in agreement with

1 the actions that had been taken by department in this
2 case?

3 A. That's right, yes.

4 Q. We don't know whether that undertaking was observed or
5 breached in subsequent years.

6 A. No, we don't. But it's not reported by HMI Macpherson.

7 Q. That would be a time when, perhaps, we weren't in the
8 year of follow-up inspections?

9 A. Yes, but --

10 Q. But closer attention was given to certain schools at
11 that time?

12 A. Closer attention was given and HMI Macpherson had free
13 rein in terms of his schedule of inspections.

14 Q. You mentioned another case involving St Joseph's. I
15 think we can read that. This is a case involving the
16 dietary provision at the school and whether it was
17 adequate or not.

18 A. Yes.

19 Q. We can read it for ourselves, because I would like to go
20 on to look at another dietary provision case, again
21 involving Dr Guthrie's Girls' School?

22 A. Yes.

23 Q. 1959.

24 A. Yes.

25 Q. The Inspectors are raising concerns about the diet at

1 the school, based on expenditure per meal for each girl.
2 It appears from the report of the Inspector that
3 expenditure per meal per week for each girl was
4 17 shillings, compared to 2 pounds, three shillings, and
5 one pence for each member of staff. There was also
6 an attempt to relate that to the average expenditure for
7 all households on food, and in the case of the staff it
8 was higher, and in the case of the children it was
9 lower.

10 A. Considerably lower.

11 Q. Considerably lower. Indeed, the Under-Secretary didn't
12 take long to pick that up, saying there had been
13 an under-generous feeding of the girls in comparison to
14 the staff?

15 A. This was the case picked up by the SED's
16 Assistant Secretary later, in terms of the potatoes.

17 Q. Okay. So there is a link between this?

18 A. Yes, yes.

19 Q. At page 102, in discussing this case, and looking at the
20 matter of what was happening in this period up to 1961,
21 you tell us that there is little evidence that the word
22 "abuse" was used in the official documents.

23 A. Yes.

24 Q. But you say that certainly the SED noted the dismissal
25 of approved school staff for what would be termed now

1 physical and sexual abuse, and --

2 A. Yes, yes.

3 Q. Also, where there was severe breach by headteachers of
4 the 1933 Regulations, or where they appeared to be
5 generally unsuitable individuals for one reason or
6 another, the department, as you put it, were not
7 inactive in the dismissal.

8 You say that beyond that the SED acknowledged that
9 there was no irregularity when the corporal punishment
10 was administered within the care and training
11 regulations.

12 I think we don't maybe need to go over that, but it
13 indicates, obviously, if you stuck to recording six
14 strokes and you weren't seen or complained about, either
15 to do with the force or that you in fact put in
16 an incorrect number, then it's unlikely that you were
17 going to be discovered.

18 A. Unlikely, unless someone complained, either inside or
19 outside.

20 Q. Yes. There doesn't appear to have been any attempt and
21 it might have been very difficult to try to regulate the
22 degree of force used --

23 A. Yes.

24 Q. -- at that time.

25 So you're basically saying, I think, that so far as

1 inappropriate care and neglect or abuse is concerned in
2 this period, it was resting principally in terms of
3 whether or not the Inspectors could identify something
4 that could be seen to be a breach of the regulations?
5 A. 1933 Regulations.
6 Q. Because we're dealing with approved schools here.
7 A. Yes.
8 Q. You deal with children's homes in roughly the same
9 period, 1945 through to 1959. A point you make at 103,
10 which I think is important, is that the retained records
11 at NRS cover only a relatively small number of
12 children's homes and allied institutions. So you are
13 not able, perhaps, to give us quite such a big spread of
14 information about what was happening?
15 A. Yes.
16 Q. You do have, I think -- you managed to local a report of
17 a Childcare Inspector in 1948 for Dumfries and Galloway
18 Girls' Home, and the issue there, without taking it too
19 much at length, was the issue of, again, employing young
20 people in homes to do work of a domestic nature.
21 A. Yes.
22 Q. Which didn't necessarily advance either their training
23 or education, in the sense of the intended purpose of
24 the school.
25 A. Yes.

1 Q. Perhaps it was seen essentially -- in fact, I think the
2 principal who was looking at the matter and seeing
3 report, probably thought it looked pretty much like
4 exploitation and compulsion?

5 A. Yes.

6 Q. And said so. And sought some assurances that
7 arrangements were made to place girls in suitable
8 employment after leaving the institution.

9 Presumably, he was trying to get assurances they
10 wouldn't end up trying to find work in a laundry?

11 A. I think that's probably correct, yes.

12 LADY SMITH: I also had the impression from what you said,
13 Professor Levitt, that there was a sense here of the
14 homes saying that once the girls reached a certain age
15 when they could have left, you stay because it's payback
16 time, and we want our pound of flesh out of you. You'll
17 work in the home for a year, and you're not going to be
18 paid, or at least not paid a proper rate, and that will
19 give us something back for what's been spent on you over
20 the years you've been here.

21 A. At least 12 months unpaid labour once they reached the
22 age of 15.

23 MR PEOPLES: As opposed to parental contribution, we have
24 a pupil contribution, financially.

25 A. Yes.

1 Q. Or in kind.

2 A. Instead of the home employing an external cleaner, or
3 whatever, they simply used the girls.

4 Q. If we go to page 104, the same sort of concerns were
5 raised in 1954 by Inspectors in relation to the Dundee
6 Orphan Institution, where there is some criticism of the
7 practises there; girls getting up early and having long
8 hours spent on domestic chores.

9 It's recorded, in the report, that they get no
10 wages, but are given 10 to 15 shillings a week as pocket
11 money.

12 A. Yes.

13 Q. Cheap labour, exploitation, same issue?

14 A. It's the same issue.

15 Q. But the attempt is always made to say that this is
16 training.

17 A. Yes, yes.

18 Q. The retort of the HMI, if I could look at the quote, is
19 that his opinion and view was that the girls are not
20 receiving proper training, in terms of the true and
21 appropriate function of an approved school.

22 A. That's right, yes.

23 Could I make a point: I think in the Dumfries and
24 Galloway Girls' Home that the care Inspector actually
25 assured themselves that particular girl had been placed

1 by a Local Authority and, therefore, was covered -- what
2 they were saying -- under the 1947 Regulations.

3 Q. In the case of the Dundee Institution, the Inspector
4 himself seems to be using the term "cheap labour"?

5 A. Yes.

6 Q. He's in no doubt what was going on here?

7 A. Yes.

8 Q. He was in no doubt that what this practice of retaining
9 children beyond school leaving age -- was contrary to
10 their interests.

11 A. Yes.

12 Q. Which, of course, was the test that should have been
13 applied by both managers and others.

14 A. Yes.

15 Q. After the 1958 Act.

16 A. I think in the case of the Dundee Orphan Institution, in
17 1954, the Inspector didn't really bother about whether
18 the girls were placed by Local Authority or not. It was
19 a question of any girl so placed in the institution
20 should not have this regime on them.

21 Q. I think if we go on to page 105, this is going back to
22 Lochburn House and the disturbances in 1958. We have
23 covered this, but I think you're saying there that at
24 least the use of girls in homes for laundry work seems
25 to have been at least a contributory factor in the

1 disturbances at that time; that seems to be what you
2 have gleaned from the relevant records that are
3 available?

4 A. That's right, yes.

5 Q. Although there seems to have been some concern by
6 another girls' home, in Dundee, that they would be doing
7 something that would be both in conflict with official
8 policy and perhaps in conflict with the regulations by
9 operating a laundry as a commercial undertaking.

10 A. Yes.

11 Q. They were concerned about this.

12 A. They were concerned about it.

13 Q. But it doesn't appear that the department or the
14 Inspector was saying that laundry operations of that
15 nature should necessarily be shut down?

16 A. That's correct. My inference here is that the
17 Ministers, after the Lochburn episode, were keen for
18 Lochburn to be re-established, and Lochburn said: we
19 can't re-establish, unless we operate as a laundry.

20 Q. They were holding a gun to the department's head?

21 A. Yes.

22 Q. I don't think they did open again.

23 A. No, I think they decided they weren't interested.

24 Q. When you say "the Chairman"; is that the Chairman of the
25 Lochburn directors --

1 A. No, the Chairman of Dundee Cobden Girls' Home --

2 Q. I see. Stated to the department, the SHD, and he said

3 that the department had told the managers that there

4 was:

5 "Real need for such establishments, that is

6 voluntary homes acting as approved schools."

7 A. Yes.

8 Q. Lochburn was a home, but did also have a certain number

9 of places for --

10 A. It was also registered as an approved school.

11 Q. As an approved school.

12 A. Yes.

13 Q. But, clearly, the Chairman got wind of the fact that the

14 department was a bit desperate.

15 A. Yes.

16 Q. And were looking for more places to put children who

17 were approved school children?

18 A. Yes.

19 Q. If I can put it broadly.

20 A. Were clearly concerned that the courts would commit

21 pupils and there would not be any places available for

22 them.

23 Q. You say, halfway down 105, that despite some concerns in

24 the period before the 1959 Regulations retention of

25 children beyond or approaching school leaving age and

1 their use for menial tasks, at best for pocket money,
2 and sometimes unpaid it would appear, does not consider
3 it an issue of abuse, despite the quality of training
4 offered."

5 A. Yes.

6 Q. So I think you are trying to say, in the mind of those
7 that were looking at this practice, it wasn't to them
8 seen as abuse as such?

9 A. No. It was a grey area.

10 Q. I suppose the problem Pre-1959 was that there were no
11 regulations.

12 A. There were no general regulations.

13 Q. Which would make it an even greyer area.

14 A. Yes. And, in addition, Inspectors could only comment on
15 children who had been placed by the Local Authority
16 under the Children's Act.

17 Q. Not all children?

18 A. Not all children.

19 Q. The next one that you refer to is a report in 1951, in
20 connection with Dumfries and Galloway Girls' Home, and
21 it appears that the home had, by then, introduced
22 a punishment book --

23 A. Yes.

24 Q. -- on the recommendation of the Inspectors.

25 Just stopping there, there was no requirement to

1 have a punishment book, but the Inspectors were clearly
2 trying to instill good habits.

3 A. They were trying to correspond with the Approved School
4 Regulations, which there would be a punishment book.

5 Q. I thought this was a girls' home?

6 A. Yes. I think --

7 Q. Trying to correspond with --

8 A. What they were trying do is establish similar practises
9 across the sector.

10 Q. But there was no regulation?

11 A. No.

12 Q. They just wanted to say: we do it for approved schools,
13 we want you to do it for girls' homes and children's
14 homes?

15 A. Yes.

16 Q. What emerged, I think, from looking at the entries that
17 were put in -- and clearly this might indicate the
18 attitude of the person making the entry -- is that there
19 was an entry that a girl had been smacked with a slipper
20 for biting:

21 "Ms **FAP** said she only give her two or three
22 strokes with her knickers off."

23 So she was happy to put that down in the punishment
24 book that she had been asked to maintain?

25 A. Yes.

1 Q. I suppose that none of what was recorded, strictly
2 speaking, was contrary to any regulation? Strictly
3 speaking.

4 A. Strictly speaking.

5 Q. Indeed, what we see is that the Inspector advised in
6 future where corporal punishment was to be used the
7 knickers should be left on. And if that advice was not
8 taken up or accepted at the next visit, as it was put,
9 a stronger protest should be made.

10 A. Yes.

11 Q. It's not exactly sort of having powerful sanctions at
12 your disposal?

13 A. No. They were limited in the sanctions they could
14 apply.

15 Q. Because there were no regulations.

16 A. No regulations. And the ultimate would be the nuclear
17 option of deregistering the home.

18 Q. Probably, for reasons we have explored, that probably
19 wasn't a realistic possibility.

20 A. Yes.

21 Q. Also, as we see there, at least at that time, in 1951
22 the use of the slipper was okay, the concern was the
23 removal of the girl's knickers before applying it?

24 A. That's right.

25 Q. That may hark back to the 1933 Regulations, where

1 administration of corporal punishment, albeit to boys on
2 the posterior, was okay with over trousers.

3 A. Yes.

4 Q. But not okay without trousers.

5 A. Yes.

6 Q. So they were trying to, perhaps, use those regulations
7 in a way to assess what can and can't be done as
8 a matter of practice.

9 A. Yes.

10 MR PEOPLES: I'm conscious of the time. I don't know if you
11 want to take a short break?

12 LADY SMITH: If that is working for you.

13 We'll do that just now.

14 (3.00 pm)

15 (A short break)

16 (3.10 pm)

17 LADY SMITH: Mr Peoples, Professor. The last little stretch
18 for today, anyway.

19 MR PEOPLES: I'll try my best to try and make this the last
20 lap.

21 At page 106, just -- I'm not going to deal with the
22 Dundee Orphan Institution or Dundee Cobden Girls' Home,
23 I think you set out what the situation was in the
24 reports that you discuss there.

25 Halfway down, you say, in the period before 1959,

1 the Scottish Home Department accepted it held the
2 responsibility to ensure children's homes kept
3 a punishment book and that its powers of enforcement
4 were somewhat limited. I think we discussed that.

5 There weren't regulations or even a statutory
6 requirement to have a book. They were trying to
7 persuade them to do what was done in approved schools.

8 A. Yes.

9 Q. Moving on, 107, these again are cases of adequacy of
10 diet. I won't go through them; we can read them for
11 ourselves.

12 What I would like to ask you before we move on to
13 the later period is that we have, on page 107, issues of
14 diet and on page 108, in relation to the Hopeman Holiday
15 Home for Abelour, we have an issue of fire safety.

16 A. Yes.

17 Q. On page 109, we have an issue affecting Abelour
18 orphanage about a drowning, where it is the bathing
19 safety issue and adequate precautions. So these are all
20 being raised in that period as part of the Inspector's
21 concerns?

22 A. That's right, yes.

23 Q. That gives an illustration of the type of concerns that
24 were raised.

25 Lastly, we have this period in relation to approved

1 schools and homes. Can I ask you this: overall, so far
2 as homes are concerned, the impression from the records
3 seems to be that generally speaking SHD Inspectors were
4 exercising a fairly light touch of oversight?

5 A. I think that's probably correct to say.

6 Q. Partly for the reasons we've explained.

7 A. Yes.

8 Q. They didn't have --

9 A. They were there to encourage changes.

10 Q. Not to enforce.

11 A. Yes.

12 Q. Because they didn't have powers of enforcement.

13 A. That's right.

14 Q. If we move on to approved schools and List D schools in
15 the next period, 1971 to 1974, which would take us to
16 the end of the period of your report, we have to keep in
17 mind that there's been the Carlton Approved School
18 disturbances. There's a report in 1960, and that
19 involved disturbances at an approved school in England.
20 We heard some evidence about that earlier on today, so
21 I'll not go back to that.

22 But what we have, I think, as you tell us in this
23 section of your report, is that there were disturbances
24 during the 1950s at various schools, Lochburn,
25 Dr Guthrie's as examples, and so forth. Ultimately, in

1 1961 or thereabouts, it was decided, essentially by the
2 Scottish Home Department, but with the agreement of the
3 SED, that there should be some Scottish Inquiry to look
4 at what you describe, as what the department described
5 as the "central issue of juveniles in need of care and
6 protection", and that led to the Kilbrandon committee
7 report.

8 A. That's right.

9 LADY SMITH: We see a number of times in your report,
10 Professor Levitt, that the impact of the Lochburn
11 disturbance and the Carlton disturbance marched
12 together, they go hand in hand in many ways. We should
13 probably record for the transcript that Carlton
14 disturbance was in, I think, Hertfordshire.

15 A. Yes.

16 LADY SMITH: It's not a Scottish one, but it did have a
17 resonance in relation to Scottish matters.

18 A. That's right, yes. And I think a heightened awareness
19 that a further disturbance north of the border would
20 cause havoc for Scottish Ministers; that they had not
21 responded in any specific way --

22 LADY SMITH: Am I right in remembering that so far as
23 Carlton was concerned, that had not only been a matter
24 of the youngsters getting unruly and perhaps the
25 building being damaged, but staff had been injured?

1 A. Staff had been injured.

2 LADY SMITH: At Carlton?

3 A. Yes, that's right.

4 MR PEOPLES: Following in response to the Durand Inquiry
5 into Carlton Approved School, there had been a Home
6 Office report, and you give us the reference of footnote
7 501, on page 111.

8 But you tell us that really the Scottish
9 Department's belief at the time was that the Home Office
10 Inquiry on that matter had failed to grasp the nettle
11 and the central issue had to be addressed.

12 I think what you are trying to tell us there -- and
13 confirm this if you could -- they really considered, the
14 Scottish Department, that there should be a new and
15 different way of dealing with young offenders and that
16 there had been too many committals to approved schools.
17 They were looking for an alternative.

18 A. I think the key thing is that the officials had the
19 Lochburn disturbance, the Carlton disturbance, and
20 a report from England which they considered inadequate.

21 At the same time, if I can refer the Inquiry back to
22 the comments made previously by SED on mass congregate
23 care, on the comments at Glasgow Magistrates' Court, had
24 no idea there was a children's department or basically
25 sending children automatically to approved schools, and

1 that there did seem to be an issue surrounding the fact
2 that juvenile delinquency was thought to be part of the
3 Scottish system.

4 I think that was the principal objection that came
5 through in September, October 1960, which lay underneath
6 the establishment of the Kilbrandon Inquiry. That in
7 fact Kilbrandon Inquiry was not to look at approved
8 schools; it was to look at the system of committals.

9 LADY SMITH: Just one other thing I meant to ask you
10 earlier, Professor Levitt. Did you see any examples of
11 the wording the court, whether it was the Stipendiary
12 Magistrates, the Justice of the Peace Court or the
13 Sheriff, was using for their sentencing, their
14 disposal -- I know it became, from personal experience,
15 ordering that a young person would be detained in
16 a young offenders' institution; was that the sort of
17 wording that was being used then or was it more
18 specific?

19 A. I think it was "committal".

20 LADY SMITH: Committal?

21 A. Yes. It was -- I think the phrase used was "committal",
22 or at least the papers I've seen talk about committals.

23 LADY SMITH: To?

24 A. To an approved school.

25 LADY SMITH: Specifically an approved school?

1 A. Yes, yes.

2 LADY SMITH: Obviously, without saying which one?

3 A. Without saying which one. It wasn't up to the court to
4 decide; it was up to the SED to discuss with the
5 approved school system.

6 LADY SMITH: Right. Thank you.

7 A. Could I also add that Kilbrandon was in the mind of the
8 officials in terms of appointing. And, for the record,
9 they knew that putting Lord Kilbrandon first would
10 likely to lead to rejection, on the basis that he was
11 a court judge.

12 So they put forward two names, one was the Professor
13 of Divinity or Theology at Aberdeen, and the other was
14 the Headmaster of Fettes College. The Ministers
15 rejected both outright. One on the basis they would end
16 up moralising, and the other, public confidence could
17 not be established if in fact a committee was headed by
18 the Headmaster of a private boarding school.

19 So Kilbrandon's name was put forward and was
20 immediately taken.

21 And Kilbrandon was put forward by Norman Walker and
22 David Cowperthwaite, on the basis that he had open
23 opinions on many matters, which fitted the bill.

24 MR PEOPLES: Yes, and fitted the man, I think, as we know.

25 A. Just have that on record, that you actually had

1 a committee that was destined basically to really
2 rigorously review the system. Sorry.

3 Q. It was a well-chosen appointment, at the end of the day?

4 A. Yes.

5 Q. Obviously, it was felt necessary to make some sort of
6 formal minute at times. Can I just take the quote you
7 have identified on this need for the Inquiry and its
8 justification?

9 You say, at the foot of page 111:

10 "Our view is that there is a case for the more
11 radical ad hoc committee type of review [in this matter,
12 juveniles in need of care and protection]. Although
13 there has been little public criticism of the
14 arrangements for dealing with juvenile offenders in
15 Scotland, we are doubtful if the arrangements,
16 particularly the juvenile court system, provide a really
17 satisfactory method of dealing with juveniles. We feel
18 that the arrangements are too closely based on the adult
19 criminal courts, and that where juveniles are brought
20 before the court they are too often dealt with by
21 magistrates who have little direct experience of the
22 treatment of juvenile offenders and little knowledge of
23 the facilities available or their use. One result is
24 a marked disparity in disposals from one court to the
25 next."

1 We have certainly seen that echoed in other comments
2 in the past.

3 A. Yes.

4 Q. So that perhaps explains how they saw matters at that
5 time, and the need for some committee to look at that
6 whole topic.

7 A. Yes.

8 Q. If we move on to particular establishments. I think
9 you've a couple of cases which involve Balnacraig and
10 Springboig St John's, which might be seen as the sort of
11 disorder cases --

12 A. Yes.

13 Q. -- that you have introduced. Balnacraig you deal with
14 at page 112, which is a junior girls' school in Perth,
15 or was, and Springboig St John's Boys' School was in
16 Glasgow.

17 So far as Balnacraig is concerned, I think the
18 situation there was, in brief, that the headmistress was
19 on long-term sickness absence.

20 A. Yes.

21 Q. The person in temporary command was judged by HMI to be
22 unfit for command. Another member of staff, a house
23 mother, was considered by the managers, not the
24 Inspector, to be unsuitable, and they were telling the
25 HMI that they, the managers, had been appalled by her

1 cruelty and vindictiveness.

2 A. Yes.

3 Q. And there were a spate of abscondings, and the upshot
4 was, I think, a temporary Head from another approved
5 school was brought in to try to restore control.

6 A. That's right, yes.

7 Q. That was very much driven by the SED.

8 A. Very much driven by HM Inspector of Schools and
9 officials from SED, yes.

10 Q. I think if we see, on page 113, the Inspector's view in
11 relation to this situation was that it was necessary to
12 act with utmost speed to halt a rapidly deteriorating
13 situation.

14 It's said with prompting from the SED, as you put it
15 in 113, the School Managers agreed to appoint
16 a temporary Headteacher from another approved school;
17 yes?

18 A. Yes.

19 Q. You tell us, on 114, that the minute -- the matter came
20 before the Secretary of State, who issued
21 an instruction, this is like a direction.

22 A. Yes.

23 Q. That control within the school should quickly be
24 established and asked to be kept informed of direct
25 developments.

1 So if the Secretary of State says that, then
2 something has to be done quickly.

3 A. They're looking over their shoulder at the possibility
4 of another Carlton.

5 Q. You say that the reports themselves, on the school, do
6 not indicate evidence of physical abuse, irregular
7 punishment or insufficient diet. But the department and
8 the Secretary of State accepted the behaviour of staff
9 and the general tone of the establishment was short of
10 the care appropriate for an approved school.

11 So it's not clear precisely what was going on. For
12 example, what the member of staff who was punitive in
13 attitude was doing.

14 A. Yes.

15 Q. But there is a suggestion that there must be some form
16 of punishment regime that was considered unacceptable?

17 A. That is right. But the Inspector doesn't bring out
18 exactly what that was.

19 Q. No. But there's clearly something there --

20 A. Yes.

21 Q. -- that was troubling them?

22 A. I think the gist of this was that the school had lost
23 control of itself as an approved school, in terms of the
24 regulations.

25 Q. In part, that loss of control seemed to be due to the

1 way the staff were behaving towards pupils.

2 A. And each other.

3 Q. But the punitive attitude towards the pupils was

4 a contributing factor --

5 A. Yes.

6 Q. -- to the loss of control?

7 A. That's right, yes.

8 Q. Then if we move on to Springboig where you say the issue

9 was not dissimilar in one sense; it was a sort of loss

10 of control, disorder-type situation?

11 A. Yes.

12 Q. We see that was a senior approved school.

13 A. Yes.

14 Q. The only one in Scotland at the time for Roman Catholic

15 boys.

16 And there was a report, in early 1960, which was, as

17 you say, underlining the impact of a lax management,

18 where few rules existed.

19 So we see that the Inspector's view, at the foot of

20 page 114, is that he's been concerned for some time and

21 this is not a recent situation.

22 A. Yes.

23 Q. But laissez-faire attitude of the Headmaster and staff

24 at the school?

25 A. That's right.

1 Q. There is a complete lack of any systematic approach to
2 the boys' general training.

3 Although he does go on to say that on the other hand
4 it's probably a happy school and happy staff, and the
5 kind of atmosphere one would least expect the boys to do
6 a Carlton.

7 A. Yes.

8 Q. The lads have probably too much affection for the
9 Headmaster and other members of staff.

10 A. Right.

11 Q. That doesn't seem to have counted for much?

12 A. He doesn't seem to be too worried. He worried, but not
13 too worried, in 1960.

14 Q. He doesn't seem to be too influenced by the fact that
15 while he doesn't like the regime, the boys are happy.

16 A. Yes.

17 Q. You might have thought the happiness of the boys might
18 be quite an important consideration.

19 A. I know, I know.

20 Q. So he goes on to say:

21 "It might be argued that this is the right way to
22 run a school, have as few rules as possible, and
23 establish amicable relations between boys and staff.
24 The influence of the staff can thus get through to the
25 boys."

1 There is a certain sense in what he's saying there?

2 A. Yes, it is. He's not condemning the school, but he is

3 concerned that if you like the rules and -- general

4 rules and regulations --

5 Q. Are not being met?

6 A. Are not being met.

7 Q. They are not getting a structure ^ OVERSPEAKING?

8 A. That's right.

9 Q. However happy the boys might be?

10 A. Yes.

11 Q. Although he does go on to say that the consequence of

12 this regime, on page 115, is that he thinks that there

13 is a situation where disorder and violence among the

14 boys themselves was almost being condoned or tolerated

15 by staff?

16 A. Yes.

17 Q. So it's not all sweetness and light. There is a concern

18 that the regime is such that while the staff might be

19 getting on famously with the boys, the boys themselves

20 are engaged in violence and acts of disorder.

21 A. Violence and abuse of each other.

22 Q. And the staff aren't really handling that situation?

23 A. That's right. The staff are, if you like, retreating.

24 Q. Yes. We see this, perhaps, in a later report, in early

25 1961, that there have been three recent incidents of

1 boys being stabbed by others and a general level of
2 fighting.

3 A. Yes.

4 Q. It was a violent place?

5 A. It was a violent place, where the managers seemed quite
6 happy with a relaxed attitude towards it.

7 Q. Yes. They were aware of the violence, but they weren't
8 really concerned.

9 A. No.

10 Q. And it says that -- I think the departmental view is
11 then expressed at the foot of 115, which is where it
12 says:

13 "In the main, the troubles appeared to arise from
14 the lack of response of a difficult lot of boys to
15 a permissive regime with no system of discipline."

16 So the Inspector seems to be blaming the disorder,
17 the violence and all these matters, to the existence of
18 a permissive regime.

19 A. Yes.

20 Q. And a lack of discipline. Rather than excessive
21 discipline; it seems to be the other way round?

22 A. A lack of discipline, and that implies, if you like,
23 that education and instruction were being neglected.

24 Q. There seems then to have been meetings between the
25 department and the managers, at page 116. At this point

1 the managers are perhaps fighting back a little bit, by
2 saying: well, you know, the school's large, too large,
3 and we need a new school --

4 A. Yes.

5 Q. -- for Roman Catholic boys.

6 A. Yes.

7 Q. And that will help the situation somewhat.

8 So they've made that case for a new school?

9 A. Yes.

10 Q. It appears that thereafter a new headmaster was
11 appointed, but the problems continued.

12 A. Yes.

13 Q. That led the Inspector, I think, to report on his view
14 of what had to happen, and his recommendation, I think,
15 was to reduce the roll, in other words a smaller number
16 of boys, and increase the number of staff, and I think
17 also to generally improve the facilities, to give them
18 some meaningful, purposeful, activity, is the
19 expression, I think.

20 A. Yes.

21 Q. So that was his way of saying that the situation at
22 least could be tackled in that way?

23 A. Yes.

24 Q. Indeed, he was so concerned that he said -- and this is
25 at the foot of 116:

1 "New boys should not really be admitted. In
2 addition to being harmful, possibly even dangerous to
3 the boy, it makes it virtually impossible to achieve an
4 effective break with a bad discipline."

5 He didn't consider it was an environment into which
6 any additional boys should be put?

7 A. That's right. I think it's important to note that in
8 fact it's the new HM Inspector of Schools, Mr Murphy,
9 who of course had come from south of the border and had
10 intimate knowledge of Carlton.

11 Q. So he's giving them a clear signal --

12 A. Yes.

13 Q. -- that there are problems that have to be tackled and
14 it's partly to do with the size of the school,
15 insufficient number of staff, facilities, a whole range
16 of things.

17 A. That's right, yes.

18 Q. There's an urgent need, as he put it on page 117, for
19 a second Roman Catholic senior school?

20 A. Yes.

21 Q. That would be necessary to address these issues, so, as
22 he puts it, the existing dangerous standards and
23 traditions are eradicated.

24 A. Yes.

25 Q. He says this was something that was proved to be

1 necessary at Carlton. So you have explained why he
2 might have knowledge of that matter?

3 A. Yes.

4 Q. The SED met with the managers, you tell us, the
5 following month, and there was an agreement on
6 additional staff and a new block for the school, and
7 other proposed structural changes to address some of
8 these issues. It was also agreed, I think, at that time
9 that there was a need for a new intermediate and senior
10 school for Roman Catholic boys and I think one was set
11 up?

12 A. Shandon, yes.

13 Q. That was something that the Minister agreed to at that
14 time?

15 A. Yes.

16 Q. So the urgent action was taken, including an agreement
17 to set up a new school?

18 A. From a political perspective, the Minister accepted the
19 answer would be: if there was a riot there, we're
20 setting up a new school.

21 Q. This was particularly likely to be his reaction if the
22 schools themselves wanted this.

23 A. Yes.

24 Q. Whereas if they didn't want something, he was, as we saw
25 before, careful not to give them what they didn't want.

1 A. That's right, yes.

2 Q. You say that, in relation to Springboig, the
3 Inspector -- this is at the foot of 117 -- noted its
4 culture had sustained bullying, violence, and a lack of
5 a systematic approach to training. The Headmaster was
6 seen as a permissive man, who didn't check disorder,
7 failed to record accurately the amount of punishment
8 that was inflicted.

9 Then you describe the Balnacraig situation as well.

10 So this is how that was dealt with, and then you
11 mention Kibble, on page 118.

12 A. Yes.

13 Q. I don't really want to take up too much time. But this
14 was a situation where the School Managers were
15 responsible for appointment and dismissal, and you say
16 that this was a case where grounds for dismissal
17 existed. The SED would exercise a certain degree of
18 influence on the way managers would respond; is that --

19 A. That's right, yes.

20 Q. In this case, it was a bit unusual, was it not, because
21 the branch covering approved schools received anonymous
22 letters about Kibble?

23 A. Yes.

24 Q. It was still felt, despite the fact they were anonymous,
25 that it merited further inquiry to see whether any

1 further action should be taken on the matter.

2 A. Yes.

3 Q. It seems that this was a wise decision, because at least
4 it uncovered the fact that there had been allegations of
5 misconduct --

6 A. Yes.

7 Q. -- involving boys and a teacher. This was when the
8 teacher was at Mossbank and the boys were there also; is
9 that right?

10 A. That's right. But the teacher had moved to Kibble.

11 Q. He then moved to Kibble?

12 A. Yes.

13 Q. It says that the allegations had only recently been made
14 by the boys. The teacher had been serving at Kibble for
15 several months and there was a police investigation.
16 The upshot seems to have been that the member of staff
17 resigned and was reported to have left the country.

18 A. Yes. I'm not sure whether that was Scotland or the UK.

19 Q. Really, the branch felt this was essentially a police
20 matter.

21 A. Yes.

22 Q. And: we should leave it to the Police to deal with it.

23 Indeed, if we go to 119, we see that the Scottish
24 Office Solicitor was advising the department that they
25 should leave any further action to the Crown Office --

1 A. Yes.

2 Q. -- if appropriate. So that was the way that matter
3 unfolded.

4 A. Yes.

5 Q. It does reveal an apparent misconduct by a teacher at
6 one school, and that teacher managed to move to another
7 school subsequent to the alleged misconduct.

8 A. Yes.

9 Q. They were both approved schools?

10 A. They were both approved schools.

11 Q. We don't really know what degree of enquiry that took
12 place before that happened?

13 A. That's right.

14 Q. If we go to Thornly Park, I think this is -- you mention
15 this one. I think this is perhaps illustrative of the
16 influence, benign or malign that Headmasters could
17 exercise over managers?

18 A. Yes.

19 Q. And, of course, the influence, if it's a strong
20 influence, can be detrimental both to the school and the
21 pupils, depending on the particular appointee to a post.

22 A. Yes.

23 Q. Is this really a case of -- this Headmaster had been in
24 post for 30 years?

25 A. A substantial period of time.

1 Q. Is this a case, basically, of another unsuitable head in
2 post for far too long?

3 A. He may well have been acceptable in the 1930s, but
4 certainly by the 1960s a rod of iron was not really
5 an appropriate way to manage an approved school.

6 Q. Indeed, the Inspectors worked all this out for himself,
7 because he said managers came and went and the
8 Headmaster felt he was able to govern his managers,
9 a thoroughly unhealthy system existed for many years in
10 which staff and boys suffered greatly?

11 A. Yes.

12 Q. So, reading between the lines, presumably that does mean
13 that they suffered in terms of their treatment?

14 A. In terms of -- I think the phrase "rod of iron"
15 indicates a punishment regime.

16 Q. Yes. Indeed, even the staff, not just the boys, were in
17 a state of perpetual near revolt?

18 A. Yes.

19 Q. You tell us that the records disclosed that he took
20 early retirement before department agreed to present the
21 managers' a rather adverse report, so he walked before
22 he was pushed?

23 A. Yes.

24 Q. Then you give us another example of yet another
25 unsuitable head, this time at St Mary's Kenmure?

1 A. Yes.

2 Q. Where the situation seems to have been that there was
3 abuse of boys?

4 A. Yes.

5 Q. Is the term "abuse" used there, in the records?

6 A. Yes, if --

7 Q. So he uses the term "abuse"?

8 A. It's the first time I've seen the word "abuse" used in
9 any report.

10 Q. We see there, perhaps, the fears of the department in
11 the late 1950s being realised, that one of the issues
12 was the irregularity of the punishment of the Headmaster
13 and we see from this case that Kenmure St Mary's was the
14 last school in Scotland where boys removed their
15 ordinary trousers and put on thin football pants before
16 punishment. That was a flagrant breach of the
17 regulations.

18 A. Absolutely.

19 Q. It says that this only came to notice no doubt after
20 being in practice for some time?

21 A. Yes.

22 Q. By a boy who had transferred to another school?

23 A. And obviously felt free to be able to express his views.

24 Q. This is how to came to light?

25 A. Yes.

1 Q. I suppose no punishment log is going to disclose that
2 practice?

3 A. No.

4 Q. They're not going to record "not over ordinary cloth
5 trousers."

6 A. That's right.

7 Q. If we go to Geilsland, now this is an even more serious
8 case, is it not? This was a suitability issue again,
9 and yet again we see it's the Headmaster that's
10 involved?

11 A. Yes.

12 Q. What seems to have happened here -- and this is a new
13 school as well?

14 A. Yes.

15 Q. It was opened in 1964, and was run by the Church of
16 Scotland, and it was for senior boys, Protestant boys.

17 A. Yes.

18 Q. Initially it seemed there was some degree of
19 commendation by the Inspector on the intensity of the
20 training at the school, but there were concerns raised
21 of incidents of irregular punishments, and the use for
22 boys for menial tasks in the evening.

23 Then it says that more detailed concerns were raised
24 by an inspection the following year, when the school
25 acknowledged the occurrence of three irregular

1 punishments, and these were that the boys had been
2 struck on the face.

3 A. Yes.

4 Q. On one occasion, the medical record was altered.

5 A. Yes.

6 Q. So we have a situation where there's irregular
7 punishment by striking, in flagrant breach of the
8 regulations, and in this case causing injury, which is
9 also in breach of the regulations, even if it was
10 permitted.

11 A. Yes.

12 Q. We also have falsification of an official record, it
13 would appear at the instigation of the head, to cover up
14 the matter?

15 A. That's right, yes.

16 Q. We see that the surgery book which was examined, and
17 maybe on this occasion at least records caught someone
18 out, was that when the Inspector saw the Matron, examine
19 the book, he was able to see that an alteration had been
20 made, consisting of putting a piece of -- pasting
21 a piece of paper over an entry which read "after
22 receiving punishment" and adding "after falling against
23 a door". So we have it reading:

24 "Swelling of the face, pain to right ear, after
25 falling against a door."

1 When the original entry was:

2 "Swelling of the face, pain to the right ear after

3 receiving punishment."

4 A. Correct.

5 Q. It's quite a serious matter, that.

6 A. Extremely serious matter, which led to disciplinary.

7 Q. Was this person dismissed?

8 A. No.

9 Q. And why was that?

10 A. The EIS put up a very strong case in support.

11 Q. Of what he did?

12 A. Of what --

13 Q. Or his retention?

14 A. Of his retention.

15 Q. We see that at page 122, do we not?

16 A. Yes.

17 Q. That through what is described as the conciliation

18 efforts of the EIS, the Headmaster retained his position

19 and appears to have agreed to follow the rules.

20 A. Yes.

21 Q. As far as you could tell, there didn't seem to be any

22 recurrence of this, was there?

23 A. It's clear that the HM Inspector of Schools visited the

24 school on a fairly regular basis, unannounced.

25 Q. To ensure there wasn't?

1 A. Yes.

2 Q. Then, going on to another case, at Loaningdale --

3 I don't want to spend too long on this, but you have

4 included it, I think, because you say that the

5 suitability of staff to work and teachers -- this is at

6 122 -- was further tested in 1964, when the department,

7 the SED, considered restoration of a teaching

8 certificate to Loaningdale's welfare officer.

9 A. Yes.

10 Q. I think the background to that was that Loaningdale's

11 welfare officer had been convicted some years before of

12 lewd and indecent and libidinous practises and behaviour

13 towards young girls aged 11 and 12, when they had been

14 his pupils at a school near Edinburgh.

15 A. I think it was Dalkeith High.

16 Q. Dalkeith High. What seems to have happened is that

17 after serving a sentence of three months' imprisonment

18 for these offences, his teaching certificate was

19 withdrawn and there was an attempt to have it restored

20 while he was at Loaningdale.

21 A. That's right, yes.

22 Q. But he had been allowed --

23 A. To become a welfare officer --

24 Q. At Loaningdale, notwithstanding the conviction and the

25 knowledge of the conviction.

1 A. That's right.

2 Q. It was a boys' school, but nonetheless --

3 A. It was a boys' school, and he was initially not teaching

4 the boys --

5 Q. He was involved in their welfare?

6 A. But he was, therefore, outside that ED list, in terms of

7 employability.

8 Q. So they wouldn't pick it up from the list of unsuitable

9 people arrangements?

10 A. If it was on the list, but that was the list for

11 reemploying individuals as teachers, not as Welfare

12 Officers.

13 Q. So the fact that he was applying for a different post

14 with children was the critical factor that got him the

15 job. Had he asked for a teaching job, the list would

16 have disclosed that he shouldn't be given the job?

17 A. That's right, yes.

18 Q. He did get the job, as we know, and then having got the

19 job, he seems to have sought restoration to go back to

20 teaching; is that right?

21 A. That's right, yes.

22 Q. Initially, he presented evidence from his own

23 psychiatrist who suggested that he could teach as long

24 as it was restricted to teaching young men only.

25 A. Yes.

1 Q. But the Medical Officers of the department advised
2 against such a move at that time.

3 A. Yes.

4 Q. Then it seems that the following year an appeal was
5 submitted and this seems to have been supported by
6 fairly eminent people.

7 A. Yes.

8 Q. Including the chair of psychological medicine at
9 Edinburgh University?

10 A. Yes.

11 Q. The Headmaster of an undisclosed Edinburgh school and
12 the Deputy Director of Education at Midlothian County
13 Council.

14 A. Yes.

15 Q. It appears that the medical officers presented with this
16 appeal felt that while there was an element of risk, he
17 should be restored to the teaching -- or the certificate
18 should be restored.

19 A. The minute indicates that it was the Headmaster of
20 Ainslie Park School.

21 Q. Thank you very much. So he was restored?

22 A. Yes.

23 Q. Albeit they did recognise it might be taking a degree of
24 risk.

25 A. Yes. Restoring the certificate did not restrict him

1 from teaching girls.

2 Q. I see Ainslie Park School is mentioned.

3 Then, moving on to Langlands Park, this is a girls'

4 school, approved school?

5 A. Yes.

6 Q. The situation here is, in 1963, the Headmaster, another

7 Headmaster, is censured at that time for slapping

8 a girl. This was a school that was recently opened for

9 senior Protestant girls?

10 A. That is right. It was a replacement, if you like, for

11 Lochburn.

12 Q. Yes. The Headmaster, in the course of the inspection,

13 seems to have admitted that another member of staff had

14 slapped another girl.

15 A. Yes.

16 Q. And the new rules, in 1961, were pointed out that

17 prohibited the use of any corporal punishment in

18 a senior girls' school?

19 A. Yes.

20 Q. It would appear the upshot was that the school's

21 managers asked the Headmaster to resign and he seems to

22 have done so, and they appointed a new Headmistress?

23 A. That is right.

24 Q. But within a few months she resigned?

25 A. Yes.

1 Q. Or had to throw in the towel, as the Inspector described
2 it.

3 A. It's not clear, no, no. I think one reads what one
4 wants into that sort of quotation.

5 Q. But you do say that subsequent inspections at least
6 didn't seem to disclose the recurrence of the irregular
7 punishments involving slapping of pupils?

8 A. That's right, yes.

9 Q. But that there was an outbreak of disorder in 1967, and
10 you say that the Inspector who looked into this matter
11 concluded, at page 124, the cause was multi-factorial?

12 A. Yes.

13 Q. You set out a number of the factors that contributed to
14 this state of affairs, and if I just take a couple of
15 things from it.

16 At 124, second paragraph in the quotation, one is:
17 "At present they [the pupils, the girls] are sitting
18 on their backsides too much, and using their legs, hands
19 and heads too little."

20 So they weren't really giving them much purposeful
21 activity?

22 A. No.

23 Q. If we go over the page, to 125, we see that the
24 Inspector also says psychiatric help is available,
25 presently only in an emergency, and that the

1 psychologist has not been able to deal continuously with
2 any number of individual cases. So not really getting
3 much professional support?

4 A. Interagency support seems deficient.

5 Q. This is perhaps the key point that the Inspector makes,
6 and it's not -- it's another recurring theme about
7 staff. He says:

8 "Staff is probably the biggest single factor in this
9 equation. With a good, experienced staff well led, the
10 previous adverse factors might have been surmounted."

11 So there, again, we have it. Time and time again
12 staff, experienced, trained, and so forth.

13 A. Yes.

14 Q. We see all that.

15 Can I go on to page 127? I'm moving to the late
16 1960s now. The Social Work Services Group has been
17 formed and the issue now was very much corporal
18 punishment and how one could presumably reduce or remove
19 that punishment.

20 And also trying to change the culture of the regime
21 in approved schools; is that broadly speaking --

22 A. Yes, yes.

23 Q. It's interesting what the HM Inspector of Schools
24 minuted in 1967; is this Murphy?

25 A. No, this is Macpherson.

1 Q. What he says, and I think it is worth quoting:

2 "Over the years [and he's been in post since 1950]
3 our superficial attempts [that is his description] at
4 training have infiltrated some more modern concepts and,
5 more important, our help in the selection of Heads has
6 reduced the number of them who would reply [I think it's
7 'rely'] mainly on corporal punishment as a means of
8 reform."

9 "There is still a nucleus of Heads, however, who are
10 anxious not be to be considered "soft".

11 "[...] I am in no doubt however, that corporal
12 punishment is still quite a savage business and that
13 boys scream when a stout Lochgelly is applied on the
14 buttocks. As [a Headmaster appointed in 1950] said once
15 in public, when another Head said that any father would
16 occasionally give his boy a pat on the backside - 'Sir,
17 I do not give them pats on the backside, I given them a
18 flogging'. The records show that many floggings are
19 administered in our schools."

20 That tells it all, doesn't it?

21 A. It does. It's a fair summary, really, of this HMI's
22 career.

23 Q. We have the issue of corporal punishment. It's been
24 laid bare by the Inspector in 1967 about what the
25 situation is.

1 A. Yes.

2 Q. I suppose then we see what was done then to address this
3 situation. I think it was accepted at all hands -- and
4 I think we see this at 128 -- that official and
5 ministerial view was that corporal punishment was
6 antithetical to a child's development, albeit it seemed
7 to be in frequent use in approved schools.

8 A. Yes.

9 Q. But there was a belief that if you attempt to abolish it
10 by regulation, that might cause an upsurge in irregular
11 and unrecorded punishment.

12 Well, I think that's rather a strange comment to
13 make because it seems that the records are littered with
14 examples.

15 A. Yes.

16 Q. So that's not something that was likely to happen
17 because of this removal.

18 A. Right.

19 Q. It was happening already.

20 A. It was happening already.

21 LADY SMITH: Professor Levitt, in the last paragraph on
22 page 127, you say that the Social Work Services Group
23 accepted the Inspector's advice that the agreement
24 reached between the department and approved School
25 Managers in 1961 had been breached; was that

1 an agreement or was it a memorandum of understanding?

2 A. No, it was, if you like, a tacit agreement between the
3 approved School Managers, Headmasters, and the
4 Department, that they would seek to reduce the
5 incidence of corporal punishment.

6 MR PEOPLES: It was an assurance that was accepted in good
7 faith --

8 A. That's right.

9 Q. -- by the department. The Minister, in fact, it was
10 given almost directly to him because they told him about
11 this, and he said: let them get on with it because we
12 can trust them, we have to have the principal, they can
13 do things and, unfortunately, it now transpires that
14 wasn't --

15 LADY SMITH: You are not referring to a separate agreement
16 with any formality to it?

17 A. No formality. It was a record of agreement between the
18 parties involved.

19 MR PEOPLES: If I can move on, reasonably briefly, the 1960s
20 saw an opening of new schools and we see that that was
21 to an extent to address overcrowding, the rise in
22 committals. There were some improvements to existing
23 schools and you've given some examples of that.

24 There was clearly a need for more places, but there
25 was still an attempt to try to reduce the size of

1 schools at the same time, but there was obviously
2 a continuing problem.

3 If we go on to 132, I think some of the examples you
4 give from here in relation to various schools are really
5 examples of the attempts to address the issue of
6 education and training?

7 A. Yes.

8 Q. Because that was thought to be not in conformity with
9 the letter and spirit of the regulations. I think you
10 give examples of where the Inspectors have taken the
11 view that the training and education is completely
12 substandard?

13 A. Is -- or non-existent.

14 Q. To give the reference, you have Springboig St John's in
15 1966, on page 132. I think that one of the points made
16 there is that what the boys are getting asked to do
17 doesn't -- they do with an apparent lack of interest or
18 enthusiasm, and vocational instruction, rather than
19 mainstream education predominates?

20 A. Yes.

21 Q. That seems to have been a feature of the system up until
22 then?

23 A. It doesn't appear that the education and training was
24 related to post-approved school -- potential
25 post-approved school employment.

1 Q. If we see that this issue is taken up again in relation
2 to Springboig St John's, in 1967, in a report where
3 I think it just brings this matters into sharp focus, by
4 saying that the school employed a single teacher, the
5 deputy head, who wasn't even teaching.

6 A. Yes.

7 Q. So that the main staff were instructors, not teachers.

8 A. Yes.

9 Q. So this was bringing into sharp focus the quality of
10 education and instructional provision. Again, it
11 highlights the general lack of enthusiasm that was the
12 impression formed of the way that the boys reacted to
13 this regime.

14 A. Yes.

15 Q. Again, it's more reports about the quality of training
16 and provision at the school. You do tell us that maybe
17 things did improve a little bit after the raising of the
18 school leaving age, but vocational training -- this is
19 at the top of 134 -- remained a major element in the
20 programme of the school.

21 Indeed, by 1978, the school employed four teachers,
22 but eight instructors --

23 A. Yes.

24 Q. -- to illustrate that.

25 There were similar concerns about Tynepark about

1 concentration of vocational training, that's page 134.

2 Geilsland, at page 135, I think it is said there
3 that the school, when visited, that educational
4 provision had been given the lowest priority. This is
5 page 135.

6 Indeed, the pressure of committals, you say towards
7 the foot of that page, were such that it had resulted in
8 dormitory accommodation -- the requirement for dormitory
9 accommodation had resulted in planned discussions for
10 classrooms not being released.

11 A. Yes.

12 Q. They had to sacrifice more classrooms?

13 A. Yes.

14 Q. To get more beds?

15 A. Yes.

16 Q. So that is again an educational provision that is under
17 scrutiny.

18 There is also, in relation to other schools -- and
19 I think Balrossie may be one -- at page 135, they are
20 pointing up the underachievement of pupils who attended
21 approved schools. They come out with nothing?

22 A. They come out with nothing, so the education part of the
23 training seems to be rather deficient.

24 Q. If we move to children's homes briefly.

25 We have got them here. There are less examples but

1 there are a couple I want to pick up.

2 First of all, there was an inspection of Glasgow's
3 childcare arrangements at the end of 1959, which had
4 identified that six of 16 homes had received negative
5 reports for various reasons, but one of the reasons was
6 that the unqualified staff and the inadequate number of
7 staff?

8 A. Yes.

9 Q. So we see that again, and if we go on, there is a really
10 important case, is there not, Wallhouse Children's Home?

11 A. Yes.

12 Q. In 1961. And that seems to have been one of the first
13 major inspections of children's homes?

14 A. Well, the first major inspection where we got a report.

15 Q. Where we have got a report. And that was because of
16 allegations about the regime made by, it says
17 individuals previously associated with the home; was
18 that staff or residents?

19 LADY SMITH: Can you give us a page number?

20 MR PEOPLES: Page 139.

21 A. It was by staff.

22 Q. And this is Local Authority children's homes in West
23 Lothian. It's not a voluntary home?

24 A. No.

25 Q. A State-run home?

1 A. Yes.

2 Q. 1961. And it is said by Inspector, the Chief Inspector
3 in a lengthy report of 100 pages: "The conduct in the
4 home was unsatisfactory in that it fails to comply with
5 the regulations and it's not in accordance with the
6 memorandum of 1959 on children's homes and, thirdly, it
7 contrary to the principles of good management."

8 The report says: "The staff of the home of are of
9 poor calibre, none is trained and few have relevant
10 experience."

11 Then, if we go over, and I think it's worth reading
12 some of this, in relation to hygiene of the home, this
13 is a home in West Lothian run by the Local Authority:
14 lavatories are left unclean -- this is the top of page
15 140 -- and there is no toilet paper in several. No
16 towels or soap in the lavatories for domestic staff or
17 children.

18 Reading further down, a succession of boys were
19 washed and dried with the same flannels and towels and
20 some children are unnecessarily left naked for long
21 periods, bed covers in the dormitories were dirty,
22 rubber sheets on the beds were inadequate, all the bed
23 clothes and the cots in the nursery were soaked with
24 urine in the morning and the Medical Officer doesn't
25 visit regularly.

1 The food is dull and unappetising, the order book
2 supports the allegations that the matron's meals are
3 superior in quality and quantity to that provided for
4 the children and other staff, and clothing, former
5 members of staff say the children do not have individual
6 clothes. As regards recreational activities, they are
7 said to be inadequate and neglected. The playroom is
8 bare and repelling.

9 The under-fives have no play things, apart from
10 rubber dolls and animals in the nursery, so -- and it
11 goes on.

12 So that's pretty appalling.

13 A. Yes.

14 Q. And the matron was given a chance to respond to these
15 allegations about the state of the home and what was
16 happening and as regards corporal punishment on page 141
17 do we read:

18 "She denied ... (reading to the words)... a cuff in
19 the ear."

20 Clearly, that would have been a flagrant breach of
21 the Approved School Regulations at the time and so far
22 as the 1959 Regulations are concerned, it's not
23 expressly said but it looks like the Inspectors took the
24 view if you apply the same criteria that that would be
25 unacceptable punishment?

1 A. Unacceptable.

2 Q. Although had they had the chance to prescribe these
3 things in 1959 it would have been put beyond doubt?

4 A. It would have been put beyond doubt.

5 Q. But the Minister preferred the view of the homes that to
6 let them decide and they'll know to do the right thing?

7 LADY SMITH: And one of the proposals in the draft 1959
8 Regulations was that no child could be hit on the head?

9 A. That's right.

10 LADY SMITH: But that didn't get embedded.

11 A. It didn't get embedded in the regulations.

12 MR PEOPLES: There are other examples you give and I'm not
13 going to take you to them because I'm conscious of the
14 time.

15 At page 142, Lord and Lady Pulwarth Home, we can see
16 had poor hygiene, staff qualifications, lack of medical
17 attention in a home for younger pre-schoolchildren are
18 matters raised. Again, fairly damning and there's
19 failures there on the part of the person in charge to
20 share information, and you can see that at 142, the
21 Medical Officer is not fulfilling the requirements of
22 the regulations and there is hygiene issues and at 143
23 there is no wash hand basin in the room that is used as
24 a combined bathroom and toilet, and after using the
25 lavatory children do not wash their hands.

1 Then:

2 "The milk kitchen is not provided with a
3 refrigerator and in consequence milk feeds prepared in
4 advance stand on a table at room temperature. The Home
5 carries a high proportion of untrained staff."

6 A. This is coming from the Department of Home and Health,
7 that the Medical Officer undertook that particular
8 inspection.

9 Q. If I can just turn briefly to Christie's Homes. We have
10 already heard of Christie's Homes. Again, the issue
11 there is staff with a lack of appropriate
12 qualifications. The matron, her only qualification was
13 as a domestic science teacher and there is no indication
14 I think that the other staff at the home had any
15 childcare or nursing qualifications?

16 A. Yes.

17 Q. Is that right?

18 A. Yes.

19 Q. And that staff in charge of the nursery, on page 145,
20 were young and untrained and indeed, unfortunately,
21 there was the death of an infant in 1967 and that
22 appears to have happened when the infant in the care of
23 a student teacher, who the Social Work Adviser noted had
24 little experience of looking after babies. I think
25 everyone else had gone off on a trip?

1 A. Yes.

2 Q. This is the home where the punishment regime was also
3 looked at on page 146 and this is where we see that the
4 logbook that was maintained, showed that one child was
5 required to wash their mouth with soapy water for using
6 foul language and the matron had bitten a child on the
7 hand. We heard about that case before.

8 A. Right. Fine.

9 Q. I'm not going to elaborate on it again.

10 There is a host of examples of this kind that are
11 showing deficiencies, breaches of the regulations in
12 relation to both children's homes and approved schools,
13 lots of key people in key position who are unsuitable?

14 A. Yes.

15 Q. And not exercising the personal influence that the
16 regulations intended?

17 A. Yes.

18 Q. Lastly, if I can, because you have a section on deaths
19 in care, and I think they're mainly to do with children
20 boarded out and I hope these were covered by the Foster
21 Care Study and if they're not they are there and
22 I think --

23 A. Could I bring your attention to footnote 674? This is
24 relating to the Glasgow home and I think again I was
25 trying to search for, if you like, key phrases and key

1 words and the Assistant Secretary of the Social Work
2 Service Group with responsibility for childcare says:

3 "Some doubt ... (reading to the words) ... abuses."

4 That is the first time I came across the word
5 "abuse" among officialdom within the Social Workers
6 Services Group and its predecessor.

7 Q. So the measure they're talking about was simply that
8 there's been a lot of non-compliance with regulations
9 and bad practice, but what we're going to do -- said the
10 Council -- is we're going to appoint a supervisor of
11 homes to visit once a month to sign the punishment log
12 and the Assistant Secretary is clearly sceptical about
13 whether that sort of measure is adequate to deal with
14 the possibility detection of abuse?

15 A. That's right, yes.

16 Q. Indeed, it's recorded there, for once, that the abuse
17 seemed to involve whacking boys in the corridor,
18 whacking them for misdemeanors for which they'd already
19 been punished ... or being made to stand for meals and
20 humiliating bath procedure of cold baths after boys had
21 absconded."

22 I think they were very sceptical about whether that
23 sort of measure would really meet the situation?

24 A. Yes.

25 LADY SMITH: Or indeed address the risk of abuse. It's not

1 just a matter of detection, it's a matter of identifying
2 where the risks lay?

3 A. Yes, yes.

4 Q. If I could just finish off, if I may, on the question of
5 effectiveness. And I want to be brief on this, but
6 I think perhaps based on the evidence you have
7 uncovered, one could form a certain view on the
8 effectiveness of the systems in place at that time to
9 protect and prevent the abuse of children.

10 If I was to suggest to you on the basis of the
11 evidence you have recovered and reported on, for the
12 period in question, if I suggested that these systems
13 and mechanisms were ineffective, what would your answer
14 be?

15 A. I would point out, where I started, when I began to
16 think about constructing this report and it was David
17 Cowperthwaite's quotation which we have come across, in
18 his published book, when he reflected back and he said
19 that there was a systematic error in the way that the
20 Children's Act 1908 and subsequent Acts had been applied
21 in Scotland and that led to overreliance on what might
22 be called the code of the approved school, which was
23 that of moral education, as opposed to the code that was
24 meant to be in force with the Children's Acts of the
25 Care and Welfare of Children.

1 And you can see very clearly here that in fact the
2 atmosphere that permeated approved schools in this
3 period also spilled over into residential care, other
4 residential care. And that it was very difficult for
5 a child, particularly someone aged 10 and over, to
6 escape from an approved school, if they were thought to
7 be in need of care.

8 So I'm not disagreeing with you, I'm simply pointing
9 out I began from that assumption which was, if you like,
10 an open admission, probably the best admission you'll
11 get from a document of the period: yes, there were
12 serious systematic defects within the system of Scottish
13 care for children.

14 LADY SMITH: To put it as shortly as one could, do you think
15 he was saying the system was one in which correction
16 took priority over care?

17 A. Yes.

18 MR PEOPLES: Just to be absolutely clear, just a couple of
19 things arising out of that. The factors which would
20 have influenced the attitudes, responses to the
21 behaviours of young people in residential care, good
22 leadership, suitably qualified and appropriately trained
23 staff, were notably absent throughout the period?

24 A. Yes.

25 Q. And that the system of external oversight does not seem

1 to have been effective in preventing abuse occurring?

2 A. It was very difficult to police, even though you saw
3 an increase in policing.

4 Q. At the end of the day, as I think I put to
5 Professor Abrams, as regards abuse, the system depended
6 and still depends on the eyes and ears and the response
7 of those who are continuously on site?

8 A. Yes.

9 Q. Because the other mechanisms don't seem to be
10 particularly effective. You need people to complain.
11 You need people to say things and that wasn't happening?

12 A. It wasn't happening and issues that were occurring were
13 not being recorded.

14 Q. On resources, it would appear at least for some of the
15 time, maybe not in the 1960s once problems were emerging
16 and there was publicity of the problems, but until then
17 perhaps insufficient resources both from the providers
18 but also from Central Government were not put on the
19 table?

20 A. I think one would argue that that was the case, that
21 there were other priorities for public expenditure.

22 MR PEOPLES: I think that concludes my questions for you
23 Professor Levitt.

24 Can I just record my thanks for the care with which
25 you have prepared the report and the very informative

1 answers that you have given during last two days.
2 I've probably put you on the spot beyond your report
3 itself but you have shown that you are clearly able to
4 help me with some of the other matters that I wish to
5 raise with you, so thank you very much.

6 A. Thank you.

7 LADY SMITH: Professor Levitt, I would like to add my
8 thanks, not only for the care and detailed work that's
9 gone into the production of this report, but for your
10 impressive stamina and resilience in managing to keep
11 going for four days this week, being questioned on your
12 other report and this one by both Mr MacAulay and
13 Mr Peoples, and, as you know, we have enjoyed it so much
14 we are inviting you back for another day, which I think
15 will be confirmed to you quite soon.

16 Meanwhile, I hope you manage to get some rest and
17 relaxation. Thank you so much.

18 I rise now until the date that will be published on
19 the website. Thank you.

20 (4.15 pm)

21 (The Inquiry adjourned until a date to be confirmed)

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