

Wednesday, 20 September 2023

1

2 (10.00 am)

3 LADY SMITH: Good morning. We turn now to the evidence of
4 Professor Norrie, who I think is here ready and waiting,
5 is that right, Mr Peoples?

6 MR PEOPLES: Yes, good morning, my Lady, he is ready to make
7 a further appearance before the Inquiry. Yes, he is the
8 first witness in this case study. If I could call him
9 now.

10 LADY SMITH: Thank you.

11 Professor Kenneth Norrie (affirmed)

12 LADY SMITH: Good morning, welcome back, thank you for
13 coming. Could we begin by you raising your right-hand,
14 please, and repeat after me.

15 Do sit down and make yourself comfortable.

16 As you may remember, I am happy to address you as
17 Professor Norrie, as Kenneth or in some other way if it
18 is your choice, but it is your choice. What would you
19 like?

20 A. I would say Kenneth today.

21 LADY SMITH: As I say, thank you very much for coming back,
22 Kenneth, to now turn to the part of your excellent and
23 detailed report that relates to the case study we have
24 just begun, looking into all forms of secure
25 accommodation for children. Let me just put it on

1 record at the beginning that I appreciate from what's in
2 the report that it is the fruits of much hard work and
3 detailed research, that will have required the expending
4 of much energy and dedication on your part, I am really
5 grateful to you for doing that.

6 If you are ready, I will hand over to Mr Peoples,
7 and he will take it from there, is that okay?

8 A. Yes.

9 LADY SMITH: Mr Peoples.

10 Questions from Mr Peoples

11 MR PEOPLES: Good morning, Professor Norrie.

12 A. Morning.

13 Q. As I think everyone will be well aware, you have given
14 evidence on a number of occasions to this Inquiry.
15 Today is the first day of evidence in a new case study,
16 which is concerned with a range of institutions,
17 including Approved Schools, List D Schools, secure
18 accommodation for young offenders and others, remand
19 homes, assessment centres, borstals, remand
20 institutions, detention centres and young offenders'
21 institutions.

22 Again, I think as you are aware, these were run by
23 a range of providers, including Local Authorities,
24 faith-based organisations, non-religious voluntary
25 bodies and the prison service in Scotland, which is

1 currently the Scottish Prison Service. As was said in
2 opening yesterday, the Inquiry considers these
3 establishments have in common that they were provided or
4 used by the State between 1930 and 2014 to accommodate
5 young offenders under the age of 18, children and young
6 persons under 18 before trial and children and young
7 persons under 18 in need of care and protection.

8 That's really the background to why we are here
9 today and you have dealt with these institutions in
10 reports that you have provided to the Inquiry, and
11 I think today that there should be in front of you
12 a screen which will allow you to refer to your report at
13 any stage. I understand that you don't have a hard
14 copy, but I am sure if you require one we can certainly
15 provide it.

16 A. I think that -- is this a hard copy here?

17 Q. There may be, yes.

18 A. Yes.

19 Q. If you wish to use it, by all means --

20 A. I have the screen and the hard copy.

21 Q. If you have the screen and the hard copy, by all means.

22 Can I just say at this stage, professor, that if
23 I refer to the report that you have prepared, which is
24 at LIT.001.001.5968, that if I refer to a page number
25 I will refer to a page number in our system so that the

1 page can be brought up on the screen. So --

2 LADY SMITH: That's the bottom right-hand corner of the
3 pages --

4 MR PEOPLES: The bottom right-hand corner, rather than --

5 LADY SMITH: -- not the one a little bit higher in the
6 middle of the page.

7 MR PEOPLES: Yes.

8 A. Oh yes.

9 Q. If I ask you to turn to a particular page, that is the
10 way in which I will seek to do it.

11 A. Yes, I see that.

12 Q. If I may.

13 A. Yes.

14 Q. I don't intend to spend time going over your very
15 impressive CV, which we have been provided with. Can
16 I just take it that you are, at least still for the
17 moment, professor of law at the University of
18 Strathclyde?

19 A. For another ten days.

20 Q. Another ten days.

21 LADY SMITH: Not that you are counting.

22 A. No, no longer.

23 MR PEOPLES: Can I say this also, that as far as this case
24 study is concerned, at this stage that many of the
25 applicants who have given evidence relevant to the case

1 study or the institutions were as children in a range of
2 care settings, indeed some in the full range of settings
3 that I mentioned a few moments ago, and as I think we
4 will discuss today, these various settings historically
5 had their own rules and regulations.

6 A. That's correct.

7 Q. Including, in particular, rules on discipline and
8 punishment, which is an area I think we will talk about
9 a bit more in due course.

10 A. Yes.

11 Q. Again, we will come to this, but I think, can we just
12 establish at the very beginning, that these rules and
13 regulations differed and sometimes differed in material
14 respects?

15 A. That's correct, yes.

16 Q. Therefore we have a situation, do we not, where the
17 children who were subject to these rules would have been
18 exposed in different settings to a different set of
19 rules?

20 A. Yes.

21 Q. In relation to the same subject matter, for example,
22 such as punishment?

23 A. Yes.

24 Q. Again, taking it broadly at this stage, it was not,
25 I think, until 1987 that a single set of rules were made

1 for residential establishments, whether children's homes
2 or residential schools or the like?

3 A. Yes, the planning for that was assumed under the 1968
4 Act, the Social Work (Scotland) Act 1968, the whole
5 intent behind that was to bring everything under one
6 set, but in fact we didn't really get them until 1987.

7 Q. It took a long time to give effect to the intention of
8 the 1968 Act in that respect?

9 A. Yes, yes.

10 Q. Yes.

11 A. You know, you could only speculate as to the delay, but
12 at least one possible part of the explanation was,
13 I suppose, priorities, what the Government considered
14 a particular priority at any one time. I am not sure
15 this was seen as a crucial priority.

16 Q. I think I can maybe help you there a little bit.
17 Professor Levitt, who has also given evidence to the
18 Inquiry, certainly has I think helped us to understand
19 why change takes time. I think in this case there was
20 certain difficulties in translating the idea of a single
21 concept of residential establishment with a single set
22 of rules into practice. Part of that was how one,
23 I think to use his expression, got rid of the Approved
24 School system and created a range of establishments with
25 common rules, and that wasn't an easy matter --

1 A. Mm-hm.

2 Q. -- for a variety of reasons.

3 A. Yes.

4 Q. I think at least there is a bit more --

5 A. Yes.

6 Q. -- that we have learned that it wasn't just a matter of
7 priority, I think there were other factors in play, and
8 again I think there was an intention, perhaps, at one
9 stage that these schools be taken over by Local
10 Authorities.

11 A. Mm-hm.

12 Q. Again, I think there was perhaps a reluctance on the
13 part of Local Authorities for, again, a variety of
14 reasons to do that. I think it was a time of great
15 change for Local Authorities?

16 A. Absolutely. There was a big redevelopment, of course,
17 in 1972.

18 Q. There was the local government reorganisation that took
19 effect in 1975, and of course we had the new structures
20 in 1968, creating the new social work departments to
21 replace the children's departments and so forth?

22 LADY SMITH: Might it also have been that human reaction to
23 the unattractiveness of making something difficult
24 a priority might have played a part, when there was so
25 much else going on? Why prioritise a difficult task if

1 you don't absolutely have to?

2 A. I am sure there would be an element of that, and
3 similarly there would be an element of inertia in, not
4 in the wholly negative sense, but if organisations or
5 institutions had been run on a particular line for very
6 many decades, and doubtless many of the people
7 responsible considered had been run successfully,
8 a mindset isn't necessarily there that suggests we need
9 to do something very, very differently and the way that
10 other institutions, different institutions, do it.

11 LADY SMITH: Yes.

12 MR PEOPLES: Can I also say in passing, although we are not
13 concerned with, well, not directly concerned with the
14 regulations applying to children's homes in this case
15 study, the 1959 regulations, which I think were the
16 first comprehensive set of regulations for children's
17 homes, that they were made under the 1948 Act --

18 A. Yes.

19 Q. -- but it did take, again, a period of some 20 odd years
20 to -- I'm sorry, 10/11 years, sorry, my arithmetic is
21 out.

22 A. Yes.

23 Q. To translate the power, to make regulations into a set
24 of regulations.

25 A. Mm-hm.

1 Q. There is a similarity, perhaps --

2 A. Yes.

3 Q. -- between that situation and the one that happened in
4 1968?

5 A. Yes, I think that's correct.

6 Q. What I propose to do this morning is, firstly, to
7 perhaps ask you some general questions about the
8 regulatory framework, the relevant framework.

9 Then I would propose to look at some parts of your
10 report, just to get a general overview of the
11 developments and changes that occurred between 1930 and
12 2014, a general picture.

13 Then I would like to turn to an overview of the
14 different regulations historically, focusing on
15 particular matters and how, if at all, they were
16 regulated by the regulations that are relevant for this
17 case study.

18 Can I just say at this stage, I may ask you to look
19 at some historical records relating to the Approved
20 School system, particularly documents written by, then,
21 Her Majesty's Inspectors for Schools, who were
22 responsible for Approved Schools. In part to compare
23 the regulations with evidence of practice by people who
24 were intimately involved with the system, and also to
25 show evidence of knowledge or awareness of abuse or

1 abusive practices on the part of inspectors, and indeed
2 officials, in the Scottish Education Department. I am
3 just warning you, perhaps, at the beginning that I will
4 come to that at some point during the course of your
5 evidence. I may ask you also for some views and
6 thoughts on the position historically as regards
7 protection of children in care from abuse.

8 That's really where I am going, and perhaps with
9 that introduction I can start with the general questions
10 about the regulations, which are just to set the scene,
11 if you like.

12 As I think has been said, a single set of
13 regulations applying generally to residential
14 establishments were made, were first made, in 1987 and
15 that these were The Social Work (Residential
16 Establishments-Child Care) (Scotland) Regulations 1987?

17 A. Yes.

18 Q. Yes. That's the post-1987 period that these regulations
19 would relate to residential establishments?

20 A. Yes.

21 Q. Some of which would have been former Approved Schools --

22 A. Yes.

23 Q. -- and List D Schools?

24 A. Mm-hm.

25 Q. Subsequent to that, just to look at that period, there

1 were further regulations -- I don't want to look at them
2 in any depth at this stage -- relating to looked after
3 children, as children in care had become.

4 A. That's correct.

5 Q. These regulations spelt out various duties and
6 requirements that were incumbent on those who had
7 responsibility for looked after children?

8 A. That's correct, yes.

9 Q. Some of those individuals in the good old days would
10 have been referred to as managers, such as those who
11 operated Approved Schools and List D Schools?

12 A. Yes, mm-hm.

13 Q. Going back in time, before 1987 we had the Approved
14 School system, as mentioned, and the era of the Approved
15 School system, including the List D Schools as they
16 became, was broadly speaking I think from 1983 through
17 to 1986. The Approved Schools --

18 A. 19 --

19 Q. -- were called Approved Schools until about 1971 --

20 A. Yes.

21 Q. -- but they were renamed or reclassified as List D
22 Schools?

23 A. Yes.

24 Q. But, in essence, they were much the same as before?

25 A. I would imagine.

1 Q. So far as these schools are concerned, can I just ask
2 you this: can you help us with the age range of the
3 children that would have been placed in these schools?
4 Would they be between about 10 and 16 years of age?

5 A. They would be, yes. They were schools first and
6 foremost.

7 Q. Yes, schools.

8 A. And for a lot of that period, particularly after 1932,
9 the school leaving age of course was less than 16 but
10 both what had previously been called reformatory schools
11 and industrial schools could keep children up until the
12 age of 16, and that was the age that it kind of carried
13 on.

14 Q. Yes. I think the actual school leaving age, as you have
15 said, was 15, and originally in the early 20th century
16 was 14.

17 A. Yes.

18 Q. And rose, I think, to 16 in the early 1970s, or was it
19 earlier than that?

20 A. I thought it was the 1960s --

21 Q. It could be.

22 A. -- but I can't remember precisely.

23 Q. I don't think it is of great moment at the moment.

24 That is the sort of age range, although I think you
25 do say in your report that it was possible for children

1 below the age of 10 to be placed in an Approved School,
2 but that was unusual?

3 A. That would have been unusual, but it was always --
4 I mean so often throughout the past 100 years, or so, so
5 often it seemed to have been a case of finding
6 an appropriate accommodation for a child, and even if
7 a child was below the age of 10 but needed to be
8 accommodated away from their family, while the intent
9 for these younger children was clearly to -- what today
10 we would call foster care or kinship care, sometimes
11 that was simply not available. So there are instances,
12 which appear sort of mentioned by the way, of children
13 under the age of 10.

14 Q. Yes, and perhaps just on that point, I mean it might
15 come as a surprise to some people that children under 16
16 could end up in an adult prison, under an unruly
17 certificate, until relatively recently.

18 A. Yes.

19 Q. That was perhaps finding a place for a child that was
20 considered to be unruly?

21 A. Yes, yes, that's the same sort of --

22 Q. But they weren't necessarily a young offender?

23 A. Absolutely. That's not necessarily the most appropriate
24 place available, the most appropriate place for that
25 young person or child, but sometimes that's the only

1 physical place physically available.

2 Q. Yes, because we were told yesterday that the current
3 policy, which is reflected in a current bill going
4 through the Scottish Parliament, which is now at
5 stage 2 --

6 A. Yes.

7 Q. -- is the intention is to take children, that is young
8 people under 18, children and young persons under 18,
9 out of the prison system --

10 A. Yes.

11 Q. -- and if they require some form of restriction of
12 liberty to put them in some form of secure accommodation
13 that is run by some other provider?

14 A. Yes.

15 Q. That's I think what is at the moment the current
16 thinking and intention?

17 A. That is the intention, and it is assumed that such
18 places will be available.

19 Q. Yes.

20 A. When needed.

21 LADY SMITH: That intention is evident from the bill that's
22 currently going through the Scottish Parliament.

23 A. Yes.

24 MR PEOPLES: Although I think there has been a recent
25 report, at least one secure service at Howdenhall closed

1 in June of this year.

2 A. I didn't know that.

3 Q. We were told yesterday at least that as far as the
4 establishments run by the Scottish Prison Service is
5 concerned, at present there are only, I think, six young
6 people under 18 in young offenders' institutions in
7 Scotland at present. So there is a move towards what
8 the policy is seeking to do --

9 A. Yes, mm-hm.

10 Q. -- in practice.

11 A. Yes.

12 Q. As far as the Approved School system is concerned,
13 I mean it came to an end, I think, when the direct
14 responsibility of the Secretary of State for funding
15 ceased in 1986?

16 A. Yes.

17 Q. And I think before then, as we know, the Secretary of
18 State provided roughly 50 per cent of the funding and
19 the Local Authorities, in whose areas the children had
20 been located, paid the other 50 per cent --

21 A. Yes.

22 Q. -- in terms of a fee --

23 A. Yes.

24 Q. -- for maintenance of the child.

25 As far as the children are concerned, just for the

1 avoidance of doubt, these children, usually in the age
2 range 10 to 16, were a mixture of young offenders who
3 had been convicted of some offence and children who were
4 in need of care and protection?

5 A. That's correct.

6 Q. As far as this system is concerned, until 1981 children
7 who were made subject to Approved School orders would be
8 sent there through the courts?

9 A. Yes.

10 Q. Or the juvenile courts as they were described?

11 A. Yes.

12 Q. Although I think you have told us a bit about the
13 reality of what that court system involved?

14 A. Yes.

15 Q. But that would be how they got there?

16 A. That's correct.

17 Q. Whichever category or class they fell into?

18 A. Yes.

19 Q. Generally speaking, am I right in thinking that after
20 1971 and the establishment of the children's hearing
21 system the vast majority of children and young people
22 would be sent to a List D School by a children's panel?

23 A. That would be correct. It would be a term in the
24 compulsory supervision order.

25 Q. Yes, it would be a form of compulsory supervision --

1 A. Yes.

2 Q. -- requirement, which was imposed by a children's
3 hearing?

4 A. Yes.

5 Q. So the court, generally speaking, fell out of the
6 picture --

7 A. Yes.

8 Q. -- although the court still had the power to send
9 children to these schools?

10 A. Yes, yes.

11 Q. As far as the regulatory framework was concerned for
12 these schools, there were really two main sets of
13 regulations. There was the 1933 regulations --

14 A. Mm-hm.

15 Q. -- which were passed just after the Children and Young
16 Persons (Scotland) Act 1932, and these were, I think,
17 the Children and Young Persons (Scotland) Care and
18 Training Regulations, to give them their full title?

19 A. Yes.

20 Q. I think it was one of the parts of these regulations
21 that related to Approved Schools?

22 A. Yes.

23 Q. These regulations were replaced, in 1961, by the
24 Approved Schools (Scotland) Rules?

25 A. That's correct.

1 Q. These rules were, I take it, in force between 1961 and
2 1987/1988, when the --

3 A. Yes, mm-hm.

4 Q. -- 1987 regulations came into force?

5 A. Yes. I think I have mentioned the precise dates.

6 Q. Yes, I'm not too concerned -- I am sure we can find
7 them, but I am just trying to get the general timeframe
8 of when they were applicable.

9 A. Mm-hm.

10 Q. Turning to another type of establishment with which this
11 case study is concerned, secure accommodation. In your
12 report you have told us a bit about the development of
13 secure accommodation.

14 A. Mm-hm.

15 Q. And how it had its origins, I think, in certain
16 provisions of the Approved School Rules of 1961 --

17 A. Mm-hm, yes.

18 Q. -- about creating special sections within Approved
19 Schools?

20 A. Yes.

21 Q. Then subsequently I think you have told us in your
22 report that what might be called dedicated secure units
23 grew up, sometimes in Approved Schools, but sometimes on
24 separate sites?

25 A. Away from, yes.

1 Q. I think just by way of example, I think the first secure
2 unit or wing was at Rossie, the MacDonald wing in 1962,
3 I believe that's the first.

4 A. I think that's right, the school in Montrose?

5 Q. Yes. There were subsequently various secure units that
6 were opened thereafter.

7 Asking the sort of same question, age range? The
8 secure accommodation, were they usually 10 to 16 years
9 as well?

10 A. Well, the history that you have indicated, the secure
11 areas were very originally within Approved Schools, so
12 they were available for the children who were there, and
13 when they developed more sort of dedicated arrangements,
14 I think exactly the same --

15 Q. Yes.

16 A. -- followed.

17 Q. I should say that the secure accommodation may have
18 began around 1961/1962 by way of these special sections,
19 but it is still with us today?

20 A. Oh yes, yes.

21 Q. Indeed, there are various secure services in Scotland?

22 A. Yes.

23 Q. I think there are five, or maybe now four if Howdenhall
24 has ceased, but there certainly are secure services
25 which are mainly run by private providers?

1 A. I understand so, yes.

2 Q. Again, this type of accommodation, would that have
3 accommodated both young offenders and children in need
4 of care and protection?

5 A. Well, yes, because the point of secure accommodation is
6 to keep a child, an individual, secure in their own
7 environment as a result of their own particular
8 circumstances, not as a result of what actually brought
9 them into the wider ... the residential establishment in
10 the first place.

11 Q. Yes, it is not a loss of liberty because they have
12 committed a crime and been convicted of that crime, it
13 is because it is to keep them secure either for their
14 own safety, but sometimes for the safety of others?

15 A. Absolutely, that is how adults perceive it. I am not
16 entirely convinced all the children will perceive it in
17 quite the same way, but we would certainly perceive it
18 as they are there for their own good rather than as any
19 sort of punishment or deprivation.

20 Q. Yes, but perhaps as you say, children might think,
21 "I have just been locked up".

22 A. I'm sure.

23 Q. It is just like young offenders, borstal or whatever?

24 A. Yes, absolutely.

25 Q. It may be that that was the way they perceived the

1 situation?

2 A. Yes. I'm sure they still do.

3 Q. And still do, indeed.

4 As far as that type of accommodation is concerned,
5 we clearly have the Approved School Rules 1961 that
6 would have been applicable.

7 A. Yes.

8 Q. But in due course, as it developed, this type of
9 accommodation, there were specific regulations applying
10 to secure accommodation?

11 A. Yes.

12 Q. I think the first of these was in 1983 --

13 A. Mm-hm.

14 Q. -- the Secure Accommodation (Scotland) Regulations?

15 A. Yes, that's correct.

16 Q. They didn't completely replace the 1961 rules, it was
17 only that they maybe had additional regulations or,
18 insofar as they were inconsistent with the 1961 rules,
19 the more specific rules would apply?

20 A. Yes, I think that's exactly the way to put it, they were
21 additional, they were add ons.

22 Q. Yes.

23 A. Just as the secure accommodation was add on to the
24 establishment itself.

25 Q. Yes.

1 Then -- I am not going to go through it too much --
2 you tell us, I think, in your reports that further
3 regulations for secure accommodation were made in 1996
4 and then in 2013?

5 A. Yes, as a result of the changes in primary legislation
6 at these points.

7 Q. Yes. Am I right that the 2013 regulations are the
8 current regulations, as far as you are aware?

9 A. I think so, yes.

10 Q. Yes.

11 Turning to remand homes -- I suppose we have to be
12 careful here that we don't confuse them with remand
13 institutions, which are run by the prison service, such
14 as Longriggend, for example. Remand homes were
15 establishments that were run by Local Authorities?

16 A. That's correct.

17 Q. They weren't run by private providers or the prison
18 service?

19 A. That's my understanding.

20 Q. Without going into too much detail, they have a long
21 history, they go back to about 1901 --

22 A. Yes.

23 Q. -- I think, or you tell us in your report. And they
24 survived until 1968?

25 A. Yes.

1 Q. The effect of the 1968 Social Work (Scotland) Act was
2 that that type of care setting or institution
3 disappeared?

4 A. Yes.

5 Q. Again, same questions: age range: is it usually 10 to
6 16?

7 A. It would be, though remand homes were more dedicated
8 towards children who had committed offences than care
9 and protection cases. But the age range was the same,
10 I understand.

11 Q. But it wouldn't only be young offenders, could it be
12 young persons awaiting trial, obviously?

13 A. Absolutely, yes.

14 Q. Would a care and protection case find their way into
15 a remand home?

16 A. Well, it ought not to, because of what the purpose of
17 the remand home was. But it has been a common
18 feature -- possibly due to the fact that Scotland is
19 a relatively small country with relatively few
20 establishments -- that if the authorities are looking
21 for a place for the child, sometimes they have to place
22 the child not in an establishment that is suitable for
23 the child's need, but because that is all that is
24 available.

25 Q. So a needs must principle?

1 A. Yes.

2 Q. This is the only place we can house them in the
3 meantime --

4 A. Yes.

5 Q. -- we will try and get them somewhere else more suitable
6 if a place arises or a vacancy arises --

7 A. Yes.

8 Q. -- but in the meantime put them there?

9 A. Yes.

10 Q. If people to this Inquiry would say, "I was in a remand
11 home but I hadn't done anything, I hadn't committed
12 an offence or I wasn't awaiting a trial", that is
13 certainly perfectly possible?

14 A. That is certainly perfectly possible, yes.

15 Q. Was there a time when remand homes were a place of
16 detention as well as a place of people awaiting trial or
17 awaiting disposal after trial?

18 A. Well, the development of remand homes was tied in with
19 the development of the Probation Service. It was
20 a mechanism by which young offenders could be diverted
21 from prison, not put in a prison environment, but still
22 have liberties restricted to an appropriate extent.

23 Q. In a sense they would be, putting it colloquially,
24 serving their sentence in a remand home?

25 A. Yes.

1 Q. Yes.

2 A. Again, the perception, I'm not entirely convinced that
3 somebody put to such a place would regard it as much of
4 a lesser infringement than being put to what has now
5 become a young offenders' institution.

6 Q. Yes. In the case of this type of setting, again there
7 were rules, bespoke or specific rules, not bespoke,
8 perhaps specific rules.

9 A. Yes.

10 Q. In the period we were looking at, from 1930 onwards, the
11 first rules were the Remand Home (Scotland) Rules of
12 1933?

13 A. That's correct, yes.

14 Q. They were replaced, in 1946, by the Remand Home
15 (Scotland) Rules?

16 A. Yes.

17 Q. Then in 1964 we have the Remand Home (Scotland) Rules --

18 A. Yes.

19 Q. -- which replaced the 1946 rules?

20 A. That's correct.

21 Q. Am I right in thinking that the 1964 rules were as
22 a consequence of an inquiry by the Ellis Committee in
23 1961, which looked into this particular setting?
24 I think I'm right.

25 A. Yes.

1 Q. That led to these rules coming into place?

2 A. Yes.

3 Q. Then if I can move on to establishments run by the
4 prison service, if I can call it that. It wasn't the
5 Scottish Prison Service as such then --

6 A. Yes.

7 Q. -- it was a prisons department, I think.

8 If we start with borstals. Broadly speaking, the
9 history of borstals, or the era, is from about the start
10 of the 20th century --

11 A. Yes.

12 Q. -- around 1908 or thereabouts?

13 A. That's right.

14 Q. Until 1980, when borstal institutions, I think, were
15 abolished, as such?

16 A. Mm-hm.

17 Q. I think when the criminal justice --

18 A. Yes.

19 Q. -- legislation ...

20 As regards age range, would that be 16 to 21?

21 A. I think that's correct.

22 Q. Borstals were intended for young offenders only?

23 A. That's correct.

24 Q. So no care and protection?

25 A. I don't think so.

1 Q. I don't think so, but I just wanted to --

2 A. Yes.

3 Q. That's your understanding?

4 A. That's my understanding, and nothing that I came across

5 in any of the reports indicated that care and protection

6 children ever ended up in borstals.

7 Q. Yes.

8 As far as regulation was concerned, the first

9 regulations, as I think you tell us in your report, were

10 regulations made in 1911, which were subsequently

11 amended in 1937?

12 A. Yes.

13 Q. These regulations, I think, were replaced in 1950 by the

14 Borstal (Scotland) Rules?

15 A. That's correct.

16 Q. They remained in force until -- correct me if I'm

17 wrong -- the Young Offenders (Scotland) Rules of 1965?

18 A. That's correct.

19 Q. Which applied to borstals and other types of penal

20 establishments?

21 A. Yes.

22 Q. There was also a type of establishment run by the prison

23 service called a detention centre?

24 A. Mm-hm.

25 Q. It was established, I think, or this type, was

1 established by legislation in 1949. A Criminal Justice
2 Act in 1949.

3 A. Yes.

4 Q. This type of establishment survived, I think, until
5 1988, when again some criminal procedure --

6 A. Yes.

7 Q. -- or some criminal procedure or criminal law
8 legislation abolished that type?

9 A. That's correct. I think I have to say, I have always
10 been a bit hazy as to exactly what the detention centres
11 were ... what their philosophy and aim was. It has
12 never been very clear to me.

13 Q. Short sharp shock treatment for three months, does that
14 ring a bell or does it --

15 A. Well, yes it does.

16 LADY SMITH: Of course you quote that as being Kilbrandon
17 and you quote it in relation to the remand homes,
18 I think.

19 A. Yes. There is at least two statements somewhere using
20 that phrase in relation to remand homes as the sort of
21 short sharp shock instead of a period of imprisonment,
22 which would be likely to be longer.

23 LADY SMITH: Yes.

24 MR PEOPLES: In practice I think -- maybe we will find out
25 more about this, and indeed we can ask those in the

1 service just exactly how they were operated -- it
2 appears that those who were placed in detention centres
3 by way of a disposal would normally be serving sentences
4 of no more than three months, and perhaps less?

5 A. I'm sure that's right.

6 Q. In the case of this type of establishment, am I right in
7 thinking that it applied to children or young persons in
8 the age range of 14 to 21?

9 A. Yes.

10 Q. So it wasn't just 16 to 21?

11 A. Yes.

12 Q. This, again, would be young offenders only?

13 A. Offenders.

14 Q. Just to remind ourselves, during this whole period the
15 age of criminal responsibility was 8?

16 A. That's correct.

17 Q. Having been increased in the early 1930s from 7?

18 A. It was 7 until the 1932 Act.

19 Q. Okay. It has recently of course been increased to 12?

20 A. Yes, yes.

21 Q. 2019, or thereabouts?

22 A. That's correct.

23 Q. As far as the detention centres are concerned, am
24 I right in thinking that insofar as there were any
25 detention centres prior to 1965, and I am not sure what

1 the situation is, would they have been governed by the
2 Borstal (Scotland) Rules of 1950 if there were, because
3 the 1965 rules apply to detention centres, I think, the
4 young offenders' rules, but before that --

5 A. I think that would be a reasonable assumption.

6 Q. Because I don't think there is anything else that we
7 have found or come across --

8 A. Yes.

9 Q. -- that would be relevant. So if there was a detention
10 centre in being in the 1950s, for example, or the early
11 1960s, before the 1965 rules, presumably they would have
12 to be governed by some sort of rules?

13 A. Yes, exactly, and there was nothing -- I didn't find
14 anything dedicated to detention centres as such.

15 Q. Yes. But what we do know, certainly, is that from 1965
16 as a result of Young Offenders (Scotland) Rules, these
17 rules would apply --

18 A. Yes.

19 Q. -- to detention centres as well as borstals, and indeed
20 remand centres and institutions?

21 A. Yes.

22 Q. So across the board?

23 A. That's correct.

24 Q. Indeed young offenders' institutions as a specific type.

25 A. Yes.

1 Q. So that's detention centres.

2 Then, yes, turning to remand centres, or

3 institutions, again I think they, as a type of penal

4 setting, owe their existence to legislation in 1949 --

5 A. That's correct, yes.

6 Q. -- criminal law legislation?

7 A. Yes.

8 Q. The age range there, 14 to 21 again?

9 A. I would think so, yes.

10 Q. That would again, in this case, because they were prison

11 service establishments, that would be young offenders

12 only, generally speaking?

13 A. Yes.

14 Q. Well, not generally speaking?

15 A. Yes, yes.

16 Q. We saw prisons could take unruly children --

17 A. Yes.

18 Q. -- but otherwise we are talking about offenders?

19 A. Yes, that's correct.

20 Q. Again, we know that the 1965 Young Offenders (Scotland)

21 Rules would have applied from the date that they came

22 into force. If there were any remand centres or

23 institutions before then, again can we make it

24 a reasonable assumption that they must have been Borstal

25 (Scotland) Rules, or they were treated as applicable?

1 A. I am sure they would be treated as applicable.

2 Q. I'm not sure that the term "remand centre" isn't one
3 that seems have been used in practice.

4 A. Mm-hm.

5 Q. We know about Longriggend as a remand institution,
6 I think that is how it was described, but it might have
7 been one of the first examples of a remand centre or
8 institution would it be --

9 A. Yes.

10 Q. -- perhaps, not sure, but no doubt the service can tell
11 us in due course.

12 A. Yes.

13 Q. Now, young offenders' institutions as a distinct
14 category of penal establishment owe their origin to
15 legislation in 1963, I think?

16 A. I think so, yes.

17 Q. In the case of young offenders' institutions, their age
18 range was and is 16 to 21?

19 A. That's correct.

20 Q. Again, we are talking about young offenders only?

21 A. Yes.

22 Q. The Young Offenders (Scotland) Rules 1965 were the
23 applicable rules --

24 A. Yes.

25 Q. -- originally, with some minor amendments, I think you

1 tell us, in 1966, 1981 and 1993?

2 A. Yes.

3 Q. Then there were new rules applying to prison and young
4 offender institutions in 1994, I think the Prison and
5 Young Offenders Institutions (Scotland) Rules 1994
6 superseded the 1965 rules?

7 A. Yes.

8 Q. These in turn were superseded by the Prisons and Young
9 Offenders Institutions (Scotland) Rules 2006, which in
10 turn were superseded by the Prisons and Young Offenders
11 Institutions (Scotland) Rules 2011, is that your
12 understanding?

13 A. I think so, yes.

14 Q. I think the 2011 rules, according to your report, were
15 the current rules?

16 A. I think so, yes.

17 Q. Then, of course, we discussed prisons, but basically
18 adult prisons were not places that children and young
19 persons under 18 should have been accommodated, but we
20 did have this unusual exception of unruly certificates?

21 A. Yes.

22 Q. Which could result in both a young offender under 18 and
23 a child who is a care and protection case finding their
24 way into an adult prison?

25 A. Yes, that's true.

1 Q. Indeed, perhaps we can say this: that in the case of
2 some institutions, and Barlinnie is an example, that on
3 the same site it would have had a young offenders'
4 institution at times and also an adult prison --

5 A. Yes.

6 Q. -- on the same site?

7 A. Yes.

8 Q. Can I now, with that introduction, turn to your report,
9 which is on the screen, LIT.001.001.5968.

10 As I said at the beginning, I don't want to -- we
11 have it here and everyone can read it and it is
12 available, but what I would like to do is to just look
13 at some matters within it relevant to when we look at
14 the regulations --

15 A. Yes.

16 Q. -- and the development of child protection for children
17 in care.

18 First of all, can I ask you to start at page 33,
19 I think 34, if we could bring that up. What I am
20 interested in is something towards the foot of page 33,
21 which runs into page 34. It is a reference to the
22 Morton Committee of 1928.

23 A. Yes.

24 Q. What, I think, you are telling us about there is that
25 the Morton Committee recognised as early as the 1920s

1 that staffing of what were to become Approved Schools
2 needed to be considered carefully, since the work, and
3 I think you quote:

4 "Demands self-sacrifice, sympathy, unflagging energy
5 and broad outlook."

6 A. Yes.

7 Q. I think that goes over on to page 34.

8 A. Yes, I see it.

9 Q. We have an early acknowledgement and recognition of the
10 importance of staffing?

11 A. Absolutely, yes.

12 Q. I don't have the reference here, but I think you mention
13 at some point in your report that in the 1940s, was it
14 Sir William Beveridge made some similar remark about the
15 importance of having qualified people involved in
16 managing and indeed working in these settings, and he
17 talked about, I think, the need for managers in
18 particular to have appropriate qualifications?

19 A. That's correct. I think that was in one of the
20 parliamentary debates.

21 Q. I think it was.

22 A. He was clearly recognising that however ideal the design
23 of any institution, those who were actually running it,
24 not just the managers, although they have
25 responsibility, but the teachers and what today we would

1 call care workers -- that's not the phrase that would
2 have been used then -- are actually qualified to do the
3 job that we are asking them to do.

4 You know, I think he was expressing some concern
5 that people weren't properly qualified. We see this
6 again in government reports from the 1960s in the lead
7 up to the 1968 Act, where --

8 Q. We have seen it in the Skinner report in the 1990s as
9 well.

10 A. Yes, where there is a continuing concern that the staff
11 in establishments that are designed to provide
12 an appropriate environment for children just are not
13 qualified to take on the role that we expect of them.

14 Q. These children are not any children, they have specific
15 vulnerabilities, often very complex needs and --

16 A. Specific and complex and multiple.

17 Q. And difficult backgrounds before they went into the care
18 environment.

19 A. Yes, exactly.

20 Q. So we have that. It is not that suddenly a light has
21 been shone on some new wisdom?

22 A. Yes.

23 Q. This is something that has been said from a very early
24 point in the 20th century?

25 A. Yes.

1 Q. Yet it appears, I think, from evidence we have heard
2 that the situation in a lot of these settings was that
3 the people were unqualified and untrained and
4 inexperienced were used at least in some roles,
5 particularly caring roles?

6 A. I think that's right. I'm not here to defend that
7 situation, but proper academic training of care workers,
8 in particular training of social workers for care
9 settings, really didn't get started until the late
10 1960s.

11 Q. And that was just the start.

12 A. Yes.

13 Q. I mean they were still working out training when the
14 Scottish Social Services Council, SSSC, was established
15 in 2001.

16 A. Yes.

17 Q. As I say, Skinner, I think we know, was making a point
18 about the need for training --

19 A. Proper training, yes.

20 Q. -- and qualifications appropriate to the type of care
21 that is to be provided?

22 A. Yes. What the Morton report is saying, I mean it sounds
23 good, but it is an aspiration. What we want of the
24 staff is people who are willing to show self-sacrifice,
25 sympathy, unflagging energy and broad outlook. It is

1 almost a statement of the dead obvious. We do want that
2 sort of thing, but these are not qualifications as we
3 would understand them today.

4 Q. No.

5 A. It is an attitudinal thing, and that's all he had to go
6 on there.

7 Q. But that is all the regulations said, in respects,
8 suitably qualified, what does that mean?

9 A. Yes.

10 Q. It doesn't help you to say what the qualifications are,
11 it is very much along the lines of what the Morton
12 Committee is saying, but it is not actually telling you
13 what is required?

14 A. Absolutely.

15 Q. There doesn't seem to have been any clear definition of
16 what would be suitable qualifications?

17 A. No, there isn't at that stage. A hope and aspiration
18 that good people will do a good job, and that's it.

19 Q. If you are unqualified, by definition you are not
20 suitably qualified?

21 Unless being unqualified is a suitable qualification
22 for the job you are doing?

23 A. Yes, I mean it depends what a qualification is.

24 Q. But the fact we can debate this --

25 A. Absolutely, yes.

1 Q. And this seems to have been an expression used in
2 regulations without amplification. Surely it points up
3 the deficiency of the regulations?

4 A. Absolutely. I don't think when the early regulations
5 talked about "suitably qualified staff", they did not
6 mean staff with a certificate that proved they had had
7 training in a particular field of care. I don't think
8 it meant that at all. I think it simply meant: good
9 people who are likely to do a good job.

10 Q. Yes, because if I just pause to move rapidly on,
11 briefly, to 1987, or the post-1987 position, and the
12 sort of regulations that we mentioned earlier, the
13 single regulations and the regulations relating to
14 looked after children, is there not now a requirement to
15 ensure that appropriately qualified staff are employed
16 in looking after looked after children?

17 A. Yes, yes.

18 Q. It may still not spell out what that means, but --

19 A. No, but I think by that stage they are using
20 "qualification" to mean some sort of background, some
21 sort of training, that the applicant for the post can
22 point to.

23 Q. Can I move on in your report to page 35. I just want to
24 touch on this briefly. What became the Children and
25 Young Persons (Scotland) Act 1932, I think there you

1 say, and I am looking for a passage which, if I could
2 quote, I think you are making the point:

3 "The purpose was to amalgamate the treatment of
4 juvenile offenders with that of neglected and deprived
5 children."

6 I think that's what you are saying there was the
7 purpose of the legislation.

8 Then you have a quote at page 35 --

9 A. Yes.

10 Q. -- which says:

11 "The underlying philosophy ..."

12 Do you have that?

13 A. Yes.

14 Q. "The underlying philosophy ... was that the similarities
15 between the two classes of children far outweighed any
16 differences, that deprivation and neglect are the main
17 causes of juvenile criminality and that tackling the
18 former is the most efficient way to reduce the latter."

19 A. Yes. You will find similar statements in the
20 parliamentary debates for the Children Act 1908.

21 Q. Yes, sorry, although I took you to 1932, I think you do
22 make the very valid point that this philosophy --

23 A. Yes.

24 Q. -- can find its origins, perhaps much earlier --

25 A. Yes.

1 Q. -- in the 1908 legislation --

2 A. Yes.

3 Q. -- and what they were attempting to do?

4 A. Yes.

5 Q. Indeed, that was perhaps why they attempted to remove
6 the distinction between industrial and reformatory
7 schools, for example?

8 A. I think -- in 1932, that's exactly right and that was
9 a direct consequence of it. To me it is really
10 interesting to read these early 20th century
11 understandings that what's important is the background
12 of these children and young people, and what has brought
13 them to the attention of the authorities is less
14 important to the overall thing. We see throughout
15 current debates. The children's hearing system today is
16 very much based on that philosophy, yet most countries
17 in the world have turned their head away from this
18 notion, these two categories of children. If you look
19 just below the surface it is actually one category, it
20 is children who are facing multiple deprivations and
21 difficulties in their lives.

22 I just found it really interesting that this is
23 a very long-established principle and understanding in
24 Scotland and in my view it is equally applicable today
25 as it was then.

1 Q. Because I think perhaps there are exceptions, but
2 a large proportion of looked after children in some form
3 of residential care, or perhaps even foster care, have
4 come from conditions of deprivation, neglect, poverty,
5 sometimes abuse, and so forth?

6 A. Yes, and all of these problems merge into each other.
7 You can't say this is a poverty case, this is
8 deprivation. They are all sort of merged and
9 interlinked and feed off each other.

10 Q. Just going on in your report, if I could move to pages
11 47 and 48, just to give the reference. This just
12 confirms what we discussed earlier on. I think you are
13 there telling us that both a young offender and a child
14 or young person that was found to be in need of care and
15 protection could be sent by the court to an Approved
16 School --

17 A. Yes.

18 Q. -- or, alternatively, committed to the care of any fit
19 person?

20 A. Yes.

21 Q. We are not looking at that in this case study. One
22 option was Approved School. You say that also a child
23 or young person beyond parental control could also be
24 sent to an Approved School, so that is another situation
25 which could see a child ending up in an Approved School.

1 I mean would a child at that time have appreciated
2 why they were going to the Approved School? Would it
3 have been explained to them that well you are out of
4 control, so that's why you are going there, or you have
5 done something wrong or you need to be in care and
6 protection for the following reasons. Do you think that
7 in those early days they would have got much clue as to
8 why they were ending up in an Approved School?

9 A. I would be surprised if the efforts that hopefully are
10 made today to explain to children what is going on
11 happened in the 1930s. But, again, I get back to the
12 thing: what people tell children is different from what
13 children hear. I suspect that however much a child is
14 told well, you are out of parental control, that's not
15 a criminal offence, you are not being sent as
16 punishment, I'm sure most children would see it as they
17 are being punished for what they did.

18 Q. Yes, any form of removal from your home and your
19 environment from the perspective of a child may well be
20 seen as loss of liberty, or some sort of punishment, or
21 some sort of deprivation of your normal life?

22 A. Yes, that's right, however much you say to the child
23 "it's in your own good", they will not see it.

24 When I was a member of the children's panel, early
25 on I was surprised, but I later came not to be

1 surprised, but I was surprised how distressed children
2 were at being removed from the most disastrous
3 environment. To me it was so obvious they needed, but
4 actually with a little thought removing any child from
5 familiar familial circumstances is going to be perceived
6 as a harm to that child, a deprivation of what they
7 want. They want to stay with their family, even in the
8 most disastrous circumstances.

9 Q. Even some notable individuals who have written about
10 being detained, I am thinking of Jimmy Boyle, who wrote
11 in A Sense of Freedom that the first time he was removed
12 from home for offending he cried his eyes out --

13 A. Yes.

14 Q. -- and told his mother he didn't want ever to go back
15 again, although he didn't live up to that in practice,
16 but he said it was a genuine feeling and reaction, to
17 just the shock --

18 A. Yes.

19 Q. -- of the first removal, although he later on perhaps
20 became more street or prison wise, or institution wise.
21 So that's maybe an example.

22 A. Exactly. I mean I think the shock very much comes from
23 the feeling of lack of power, lack of control, removal
24 of any sort of decision-making power, and even today in
25 the children's hearing we try to encourage children to

1 give their views, and to speak, but they are inhibited
2 and they feel that they don't have control over the
3 process or the outcome of where they are going to go.
4 And that must increase feelings of vulnerability
5 terribly.

6 Q. I think you say in your report, and we may come to this,
7 that in more recent times one of the, I think you call
8 it a sort of disturbing perhaps consequence of removal
9 is that whatever the home background, there is a loss of
10 parental support or guidance or parental association,
11 and in some ways you can't replicate that in
12 an institutional setting, although we are now developing
13 the concept of the corporate parent to try to
14 compensate, I think is your word --

15 A. Yes.

16 Q. -- for that situation.

17 A. Yes. It is a pretty poor compensation, but, you know,
18 the statistics of children who have come out of care,
19 who are no longer looked after children and young
20 adults, the statistics of the support mechanisms that
21 are available for them is well known to be very
22 substantially less, and their job prospects, their
23 earning prospects, their educational prospects, are very
24 much less. The rates of suicide and homelessness is
25 very much greater. I'm not saying this is all a direct

1 consequence of the childcare system that has removed
2 them from the environment, but there are consequences in
3 the long term. I think that's well recognised today.

4 Q. In a way, as you tell us in your report, historically
5 the philosophy was remove the child from the harmful
6 environment --

7 A. Yes.

8 Q. -- and break the link with family as far as possible?

9 A. Yes.

10 Q. By various means, and have long-term separation.

11 A. Yes.

12 Q. Yet -- I think we will come to this in your report --
13 the penny dropped in Kilbrandon that most children
14 eventually go back to the community they came from.

15 A. Yes.

16 Q. So if you haven't addressed the problem in the community
17 that maybe led to them getting to care in the first
18 place --

19 A. Yes.

20 Q. -- then what good is the period away?

21 A. Yes, exactly. It is surely no surprise that young
22 people go back to their familiar surroundings.

23 Q. Yes, because most children eventually have to leave
24 an institution --

25 A. Yes.

1 Q. -- or a setting --

2 A. Yes.

3 Q. -- and perhaps the majority will go back to what they

4 know?

5 A. Yes.

6 Q. You do say at pages 47 to 48 that all of this, whatever

7 the child may have thought, was done, at least from the

8 legal framework, on the basis of a welfare test?

9 A. Yes.

10 Q. The children's welfare?

11 A. Yes.

12 Q. At least that's the legal way of looking at it.

13 A. Yes.

14 Q. This is for your own good and welfare.

15 A. Yes.

16 Q. You set out the test there, I think, saying:

17 "Every court in dealing with a child or young person

18 who is brought before them, either as needing care or

19 protection or as an offender or otherwise, shall have

20 regard to the welfare of the child or young person, and

21 shall in a proper case take steps for removing him from

22 undesirable surroundings, and for securing that proper

23 provision is made for his education and training."

24 That was the way it was seen, and that was the test

25 that was to be applied?

1 A. Yes, yes, and that's in the primary legislation. That's
2 not in the --

3 Q. Yes, yes.

4 A. -- any of the background regulations. It's worth noting
5 that "have regard to the welfare of the child" is not as
6 strong a test as we have today.

7 Q. No.

8 A. But I think it is the first explicit requirement that
9 the court take account of the welfare of the child in
10 making whatever decision it comes to.

11 Q. That's in the 1930s?

12 A. In the 1932 Act.

13 LADY SMITH: It is striking, isn't it, that the idea is to
14 remove the child from surroundings that are found to be
15 undesirable --

16 A. Yes.

17 LADY SMITH: -- and what are you to achieve? Well, you are
18 to achieve proper provision is made for education and
19 training.

20 A. Yes.

21 LADY SMITH: What about caring for the child, caring for
22 their wellbeing? There is no hint of that there at all.

23 A. No, there isn't a hint of that. I think this can be
24 traced right back. The reason you are removing children
25 from situations of dire poverty, criminality and

1 immorality is to make them productive citizens. You
2 achieve that by training them for appropriate jobs, and,
3 you know, in a lot of residential establishments at the
4 time it was sort of domestic work for girls and farm
5 work for boys. Make them good, productive citizens,
6 irrespective of whether that suited that particular
7 child or not.

8 LADY SMITH: Do you have the impression that the thinking
9 was focusing on keeping them safe physically? The
10 "undesirable surroundings" is a broad term that would
11 seem to encompass high risk that this child could end up
12 dead and certainly very ill, damaged, diseased whatever.
13 So you get them to a place where physically the risk is
14 less. So that's fine, tick, done. The additional thing
15 is to give them education and training. No thought
16 being given to their emotional wellbeing.

17 A. Absolutely not. I don't think -- well, while the child
18 becomes a more central feature in the process, the
19 individual doesn't.

20 LADY SMITH: No.

21 A. We only start hearing references to the individual needs
22 of individual children, a recognition, in other words,
23 that different children will need different responses,
24 much, much later, in the 1960s.

25 Certainly in the 1930s children as a category, they

1 need protection, physical protection, obviously, and
2 they need set up for becoming productive citizens. But
3 an idea that one child will need something very
4 different from another, and all children will need
5 emotional support, there is no hint of such things.

6 LADY SMITH: I suppose the brutal view could be that
7 society's objective was to prevent them being a burden
8 on society?

9 A. Absolutely, yes. A burden in all sorts of senses.

10 LADY SMITH: Yes.

11 A. To make them productive economic citizens.

12 LADY SMITH: Yes.

13 A. It is interesting, if you look at all the aftercare
14 provisions, which actually appear -- I was surprised
15 quite how early these are, they are all about ...
16 aftercare is all about helping the child find
17 employment. Again, it is making them economically
18 viable, which in itself is not a bad thing, in itself is
19 in the welfare of children, but it is only one small
20 aspect of a whole child's life.

21 LADY SMITH: Mr Peoples.

22 MR PEOPLES: Can I just follow up on a couple of things you
23 said there. Perhaps if we were trying to find
24 an explanation or an aim behind removal, and if we
25 assume for the moment that one aim was to try and

1 produce a productive citizen, then it may be that that
2 is being placed ahead of trying to give the child what
3 might be colloquially called a normal childhood that
4 children have, and it is looking beyond childhood, and
5 there is no focus on the time being, and the emotional
6 development, the social development and so forth of the
7 child when they are children. And that it is really
8 what is best for the State, what's in the best interests
9 of the State, rather than the best interests of the
10 child. Is that a way that you might see it, it is more
11 society's interest that is being placed on a pedestal?

12 A. I think -- yes is the simple answer. The concept of
13 a normal childhood I think simply doesn't come into the
14 picture when you are talking about residential
15 establishments. There was a hope and an assumption and
16 a preference to board children out into what we now call
17 foster care. That was very much designed to provide
18 a normal family environment in which the child could be
19 brought up. But when that's not available, or when the
20 child is in a residential establishment, there is
21 nothing in any of the legal provisions which remotely
22 seeks to provide anything that could rationally be
23 described as a normal childhood.

24 Q. Indeed I think we are familiar with regimes in
25 institutions, and will no doubt become more familiar

1 with regimes in these types of institutions as we go
2 along, but the regimes are catering, really, not for
3 individuals but for large groups, much larger than even
4 a big family.

5 A. Yes.

6 Q. I mean, so they are not really looking at whether
7 individual children are secure in a normal childhood, if
8 you have to stand in line or you have to be regimented
9 in your day.

10 A. Yes.

11 Q. If you have to ask whether you can eat something, or you
12 can have something, that's not what children --

13 A. No.

14 Q. -- were entitled to expect from society.

15 A. It is an institutional environment, in the worst sense
16 of the word.

17 Q. Yes.

18 A. I suppose there were some organisations, such as that
19 place (Indicated).

20 Q. Is that the Quarrier's Home?

21 A. Quarrier's, yes.

22 Where the idea was to provide a simulacrum of --

23 Q. A cottage model?

24 A. A cottage model, yes.

25 Q. Rather than having a large institutional model?

1 A. Yes, with a housemother and houseparents, but still you
2 are talking about 12/15 children --

3 Q. Or more, historically?

4 A. -- or more, in each house.

5 Q. Yes.

6 A. So it's --

7 Q. So even there. I mean that is perhaps something that is
8 between even an alternative foster home and a large
9 institution, you might have some things which are a bit
10 of a hybrid --

11 A. Yes.

12 Q. -- which is attempting to replicate, albeit it's
13 creating a children's village with different houses,
14 cottages ...

15 A. Yes, that is driven, I suppose, by the philosophy of the
16 organisation, rather than anything the law requires.

17 Q. Yes, it wasn't driven by the State --

18 A. Yes.

19 Q. -- or the way that the law was framed?

20 A. Yes.

21 Q. If I could move on to, basically, 1948.

22 A. Mm-hm.

23 Q. And ask you to turn to page 60 of your report. Just to
24 remind ourselves, what you tell us there about the aim
25 of the Act, and you say, I think, on that page:

1 "... major aim [of the Children Act 1948] was to
2 simplify the regulatory mechanisms under which children
3 and young persons were accommodated away from their
4 parents, whether under court order or otherwise. It
5 achieved this by replacing the multifarious forms of
6 governmental control over such accommodation with
7 unified control by Local Authorities; in addition it
8 imposed a positive obligation on Local Authorities to be
9 proactive and to seek out children in need of care and
10 protection."

11 We have that as the aim of the Act.

12 You say, I think, on pages 60 to 61, you refer to
13 the Clyde report that preceded the Act, where I think
14 you say:

15 "The mechanisms ... [historically] by which children
16 and young persons were brought into these environments
17 were different, as were the regulatory provisions
18 governing the care offered ... in these different
19 environments. Children with similar needs might
20 therefore be dealt with very differently depending upon
21 the legal route by which they came to be accommodated
22 away from their parents, and the oversight of their
23 care -- even the level of protection offered -- differed
24 according to the accident of the form of accommodation
25 provided. And of course different local authorities

1 provided their services to children and young persons
2 under a diversity of local structures."

3 I suppose the point I made earlier is that if you
4 are a child that has experienced a number of these
5 environments, you could end up being quite confused.

6 A. Well, yes. But children won't know what the regulatory
7 structures behind any of their accommodation is. But
8 they will know, I would imagine, very quickly different
9 accommodations and different institutions have not just
10 different structures, but different philosophies and
11 different staff. And the staff at these institutions
12 will have a huge practical day-to-day impact upon the
13 children.

14 Q. If you are a girl, for example, that was in a remand
15 home, you wouldn't, at least according to the
16 regulations, receive any corporal punishment --

17 A. Yes.

18 Q. -- but if you were a girl in an Approved School you
19 would.

20 A. Yes.

21 Q. And if you were in both, if the same girl had been in
22 both, they might be asking themselves: what's going on
23 here?

24 A. Yes.

25 LADY SMITH: You could also receive it in foster care.

1 MR PEOPLES: Oh, yes, sorry, it was just an example.

2 LADY SMITH: Yes.

3 MR PEOPLES: Obviously what you have said there is

4 highlighting a degree of irrationality, that there is

5 a difference of treatment that is really not

6 justifiable --

7 A. Yes.

8 Q. -- in terms of how you get to a particular place.

9 A. Yes, the whole point of the 1932 Act was to try to

10 harmonise the overall routes for one court by creating

11 what today I suppose in the children's hearing system we

12 would call grounds of referral. Here are particular

13 circumstances, and it can lead to ... the outcome will

14 be one in which we have taken full account of the

15 welfare of the child. But the reality, of course, is

16 where the child ends up is subject to a number of

17 different regulatory backgrounds. But the institutions

18 themselves, even when subject to the same regulatory

19 background, each institution will have a very different

20 atmosphere, driven to a very large extent by staffing.

21 Q. Am I right in thinking that the Clyde Committee didn't

22 really look specifically at Approved Schools?

23 A. That is correct. Is the report called "The report into

24 homeless children"?

25 Q. I think the focus is more on foster care, children's

1 homes run by voluntary providers --

2 A. Yes.

3 Q. -- and maintaining children in homes run by Local

4 Authorities.

5 A. Yes.

6 Q. Rather than looking at Approved Schools --

7 A. That's correct.

8 Q. -- to which children were sent by the courts?

9 A. Yes.

10 Q. So --

11 LADY SMITH: I think that was the same with Curtis, wasn't

12 it?

13 A. Yes.

14 LADY SMITH: The English parallel report.

15 A. Mm-hm. I think its terms of reference were a little

16 wider than the Clyde. I can't remember what it was

17 called, but its title doesn't use the word "homeless".

18 LADY SMITH: But I don't think it did a study of the

19 provision in what we would have called Approved Schools

20 at that time.

21 A. Yes.

22 LADY SMITH: If I remember rightly.

23 MR PEOPLES: The reason I am asking this is that if the

24 penny had dropped that there was perhaps two broad

25 classes that should be treated the same, young offenders

1 and children in need of care and protection, and one
2 form of disposal was the Approved School to meet their
3 needs, it seems odd that you then start to look at
4 certain settings but not the whole setting, all the
5 settings. That seems to be the feature. Kilbrandon
6 didn't look at everything, he looked at juvenile
7 delinquency, if you like, and Ellis looked at remand
8 homes.

9 A. Yes.

10 Q. Clyde looks at certain settings, but none of them look
11 at all of them?

12 A. Yes, I think that's entirely fair.

13 Q. That's not exactly ideal if you think that the
14 philosophy is that really they are all children and that
15 you have to look at them as a class?

16 A. I think that's entirely fair. However, the legislation
17 that follows these reports has tended to be broader than
18 simply what the reports focused on.

19 Q. Yes, I take your point. Because in a sense it is
20 almost -- you can see where I am perhaps going with
21 this.

22 A. Mm-hm.

23 Q. That eventually we get someone to accept the broad
24 concept of residential establishment and the
25 desirability of a single set of rules?

1 A. Yes.

2 Q. But it has taken a heck of a long time to get there?

3 A. Yes, absolutely.

4 Q. And we are still looking at all these different settings
5 in isolation from each other?

6 A. Yes, yes, that's all true.

7 Q. And reforming them on that basis?

8 A. Mm-hm.

9 Q. Of course then we get different regulations and rules,
10 which are not necessarily on the face of it very
11 coherent, rational and consistent?

12 A. Yes.

13 Q. There is another point that perhaps needs to be made.
14 While you make the point in your report that children
15 with similar needs were often dealt with in different
16 settings, and under different rules and different
17 environments and cultures, is it not the case that
18 Approved Schools did not accommodate children with
19 similar needs. The children in these schools were not
20 a homogeneous group?

21 A. The children were certainly not a homogeneous group.

22 Q. Indeed these were not specialist schools in the sense
23 that we have today. The schools didn't have the
24 facilities or the staff to meet the different and
25 usually complex needs of children sent to them, and

1 historically I think there were insufficient specialist
2 facilities capable of meeting these types of needs. So
3 you often had children who might have mental health
4 problems?

5 A. Yes.

6 Q. They might be seen as, to use the old-fashioned term,
7 "maladjusted"?

8 A. Yes.

9 Q. For which there were special residential schools, but
10 not many --

11 A. Mm-hm.

12 Q. -- historically? So we have a problem here, don't we?

13 A. It is a huge problem, and I have absolutely no doubt
14 that simply focusing on the education that is provided
15 in Approved Schools, there is some education, but it is
16 certainly not focused on the needs and abilities of each
17 individual child there. So it is a pretty minimal level
18 of education that would be provided.

19 Q. This may be as good a point as any just to make this
20 point, before we have a short break, that throughout the
21 era of the Approved Schools there was a very basic form
22 of classification; reference to gender, faith --

23 A. Yes.

24 Q. -- and also the rather crude categorisation of senior,
25 intermediate and junior?

1 A. Yes.

2 Q. That never really changed?

3 A. Yes, that's correct.

4 Q. So all we have is that sort of situation. There is no
5 attempt to make it more refined and specialised?

6 A. No.

7 Q. To introduce the sort of facilities, perhaps, that the
8 non-homogeneous group required to meet their particular
9 needs. That, again, is perhaps something that was only
10 recognised much later on?

11 A. It was recognised much later on. I suspect it would
12 have been fairly obvious right from the start to the
13 people who were involved in, for example, providing
14 education to children, that they are dealing with very
15 different children of different abilities and different
16 needs, different emotional situations. But there would
17 be elements of training and funding. At their best,
18 these Approved Schools were doing the best they could in
19 the resources that were available to them, and not just
20 financial resources, but in terms of staffing and the
21 appropriate qualifications of the staff, which we have
22 already talked about. In the environment in which you
23 really need a lot of expertise, a lot of support and
24 a lot of financing. That just simply didn't exist in
25 the periods that we are talking about.

1 Q. Just before we perhaps finish, on the classification
2 system throughout the life of the Approved School
3 system, just to give an example, to give this context
4 for some of the establishments we are looking at,
5 St Ninian's Gartmore was a junior school for Roman
6 Catholic boys, St Mary's Kenmure was an intermediate
7 school for Roman Catholic boys and Springboig St John's
8 was a senior school for Roman Catholic boys, I think
9 St Joseph's in Tranent was an intermediate school?

10 A. Yes.

11 Q. That was how they were classified. If you were a Roman
12 Catholic, then depending on your age you could move from
13 one school to another, also depending on availability,
14 of course.

15 A. Yes.

16 Q. And you might end up in a non-denominational school or
17 a Protestant school if it happened there wasn't a place,
18 and that did happen?

19 A. Absolutely --

20 Q. Then the senior schools would include Kibble, Rossie,
21 Wellington, Geilsland, St Andrew's is one of the newer
22 schools, Dr Guthrie's Girls was a senior school,
23 Tynepark, Dalbeth were senior schools.

24 Then you have the junior ones like Balgowan and
25 Balrossie, Dr Guthrie's Boys was a junior school,

1 Balnacraig was a junior school, Oakbank was
2 an intermediate and so forth, St John Bosco was
3 intermediate.

4 So we have this as the system, and that's -- so if
5 the clearing house is looking for an intermediate
6 school, that they just look at well, what's
7 an intermediate school, is there a place?

8 A. Yes.

9 Q. And will they take this child?

10 A. Yes.

11 Q. It is pretty basic.

12 A. It is very basic. If you think about the geography of
13 Scotland, if a place becomes available in the
14 appropriate intermediate school, that might make it even
15 harder than ever for a parental or familial connection
16 to be maintained and there is very little, there is
17 nothing in the early regulations about maintaining
18 parental contact. But later on from the 1960s it
19 becomes more important. But the practical reality is if
20 you are sent 50 miles away, at a time when car ownership
21 was much less, and public transport was much more
22 difficult, the practicalities of maintaining any
23 connection with the family becomes remote.

24 MR PEOPLES: This is a good time, I think, to have a morning
25 break.

1 LADY SMITH: It certainly is, we are past 11.30.

2 If it works for you we will take the morning break
3 now, Kenneth, and sit again in about 15 minutes or so.

4 A. Okay, thank you.

5 (11.33 am)

6 (A short break)

7 (11.49 am)

8 LADY SMITH: Kenneth, are you ready to carry on?

9 A. Yes.

10 LADY SMITH: Thank you.

11 Mr Peoples.

12 MR PEOPLES: Thank you.

13 Can I move on in the report to pages 69 to 71, just
14 to where you say in the event:

15 "The structural reforms in the 1948 Act ...

16 This is the children's committees and children
17 officers and children departments within each Local
18 Authority:

19 "Only operated for [a period of] 20 years, before
20 being subsumed into the wider social work departments of
21 Local Authorities [which were] required to be set up [by
22 the Social Work (Scotland) Act] 1968."

23 A. Yes.

24 Q. So this structure had a short life.

25 Indeed I think, if my memory serves me well, that it

1 wasn't really a recommendation of Kilbrandon that there
2 be generic social work departments, I think that was
3 something that emerged from subsequent consultation in
4 white papers and so forth.

5 A. Yes, that's correct.

6 Q. As far as the structural reform that took place in 1948
7 was concerned, as we have already said, children in
8 residential care remained subject to different sets of
9 rules and regulations?

10 A. Yes.

11 Q. We discussed that this morning before the break.

12 Can I move to pages 77 to 78, and perhaps just
13 highlight something that you say there, which I think
14 echoes some of the things you said earlier on about the
15 changing nature of the duty of Local Authorities has
16 progressed over time. You say another major
17 development, which amounted to a fundamental shift in
18 State responsibility towards children in the care of the
19 State, was the way the duty of the Local Authority
20 towards children in care was formulated.

21 You say:

22 "Previously, those looking after children under
23 statutory authority would be vested with the rights and
24 powers of a parent, but parents were not (and, it is
25 often forgotten, are not) under any statutory obligation

1 always to act in their child's best interests. Under
2 the 1948 Act, for any child in the care of a local
3 authority, 'It shall be the duty of that authority to
4 exercise their powers with respect to him so as to
5 further his best interests, and to afford him
6 opportunity for the proper development of his character
7 and abilities'."

8 A. Yes.

9 Q. So it's very much, apart from the courts having
10 a welfare test and best interests, the Local Authorities
11 have that duty specifically --

12 A. Yes.

13 Q. -- in terms of children in their care?

14 A. Yes, because they are the ones to a larger extent at any
15 rate are providing the care, and certainly overseeing
16 it. The 1948 Act is the first one that requires them to
17 do so in a way that furthers the child's best interests.
18 I think it is also worth pointing out that "affords him
19 the opportunity of proper development of character and
20 abilities", that does bring in a much more
21 individualistic focus, whether the reality allowed that,
22 but the Local Authority is really being told here not
23 just to regard children as a homogeneous group but to
24 regard children on an individual basis.

25 Q. It is getting more towards the modern formulation of the

1 duty?

2 A. Yes.

3 Q. About not just safeguarding welfare, but promoting the
4 development of the child?

5 A. Yes, mm-hm.

6 Q. However, you also say at page 78, and I think maybe this
7 it important for present purposes:

8 "Children who were subject to Approved School orders
9 while under such orders were not in the care of the
10 Local Authority."

11 A. Mm-hm.

12 Q. Does that in essence mean they were not considered to be
13 in the care of the State, and the State had certain
14 responsibilities in relation to them but they weren't in
15 the care of a Local Authority or the State itself?

16 A. They wouldn't be regarded as what today we would call
17 looked after children.

18 Q. Yes.

19 A. Yes.

20 Q. Yes. So there was a distinction, then --

21 A. Yes.

22 Q. -- between the children who were the subject of Approved
23 School orders --

24 A. Mm-hm.

25 Q. -- and children in the care of Local Authority, who may

1 have just been received into care under the statutory
2 powers of the Local Authority --

3 A. Yes.

4 Q. -- under section 1, I think it is, of the Act?

5 A. Yes.

6 Q. So there was this distinction?

7 A. There is a clear distinction there, though I suppose
8 some of the children in the care of the Local Authority
9 would find themselves --

10 Q. Yes.

11 A. -- in an Approved School, but not all children.

12 Q. I think there was a practical or potential practical
13 consequence that I think ... do you not tell us that the
14 duty of managers of Approved Schools towards children in
15 their care remained as it had always been, which was
16 based on parental duty.

17 A. Yes.

18 Q. So managers were under no legal obligation, just as
19 parents weren't, to act in the child's best interests.

20 A. Yes.

21 Q. In a sense whatever the overarching duty of the Local
22 Authority, if the child has a connection with the
23 Authority, the people that were directly dealing with
24 the children did not have the same duty at that time?

25 A. That's absolutely correct.

1 Q. That seems to be a bit anomalous?

2 A. It's anomalous, and it kind of takes away the power of
3 the provision in the 1948 Act, which says to Local
4 Authorities, "You have to do what's in the best
5 interests of the child". The Local Authority says it is
6 in the best of the child that the child stay in this
7 Approved School, the managers then --

8 Q. Take a different decision.

9 A. -- take a much wider approach that they are not focused
10 on the welfare of the child, the Local Authority could
11 say, "Well, sending the child there is the way that we
12 have fulfilled our duty to further that child's best
13 interest", so our duty has been fulfilled.

14 Q. But there is a potential tension between --

15 A. Clearly, yes.

16 Q. -- the nature of the respective duty?

17 A. Yes.

18 Q. Can I perhaps move on to the 1960s and the 1968 Act.

19 A. Mm-hm.

20 Q. I think what you describe at page 82:

21 "Another major change of direction in childcare law
22 and policy was heralded by the passing of the Social
23 Work (Scotland) Act 1968."

24 If I could turn to pages 83 and 84, I think perhaps
25 something I want to just sort of draw attention to,

1 which you mention in your report. You mention that the
2 Kilbrandon report effectively caused a change in
3 mindset, in the sense that the report itself, in 1964,
4 presaged a change in the way in which residential care
5 was perceived. You say previously, relevant legislation
6 had been based on the view that since children were
7 affected by their home environment, the best way to
8 resolve the problem of children whose development was
9 being inhibited or harmed was by removing them from that
10 environment, often on a long-term basis. Kilbrandon
11 identified serious drawbacks to this approach, in
12 particular that it focused on the child without tackling
13 the underlying familial difficulties, although in most
14 cases the child would eventually return to his or her
15 home and community. In addition, you say, social work
16 practice had developed since the 1948 Act and there was
17 far greater emphasis than before on working with
18 families to allow children to remain at home, especially
19 after, I think, the 1963 Act ...

20 A. Yes.

21 Q. I am not going to go back to that, but I think we know
22 what that relates to.

23 You then go on, I think, residential care was to be
24 seen in most cases as a temporary measure during which
25 firstly intensive education and training could be given

1 to the child with the aim of increasing the chances that
2 their eventual return home would be successful, and
3 social work staff should maintain close contact with
4 both the child and the child's family.

5 A. Yes.

6 Q. That's the change in mindset.

7 A. Yes.

8 Q. Of course, what's relevant, perhaps, is for those that
9 were in care, did that make any difference to their
10 lives then or for some time after and that, I suppose,
11 really depends on what their experiences were?

12 A. I'm sure it did. As you have said, even before -- and
13 I say in the report, social work practice had been
14 changing, had been building upon experience, and the
15 realisation was important, that children do go back to
16 their families.

17 Q. Yes.

18 A. Whether we like it, whether the State likes it or not.
19 Social work practice became, by the 1960s, much more
20 focused on providing full support for the family.

21 This, I suppose, explains why ... the point you
22 mentioned earlier, that Kilbrandon didn't see his system
23 in terms of the whole social work system. The
24 government of the day took the view that the way social
25 work practice had evolved, it was important to look at

1 the family as a whole. That included the child, so the
2 child was one part of a bigger issue that social work
3 departments could be involved with.

4 Q. So in a way, perhaps the solution that was eventually
5 preferred would better meet that general aim of --

6 A. I think it does, yes.

7 Q. -- the generic social work department that didn't focus
8 on the child, but rather looked broadly, looked at the
9 environment and tried to tackle the environment, if it
10 was the cause of the difficulties and the needs?

11 A. Yes.

12 Q. The only thing is, you say:

13 "Residential care was seen in most cases as
14 a temporary measure."

15 I don't suppose that would include Approved Schools.
16 They would still be seen as a relatively long-term
17 measure for most children in them. I know they could be
18 released on licence, but that wouldn't happen for
19 a time?

20 A. No, these were much longer provisions.

21 Q. I suppose the question is whether this change in mindset
22 that was going on in the wider world, changed the
23 mindset of those who ran Approved Schools or those who
24 headed up them, would no doubt depend on the
25 individuals, and their attitude to --

1 A. I am sure that's --

2 Q. -- the situation.

3 A. -- exactly right, and their background and their own

4 training.

5 One has to hope that the people in day-to-day charge

6 of any of these institutions genuinely believed that

7 what they were doing was the best that they could in the

8 circumstances.

9 Q. Well, I may --

10 A. And if they had been doing that for 20 years. The fact

11 that there is a change of mindset in Kilbrandon, it

12 would take a change of personnel before that --

13 Q. Yes, change of personnel might be important in that

14 situation and if you have people that are, have been

15 there since time immemorial, then that might be

16 difficult?

17 A. Yes.

18 Q. Old practices die hard?

19 A. Yes, exactly.

20 Q. In many of these schools I think we may see that the

21 heads were there for a long time?

22 A. Mm-hm.

23 Q. It wasn't a system that facilitated ready transfer

24 between schools, because they weren't part of the

25 mainstream teaching where people might move to different

1 schools, and the education authority might have the
2 power to move them. I mean they were very much
3 appointed to a school?

4 A. Yes, they were much more independent in that sense.

5 Q. At pages 86 to 87, I will just mention briefly there was
6 a White Paper before the 1968 Act. I think what you
7 tell us at 86 to 87 was:

8 "... the White Paper that preceded the 1968 Act
9 recognised that residential care would continue to be
10 necessary."

11 I think that remains the position today, no one
12 suggests there is no place for residential care.

13 A. Mm-hm.

14 Q. But it also said that suitable establishments had to be
15 provided, and that there was scope for much improvement
16 in residential care provision. More variety of types of
17 establishment was needed. Previously children were
18 placed in a home or school because of nothing better or
19 more suitable to their particular needs. The aim was to
20 abolish existing statutory distinctions between certain
21 types of establishment and have a varied range of
22 establishments available to children in need of
23 residential care and training.

24 That seems to have been the aim --

25 A. Yes.

1 Q. -- although it took a long time?

2 A. It sounds good, doesn't it.

3 Q. It sounds good, but again it took a long time to perhaps
4 achieve some of the main aims.

5 A. Yes.

6 Q. Because List D Schools, although Approved Schools were
7 reclassified as List D Schools, they stayed essentially
8 the same type of establishment --

9 A. Yes.

10 Q. -- until at least 1986?

11 A. Yes.

12 Q. Although remand homes as a type disappeared, and indeed
13 it was said at that time, and I think this is what
14 happened in practice, that those that were suitable, as
15 it was described, would become assessment centres and
16 the idea was that these centres would be where
17 children's needs would be assessed before deciding
18 whether they needed residential care and, if they were
19 in need of such care, the type of establishment which
20 would be suitable to their particular needs. That,
21 again, was the broad aim.

22 A. Yes.

23 Q. Of course the intention was to put in place one set of
24 rules governing all residential establishments in which
25 the State accommodated children, as you say, other than

1 for mental health reasons.

2 That took a long time --

3 A. Yes.

4 Q. -- as it happened.

5 I think at least in the early days of the children's
6 hearing system, perhaps one weakness of the early
7 children's hearing system was that they didn't have the
8 range of facilities that would have enabled them to have
9 greater choice to meet the individual needs of the
10 children and young persons who appeared before them.

11 I mean they were often left with, "There is a List D
12 School if you were wanting to send them away from home,
13 we don't have much else we can consider", because there
14 was a shortage, at least in the early days, of
15 facilities. Is that your --

16 A. Yes, I am not sure I would limit that comment to the
17 early days of the system.

18 Q. Okay.

19 A. I mean I well remember sitting on children's hearings in
20 the late 1990s/early 2000s in which an environment was
21 clearly for the best interests of the child, but there
22 was simply no bed available in that particular
23 environment, and very, very frequently the discussion
24 was: what's available? Rather than: what is best for
25 this particular child?

1 Q. So we might have a limited number of specialist
2 facilities at that time --

3 A. Yes.

4 Q. -- but unfortunately availability meant that while they
5 were the obvious choice, they couldn't be --

6 A. Yes, it was the best that was available --

7 Q. -- used.

8 A. -- rather than the best for the child.

9 Q. So that was in the 1990s?

10 A. Yes, into the 2000s.

11 Q. Because I think we have become used to now, perhaps in
12 the last couple of decades, of at least to some extent
13 a growth of specialist facilities of different types --

14 A. Yes.

15 Q. -- to cater for specialist needs?

16 A. Yes.

17 Q. I think that's a trend, at least, I am not sure it has
18 reached its height or fills the demand, but that's the
19 way we have gone, I think.

20 A. Yes.

21 LADY SMITH: I suppose, Kenneth, we are back to aspiration,
22 and what you can at least say is the aspiration was
23 a good one, great, and at least they didn't abandon the
24 aspiration because it couldn't always be achieved. But
25 you have to recognise it couldn't always be achieved.

1 A. Yes, I think that's right. I think the importance of
2 the legislative provisions is there is an increasing
3 understanding that different children will need
4 different facilities, different support mechanisms,
5 different children are different. Throughout the latter
6 part of the 20th century there is a much greater
7 awareness of that reality.

8 LADY SMITH: Yes.

9 MR PEOPLES: But I suppose if I was the child in the 1990s,
10 an example you gave, I didn't get the opportunity
11 I should have received?

12 A. Yes.

13 Q. Looking from the perspective of the child, that child,
14 unfortunately -- for perhaps perfectly sound reasons at
15 the time, because of circumstances -- didn't get their
16 particular needs met in the most appropriate way.
17 I know that's a counsel of perfection at times, but
18 I don't think that example you gave would be unique?

19 A. Oh, it wouldn't be unique. But I suspect -- doubtless
20 you are getting witnesses of people who were children
21 who have gone through these processes -- they cared far
22 less about the particulars of the environment and cared
23 far more about the fact that they were being taken away
24 from their home.

25 Q. Yes.

1 I will just mention in passing, at pages 90 to 91
2 you mention the changing nature of the duty owed by
3 Local Authorities to children in care. You say that the
4 Local Authority remained under, until 1975, the sort of
5 duty that was introduced first in 1948 that we have just
6 mentioned.

7 A. Mm-hm.

8 Q. But that it was replaced in 1975 by a somewhat stronger
9 requirement to focus on the welfare of the child, and
10 I quote:

11 "Where a child is in the care of a Local Authority
12 under any enactment ... they shall, in reaching any
13 decision relating to the child, give first consideration
14 to the need to safeguard and promote the welfare of the
15 child throughout his childhood; and shall so far as
16 practicable ascertain the wishes and feelings of the
17 child regarding the decision and give due consideration
18 to them, having regard to his age and understanding."

19 A. Yes.

20 Q. So you see that as a stronger formulation of the duty?

21 A. I do see it as a stronger formulation, and I think the
22 crucial words there are "in reaching any decision
23 relating to a child". So it can be the minor procedural
24 decisions, the major decisions about whether a child
25 should be moved from one environment to another, who

1 should have contact with the child, any decision,
2 I think that was the major expansion, if you like, of
3 the notion of how Local Authorities should come to their
4 decisions to take into account not only the welfare but
5 also the wishes and feelings of the child, too.

6 Q. It is not necessarily a decision that, on the face of
7 it, might appear to be in the best interests at the
8 time, it is whether it would be in the best interests
9 having regard not just to the time at which the decision
10 has been taken, but the future of that child?

11 A. Absolutely.

12 Q. So you are having to look at a much bigger picture --

13 A. Yes.

14 Q. -- in deciding well, what should we be doing in this
15 situation?

16 A. Yes.

17 Q. You say that that duty was applied by legislation,
18 I think, in 1983, to children in the care of a voluntary
19 organisation. So it was broadened to -- I think is that
20 in a footnote? I seem to have read it there at some
21 point. I think it may be the footnote.

22 A. Oh, yes, the Health and Social Services and Social
23 Security Adjudications Act 1983--

24 Q. Yes.

25 A. -- added in the words -- the Local Authority added in

1 the words "or a voluntary organisation". I see that, it
2 is footnote 302.

3 Q. What I was interested in, perhaps, was whether, I mean
4 between 1975 and 1986 we still had List D schools --

5 A. Yes.

6 Q. -- and we still had managers --

7 A. Yes.

8 Q. -- of these schools. These children were not children
9 in the care of the Local Authority, I think, I suppose,
10 at that point?

11 A. That's right.

12 Q. Did the nature of the duty of managers change in that
13 period, in the sense of being away from having the
14 rights and powers of a parent to having an equivalent
15 duty to the Local Authority?

16 A. I think it comes in in --

17 Q. 1983?

18 A. -- that change in 1983.

19 Q. So there was a period, again looking at the comparison
20 between the obligation or duty of the Local Authority,
21 there may have been a distinction between that duty,
22 which was --

23 A. Yes.

24 Q. -- maybe a much stronger duty --

25 A. Yes.

1 Q. -- and perhaps the duty or the power of a manager --
2 A. Yes.
3 Q. -- which was seen as equivalent to the parental powers
4 and rights?
5 A. Yes. I think one of the features of this evolving
6 legislation throughout the 20th century is a willingness
7 on the part of the State to impose duties on other parts
8 of the State, such as Local Authority, and
9 an unwillingness to impose too many onerous equivalent
10 duties on what are essentially voluntary organisations;
11 charities and the like.
12 But the 1983 amendment, I think, recognises that --
13 well, it didn't make any difference to the child who is
14 in control of the institution --
15 Q. No.
16 A. -- and the State has to get over that inhibition about
17 telling charities and the like how to run their
18 business.
19 LADY SMITH: We saw something very similar in child
20 migration --
21 A. Yes.
22 LADY SMITH: -- with the delay between Local Authorities
23 being subject to regulatory control --
24 A. Yes.
25 LADY SMITH: -- and charitable organisations being subjected

1 to regulatory control.

2 A. Yes, that's exactly right.

3 LADY SMITH: Which is discussed in volume 2, that is about
4 to be released.

5 A. I will look forward to seeing it.

6 MR PEOPLES: You can also see a degree of unwillingness in
7 relation to regulation of the conduct and management of
8 voluntary homes, because the first comprehensive set of
9 regulations is in 1959.

10 A. Yes.

11 Q. And voluntary homes had existed for a very long time?

12 A. Yes.

13 Q. But yet they weren't -- it was probably at best
14 a soft-touch regulation.

15 A. Mm-hm.

16 Q. Light touch.

17 A. Mm-hm.

18 Q. Until then. I think I may have asked you, or I may have
19 tried to find from you, the reason for that. I think at
20 some point in your report -- or perhaps your book,
21 I can't remember which -- you offered an explanation
22 that the imposition of obligations or duties on
23 voluntary providers might only have been done where the
24 provider was in essence performing the functions of the
25 State --

1 A. Functions of the State.

2 Q. -- such as looking after offenders --

3 A. Yes.

4 Q. -- or children in need of care and protection. So they

5 might have felt in those instances that they had some

6 obligation and right to be intrusive, or interfere and

7 regulate in a stronger way?

8 A. I think the State certainly would have an obligation --

9 Q. Yes.

10 A. -- because it doesn't lose its duty of care towards

11 children just because it has contracted out the child to

12 a voluntary organisation. I suppose the inhibition is

13 also not wanting to discourage voluntary organisations

14 from offering these services, because if they didn't the

15 State would have to, and there would be significant

16 costs involved.

17 Q. Is it not the reality of the situation that what one

18 might call the care system of the State, whether pre or

19 post 1948, has relied heavily on the private sector --

20 A. Yes.

21 Q. -- or private providers --

22 A. Yes.

23 Q. -- and to an extent that has given the private

24 providers, and I think Professor Levitt gave us examples

25 of this when the 1959 regulations were being considered,

1 had considerable power and could exert considerable
2 pressure to achieve regulations that they were happy
3 with --

4 A. Yes.

5 Q. -- even if the officials felt that other regulations
6 were more appropriate?

7 A. Yes.

8 Q. And that the political pressure to make sure that there
9 wasn't some sort of public spat was met by simply going
10 along with what would be acceptable to the private
11 provider?

12 A. Yes. The worst scenario would be a withdrawal of the
13 provision of services --

14 Q. Yes.

15 A. -- by the private --

16 Q. What do you do then? Is that not also a reason why the
17 power to withdraw certification, or registration, while
18 it may have existed in theory, was never exercised in
19 practice?

20 A. Yes.

21 Q. It may not even have been threatened very often?

22 A. Yes. But the consequences of doing so were severe and
23 expensive.

24 Q. Yes.

25 A. Just because if you withdraw certification of one

1 school, that doesn't mean there is places for all of
2 these children somewhere else.

3 Q. They have to go somewhere.

4 A. They have to go somewhere.

5 Q. If I could go to page 92, if I may, where you make
6 a point there that what had been a clear boarding out
7 preference, which was a feature of the 1948 Act,
8 disappeared from the new Act, the 1968 Act, which simply
9 listed as alternatives ways in which a Local Authority
10 could discharge its duties to provide accommodation and
11 maintenance for children in their care. You say:

12 "It was left to the Local Authority or the
13 children's hearing to determine ..."

14 I take it that is in a case where a child is
15 referred to the hearing obviously, rather than just
16 dealt with through the statutory powers?

17 A. Yes.

18 Q. It was for the Local Authority or the children's hearing
19 to determine what compulsory measure of care might be
20 required --

21 A. Yes.

22 Q. -- and to decide which option would best serve the
23 child's best interests?

24 A. Yes.

25 Q. Indeed, you say:

1 "The children's hearing could make a supervision
2 requirement that required them, for example, to reside
3 in a List D School."

4 A. Yes.

5 Q. And frequently did?

6 A. Yes.

7 Q. Although the difference was, unlike a court, the hearing
8 continued to have jurisdiction, and would review --

9 A. It had review powers, yes.

10 Q. -- the matter, is it at least annually? I can't
11 remember.

12 A. It is at least annually.

13 Q. There was a continuing supervision and review power, or
14 duty to review?

15 A. Yes, and still if the supervision requirement is not
16 reviewed it falls.

17 Q. Yes.

18 A. So the legal authority for the child to be there,
19 whatever the placement, falls too.

20 Q. Falls.

21 I think it is correct to say -- I don't want to take
22 you into territory you are maybe not as familiar with --
23 that the 1968 Act didn't really bring any major changes
24 to the inspection of Approved Schools. It brought
25 changes to the inspection of other places, but what

1 became List D Schools, I think Professor Levitt's
2 evidence -- if I can recall it correctly -- in May was
3 to the effect that the schools continued to be inspected
4 by central government, at least in the form of the
5 central advisory service adviser. It may not have been
6 an inspectorate as such, but it became involved in
7 visiting schools and continued to report on them --

8 A. Yes.

9 Q. -- and so forth. Perhaps I can just say, what he told
10 us, maybe it is just worth putting it in at this stage,
11 is that Approved Schools were inspected periodically,
12 historically by Scottish Office inspectors. I think
13 until -- this is relevant to what we will maybe come to,
14 until around 1961 there was only one Approved School
15 inspector, Mr Macpherson, who was appointed around 1950.

16 A second inspector for Approved Schools, Mr Murphy,
17 was appointed around 1961 and I think together they
18 basically were the inspectors for the schools, these
19 schools, from 1950 right through to probably the late
20 1960s.

21 We were told by Professor Levitt that from the early
22 1950s they could be assisted by an educational
23 psychologist, so in that time they started to have
24 professional input from psychologists, and I think in
25 some cases psychiatrists. What he did tell us, as well,

1 is that Her Majesty's inspectors in general had no
2 specific statutory responsibility for what we would now
3 regard as safeguarding, but because Approved Schools had
4 to be registered with the Secretary of State and could
5 be deregistered by him, the inspectors did have regard,
6 when carrying out their functions to what I might
7 describe as care and welfare issues as well as the
8 educational provision in assessing whether a school
9 should be registered, and if it was registered whether
10 there is a basis for deregistering the school. So in
11 that way they were performing a function that might at
12 least to some extent have regard to care and welfare.

13 A. Yes.

14 Q. But that wasn't their role, so they weren't performing
15 a child protection function as such, although they might
16 come across things that would be uncovered and action
17 taken in some shape or form.

18 Would that have been your understanding, or would
19 you have thought that they might be more, or there
20 should be someone that has specific responsibility for
21 care and welfare?

22 A. In the 1950s and early 1960s I should have been
23 surprised if there were inspectors dedicated to looking
24 at the particular welfare of children. My understanding
25 was that it was suitability of buildings, safety, health

1 and safety of buildings, perhaps curricular matters --

2 Q. Yes.

3 A. -- qualifications of teachers, that sort of thing.

4 Q. I suppose, as the name implies, as part of the education

5 system or school system their primary function was to

6 look at educational provision --

7 A. Yes.

8 Q. -- if that was how they were designated ...

9 A. Yes.

10 Q. I think, this may be relevant to something we will come

11 to about regulation. They had no responsibility, we

12 were told by Professor Levitt, in relation to complaints

13 of abuse or ill treatment of individual children?

14 A. Mm-hm.

15 Q. That is very different to, perhaps, the systems we have

16 today --

17 A. Mm-hm.

18 Q. -- that involve inspection and inspectorates.

19 Also, another point that I think he made clear was

20 that their powers were limited. Beyond inspecting and

21 reporting back to the relevant department, they could do

22 no more than recommend, and they couldn't direct action

23 to be taken or impose sanctions for failure to take the

24 action.

25 A. Mm-hm, yes.

1 Q. Again I think we can -- we know from your report that
2 the Care Inspectorate and its predecessor, the Care
3 Commission, from 2001 were given these powers.
4 A. Yes.
5 Q. So we weren't just resting on the theoretical
6 possibility of deregistration, they had powers which
7 allowed them to require information --
8 A. Yes.
9 Q. -- to issue directions and to take appropriate action if
10 these were not complied with?
11 A. Yes.
12 Q. That was quite a significant shift, but very late in the
13 day?
14 A. Yes, it was hugely significant, I think.
15 Q. It didn't happen in the 20th century?
16 A. No.
17 Q. Which is --
18 A. Shocking.
19 Q. It might be shocking and surprising to some, would you
20 agree?
21 A. I would certainly agree that that is both shocking and
22 surprising.
23 Q. Because I think he had said to us that there were
24 childcare inspectors within the Scottish Office in this
25 period, but they were not involved in the inspection of

1 schools, including Approved Schools. I think he said
2 that on Day 352, just for the record, that he told us
3 a bit about that.

4 Then he said, just again to complete that story,
5 post 1968, when the schools were reclassified as List D
6 Schools, he told us that the HMIs continued to assess
7 the quality of the educational provision as before, but
8 care and welfare matters became the concern of what were
9 termed social work advisers within the newly formed
10 social work services group, and they visited schools
11 from time to time. Although they weren't, I think,
12 strictly performing a recognised inspectorial function?

13 A. It is similar, I suppose, to the managers of Approved
14 Schools. I think there is something in the 1961
15 regulations about the managers being required both to
16 visit the schools and, interestingly, to speak to the
17 pupils. But that's not an independent inspector, that's
18 managers going to their own institutions, even though
19 there is the beginnings of speak to the kids --

20 Q. Yes.

21 A. -- it is not a hugely effective way of doing so at that
22 stage.

23 Q. It is not external, independent oversight --

24 A. It is absolutely not.

25 Q. -- which is no doubt the purpose of having a Care

1 Inspectorate, or a Care Commission as it once was. So
2 we didn't have that?

3 A. Yes.

4 Q. Also the regulation you have in mind seems rather woolly
5 about what your purpose is --

6 A. Yes.

7 Q. -- if you make a visit and speak to a child?

8 A. Yes.

9 Q. I don't think they even said that they also had
10 a specific complaints jurisdiction that they had to
11 exercise. They might speak about complaints if they
12 were there, but I don't think there is anything
13 equivalent to even what they had in prisons about
14 visiting committees --

15 A. Yes.

16 Q. -- who would hear individual complaints?

17 A. Yes.

18 Q. We have nothing of that kind that exists, I mean
19 assuming children would complain, of course.

20 A. Yes, I mean not until 1987 do you see a specific
21 reference to listening to complaints.

22 Q. Yes, rather than speaking to children.

23 A. Yes, mm-hm.

24 Q. As I say, that was what happened pre and post 1968,
25 according to Professor Levitt, because it is quite

1 a complicated process. At first sight it seems
2 inspectors, great, they do all manner of things and they
3 will have all manner of powers, but it doesn't appear
4 that that was quite the true situation, during the
5 period that the Approved Schools system was in
6 operation.

7 Can I move on from the 1968 period through, and come
8 to the 1990s, which is dealt with in your report.
9 Because I think a lot started to happen in the 1990s,
10 and you tell us about that.

11 The background to that, I think, if we go to
12 pages 100 to 101 of your report, you tell us that the
13 early 1990s saw a number of policy developments, in
14 particular of official reports that suggested that the
15 whole system for looking after children unable to be
16 cared for by their parents required a substantial
17 overhaul. You make reference to the Skinner report
18 "Another kind of home" in 1992 on residential care in
19 Scotland, which focused on the need for good quality
20 residential care in smaller units --

21 A. Yes.

22 Q. -- with specialised functions, staffed by persons with
23 special skills.

24 In a sense, we are just getting a refinement of what
25 the Morton Committee was saying in the 1920s --

1 A. Yes.

2 Q. -- and Beveridge was saying in the 1940s?

3 A. Yes, exactly.

4 Q. Also it says it addressed key areas, such as the
5 training and qualifications of staff, the rights of
6 children and the need to safeguard children who were in
7 residential care.

8 Also, it emphasised that residential childcare
9 should not be seen as a place of last resort, but as
10 an option --

11 A. Yes.

12 Q. -- that should be treated and considered positively,
13 rather than --

14 A. Yes.

15 Q. I think that's what got Fife --

16 A. Into trouble.

17 Q. -- into problems and led to an inquiry, that they were
18 seeing residential care as something to be avoided at
19 all costs?

20 A. Yes.

21 Q. I think apart from that review there was also
22 an influential review in 1987 by Roger Kent, the Kent
23 review --

24 A. Oh yes.

25 Q. -- which I think was again quite important in terms of

1 particularly trying to safeguard children in care.

2 Again we have the move from safeguarding children in the

3 community to safeguarding them when they are in the

4 supposed place of safety?

5 A. Yes.

6 Q. Yes?

7 A. Absolutely.

8 Q. Another thing you say about this decade, and can I take

9 you to page 103 of your report, you say there among the

10 recommendations of another report, the Orkney Inquiry

11 report in the early 1990s I think it was, was that:

12 "Allegations made by a child ... should be treated

13 seriously though not necessarily accepted as true."

14 To the outsider that seems pretty shocking to have

15 to say that as a recommendation in the 1990s; do you not

16 think?

17 A. Um --

18 Q. 1990s.

19 A. It is difficult to look back at the mindset. This is

20 something that was identified also in the Cleveland

21 report. Was that about 1987?

22 Q. I think it is the late -- yes, it is certainly not

23 1990s, I think it was in the 1980s.

24 A. Where children were just not listened to, if they made

25 serious allegations the assumption was almost that it

1 had all been made up, or that they were --

2 Q. The presumption in that, was --

3 A. Almost.

4 Q. I am not suggesting, I am not saying --

5 A. The reaction was not to take these sort of things, these
6 sorts of allegations by children, particularly
7 seriously. One of the major recommendations of
8 Cleveland was listen to the children. They might not be
9 telling things that are absolutely factually accurate,
10 but they are telling their truth, if you like, to use
11 a much more modern way of putting it.

12 This, I think, is what Lord Clyde was getting at,
13 because the Orkney case, of course --

14 Q. Oh, it is very different circumstances, I readily
15 accept.

16 A. It is hugely different circumstances and it is quite
17 a difficult one, because it started with children not
18 telling the truth, that caught up all sorts of children
19 who should never have been brought in to the childcare
20 and protection system. The interview techniques that
21 Lord Clyde very strongly criticised were tendentious, if
22 you like, that the interviewers wanted to lead the
23 children to say particular things. Lord Clyde points
24 out that's absolutely not the way that you should
25 interview children. You should take them seriously, is

1 the overall message.

2 Q. But you would have thought by then, I appreciate all you
3 say, but if someone has to say that as a general
4 proposition, albeit in a certain context, it certainly
5 is revealing, disappointing and possibly shocking.

6 A. It is all of these things. To me it reveals a mindset.
7 It reveals the way that society regarded children at the
8 particular time.

9 Q. And --

10 A. And had long, long, long done so.

11 Q. That wasn't just the 1990s.

12 A. Yes.

13 Q. I think it was echoing, perhaps, many decades that that
14 was the reality.

15 A. Yes.

16 Q. At page 105 I think there is another White Paper, this
17 time it was Scotland's Children, in 1993 --

18 A. Mm-hm.

19 Q. -- that you mention, which accepted, and I quote:
20 "The quality of care experienced by young people in
21 many residential homes and schools needed to be
22 improved."
23 That was being said in the 1990s --

24 A. Yes.

25 Q. -- yet again.

1 A. Yes.

2 Q. Interestingly, the White Paper also says:

3 "It is essentially a management responsibility to
4 improve the quality of the current provision of much
5 residential childcare."

6 To some extent the State is passing the buck --

7 A. Yes.

8 Q. -- are they not?

9 A. Absolutely, yes.

10 Q. Yes, if these children are in reality in the care of the
11 State, the State perhaps should put that a different
12 way. It is not essentially management's, it is
13 everyone's responsibility --

14 A. It is absolutely everyone's.

15 Q. -- including the state's?

16 A. First and foremost you could argue it is the state's
17 responsibility, because ultimately it is the State that
18 has removed children from their family background and
19 accommodated them somewhere else.

20 Q. Yes.

21 Of the 1995 Act, the Children (Scotland) Act 1995,
22 you deal with that between pages, I think, 108 and 121.
23 I think what I am wanting to perhaps refer you to
24 briefly for the background is I think on page 108.
25 I think it is the first page of that section, dealing

1 with the Act. You make reference to Gilmour and

2 Giltinan --

3 A. Mm-hm.

4 Q. -- writing in 1998 --

5 A. Yes.

6 Q. -- which is three years after the Act itself has been
7 passed, on the background to the Act.

8 You say that according to them, from the later 1970s
9 child protection became a central activity of the social
10 work profession.

11 By that do you mean largely speaking protection of
12 children in the community, or did they mean that?
13 Because child protection of children in care was
14 probably not in that decade very developed?

15 A. Yes, I think they were referring to -- both these
16 authors come from a social work background. I think
17 what they were saying is that the practice of social
18 work was taking much more seriously child and protection
19 issues. Prior to then, social work became involved with
20 children who had got into trouble with the law and the
21 like. From the 1970s there was an increasing
22 recognition of the need to focus at least as much on
23 care and protection issues for children. I think that's
24 what they are saying there.

25 Q. They go on, I think, to say that by the late 1980s there

1 was a radical rethinking of the way the social work
2 profession specifically and society in general responded
3 to the needs of children and families. Again, it is
4 probably more the emphasis of the children and families.
5 A. Yes.

6 Q. The family unit. It says there was a greater emphasis
7 on the rights of the children. Perhaps that is not
8 surprising with the UN Convention on the Rights of the
9 Child that was 1989.

10 A. Mm-hm.

11 Q. You say, I think, that part 2 of the 1995 Act, which was
12 based partly on recommendations of the 1993 White Paper,
13 Scotland's Children --

14 A. Yes.

15 Q. -- dealt mostly with public law matters such as Local
16 Authority responsibilities towards children in need and
17 the children's hearing system?

18 A. Yes.

19 Q. That's the background to all of this.

20 A. Yes.

21 Q. If I pass on to page 110 of your report.

22 A. Mm-hm.

23 Q. You say there:

24 "It may well be the most radical change in part 2 of
25 the 1995 Act was its much increased focus on listening

1 to children. This had been required when the United
2 Kingdom ratified the UNCRC ..."

3 A. Yes.

4 Q. Which we have just mentioned?

5 A. Yes.

6 Q. We are getting into the era of recognition of both
7 listening to children and also that children have
8 rights?

9 A. Yes.

10 Q. Which must be respected?

11 A. Yes.

12 Though famously there is virtually no rights of the
13 child in the Children (Scotland) Act 1995.

14 LADY SMITH: Nor any rights of parents in part 1 --

15 A. Yes.

16 LADY SMITH: -- that deals with the parent-child
17 relationship.

18 A. Yes.

19 LADY SMITH: Any rights they have are only to enable them to
20 fulfil their overarching responsibilities.

21 A. Responsibilities.

22 MR PEOPLES: So echoes of "staff should be suitably
23 qualified".

24 A. Yes.

25 Q. What does that mean in practice? It leaves lots of room

1 for debate if you leave it as broadly as that, does it
2 not?

3 A. It absolutely does.

4 Q. And different interpretations of what it means in
5 practice?

6 A. Yes.

7 Q. That's the difficulty with that approach?

8 A. Yes.

9 Q. What you do say, and perhaps I could just refer to this,
10 at page 113 through to 116. I will just try and,
11 I think, summarise, and you can tell me if I have the
12 summary wrong, that you discuss under a heading "The
13 concept of and duties towards the looked after child".
14 I think you in these pages of the report you are
15 explaining, are you not, that there was, prior to 1995,
16 no universal definition of "children in care" because
17 the phrase was not a term of art and little in the way
18 of general duties towards all children in care, and
19 instead the duties were to be found severally in the
20 rules and regulations governing the particular type of
21 care to which the child was made subject and the 1995
22 Act provided a universal definition of "looked after
23 child"?

24 A. That's correct.

25 Q. And that was the change in terminology?

1 A. Yes. I think the point I am trying to make is it was
2 more than a change in terminology.

3 Q. Oh yes.

4 A. The phrase "children in care" meant a lot of different
5 things depending upon the nature of care that was being
6 provided, whereas section 17 provides here's the
7 definition of "children in care" of "looked after
8 children" in the 1995 Act and subsequent provisions in
9 the '95 Act says for any looked after child, implicitly
10 irrespective of the type of care we are providing, for
11 any, here are the duties and the responsibilities that
12 the Local Authority has towards that child.

13 Q. And that child for example could be one that was in
14 accommodation provided by a Local Authority or
15 a voluntary organisation --

16 A. Yes.

17 Q. -- or a child that was subject to a supervision
18 requirement --

19 A. Yes.

20 Q. -- imposed by hearing?

21 A. Yes.

22 Q. So they were all looked after children?

23 A. Yes.

24 Q. And that was within the definition?

25 A. Yes, the phrase becomes a term of art, if you like.

1 Q. Yes. And do we see that in relation to what are now,
2 what is now a group, "looked after children", that we
3 have the modern formulation of duty towards all of these
4 children, which is to safeguard and promote the child's
5 welfare as a paramount concern?

6 A. Yes.

7 Q. And indeed we are now into the era, are we not, that for
8 each looked after child there must be a care plan --

9 A. Yes.

10 Q. -- in place, not only to address immediate needs, but
11 also to address longer term needs?

12 A. Long term needs for them.

13 Q. And normally --

14 A. And it is a care plan for each individual child, drawn
15 up taking account of that child's developmental needs,
16 environment, it's a much more individualistic approach.

17 Q. A far cry from the days when children were put in
18 an Approved School?

19 A. Yes.

20 Q. Who had different needs?

21 A. Yes.

22 Q. They wouldn't have had a care plan?

23 A. Absolutely not.

24 Q. Or nothing of the sort. And the plan itself had to
25 simply, not only sort of had to set out the needs, but

1 had to set out how these needs would be met, and the
2 services that would be used to meet them?

3 A. Yes.

4 Q. So it is quite specific as to what it has to include?

5 A. Yes.

6 Q. And in addition the child's case must be regularly
7 reviewed --

8 A. Yes.

9 Q. -- as well. It is a matter of statutory requirement?

10 A. Yes, and that must be hugely important, because --

11 Q. Yes.

12 A. -- children's needs and interests and relationships
13 change probably much more rapidly than an adult's do.

14 Q. Yes. And you also have a section where you mention
15 changes since the 1995 Act. And there are a lot of
16 changes, and we can see them in the report, and one is
17 obviously the changing face of the family, which you
18 deal with at pages 122 to 123. That we are no longer
19 looking at a traditional family unit, and that's
20 something that is a significant change that was taking
21 place. We have the constitutional changes you mention
22 at page 123 of devolved government and the incorporation
23 into the Scottish domestic law of the European
24 Convention on Human Rights?

25 A. Yes.

1 Q. And you also have a section which is dealing with
2 a shift of focus in child protection legislation, and
3 you mention or you explain that at pages 124 to 125, and
4 if I could turn to that. What you tell us there is
5 that:

6 "The mechanisms of child protection were originally
7 designed to allow the removal of children who had been
8 harmed within their own families to an environment
9 perceived to be safer."

10 And then I will miss out what is not necessary.

11 "Until ... 1968 that removal [was] usually intended
12 to be long-term, in order to insulate the child from the
13 bad influences they would otherwise be exposed to during
14 their impressionable years. The 1968 Act changed the
15 emphasis towards working with families to prevent such
16 harm and that emphasis remained evident in the Children
17 (Scotland) Act 1965.

18 "Subsequent legislation, however, has shifted
19 attention from children at risk within the family
20 setting to children at risk in wider society -both in
21 respect of children subject to no State involvement in
22 their private lives and in respect of children already
23 being looked after by the State."

24 And you say this:

25 "It has become recognised - belatedly many will

1 doubtless think - that 'places of safety' are not safe
2 because we call them so but because they are staffed by
3 properly trained, suitably motivated and robustly vetted
4 individuals."

5 And you go on:

6 "Writing in 2004 [we are enough to into the 20th
7 century] Cleland points that 'the early law was
8 concerned with unsuitable parents. The modern law is
9 beginning to develop the concept of 'unsuitable adults',
10 adults whose access to children should be restricted as
11 they pose a danger to children. She refers to the child
12 protection review [that is It Is Everyone's Job to Make
13 Sure I am All Right'] published by the Scottish
14 executive in 2002, which identified as the first of the
15 hallmarks of an effective child protection strategy the
16 incorporation of preventative strategies."

17 Then you say:

18 "Since Cleland wrote a whole body of law has been
19 enacted to ensure children are protected not only from
20 their own families but also from those charged with
21 their care in any other context."

22 So that's quite a significant change?

23 A. I think it is a hugely significant change, yes, and it
24 reflects the recognition that children who have been in
25 care, who are being looked after by the State, are

1 actually more vulnerable than children who are being
2 brought up within a family setting, even if that family
3 setting leaves an awful, awful lot to be desired. The
4 very fact that a child is accommodated away from home
5 makes them more vulnerable than they were ever before.

6 Q. It has taken a long time for the penny to drop.

7 A. It certainly has taken a long time. I have no doubt
8 that in the early days, by which I mean kind of anything
9 before 1995, there were public instances of children
10 being abused and harmed while being accommodated in
11 institutions. And people assume these were isolated
12 events; it was a single bad apple sort of thing, and
13 people didn't tend to focus on structural protections.
14 From the very last years of the 20th century, and in the
15 early years of the 21st century, we have come to
16 recognise that you need structural protections as well
17 as simply ensuring that there is not bad apples about
18 the place; that we need to have systems in place to
19 ensure that we are weeding out bad apples, it is not
20 a phrase I like, but we are weeding these people out
21 before they get anywhere near children who are
22 vulnerable.

23 Q. Can I say this, because it may be just a reminder, we
24 have had a study, or a case study involving the campaign
25 for an inquiry, and the Scottish Government's response,

1 and I think we certainly saw evidence in the early days
2 when there was a campaign for an inquiry of the initial
3 response through officials of saying these instances of
4 abuse appeared to be rare occasions, and there wasn't
5 a major problem. I think the position has clearly
6 shifted since then, but it perhaps illustrates how it
7 was perceived at least, or how it was reacted to when
8 someone said well, this has been going on, we need
9 a major inquiry, and the initial reaction was to attempt
10 to head it off and also say we don't seem to have much
11 evidence that there was a big problem and there was, to
12 use the expression you have used, a few bad apples
13 argument, which I think fortunately the position has
14 changed since that time.

15 A. Of course it has. And it is one of the consequences of
16 this Inquiry, surely, that in the past instances became
17 public when there was criminal charges. But most, most
18 instances of abuse were hidden, and didn't get anywhere
19 near criminal charges, or any other sort of inquiry, and
20 the reason for that is that children weren't listened
21 to, children were deemed to be vulnerable and volatile,
22 and not worth listening to. And also a lot of children,
23 this Inquiry has shown, didn't have the capacity to
24 speak out for whatever reason, for a whole variety of
25 different reasons, they didn't feel able.

1 LADY SMITH: There could also be systems that were defective
2 in the way that the single bad apple was able to
3 perpetrate abusive practices, unhalted.

4 A. Yes.

5 LADY SMITH: Supposedly unnoticed.

6 A. Yes.

7 LADY SMITH: That should have been noticed. And that is
8 nothing to do with children speaking up.

9 A. No.

10 LADY SMITH: It is all to do with not having a system that
11 spots the problem very early on; either doesn't let it
12 in in the first place, or spots it fast.

13 A. And having spotted it actually deals with it.

14 LADY SMITH: Indeed.

15 A. Rather than shifting the individual to some other
16 equivalent institution.

17 LADY SMITH: Yes.

18 MR PEOPLES: I am going to return to this, this afternoon.

19 A. This Inquiry is not the only one in the world that is
20 noticing exactly that phenomenon.

21 Q. I will return to some of the things you said about how
22 abuse gets in to the public eye, but also I will refer
23 you, as I said at the opening of my questioning, I will
24 refer you to some material from an earlier decade that
25 will perhaps open some eyes and seem surprising, that

1 was clearly not made public at the time. So we will
2 come to that this afternoon. But if I can just continue
3 with the reports, I have not lost sight of it, I will
4 come back to it.

5 So you have told us about this change in focus, and
6 I am not wanting to go through it, we can read it, but
7 you go through it and you effectively indicate in
8 a broad sense what that involved, and you mentioned
9 three particular examples of this shift, one being new
10 rules designed to identify individuals who ought not to
11 be allowed to work with children because of the risk
12 established from previous behaviour. Of course, that's
13 the caveat; that they might abuse their position, and
14 that's the listing of people who shouldn't work with
15 children, and there is legislation in 2003 and 2007,
16 I am not going to go through the detail, but that's one
17 example.

18 And then you also mention another is the new
19 institutions that were created to take over registration
20 and inspection of services for vulnerable children, and
21 you have in mind there the Care Inspectorate/Care
22 Commission?

23 A. Yes.

24 Q. And perhaps we should add the establishment of the
25 social care workforce regulator, the Scottish Social

1 Services Council, SSSC, in 2001, which we mentioned this
2 morning, earlier.

3 Thirdly, another development is the creation of new
4 sexual offences that have been created in respect of
5 those in a position of trust in relation to children.

6 A. Yes.

7 Q. I think the current one, by way of example, is the 2009
8 Sexual Offences Act which creates specific offences
9 which don't involve as relevant issues of consent, so it
10 is an attempt to simply address that people in positions
11 of authority, whatever they may claim was consensual,
12 are guilty of an offence --

13 A. Yes.

14 Q. -- if in a position of trust they engage in sexual
15 activity of a broad kind, with a child under 16?

16 A. Yes.

17 Q. Not 18, 16?

18 A. Yes. It is abuse of power, abuse of trust, sort of
19 thing.

20 Q. Yes.

21 A. That makes it the offence, rather than any matter of
22 consent.

23 Q. Yes. Just on the new oversight institutions, which
24 I have just mentioned, that were introduced by the 2001
25 Act, you say, I think it is around page 129 of your

1 report -- certainly between there and 139 -- where you
2 are making the general point that the modern system
3 oversight is obviously a very different one to that
4 which came before, but you say that by the end of the
5 20th century it had become clear that the oversight of
6 social care in Scotland was fragmented and inconsistent.
7 Of course that did lead to the creation of at least
8 a single body responsible for regulation of services.

9 A. Mm-hm.

10 Q. Initially the Care Commission and since 2011 the Care
11 Inspectorate?

12 A. Yes.

13 Q. Just at page 129, if I may go back to that, you say
14 there, after the bit that says that the system or the
15 oversight was fragmented and inconsistent:

16 "Some but not all forms of social care required to
17 be registered, with either the Local Authority or the
18 Secretary of State ([latterly] the Scottish Ministers
19 [since 1999]); the duty of inspection would often lie
20 with the Local Authority, but sometimes it lay with
21 health boards or the Social Work Services
22 Inspectorate -- and sometimes was not required at all.
23 There was clear potential for conflict of interest, with
24 Local Authorities having duties both to provide services
25 and at the same time to monitor how well they were run,

1 often in comparison (and in financial competition) with
2 similar services provided by voluntary organisations.
3 Different Local Authorities across Scotland were able to
4 adopt different practices, and there were serious
5 regulatory complications when a service user required
6 both social care and health service input.

7 You make the point:

8 "There was no single body responsible for ensuring
9 standards of care across the range of services that the
10 State might provide to children and others."

11 You say by then there was widespread agreement that
12 there needed to be different arrangements put in place.

13 I suppose that what you do there is summarise all
14 the reasons why the existing oversight arrangements over
15 a long period were completely unsatisfactory?

16 A. Yes. Absolutely.

17 Q. Is that a fair comment?

18 A. That's a very fair comment. They were not independent,
19 you know. Local Authorities would investigate Local
20 Authority provisions.

21 LADY SMITH: They were marking their own homework?

22 A. Yes, exactly, exactly that.

23 MR PEOPLES: Again, just conscious that we are near lunch,
24 I want to just say that we have talked about the era of
25 care planning and so forth that has come in in the

1 1990s.

2 A. Mm-hm.

3 Q. Just to pick up a further thing, that now, since 1995,
4 and indeed since 2002, providers have to prepare
5 a statement of aims and objectives of the service they
6 provide.

7 A. Mm-hm.

8 Q. They have to make provision for health and welfare and
9 privacy and dignity of service users. They have to
10 prepare a personal plan for each service user, setting
11 out how the service user's health and welfare needs
12 would be met. They have to ensure that suitably
13 qualified and competent persons are working in the care
14 service in such numbers as are appropriate for the
15 health and welfare of service users, as well as ensuring
16 that suitable training was given, and they must keep
17 proper records and establish and operate a complaints
18 procedure.

19 It is certainly a considerable improvement in the
20 formulation of suitably qualified staff. I mean it is
21 still not spelling out what that entails, but no doubt
22 there is a degree of guidance that can be provided?

23 A. I would certainly hope so.

24 Q. I think the Scottish Social Services Council have some
25 requirement to set out what qualifications the various

1 forms of social care workers should possess, either
2 currently or within a certain time of being employed in
3 certain positions.

4 A. Mm-hm.

5 Q. So we are moving in the right direction?

6 A. Yes.

7 Q. Although we may not be there yet.

8 A. Well, we started from a very poor starting point, didn't
9 we?

10 Q. Yes. What I read out there, I think, is in essence the
11 requirements of The Regulation of Care (Requirements As
12 to Care Services) (Scotland) Regulations 2002, set out
13 the sort of things that were required of a care service,
14 including a children's service. Of course we said
15 earlier the 2001 Act gave the Care Commission, now the
16 Care Inspectorate, power to issue improvement notices to
17 any provider, and registration could be cancelled if
18 improvements were not made or regulations had been
19 breached. They had power to require provision of
20 information, and I think at least in the beginning, I'm
21 not sure, they will no doubt tell us in due course when
22 they give evidence, that there was a requirement to
23 carry out inspections at least twice a year, one being
24 unannounced, so we are in the era of unannounced
25 inspections?

1 A. Yes.

2 Q. Which were a rare beast in the past, I think, if I am
3 not mistaken.

4 A. Yes.

5 Q. There was no requirement, I think, in the regulations to
6 conduct unannounced inspections?

7 A. Not unannounced. The earlier regulations said there
8 shall be visits and inspections.

9 MR PEOPLES: My Lady, I wonder if this is a suitable point
10 just to break for lunch?

11 LADY SMITH: I think we should.

12 I think we should stop here for the lunch break and
13 I will sit again at 2 o'clock. Thank you.

14 (1.02 pm)

15 (The luncheon adjournment)

16 (2.00 pm)

17 LADY SMITH: Good afternoon.

18 Are you ready for us to carry on, Kenneth?

19 A. Yes.

20 LADY SMITH: Thank you very much.

21 Mr Peoples.

22 MR PEOPLES: Thank you, my Lady.

23 Professor Norrie, before lunch we were looking at
24 a section of your report about changes since the 1995
25 Act. In particular a section dealing with a shift of

1 focus in child protection legislation. I had been going
2 through some of the changes, and we were looking at the
3 Regulation of Care (Scotland) Act 2001, and some of the
4 changes that were introduced, including the
5 establishment of the Care Commission and the powers that
6 were given to that body, and also the fact that the Act
7 also established the SSSC, the workforce regulator.

8 A. Mm-hm.

9 Q. Can I just take from you that I think you say in your
10 report that the Scottish Ministers as far as they had
11 functions, or have functions, and the SSSC and the Care
12 Commission in the past, and now the Care Inspectorate,
13 are all required to exercise their respective functions
14 in accordance with certain principles. One of which is
15 the principle that the safety and welfare of all service
16 users are to be protected and enhanced. So there is
17 that specific requirement that they all have to be
18 mindful that that principle applies to their functions.

19 A. That's right.

20 Q. As a group?

21 A. Yes.

22 Q. I suppose that's corporate responsibility in the broad
23 sense?

24 A. Yes.

25 Q. Rather than focusing on a duty on a particular --

1 A. I think so, yes.

2 Q. -- body or a particular part of the State?

3 A. Yes.

4 Q. Then you have a section in the report, and I am going to
5 take this fairly short, but The Children and Young
6 People (Scotland) Act 2014, it is at pages 143 through
7 153 I think, in your report, and I will just pick out
8 a couple of things. I am not going to go anywhere near
9 the named person scheme, which you deal with. I know
10 there are movements and developments this week, as we
11 learned, but I think at least the incorporation of the
12 Human Rights Convention, I think there has been some
13 movements, there will be some changes.

14 Can I take this: I think it does have other
15 significance apart from trying to introduce a scheme,
16 a named person scheme. What you say at page 143 is:

17 "The most recent significant development in Scottish
18 child protection law has been the giving of legislative
19 effect to the recognition of the merits of early State
20 intervention in family life as a means of avoiding, or
21 at least reducing the risks of, compulsory
22 intervention."

23 I suppose it is a matter of common sense that if you
24 can avoid such intervention, then that at least is one
25 way of reducing the risk of abuse where intervention has

1 happened?

2 A. Absolutely, yes.

3 Q. Clearly?

4 A. Yes.

5 Q. I think that you tell us in that section, and I don't
6 think we need to go to it, that as was explained in the
7 challenge to the named person scheme, that there were
8 various ideas that underpinned or underlay the
9 legislation, one being the one that we have just
10 mentioned, the shift from State intervention after
11 a risk has been identified to an emphasis on early
12 intervention to promote children's wellbeing. The other
13 idea is a move towards collaborative working and
14 information sharing?

15 A. Yes.

16 Q. One of the things you tell us, I think, is that there
17 were parts 1 and 2 of the Act, you give us some
18 description of what they involved. Can I ask you this
19 about parts 1 and 2, which I don't think were the
20 controversial parts that were the subject of legal
21 challenge, if I am understanding it correctly.

22 A. Yes.

23 Q. Was this an attempt by primary legislation to basically
24 do sort of two things? Was it to secure better or
25 further implementation of the requirements of the UNCRC?

1 That was one attempt.

2 Was it also to provide a mechanism for investigation
3 of the extent to which providers of services for
4 children and young people were having regard to the
5 rights, interests and views of that group when making
6 decisions or taking action which affected them?

7 A. Absolutely. The UN Convention had been a sort of
8 background --

9 Q. Yes.

10 A. -- provision since the early 1990s. And primary
11 legislation had tried to ensure that it was consistent
12 with the UN Convention. What the 2014 Act tries to do
13 is to bring that much more to the forefront, not just of
14 legislative drafting, but also of how rules and
15 procedures are applied in practice.

16 Q. Can we see that this at least is an attempt by means
17 other than simply the independent external inspection of
18 services by a Care Inspectorate, this is an attempt by
19 legislation to create mechanisms to monitor the
20 effectiveness in practice of the legal and regulatory
21 framework?

22 A. Yes, it enhances particularly the Commissioner's role,
23 it allows the Commissioner rather more direct
24 interventionary powers than he or she had before.

25 LADY SMITH: Can you remind me when the Commissioner's role

1 was first established? I am struggling to remember now.

2 MR PEOPLES: 2004?

3 A. Oh, no, was it not before that?

4 MR PEOPLES: The children and young persons, the Children's

5 Commissioner?

6 A. Yes.

7 MR PEOPLES: I think it was 2004.

8 LADY SMITH: Surely Kathleen Marshall was only appointed in

9 2004?

10 A. Kathleen Marshall was the first one.

11 LADY SMITH: She was the first, and I thought it was

12 before --

13 MR PEOPLES: We can check.

14 LADY SMITH: It may have been late -- it is the same era,

15 and the ideas certainly I think started to emerge after

16 the 1995 Act. She was very involved, if I can put it

17 that way, in at least disseminating the messages from

18 the 1995 Act.

19 A. Yes.

20 MR PEOPLES: Well, we can check.

21 LADY SMITH: Yes.

22 MR PEOPLES: I'm sure.

23 But yes, there was a role for the Children's

24 Commissioner in this process. Is this some attempt to

25 obtain evidence of the effectiveness of existing

1 mechanisms in practice? Is this a way of testing the
2 effectiveness of these mechanisms in giving, in a real
3 sense, effect to the rights of children and --

4 A. I'm not sure.

5 Q. Do you think it goes that far? Is it simply just
6 a power, it is not a method of testing effectiveness?

7 A. The Children's Commissioner in Scotland has always, as
8 far as I understand, and I have spoken to most of the
9 people who have filled that office, the Children's
10 Commissioner has always had the UN Convention at the
11 absolute forefront of their policy development and their
12 advocacy for children.

13 The 2014 Act allowed the Commissioner to move beyond
14 a sort of policy focus to an individual focus, looking
15 at individual cases. But still always with the notion
16 of children's rights, particularly those from the UNCRC.

17 Q. It's not strictly a role of investigating individual
18 complaints then, it doesn't go that far, but it can
19 involve looking at --

20 A. Yes.

21 Q. -- individual situations --

22 A. Yes.

23 Q. -- as a reason to investigate?

24 A. Yes.

25 Q. It is not really a direct complaints procedure for

1 children, that's not the function of the Children's
2 Commissioner, is it, to adjudicate on complaints or --

3 A. It's certainly not adjudication, no.

4 Q. No.

5 Obviously, as I say, part 4 was the named persons
6 scheme, and that was successfully challenged in the
7 courts, based on a degree of incompatibility with the
8 right under Article 8, I think, to respect for family
9 life?

10 A. Yes.

11 Q. Can I just be clear, though, because I think this is
12 maybe sometimes misunderstood, whatever the effect of
13 that challenge, the broad principle is that information
14 can be shared where a child is at significant risk of
15 harm if that information is relevant in that context?

16 A. Absolutely.

17 Q. That doesn't get ruled out by this decision?

18 A. No, no. There was information sharing before --

19 Q. Yes.

20 A. -- the 2014 Act, before the named person scheme. The
21 primary purpose, as I understand the named person
22 scheme, was to streamline a lot of what was already
23 happening. There were discussions when the 1995 Act was
24 going through about different Local Authorities sharing
25 information amongst themselves, because sometimes

1 families moved to different Local Authority areas. That
2 had been very patchy before the 1995 Act, and somewhere
3 in part 2 there is a requirement on Local Authorities to
4 share information with each other.

5 Q. Yes, because I think one of the criticisms historically
6 was that often bodies with responsibility, particularly
7 providers, didn't have the background information they
8 needed --

9 A. They didn't have the full picture.

10 Q. -- or the full picture.

11 A. There were different operators --

12 Q. Yes.

13 A. -- with part of the picture.

14 Q. Yes.

15 A. That could potentially lead to more vulnerabilities than
16 would be necessary.

17 Q. Can I turn away from your report, in a broad sense at
18 least, I am still looking at the matters you deal with,
19 but I did say we would have, perhaps, a look at the
20 regulations themselves, but I am going to be highly
21 selective, as I said to you this morning, so I am not
22 necessarily going to take you through all and every
23 detail. Can I say in relation to this sort of exercise
24 I will pick out some matters that are regulated by the
25 regulations, and probably I will concentrate largely on

1 Approved Schools, List D Schools, secure accommodation,
2 remand homes and, to a limited extent, assessment
3 centres.

4 The establishments run by the Scottish Prison
5 Service I am probably going to deal with to a lesser
6 extent, and in fact maybe I can begin with those
7 establishments, just to identify some features of them
8 which may be relevant to looking at the other
9 regulations. If I could do that. I think as we already
10 have perhaps learned in your report, that since the 19th
11 century until 2015 there was a system of visiting
12 committees which would visit penal establishments --

13 A. Mm-hm.

14 Q. -- and carry out a range of functions, one of which was
15 to hear complaints by persons, prisoners --

16 A. Yes.

17 Q. -- inmates, and that was one of their functions, quite
18 apart from the general function or jurisdiction of the
19 governor to deal internally with complaints that were
20 brought to his attention. So that's broadly --

21 A. Yes.

22 Q. -- the system. I think that what replaced that is
23 what's known as a system of independent prison
24 monitors --

25 A. Mm-hm.

1 Q. -- who now visit prisons. I think they do also carry
2 out an investigative role and look at the conditions of
3 prisons to see that they comply with relevant
4 regulations, and indeed international standards, if
5 possible, I think. That's part of the background to
6 these monitors being set up; is that right?

7 A. That is my understanding. I have no particular
8 expertise in prison visiting and monitoring.

9 Q. No, I think we will hear a bit more about that when we
10 have other witnesses, but I just wanted to set that
11 scene --

12 A. Mm-hm.

13 Q. -- because this is something that has existed for a long
14 time as a system --

15 A. Oh, yes.

16 Q. -- and it also involved hearing of complaints from
17 individuals.

18 A. Yes.

19 Q. That doesn't really see a parallel, does it, in any of
20 the regulations for the other types of institutions
21 historically?

22 A. Historically, no, it doesn't. Again, to a large extent
23 this, I think, goes back to our views of the place of
24 the voice of the child.

25 Q. Yes.

1 A. Which was -- only at a very, very late stage was that
2 thought worth taking and anybody's time taken to take it
3 into account.

4 Q. Maybe the other big feature we have to remember with
5 what I would call the SPS establishments, we have looked
6 at borstals, detention centres, remand institutions and
7 young offender's institutions over time, is that
8 corporal punishment was not permitted?

9 A. Corporal punishment was not permitted.

10 Q. So the older you got and the further into the system,
11 perhaps the greater protection you got?

12 A. That's one way to put it. When you are talking about
13 the adult criminal population, corporal punishment --
14 once flogging had been abolished -- was assault pure and
15 simple, and there was no defence of reasonable
16 chastisement, which is a defence that only applied to
17 children. I kind of suspect that borstals and
18 institutions like them were seen as part of the prison
19 estate, so it was easier for them to follow that type of
20 rule rather than rules involving children.

21 Q. I suppose that in the end, as we know, if you take the
22 definition of a child or young person, certain for our
23 purposes and internationally, there are those in these
24 place who are under 18 --

25 A. Yes.

1 Q. -- and who have the benefit of that protection?

2 A. Yes.

3 LADY SMITH: There is also the practicality of physical
4 size, isn't there? I think back to what I have heard
5 about corporal punishment, for example in boarding
6 schools. Very much a feature with the younger children.
7 It tails off as the children get older. Because it is
8 not going to work. It is going to be really difficult
9 once, particularly, young boys are as big as the
10 teachers who are trying to discipline them in a physical
11 way.

12 A. Yes.

13 LADY SMITH: So they move on to other forms of punishment.
14 I can see the prospect of someone who works in
15 a prison being expected to exercise corporal punishment
16 in relation to the average inmate is not at all relished
17 and is probably not going to work and may run the risk,
18 I would have thought, of provoking widespread reaction,
19 let's put it that way, isn't it?

20 A. Oh, I think that's absolutely right. Yes.

21 LADY SMITH: Maybe not thinking we are going to protect
22 prisoners more, it is just that's not the way to go if
23 you are trying to control the behaviour of adults.

24 A. It reminds me of a comment that Professor Joe Thomson
25 makes in his book on family law, when he was talking

1 long before corporal punishment of children was
2 prohibited. But he makes a similar comment that this is
3 practical and fine for the ten year old, by the time you
4 have a 15-year old prop forward rugby player and
5 a single mother, the concept of physical chastisement
6 just loses touch with reality.

7 LADY SMITH: Yes.

8 MR PEOPLES: But it didn't lose it in Approved Schools or
9 List D Schools, because the rules permitted corporal
10 punishment of 16-year olds, who could be rugby-size
11 forwards.

12 A. Yes.

13 Q. They could be next door to someone who had previously
14 been in a borstal, and might be a smaller person, or
15 bigger. There is no rational reason for this
16 distinction if you look at it as children and saying
17 that children in one setting, aged 16, are subject to
18 corporal punishment, six of the best, whereas someone in
19 another institution of the same age is not.

20 A. Yes, I would not suggest there is any rational reason
21 for these distinctions.

22 Q. I mean I get the point that as particularly boys get
23 bigger and stronger, then adults might be more wary
24 about how they discipline or punish them, because of
25 what might happen in response. But the framework still

1 permitted that, and I'm sure we would have instances
2 where boys of 14/15/16 have received corporal
3 punishment --

4 A. Yes.

5 Q. -- and suffered from it?

6 A. Yes, of course. What you can take from the legislative
7 background is that was not an unlawful act.

8 Q. No. But if we stick with the SPS just now, another
9 interesting feature is I think that unlike perhaps some
10 of the regulations for what I call non-SPS
11 establishments, for convenience, is that there was
12 a regulation of the use of force.

13 A. Mm-hm.

14 Q. In fact not only was corporal punishment prohibited, but
15 force was not to be used against inmates unless
16 unavoidable, and an officer could not strike, I think,
17 or words to that effect, an inmate unless compelled to
18 do so in self defence.

19 A. Mm-hm.

20 Q. It wasn't just that it couldn't be punished, you
21 couldn't use force.

22 A. Mm-hm.

23 Q. Save if it was unavoidable, and really in circumstances
24 of self defence, often. So that's different from the
25 other regulations?

1 A. I mean it is, but I wonder if the proper -- I wonder if
2 the true motivations behind that is to have written in
3 the defence rather than the legality of the use of
4 force.

5 Q. Well, if force was permitted in any of these
6 institutions it might have been better to spell that out
7 in all of them?

8 A. Maybe.

9 Q. No, I am not --

10 A. Yes.

11 Q. I'm just -- we are exploring the differences, and
12 obviously that is a difference.

13 A. I think the whole environment in prison-type
14 institutions was very different from the environment in
15 Approved Schools, children's homes and the like.

16 Q. There appears to have been a rule in the young
17 offender's rules in 1965 to the effect, to deal with
18 sharing of accommodation, which I don't think has any
19 parallel in the other regulations. That if an inmate
20 was not in a solo room he had to occupy it with no fewer
21 than two others.

22 A. Yes.

23 Q. Can you hazard a guess as to why that might be?

24 A. Well, there are two obvious -- well, one obvious and
25 another perhaps less obvious potential.

1 It may well be easier for inter -- I am trying to
2 avoid using the word "inmate", for --

3 LADY SMITH: Let's just use it, because we know what we mean
4 and we are not meaning to be offensive.

5 MR PEOPLES: We will just use the terms that I think were
6 probably used at the time.

7 A. Yes, okay.

8 I think the opportunity for inter-inmate abuse,
9 abuse of one inmate upon another, abuse of one inmate by
10 another, would be greater if there was only one person
11 present, the abuser and the abused, rather than if there
12 were more.

13 I did wonder when I first read that whether this was
14 designed also to inhibit sexual activity.

15 Q. It is a possibility.

16 A. Yes.

17 Q. Particularly if it is non-consensual.

18 A. Yes, well, and consensual --

19 Q. Well, [overspeaking] consensual activity, but they liked
20 even less non-consensual activity, do you not think?

21 A. I think at that time consensual activity would have been
22 seen in a similarly negative light.

23 Q. Yes. But I think even to our thinking today, you don't
24 want two people to be in a confined space together and
25 one being subjected to sexual activity which is

1 non-consensual?

2 A. Yes, absolutely.

3 Q. We can agree on that?

4 A. Absolutely.

5 Q. Whatever they thought historically about the difference,
6 because of the views taken.

7 LADY SMITH: Mr Peoples, can I just rewind. You were
8 addressing the rule in young offender's rule 1965 about
9 sharing accommodation. Did I pick you up as saying if
10 an inmate was not in a solo room he had to occupy it
11 with less than two others?

12 MR PEOPLES: No fewer than two others, so there had to be
13 three at least.

14 LADY SMITH: I thought that was --

15 MR PEOPLES: Sorry, did I --

16 LADY SMITH: However it came out, it is reading the other
17 way round on the transcript at the moment. I thought
18 the point was there must be at least three in the room.

19 MR PEOPLES: That was the point, yes.

20 LADY SMITH: Yes, thank you.

21 MR PEOPLES: I hope I didn't express it wrongly, but if
22 I did ... certainly that's what I think I took from the
23 report.

24 LADY SMITH: Don't worry, we have sorted it out now.

25 MR PEOPLES: Just in passing, to look at it from the other

1 angle, it wasn't all plain sailing for young offenders,
2 because I think you tell us at some point that in 1965
3 in the young offenders rules a new punishment was added,
4 deprivation of a mattress for a period not exceeding 15
5 days. That may have happened in other settings, but it
6 wasn't sanctioned by the regulations?

7 A. Yes.

8 Q. That was, maybe, the downside of being at a young
9 offender's institution, if these rules apply.

10 A. Yes, are these the rules also that -- I can't remember
11 which way round it is, either prohibit or now allow
12 denial of a meal.

13 Q. I think there were certainly provisions where
14 deprivation of meals was a form of punishment that did
15 exist historically.

16 A. Yes, but I think with Approved Schools that was
17 explicitly prohibited.

18 Q. Yes, it was.

19 A. Whereas with borstal-type institutions that was
20 explicitly permitted, so long as it wasn't more than one
21 meal.

22 Q. Yes, I think the restriction in diet was a permitted
23 method.

24 A. Yes.

25 Q. At least for a time. That could create the difference

1 in how you could punish someone, other than using
2 corporal punishment.

3 A. Yes.

4 Q. The other thing that caught my eye is that in relation
5 to penal establishments, the 1965 rules had provision --
6 I think it goes back quite a long way -- that no inmate
7 was to be put under, the expression is "mechanical
8 restraint except on medical grounds under the direction
9 of the medical officer and mechanical restraint was not
10 to be used as punishment".

11 Can you just help us with that? What did they have
12 in mind?

13 A. I can't help you with that, I'm afraid. I puzzled about
14 what they meant by "mechanical restraint". And I didn't
15 find anything that described the mechanical piece of
16 equipment. So I'm afraid I can't help.

17 LADY SMITH: Could it have referred to some form of
18 straitjacket?

19 A. Is that mechanical?

20 LADY SMITH: I wouldn't call it mechanical, but it may have
21 something within it that you can use to tighten the hold
22 on the human body.

23 A. Yes, possibly.

24 MR PEOPLES: Handcuffs?

25 A. Somehow they feel more mechanical than a straitjacket,

1 but that is purely my impression.

2 Q. I am just trying to give some context, it's clear there
3 is a rule there, and it goes back -- the words
4 "mechanical restraint" have a long history, don't they?
5 They go back to the --

6 A. Early 20th century.

7 Q. So they must have had in mind something that was at
8 least at the time in use and then they had to address it
9 in regulations.

10 LADY SMITH: Shackles if we are going back to the early 20th
11 century, shackles on the ankles.

12 MR PEOPLES: The trouble is it seems have survived into the
13 1965 rules, after things like shackles and flogging, all
14 of these interesting things, had been consigned to
15 history.

16 A. It is not necessarily an uncommon phenomenon to use
17 language from earlier, even though the context is --

18 Q. Dynamic interpretation means it has a new meaning.

19 A. Mm-hm.

20 Q. Yes. We don't see any equivalent. It is really
21 something we can just raise at this point. I think one
22 of the things I wanted to ask you is to what extent in
23 other regulations to do with Approved Schools, remand
24 homes, there was any specific regulation on the issue of
25 restraint?

1 A. There is, I think, no specific regulation focused on
2 restraint. The nearest you get is the very, very
3 detailed thing about corporal punishment. But of course
4 that's different from restraint. Restraint seems to be
5 an issue that is in the sort of prison environment, but
6 it is not at all the language that appeared in the
7 Approved School regulations.

8 Q. Yet we, I'm sure we will hear, but we have probably
9 heard of lots of occasions where people, to use the
10 colloquial expression, kick off and restraint of one
11 description or another is used to control them.

12 A. Yes.

13 Q. Therefore it is not a modern phenomenon that that was
14 happening in these institutions, yet it is not the
15 subject of any specific regulation over time.

16 A. Yes.

17 Q. Do we conclude that in relation to restraint as such
18 that that was regulated simply by the general law, the
19 civil law and the criminal law?

20 A. I would have thought so.

21 Q. So that would be the basis of someone --

22 A. Yes, yes, that would be the legal --

23 Q. Route.

24 A. -- constraint on the use of restraint. The extent to
25 which it would have been used would come very much down

1 to the practices of the staff in the institution.

2 Q. Yet it probably didn't occur to anyone to talk about
3 even the use of force in the context of these other
4 regulations.

5 A. No.

6 Q. It may be that the different departments that dealt with
7 these things didn't talk to each other, but the fact
8 remains that even some regulation of force is not
9 expressed in these other regulations?

10 A. Yes, they are not, and I suspect it comes from the
11 different traditions, the different environments, that
12 a prison-based environment is so different from
13 a school-based -- we are still talking about Approved
14 Schools.

15 Q. Yes, yes.

16 A. It is a school-based -- so the sort of mindset of the
17 two institutions are doubtless reflected in the mindset
18 of the regulators of these two quite different
19 institutions.

20 Q. The trouble with that is that if you are talking of
21 different mindsets, if you look at schools, for example,
22 corporal punishment on the posterior was a feature of
23 Approved Schools, it's not a feature of mainstream
24 schools.

25 A. No.

1 Q. Whatever they were thinking, they drew a distinction
2 between how a pupil in a mainstream school could be
3 treated, they could get, no doubt, the tawse on the
4 hand, and no doubt many did, but they couldn't, at least
5 in terms of regulations or rules, they couldn't receive
6 corporal punishment on the posterior.

7 A. Yes.

8 Q. That is a curious distinction.

9 A. For which I have no explanation.

10 Q. No, well, I am just trying to draw up how this is a bit
11 of a hotchpotch of regulation.

12 A. Yes, it is.

13 Q. Applying to a class of people, vulnerable children, who
14 are young offenders or in need of care and protection,
15 under 18, in a variety of settings were getting treated
16 in a totally different way.

17 A. Yes.

18 Q. That is the whole point of why we are having this
19 discussion --

20 A. Yes.

21 Q. -- it is just to see if we can make sense of it. I am
22 saying I am struggling, you are struggling?

23 A. Yes, and as you said earlier this morning, individual
24 children could have experience of a number of different
25 environments and a number of different regimes, and it

1 must have confused them even more than it is confusing
2 us.

3 Q. Yes.

4 The other thing that perhaps caught my eye, if we
5 just stick with the SPS establishments, just briefly, is
6 if we go to the borstal rules of 1950, which is 15 years
7 before the young offenders' rules were passed, that the
8 corporal punishment was for -- sorry, the borstal rules
9 of 1950, if an inmate didn't -- sorry, we have dealt
10 with that one.

11 If a female inmate, she had to be attended by
12 a female officer, no male officer could enter the
13 premises reserved for females except when on duty and in
14 the company of a female officer. So we don't see any
15 equivalent of that in Approved Schools, for example.

16 A. No. No, we don't.

17 Q. About the separation of genders, both children and
18 adults.

19 A. Yes.

20 Q. We have the separation of gender as regards boys and
21 girls in Approved Schools --

22 A. Yes.

23 Q. -- because there were girls schools and boys, so there
24 were single-sex schools?

25 A. Yes.

1 Q. But when it came to adults, well, then that type of rule
2 that we have seen in the borstal rules doesn't feature?

3 A. Yes. That is actually really bizarre, because the
4 borstal rules are clearly showing that in 1950 there was
5 an understanding that young girls, young women, were
6 vulnerable to sexual and other abuse of powers by men
7 who had roles of responsibility over them. But that
8 understanding doesn't seem to have translated elsewhere.

9 I mean it might have been assumed that, well, if you
10 are in borstal you are going to be that wee bit older,
11 whereas if you are in an Approved School you are going
12 to be that wee bit younger. You started off this
13 morning by exploring the ages, and there is clearly
14 substantial overlap. So that can't be anything like
15 a whole explanation.

16 Q. Just lastly, of course as we have said, and I am not
17 going to labour it, but obviously we have a complaints
18 procedure that is built into the regulations.

19 A. Yes.

20 Q. I don't think we see any real equivalent to that in the
21 regulations for --

22 A. Not until much later on, yes.

23 Q. Yes, until much later on.

24 That, I think, would be sufficient for me to just
25 explore those establishments, but there are material

1 differences --

2 A. Yes.

3 Q. -- but they could affect children of the same age?

4 A. Yes. One other difference that I noticed is that with

5 the borstal regulations you get a list of bad behaviour

6 which can justify the punishment of whatever nature. It

7 is very curious that from the early 20th century,

8 including the 1950s stuff, one of the elements of bad

9 behaviour is "mutiny", and I thought that was a very odd

10 word to use in any sort of environment like that,

11 because normally we assume mutiny has a very

12 militaristic meaning to it, but that is the word that is

13 used throughout until, I think, the 1964 rules.

14 LADY SMITH: Of course inherent in a mutiny is a refusal to

15 perform the services you should be performing --

16 A. Yes.

17 LADY SMITH: -- quite apart from anything else you are doing

18 in a mutiny.

19 MR PEOPLES: There were naval training schools, I am just

20 throwing it in.

21 A. But these were industrial schools and they were the ones

22 that did not have mutiny as one of the --

23 Q. It is just one of these bizarre, another bizarre

24 example?

25 A. I thought it was a very odd use of word to describe, and

1 I was very unsure what they actually meant. But it is
2 specifically on that list of things that can justify
3 punishment.

4 Q. I mean "rioting" might have been better.

5 A. Yes, I think they might have rioting as well.

6 Q. Just because that is something that we are familiar
7 with, not only in penal establishments, but in List D or
8 Approved Schools. I think we have examples of, I think
9 Professor Levitt mentioned some of them --

10 A. Yes.

11 Q. -- so it is certainly a feature --

12 A. Yes.

13 Q. -- whether it should be regulated or not.

14 I might have understood the inclusion of that word,
15 but, as you say, mutiny is maybe a more difficult one to
16 fathom.

17 A. It just struck me as being a very odd part of these
18 rules.

19 Q. The Approved Schools, if I just turn to them, bearing in
20 mind what we have already discussed, and just pick up
21 some things from that. As far as Approved Schools are
22 concerned, would I be right in thinking in terms of the
23 regulations, whatever was the practice, that three key
24 roles were the managers, the headmaster, or
25 headmistress, and, thirdly, the medical officer?

1 A. Yes.

2 Q. They all appear on the face of it to have been -- there
3 was an assumption that they would play important roles,
4 and no doubt if they did what was the spirit of the
5 regulations would ensure the good conduct and management
6 and maintenance of discipline and so forth, and that
7 children would not be excessively punished and so forth.
8 That presumably was envisaged should be the situation
9 and perhaps there was a rather naive assumption that the
10 people that were appointed to these roles would live up
11 to these ideals?

12 A. I would imagine that was the hope and expectation.

13 Q. If we just look at the Approved Schools, in terms of the
14 managers, just one point. I think we have observed they
15 didn't have to have any special qualifications to run
16 a school for vulnerable children with special needs?

17 A. Well, that's absolutely right. I mean effectively, in
18 the very early days, the managers were the trustees of
19 whatever charity it was that had been set up. Now, you
20 didn't need any particular qualification to be
21 a trustee. Financial probity, I suppose, would have
22 been, again, hoped for. But certainly not in terms of
23 you have to have an understanding of the needs of
24 children before you can be a manager, just if you were
25 a trustee of the particular charity, or an officer of

1 the particular charity, you were a manager.

2 I think the first legislative references is possibly
3 in the Children Act 1908, which talks about the powers
4 and duties of managers, but it doesn't explain who they
5 are, to appoint staff at, at that time, industrial and
6 reformatory schools.

7 Q. If you don't understand the work you are engaged in and
8 yet you have to appoint people, it is not a happy start?

9 LADY SMITH: I think just going back to the use of the word
10 "manager", I think it was a common term used in
11 voluntary associations across the board, whether they
12 were ones that became charities or not.

13 A. Yes.

14 LADY SMITH: The managers took on responsibilities for
15 running the voluntary association.

16 A. Yes.

17 LADY SMITH: Just as in a charity it would be the trustees,
18 but actually the managers held in trust the assets.

19 A. Yes, but in Approved Schools, and their predecessors,
20 the managers were not the ones who were managing the
21 day-to-day running of the establishment. They were the
22 people in the background.

23 LADY SMITH: The board.

24 A. The board, the board, yes.

25 MR PEOPLES: They didn't therefore, although they had

1 a requirement certainly under the earlier regulations in
2 Approved Schools to visit periodically, they don't
3 appear even in relation to their visits to have had any
4 specific responsibility for the welfare of the children
5 in the schools.

6 A. No.

7 Q. It is certainly not made explicit if they did.

8 A. No.

9 Q. As you have described, the more natural function of
10 a board like that would be to deal with other matters of
11 business, financial issues, property issues, and the
12 like?

13 A. Yes, I mean putting the best light on their
14 responsibility for the wellbeing of children, they
15 certainly had the responsibility to ensure the
16 suitability of the premises --

17 Q. Yes.

18 A. -- as a sort of health and safety issue. But it really
19 went no further than that.

20 Q. Indeed that might be reinforced, because when we come to
21 the responsibilities of another key player, the head of
22 the school --

23 A. Yes.

24 Q. -- the head of school was responsible, admittedly to the
25 managers, but was responsible for the conduct and

1 discipline of the school.

2 A. Yes.

3 Q. It would appear that the regulations envisaged that that
4 was very much the headmaster or the headmistress's
5 territory?

6 A. Yes, very much so, and that made the whole system
7 hugely, hugely subjective, because if the headteacher
8 has a particular philosophy, a particular character,
9 they are effectively given the power to apply that to
10 the conduct of the whole school on a day-to-day basis,
11 not just as a sort of written statement of principle,
12 but actually on a day-to-day basis. And different
13 headteachers will have very different philosophies.
14 I mean most of us can remember, as schoolchildren,
15 getting a new teacher and the whole environment changes.
16 I would imagine that's even more so if it is in these
17 residential establishments.

18 Q. I think there is, in the context of maintenance of
19 discipline, we have the expression, and I think it is in
20 the earlier regulations, and indeed in the later one,
21 the personal influence --

22 A. Yes.

23 Q. -- of the head of the school.

24 A. Yes.

25 Q. What does that mean? Anything?

1 A. I think it means what I have said. They have not only
2 the responsibility, but they have discretion as to how
3 they are going to -- the levels of disciplinary activity
4 is entirely in their hands, and people my age where, at
5 school, corporal punishment, the belt, was given out.
6 Some teachers were very, very reluctant to use it.
7 Other teachers were far less reluctant. In this sort of
8 environment you will have some headteachers who are
9 old-school disciplinarians and other school headteachers
10 with more liberal views. These are all relative terms,
11 obviously.

12 The point of that sort of construction of the
13 legislation seems to me it is very much saying it is in
14 your discretion, it is up to you. The regulations
15 aren't going to detail any particular, it is your
16 responsibility, we have appointed you to this -- or the
17 managers have appointed you to this role. It is for you
18 to determine just how disciplinarian the environment is
19 to be.

20 MR PEOPLES: And yet --

21 LADY SMITH: I am just thinking of how I have seen examples
22 of that in our boarding schools case study, that
23 although there will be a body that we will call a board
24 or a board of governors or whatever, because of the
25 influence the head can have on a day-to-day basis, you

1 may get one head -- I have seen this in relation to more
2 than one school -- who turns a prior policy approach on
3 its head. A prior policy approach of criticism of
4 children, suppression of children, discipline of
5 children, to one in which priority is given to
6 encouragement, focusing on what they do well,
7 encouraging them to keep doing that, looking ahead,
8 aspire to do even more of what they are doing well.
9 That comes from a single person in the position of the
10 head.

11 A. Yes, and equally I'm sure the reverse could happen.

12 LADY SMITH: Oh yes, yes, yes.

13 MR PEOPLES: Just while it would appear that there was
14 a large measure of discretion captured by that
15 expression, it wasn't an unfettered discretion, in one
16 sense, at least in relation to corporal punishment.

17 A. No.

18 Q. Because at least the regulations were prepared on that
19 matter to, to some extent, restrict the discretion that
20 was available to the headteacher, or indeed the managers
21 if they wanted to introduce some policy in relation to
22 punishment that they felt the headmaster should apply.

23 A. Yes.

24 Q. Can I just ask you this: there were provisions, and
25 there is distinctions between boys and girls --

1 A. Yes.

2 Q. -- which we will discuss. But so far as the
3 restrictions themselves are concerned, in the broad
4 sense, can it be said that the restriction on
5 permissible corporal punishment was one that was more
6 restrictive than the common law applying generally to
7 the use of corporal punishment by parents on children,
8 because were parents prevented from administering
9 corporal punishment to a particular part of the body, to
10 a daughter, for example?

11 A. No.

12 Q. No?

13 A. No. The only restriction was that the -- for parents,
14 the general common law was the chastisement had to be
15 "reasonable".

16 Q. Yes.

17 A. And I suppose it was left to, I suppose, a combination
18 of the prosecutors and the courts to flesh out what
19 "reasonable" meant in particular circumstances. There
20 was nothing like the detail of regulation of the extent
21 to which corporal punishment could be inflicted on
22 children in Approved Schools.

23 Q. When I went back to the difference in duty of managers
24 having the same parental rights and powers, that has to
25 be qualified by the fact that the regulations --

1 A. Yes.

2 Q. -- put some restriction on those powers?

3 A. Yes.

4 Q. So it wasn't the fullest powers a parent might have --

5 A. Yes.

6 Q. -- subject to the general law?

7 A. That's absolutely correct.

8 Q. Presumably that came in at an early stage, and no doubt

9 for a reason, one assumes?

10 A. Um, if you look, I think, at the 1933 regulations, it

11 seems a disproportionate amount of time is spent on --

12 Q. That one matter?

13 A. -- that single matter, compared with all the other --

14 I mean it takes up about a third of the whole statutory

15 instrument. It is preposterous, if you think about it.

16 But that does indicate that the people who drafted

17 that regulation thought there was an issue that needed

18 to be addressed. I think that would be a reasonable

19 assumption from that.

20 Q. Apart from stipulating in some detail the number of

21 strokes, the part of the body --

22 A. Yes.

23 Q. -- whether you could use corporal punishment on girls

24 and boys and what differences there would be --

25 A. Mm-hm.

1 Q. -- it went further in the sense that there was
2 an exhortation rather than anything else to reduce all
3 forms of punishment to a minimum, is there not?
4 A. Yes.
5 Q. But whatever -- that, again, is more aspirational,
6 and --
7 A. Yes, because --
8 Q. There is no sanction, is there?
9 A. No, I don't think there was any sanction. Because you
10 have to read that in conjunction with that thing you
11 also mentioned earlier about the personal influence of
12 the headteacher, giving the headteacher discretion as to
13 what they thought the minimum necessary actually was.
14 Q. Also there was something along the lines of using
15 an expression that punishment, and this isn't -- shall
16 consist mainly of basically things that didn't involve
17 corporal punishment. That was the intention that the
18 regulators were trying to get that message across?
19 A. Yes.
20 Q. But ultimately, again, it is a pretty -- it is not
21 fenced with anything that would give it teeth, it is
22 just saying well, this is what we are telling you to do,
23 but if you don't do it, or if you, in your personal
24 influence, decide that something should be done more
25 than we think is right, then there was not much they

1 could do about it, is there?

2 A. There was no sanction, .

3 Q. Other than deregistering -- it is not really a very

4 adequate formulation, would you say, if you felt there

5 was a need -- it wasn't even said corporal punishment

6 should be used as a last resort.

7 A. Mm-hm.

8 Q. That may have been implicit, by using the word "mainly"

9 above others, but it was not said in those terms?

10 A. It was not said in those terms, and I have no doubt that

11 different institutions, because they had different

12 headteachers, would interpret all of these things

13 differently. The granting of the discretion right at

14 the beginning suggests that it would be very, very

15 difficult to say that this regime of punishment is

16 unacceptable in law.

17 Q. Yes, I think the band of reasonable responses concept

18 might be coming in there --

19 A. Yes.

20 Q. -- albeit it wouldn't have been said in those ways --

21 A. Yes.

22 Q. A spectrum, as long as you don't get outwith the two

23 ends --

24 A. I think that is exactly right, but it would be a very,

25 very broad spectrum. I mean I think the other thing to

1 remember here is that there is a huge focus on corporal
2 punishment, which suggests there were problems there,
3 but there were so many other non-physical forms of
4 discipline, isolation, for example, can be very, very,
5 very -- we know today can be emotionally hugely harmful
6 to children, and some might argue more harmful than the
7 loving slap, as parents, advocates, often talk about.

8 Q. But you weren't allowed under these regulations to use
9 the loving slap, as someone in loco parentis?

10 A. Yes, yes.

11 Q. Because the use of the hand, the bare hand on any part
12 of the body --

13 A. Yes.

14 Q. -- was not permitted by the regulations?

15 A. Yes.

16 Q. The only implement permitted was what was described,
17 without definition, as a light tawse?

18 A. Yes.

19 Q. Obviously when it came to the use of corporal
20 punishment, while it could be used on both boys and
21 girls under the regulations, in the case of boys it
22 could be used on the hands or posterior, but only on the
23 hands in the case of girls?

24 A. Yes.

25 Q. So these were the regulations --

1 LADY SMITH: I'm just thinking aloud. This problem of
2 enforcement, if we can call it that, was inherent in
3 other regulations in relation to the provision of
4 residential accommodation for children, wasn't it? I am
5 thinking for example the regulations that provided for
6 how close together beds could be.

7 A. Yes.

8 LADY SMITH: Or how many windows in a dormitory there could
9 be.

10 A. Yes.

11 LADY SMITH: Where in the regulations was there anything
12 that said, "And if the provider doesn't do that, the
13 sanction is ..." It was absent?

14 A. Well, the regulations, absolutely never.

15 LADY SMITH: No.

16 A. -- provide a sanction, as Mr Peoples has said. The only
17 sanction in a sense is the nuclear option --

18 LADY SMITH: We will close you down.

19 A. -- of deregistering, decertification, closing down. But
20 there were so many other implications to that, that it
21 was never used, or almost never used. So effectively
22 these rules which are set down by the regulations, even
23 though in one sense they have the force of law, actually
24 enforcing them in practice was nigh on impossible.

25 LADY SMITH: It is a nightmare. You cause an immediate

1 problem for the Local Authority, for the children, that
2 suddenly the provision is not there any more. A recent
3 example of that would be the New School Butterstone
4 closing very suddenly, a day's notice, and the fallout
5 of that was such there had to be a review and a report
6 because of the damage that it was thought had been done
7 to children and families on the closure.

8 A. Mm-hm.

9 LADY SMITH: Nobody would want to do that.

10 A. No.

11 LADY SMITH: So you are back to encouragement, firm
12 encouragement, reference to the regulations, if whoever
13 is inspecting does have encyclopedic knowledge of the
14 regulations, and if, when it comes to discipline,
15 appropriate records and accurate records are being kept
16 of what's happening.

17 A. Yes.

18 LADY SMITH: That's a whole other problem area, I think,
19 from what I have heard.

20 A. Yes. Well, I mean recording of corporal punishment was
21 certainly mandated. Whether these records were complete
22 or not is a whole other question. But I think it was
23 the medical officer at least had access to the
24 punishment books.

25 MR PEOPLES: He was required, wasn't he --

1 A. He was required to --

2 Q. -- to look at them and draw attention to any instances
3 of excessive punishment. But of course if you put in
4 punishments are permitted by the rules it is very
5 difficult from the entry to say there has been
6 a breach --

7 A. Yes.

8 Q. -- unless you inadvertently don't realise that the entry
9 you are putting in is something that the rules don't
10 permit.

11 A. Yes.

12 Q. So it is not a great safeguard for the child and indeed
13 the punishment book doesn't really tell you whether the
14 extent of any punishment was such as to be injurious to
15 the physical or mental health of the individual
16 concerned --

17 A. Yes.

18 Q. -- because you will not get a description of what was
19 done, or how it was done, what force was applied, and so
20 forth.

21 A. Yes.

22 Q. Therefore if that's the method to try and protect
23 against injury it wasn't a particularly effective means,
24 and it also was dependent on reliable and accurate
25 records from the parties who were administering it.

1 A. Absolutely. It is minimal and it is dependent on
2 a number of processes, not all of which would take place
3 all the time.

4 Q. Yes.

5 LADY SMITH: And there was nothing to mandate the recording
6 of the degree to which the person administering the
7 physical punishment also humiliated the child by the way
8 they did it, by the language they used.

9 A. Yes.

10 LADY SMITH: Practices such as making the child wait
11 sometimes --

12 A. Yes.

13 LADY SMITH: -- for the punishment.

14 A. Yes.

15 LADY SMITH: Or be outside the door while others were being
16 punished --

17 A. Yes.

18 LADY SMITH: -- hearing what they were going to have to face
19 very shortly.

20 A. What we do get in the 1961 regulations is a requirement
21 that other children aren't involved.

22 LADY SMITH: In the punishment room --

23 A. Yes.

24 LADY SMITH: -- and administering the punishment?

25 A. Yes.

1 LADY SMITH: Yes, that's perhaps another matter.

2 MR PEOPLES: Just moving to the 1961 rules, just because
3 they certainly did replace them, but they were a bit
4 better than the previous ones in one sense, that the
5 managers did require to meet at the school and visit
6 monthly, it was said, according to the rules.

7 A. Yes.

8 Q. In order to ensure that conditions of the schools and
9 the welfare, development and rehabilitation of pupils
10 was satisfactory. I suppose at least now there is
11 an acknowledgement that one of the reasons for the visit
12 is to look at whether the welfare, development and
13 rehabilitation of the pupils more as a class or group is
14 satisfactory?

15 A. Absolutely. It is now going beyond just ensuring that
16 the building still has a roof and the toilets work, that
17 sort of thing.

18 Q. Yes. The managers are also explicitly obliged to manage
19 in the interests of the welfare, development and
20 rehabilitation or pupils, or in part, so there is some
21 recognition there that -- sorry, did the headmaster have
22 to do that as well?

23 A. Yes.

24 Q. He had to have some regard in a similar way. So there
25 is a recognition that welfare becomes a responsibility,

1 but it is not really spelt out?

2 A. It is not spelt out. It is a recognition that this is
3 part of --

4 Q. Of what you are supposed to be doing?

5 A. Of what you are supposed to be doing. This is why these
6 kids are in school, for their welfare.

7 Q. Yes, sorry, I was thinking of the headmaster
8 responsible, to the managers admittedly, for the
9 efficient conduct of the school in the interests of the
10 welfare, development and rehabilitation of pupils.
11 I think that's what I had in mind, so we have some
12 movement, but it is not a huge shift and we are still in
13 the era of the managers having been the equivalent of
14 parents in terms of rights and obligations?

15 A. Yes.

16 Q. They don't have duties to look --

17 A. That's correct.

18 Q. -- after the best interests of the child?

19 A. That's correct.

20 Q. It has not really addressed the whole problem -- well,
21 if you accept it is a problem. I am suggesting it was?

22 A. I completely accept it is a problem, and it doesn't
23 address it at all, effectively.

24 Q. Now --

25 LADY SMITH: Mr Peoples, I was thinking of taking

1 a five-minute break around now, would that be a useful
2 point to stop?

3 MR PEOPLES: I am about to pass on to something else.

4 LADY SMITH: Right, let's do that.

5 I will take a short break if that's all right.

6 (3.01 pm)

7 (A short break)

8 (3.08 pm)

9 LADY SMITH: Are you ready to carry on?

10 A. Yes.

11 LADY SMITH: Thank you, Kenneth.

12 Mr Peoples.

13 MR PEOPLES: Professor Norrie, we had looked at some of the
14 features of the Approved Schools regulations.

15 A. Yes.

16 Q. I don't propose to look separately at the secure
17 accommodation, because we have already observed that
18 there was specific regulations from 1983.

19 A. Mm-hm.

20 Q. But I don't think anything that we have discussed so
21 far, or any differences between these settings and SPS,
22 that there is anything different or anything new that
23 emerges out of these regulations, unless you tell me
24 differently?

25 A. No, I think that's fine.

1 Q. As far as remand homes, if we just deal with them
2 relatively shortly I hope. One of the things that
3 caught my eye about the 1933 rules was something, again,
4 which doesn't appear to have any parallel in any other
5 rules. Care was to be taken to keep in separation any
6 inmate who may be likely to exercise bad influence over
7 any other inmate. I don't think there is a similar
8 regulation in any other --

9 A. No, no there is not.

10 Q. Again, one is entitled to, I think, ask the question
11 that there were regulations being made for Approved
12 Schools in 1933. There were regulations made for remand
13 homes in 1933, and yet there are differences such as
14 that.

15 A. Yes.

16 Q. Again, one possibly raises the question of: what was
17 going on here that justified it there in the context of
18 remand homes but not in the context of Approved Schools?

19 A. I suspect there was not a single person or body
20 looking --

21 Q. At the whole thing.

22 A. -- at all of these together and looking for
23 justifications to make distinctions. I suspect each of
24 these sets of rules and regulations were designed by
25 different departments within the Scottish Office,

1 without too much talking to other people.

2 Q. I think that probably echoes to some extent

3 Professor Levitt's evidence about the structures within

4 Scottish Government historically, that perhaps they had

5 their own brief and their own responsibilities and their

6 own branches, there were other branches that dealt with

7 different things, albeit they all dealt with perhaps

8 children in the broad sense.

9 A. Yes.

10 Q. Yes, I just noticed that, and it said in the same rules,

11 the remand home rules:

12 "In mixed homes [so this was an example of a setting

13 where the children could be mixed] boys over ten should

14 be separated from girls, except during instruction,

15 employment or meals."

16 And, perhaps a statement of the obvious, sleeping

17 arrangements should be separate.

18 A. Mm-hm.

19 Q. Yes. I don't think we see something quite like that,

20 but on the other hand Approved Schools were always,

21 I think, single sex?

22 A. Yes, they were single sex.

23 Q. So it may be that it wasn't required.

24 A. Yes.

25 Q. Again, this is a similarity, that discipline was to be

1 maintained by the personal influence of the
2 superintendent, who is the equivalent of the head of the
3 establishment?

4 A. Yes.

5 Q. Which is the same formulation as in the Approved School
6 regulations of the time. Presumably your observations
7 could equally apply --

8 A. I would imagine so.

9 Q. -- to the expression used in these regulations. Of
10 course, as we observed, this is a setting, I think,
11 where one of the punishments, if it was necessary for
12 the maintenance of discipline, could involve reduction
13 in the quality or quantity of food, but not deprivation
14 of two meals in succession.

15 A. Mm-hm.

16 Q. Which, I don't think has a parallel, necessarily, in
17 anything else, but I may be wrong.

18 A. No, no, the regulations for Approved Schools explicitly
19 say there shouldn't be deprivation of meals.

20 Q. And they were made in the same year?

21 A. Yes.

22 Q. Which seems a bit odd?

23 A. Yes.

24 Q. Yes.

25 Then this is a setting where the corporal punishment

1 was for boys only and to be, the expression used,
2 I think, "moderate", without much -- well, there is no
3 specification of what represented "moderate" as opposed
4 to something other than moderate in this context, or how
5 it was to be administered. In contrast, as you pointed
6 out --

7 A. Yes.

8 Q. -- to the very detailed rules in the Approved School
9 Regulations of the same year?

10 A. Yes.

11 Q. One could perhaps write a book about this. Because you
12 say this does contrast very sharply on the approach to
13 corporal punishment --

14 A. Yes.

15 Q. -- in two sets of regulations that were passed in the
16 same year, or made in the same year?

17 A. Yes.

18 Q. The 1946 rules, I just want to touch on them. As
19 I understand, a doctor is required to be appointed to
20 each remand home to act as medical officer. Is that the
21 first time that a medical officer was introduced into
22 the framework for remand homes, do you think, 1946?

23 A. I think so.

24 Q. Yes.

25 A. I don't think there was any earlier reference. There

1 had been earlier references, the medical officer was
2 a much longer established figure for Approved Schools --
3 Q. Yes.
4 A. -- but I think 1946 was the first time for remand homes.
5 Q. But the formulation of discipline to be maintained by
6 personal influence of the superintendent was carried
7 forward, again, from the earlier rules?
8 A. Yes.
9 Q. I think, though, by 1946 there was provision that
10 corporal punishment was allowed or permitted if other
11 measures, certain other measures set out in the
12 regulations, proved ineffective, but could still only be
13 administered to boys?
14 A. Mm-hm.
15 Q. That was almost a last resort provision?
16 A. Yes.
17 Q. Unlike the Approved Schools?
18 A. Yes, that's what it seemed.
19 Q. I think it is said expressly that only punishment
20 described by the rules was permitted, but just for the
21 avoidance of doubt it adds what is not permitted,
22 striking, cuffing or shaking.
23 A. Yes.
24 Q. So it doesn't just say, "This is what's permitted", they
25 actually took the time to describe certain things which

1 were prohibited?

2 A. Absolutely.

3 Q. Any thoughts on why that might have been so?

4 A. On why it might be so? It seems to be likely that you

5 only go to the effort of prohibiting something that you

6 don't want to happen if that has been happening in the

7 past, and there is a recognition there that that's just

8 not an appropriate response to bad behaviour by young

9 people.

10 Q. Might it also be, to hark back to what you said about

11 the loving slap, that perhaps there might have been some

12 belief that a cuff across the ear wasn't possibly seen

13 as corporal punishment?

14 A. Yes.

15 Q. Is there possibly a flavour of that?

16 A. There is a flavour, although I suspect loving didn't

17 really come into it in the way that it would in the sort

18 of familial --

19 Q. No, no, I wasn't suggesting it did, I was just

20 suggesting that based on the fact that probably loving

21 slaps were tolerated by the general society as part of

22 the parental rights and powers of --

23 A. Yes, we have all heard stories of police constables in

24 the 1950s and earlier periods giving a guy a cuff around

25 the ear, and that was assumed by policemen at the time

1 to be a perfectly appropriate response and considered
2 effective in the circumstances, and I suspect it was
3 more like that. It would be, I suspect, something
4 completely informal, not the sort of thing, instead of
5 going through the formal situation of the light tawse
6 and recording it in a sort of punishment book, just
7 a slap around the ear and we will say no more about it.

8 Q. But clearly the regulators there thought that whatever
9 might have happened in practice, in the streets with the
10 police or whatever --

11 A. Yes.

12 Q. -- that that shouldn't happen in this setting?

13 A. That's not acceptable in an institutional setting.

14 Q. On this occasion, while there was very little
15 description of, perhaps, the -- well, actually there was
16 more description, I think, in these rules about the
17 number of strokes. I think we got to both hand and on
18 the posterior.

19 A. Yes.

20 Q. So they are beginning to borrow from the Approved School
21 Rules, but it is boys, and it is a strap approved by the
22 council, the Local Authority, so it is not a light
23 tawse, it is not the expression, it is whatever is the
24 approved strap, that could be anything then, as long as
25 it is approved, that could be a heavy strap --

1 A. Presumably different councils had different --

2 Q. Yes, they could choose, one could choose a light one,
3 one could choose a --

4 A. Heavier.

5 Q. A heavier one.

6 A. I always thought the reference to "light" was neither
7 here nor there, because it is the force with which the
8 person administered it, rather than the weight of the
9 strap that had at least --

10 Q. Well, I think it is a factor, but I suspect that
11 a certain degree of force with a heavy strap, the same
12 degree of force with a light might have different
13 outcomes?

14 A. I am sure that's true --

15 Q. But I take your point.

16 A. -- but you could do a lot of harm with using a light
17 strap very vigorously.

18 LADY SMITH: You can do even more harm with using a cane,
19 which may be physically much lighter than the strap,
20 which is why canes were a no no from quite early on.
21 Not to say some schools didn't use them.

22 MR PEOPLES: As far as corporal punishment is concerned,
23 just to finish off this sort of thing, obviously we know
24 that there was a changing approach and it was ultimately
25 banned in all schools, but that took, again, time.

1 I think we are talking of late 1970s, early 1980s when
2 there was an official prohibition.

3 A. Yes.

4 MR PEOPLES: Before I go on, I'm told that the Children's
5 Commissioner was appointed in 2003.

6 LADY SMITH: 2003.

7 MR PEOPLES: The first time, yes.

8 LADY SMITH: Thank you.

9 MR PEOPLES: I think that accords with my general
10 recollection, I think I was one year out, if I could use
11 that expression. Yes, if I could just say that.

12 LADY SMITH: Yes.

13 MR PEOPLES: Can I lastly, I didn't ask you this and I meant
14 to, in terms of the position of managers, there was
15 nothing in the regulations that restricted tenure, so
16 they could go on for life, if they wanted?

17 A. Yes, yes.

18 Q. And many did, probably.

19 A. I saw nothing in any of the regulations about that.

20 Q. Yes.

21 Sorry, there is one other matter I want to before
22 I leave the regulations. There was an expression that
23 was used with corporal punishment that was administered
24 to the posterior, that it had to be over ordinary cloth
25 trousers. That seems to have been open to

1 interpretation what that meant. It is maybe not
2 an expression that's sufficiently precise to allow only
3 one situation where it is administered. I mean I think
4 we will find out that in different schools certain
5 practices were used.

6 A. Yes. I assumed all that meant was not on bare buttocks.

7 Q. I think the inspectors thought it meant more than that,
8 but I will come to that shortly, then.

9 LADY SMITH: I think it also meant not over pyjamas, the
10 thin cotton pyjamas, either.

11 A. Yes.

12 MR PEOPLES: Maybe I could just ask one other thing on the
13 matter of regulations. I don't think I brought this
14 out, but in the case of Approved Schools, while there
15 was a licensing system, and they could be released
16 earlier than their sentence, if you like, or the order,
17 there was also I think a practice that if provided there
18 was no grounds for preventing it, that many were allowed
19 home leave --

20 A. Yes.

21 Q. -- at weekends, and then they were expected to return to
22 the school.

23 A. Yes.

24 Q. In that sense it was a bit more like a school, that they
25 did at least have periods at home or in the community?

1 A. Yes, that's right.

2 Q. Am I right in thinking that even though they were on
3 home leave there was still a continuing responsibility
4 on the managers, and the Local Authority, because they
5 were children in care.

6 A. Oh, I think that inevitably followed; they would still
7 be under a particular legal order and responsibility
8 under that order would sit first and foremost with the
9 managers of the establishment. And it doesn't disappear
10 when the child leaves the school gates.

11 Q. You couldn't just say, "Here's the money to get the bus
12 and to get the bus back" and not worry about what
13 happened in between? I mean it might be difficult to
14 regulate that, because they go back to the community
15 that you took them from to keep them safe, but
16 nonetheless the rules and the relationship with the
17 child meant that there was a responsibility for them.

18 A. There was clearly a responsibility, and I can't now
19 remember which set of these various regulations, but in
20 one of them that lists the sanctions, or punishments,
21 the removal of home leave was one of them. That
22 suggests the managers had a responsibility to, if they
23 felt that period of leave was going to be misused or
24 abused or the child was going to be at risk, then they
25 could prevent it. It was never presented as a matter of

1 right --

2 Q. No.

3 A. -- it was always a matter that would require at the very

4 least the permission of the managers of the Approved

5 School.

6 Q. Now --

7 LADY SMITH: Would it be that, or would it be, say, child

8 goes on home leave one weekend, his school subsequently

9 discovers that the child actually got into a bit of

10 trouble, misbehaved in public over that weekend, and the

11 child is then told, "Your home leave is cancelled for

12 the next three home leaves"?

13 A. Yes.

14 LADY SMITH: That would be a punishment of the child.

15 A. Yes, it would.

16 LADY SMITH: What that might tell you is the powers of the

17 school over the child don't go away because they are on

18 home leave, but does that tell you that the school was

19 also responsible in any way for what was happening to

20 the child during the home leave?

21 A. I think it tells you that the school has to pay

22 attention --

23 LADY SMITH: Right.

24 A. -- to what is happening. The school can't, can't, just

25 wash their hands of the child and say well, once you

1 have crossed the school gates you are no longer our
2 responsibility. Because there are potential
3 consequences. The fact that they can take these into
4 account in determining how the child is to be treated
5 once they are back in the school suggests to me that
6 they have to exercise responsibility in relation to the
7 child.

8 LADY SMITH: If, not to put too fine a point on it, somebody
9 is exploiting the child when the child is away on
10 permitted home leave, are you saying that the school
11 can't respond by saying, "It was nothing to do with us
12 and it wasn't for us to take to do with whatever was
13 happening to the child over the weekend"?

14 A. If the school had reason to believe the child was at
15 risk in any way, it would be a derogation of that
16 responsibility not to react appropriately. I think
17 that's what I am saying.

18 LADY SMITH: Yes.

19 Does that mean the school needed to, at the very
20 least, know where the child was going, which adults were
21 going to be caring for them while they were away, that
22 kind of thing?

23 A. One would very much hope that they knew at the very
24 least where the child was going and the environment. If
25 it is home leave, the school ought to be aware of who is

1 actually in the home.

2 LADY SMITH: Yes.

3 A. They might not necessarily have the wherewithal to
4 determine well, who is coming about into the home, what
5 potentially exploitative relationships are going on
6 otherwise.

7 LADY SMITH: Thank you.

8 MR PEOPLES: I think in the modern times, and we are in the
9 era of risk assessments, and these risk assessments
10 don't only relate to risks within the residential care
11 environment, but possibly risks if the child or young
12 person is outwith that environment, and I think that
13 does happen. Clearly historically a sophisticated or
14 indeed any system of risk assessment seems not to have
15 been in play, certainly it wasn't developed in the way
16 we have now. That would be what would happen now, would
17 it not? Some attention would be given to what are the
18 risks if a child, unaccompanied, is allowed to leave
19 an institution and go to a specified place, for example.

20 A. Yes, I think that's right. But I think in previous
21 times it would all come down to an issue of
22 reasonableness, what would it be reasonable to expect
23 the school to be aware of?

24 Q. Yes.

25 A. If it is beyond what it would be reasonable to expect

1 them, then they would be free from any repercussions.

2 Q. If they knew anything about the background of why they
3 were in care, such as they came from a background where
4 they were exposed to a moral danger.

5 A. Yes.

6 Q. Then that might be a case to say, "Well, we have to
7 think long and hard before we send them back there"?

8 A. Absolutely, or not so much send them back, but allow
9 them to go back --

10 Q. Allow them back, sorry.

11 A. -- on leave. Because these periods of home leave were
12 within the discretion of the school. It was not
13 a matter of right on the part of the child, or indeed
14 the parents.

15 Q. I am going to ask you to look at some documents. One is
16 relevant to what we have been discussing already, which
17 is to do with the management of Approved Schools, so can
18 I deal with that one first and then I will come to other
19 ones to conclude your evidence today.

20 A. Okay.

21 Q. Can I ask you to look firstly at a document
22 BSC.001.001.0456, which I hope will come up on the
23 screen. I think it is a document you will have at least
24 had a chance to consider --

25 A. Yes.

1 Q. -- before giving evidence.

2 A. Yes.

3 Q. For the benefit of just introducing it, it is a minute
4 of agreement that was executed, I think, around 1915, or
5 thereabouts, between the chairman of the directors of
6 the Catholic industrial schools of Glasgow, and,
7 basically, the De La Salle order, can I put it briefly?
8 It relates to St Mary's Boys Industrial School, Kenmure,
9 Bishopbriggs. First of all --

10 LADY SMITH: And it is dated 1916?

11 MR PEOPLES: 1916, yes, sorry, I have the wrong year.

12 I think we were aware at the Inquiry that there were
13 some agreements of this type that appear to have been
14 executed around this time involving the De La Salle
15 order and establishments which they became involved
16 with.

17 Just in this one, the preamble, as you can see, says
18 that the background to it is that the parties have
19 arranged that St Mary's --

20 LADY SMITH: Can we go to the page.

21 MR PEOPLES: Sorry, it is page 2.

22 LADY SMITH: That's the backing that's there at the moment.

23 MR PEOPLES: Sorry, yes, if we can turn that round.

24 LADY SMITH: That might be helpful. That's great, thank
25 you.

1 MR PEOPLES: We can see from the preamble that the parties
2 have arranged that the school be placed under the
3 superintendence of the De La Salle Brothers. Therefore
4 it is right that the terms of the parties' agreement
5 should be reduced to writing. Then we see a series of
6 clauses thereafter. I will ask for comment in a moment,
7 but the clause second is:

8 "The school shall however continue under the
9 industrial school directors as at present constituted,
10 and as may be, and as members thereof may be appointed
11 in due course by the Roman Catholic archbishop of
12 Glasgow from time to time, and other elected members
13 from the town council of Glasgow."

14 The correspondent, that is a figure, I think,
15 corresponding with the government departments, shall be
16 the brother's superintendent, which I think is the head
17 of the school, and the treasurer is to be appointed by
18 the archbishop or the directors.

19 There are various other clauses, clause 4 deals with
20 a bank account which shall be in the name of the
21 directors of the school and shall be operated by the
22 superintendent and one of the directors. Then if we go
23 on, this is one I am interested in your comments, at
24 clause 7 it says:

25 "The Superior General [that's the head of the order,

1 effectively, not the superintendent, who was the head of
2 the school] shall have the liberty of appointing and
3 changing any brother, including the brother
4 superintendent, when he may deem it necessary and
5 useful."

6 If we go on, it says in clause 8:

7 "The superior general shall be responsible for
8 keeping the staff of brothers efficient and for changing
9 brothers as he may deem necessary for the efficient
10 working of the institution."

11 Can I just pause there and say there is no apparent
12 requirement to consult the directors in making these
13 decisions?

14 A. That's --

15 Q. Is that a point you were perhaps going to make?

16 A. It is a true comment, that's all I can say.

17 Q. Yes. Then if we see --

18 LADY SMITH: Mr Peoples, this role, Superior General, does
19 it appear earlier in the document or are we to take
20 it --

21 MR PEOPLES: Yes, the Superior General --

22 LADY SMITH: Sorry, I don't have the whole document in front
23 of me.

24 MR PEOPLES: It is in the instance of -- it is the Superior
25 General of the order, effectively.

1 LADY SMITH: Of the order?

2 MR PEOPLES: Yes.

3 LADY SMITH: So that is --

4 MR PEOPLES: The head of the order.

5 LADY SMITH: -- somebody probably based in Rome, were they
6 a Rome-based order?

7 MR PEOPLES: Could be, it's certainly not someone that is
8 connected directly with the school, it's someone with
9 the authority of the order.

10 LADY SMITH: It's not certain to be a Superior General for
11 the UK, as we get with some religious orders?

12 MR PEOPLES: No, I think it's --

13 LADY SMITH: Somebody pretty distant from the day-to-day
14 running of the place?

15 MR PEOPLES: Pretty high up in the running of the place,
16 yes.

17 If I go on. I read out clause 8. Clause 9:

18 "The brother superintendent shall have the liberty
19 of appointing and discharging other officials and
20 employees in connection with the institution and
21 school."

22 So there is the brother superintendent, who is the
23 head of the school, who is appointed by the order?

24 A. Yes.

25 Q. Has the power of dismissal?

1 A. Yes.

2 Q. Not the directors?

3 A. Yes.

4 Q. I am not going to read the rest of that, just in the
5 great scheme of things, because we have been discussing
6 the key roles in the regulations of managers, medical
7 officers, headmasters and so forth, we now have this
8 layer in the context of a school that became an Approved
9 School, and our understanding is that, and certainly it
10 was said yesterday, I think, by at least one of the
11 parties with leave to appear, that this sort of
12 agreement certainly there is no evidence that it ceased
13 to have some operative effect until very recently,
14 I think, was the gist of what we heard.

15 LADY SMITH: I think so.

16 MR PEOPLES: I don't want you to comment on that, I just
17 want you at the moment to say does this appear to be
18 a relationship where an order agreed to supply labour to
19 a school run by someone else who is the employer? Does
20 it look like that to you?

21 A. What it looked like to me is that what in another school
22 we might call the headteacher, or the headmaster, has
23 much, many of the powers of the managers of another
24 establishment. They are all focused on the headteacher,
25 the brother superintendent. I have no idea about the

1 hierarchical structure of the De La Salle order, but
2 I would imagine that that headteacher has primary
3 responsibilities within that hierarchy of that
4 institution, more than the managers of a charity would.

5 Q. I mean it looks to me as if, for example if the board of
6 directors were the equivalent of what we call the
7 managers in the regulations, had thought, "Well, I think
8 we want to appoint someone else to the role of
9 headmaster" or, "We want to dismiss someone", they
10 couldn't do it, because under this agreement that's
11 a matter that has been transferred --

12 A. It is a matter -- yes.

13 Q. However you analyse it legally, has been transferred to
14 another party. So they have surrendered their powers,
15 albeit the regulations probably thought they should
16 still have these powers.

17 A. Yes.

18 Q. There may be a nice question of how this fits with the
19 regulations, but I don't want you to try to work that
20 one out. But that's what's happening, it's not someone
21 saying actually we are not anything to do with the
22 running of this school, or the day-to-day running, we
23 just simply supply brothers as and when, it is more than
24 that?

25 A. It seems much more than that.

1 Q. Yes.

2 A. It is an agreement whereby the headteacher has much,
3 much more responsibility than the equivalent headteacher
4 in a secular establishment.

5 Q. Yes. But also the Superior General, I think is the
6 terminology, can remove the headmaster at any time --

7 A. Yes.

8 Q. -- at his own instance?

9 A. Yes.

10 Q. Whatever view the managers or directors might have on
11 the matter?

12 A. Yes, yes. That person is ultimately responsible to the
13 superior, whatever they're called.

14 Q. Okay. That's fine. I just wanted to get your comments,
15 because we have discussed it, and we have your thoughts
16 on it, and I think certainly it is more than a supply of
17 labour arrangement.

18 A. Yes, I think so. I think it is clearly more than
19 a supply of labour.

20 LADY SMITH: We can no doubt explore this further in this
21 case study when we get to the De La Salles, but
22 I couldn't help but notice that they are still providing
23 educational services around the world. I think their
24 latest return to the Charity Commission refers to 80
25 different places in which they are doing it, and it will

1 be interesting to find out whether it is still this
2 basis on which they are doing it, or whether it has
3 changed for some reason.

4 MR PEOPLES: Mm-hm.

5 That's something I think we will have to consider in
6 due course.

7 LADY SMITH: A little way down the line.

8 We will be there before we know it, Mr Peoples.

9 MR PEOPLES: Yes, of course.

10 Can I move on to some documents that I don't think
11 you will have seen before, but I wanted to, as
12 I mentioned this morning, put them to you in the context
13 of what we have been discussing, just to see whether
14 there is some comparison between practice and
15 regulations, or some differences.

16 The first document I would like you to look at is at
17 SGV-000061831, page 44. It should come up.

18 I will just explain. This isn't the document I am
19 particularly interested in putting to you, but this is
20 the background to the document I am about to show you,
21 which is a letter to the Guardian on 2 March 1967 from
22 someone who doesn't identify themselves but is
23 an Approved School teacher, which, it is reasonable to
24 assume, a school in England not a school in Scotland,
25 but it just says it's a teacher at a privately run,

1 publicly financed Approved School, and there seems to
2 have been a good going public debate about these schools
3 at the time that was featuring, and the letter is headed
4 "7,000 naughty boys". The writer says:

5 "From my own experience in such schools, I should
6 say the main reason for their failure is as follows ..."

7 There then follows a number of reasons why this
8 person thinks that they represent a failure, and it is
9 in part to do with the school managers, the type of
10 managers that are appointed to the school, and their
11 experience and background. Then also he mentions with
12 very few exceptions the background of the boys in these
13 schools, working class families, long history of social
14 difficulties that result not only in child delinquency
15 but also in home that are socially and materially
16 defective. Then he goes on:

17 "The managers do not understand the boys or their
18 parents and have no idea at all of what living on a low
19 working-class income may involve."

20 Strong stuff. Obviously it is said in that way, and
21 then he goes on to say something about the staff:

22 "Far too many of the staff at such schools are not
23 professionally qualified in any way to deal with
24 children, let alone the psychiatrically disturbed
25 youngsters with whom we have to deal. At my school only

1 five staff are qualified out of a staff of about 40, of
2 the housemasters not one is qualified in any way."

3 Of course the regulations didn't require this at the
4 time. It says also towards the foot of the first
5 column:

6 "In general the opinion among the school staff is
7 that the boys are here to be disciplined or trained."

8 This has shades of some of the things we discussed
9 this morning --

10 A. Yes.

11 Q. -- of what was seen as the purpose of them being in
12 these places, rather than care and emotional
13 development --

14 A. Yes, the very name of the 1933 regulations, which you
15 have already mentioned, "Care and training".

16 Q. This is 1967, he then goes on in the second column,
17 (iii):

18 "The school discipline is entirely negative,
19 reinforced by a savage use of the cane that would
20 horrify anyone not inured to it. It is not pleasant to
21 hear a boy screaming (this is no exaggeration; it
22 happens at this school every week, sometimes day by day,
23 after such treatment the boys' buttocks are covered with
24 green and black bruises ..."

25 Then he goes on, under a heading, "Boys not angels

1 but ..." to say this:

2 "I am well aware that the boys are not angels and
3 I do know that their conduct causes a good deal of
4 anguish to the staff, but after all we are supposed to
5 be professional people, although most of us aren't."

6 Then he goes on towards the foot of that column to
7 give his experience:

8 "In my experience, boys only abscond under severe
9 emotional distress."

10 So he makes that point too.

11 Then he goes on towards the foot of that column to
12 say:

13 "The schools are generally operated in complete
14 isolation from parents, who in most cases are
15 effectively discouraged from visiting the schools. Thus
16 I know of schools where visiting mothers, often fat,
17 middle aged, varicose veined, with two or three
18 struggling children or baby in arms are left to walk up
19 and later down a country lane for three miles without
20 transport. On arrival there is no sitting room and no
21 seats. There is no such thing as a cup of tea, which
22 the parents would willingly pay for, and no possibility
23 of privacy. Remember, this is not a local school but
24 a boarding school so remote that some parents travel for
25 four hours before reaching the school. How can

1 effective contact with parents be made under such
2 conditions?"

3 I am not going to read any more -- we can read it
4 all -- but that gives a flavour of what is being said in
5 1967 about Approved Schools, by a teacher.

6 A. Yes.

7 Q. In response to that there is an internal minute by one
8 of the Approved School inspectors in Scotland,
9 Mr Macpherson, who I mentioned earlier. Can I take you
10 to that, take you to his minute at page 48 of the same
11 document.

12 Mr Macpherson is copying this to an SED official,
13 Mr Bennett, and he is copying in another official,
14 Mr Wilson, and he is copying in his fellow Approved
15 School inspector, Mr Murphy. He is responding to the
16 article I have just read parts of, and he begins, and
17 I can just read for you:

18 "I do not consider this article to be highly
19 imaginative or descriptive of a very exceptional
20 situation, though its emphasis in parts is evidently on
21 malpractices in a poorer school and on the less savoury
22 aspects of it."

23 Then he deals with the various points raised and the
24 first thing is he says:

25 "My views on voluntary management are well enough

1 known to you."

2 I'll come to that if I can, shortly:

3 "While the army officer type is less common in
4 Scotland, we have many others, mainly middle class
5 times, self perpetuating, well intentioned, but often
6 ignorant of modern methods of treatment in an Approved
7 School."

8 He does say there are exceptions but that's his
9 general characterisation of managers.

10 He then goes on to say in (ii):

11 "I think the writer is describing a senior school,
12 to judge from the small number of qualified people. It
13 is quite normal in one of our senior schools to have
14 only three 'qualified' staff and these are qualified for
15 the rather (in this situation) limited profession of
16 teaching."

17 There is a sideswipe about the quality of the
18 education being given by those who have any form of
19 qualification to teach.

20 A. Mm-hm.

21 Q. He then goes on, on the matter of training:

22 "Over the years our superficial attempts of training
23 have infiltrated some more modern concepts and, more
24 important, our help in the selection of heads has
25 reduced the number of them who would rely mainly on

1 corporal punishment as a means of reform, there is still
2 a nucleus of heads however who are anxious not to be
3 considered soft."

4 He then goes on in a handwritten section -- I will
5 read out what he is saying, but you will see on the side
6 note it says in handwriting:

7 "Not typed in deference to the female typist."

8 I will now read what he says, this is an internal
9 minute to officials in the SED, and I think the words
10 read:

11 "I cannot imagine that in the school described or in
12 one of ours the discipline is entirely negative. Awards
13 are also used. I am in no doubt, however, that corporal
14 punishment is still quite a savage business and that
15 boys scream when a stout Lochgelly is applied on the
16 buttocks. As Mr LLY [redacted] said once in public [he was
17 SNR [redacted] at Rossie for a very long period], when
18 SNR [redacted] said that any father would occasionally
19 give his boy a pat on the backside, 'Sir, I do not give
20 them pats on the backside, I give them a flogging'. The
21 records show that many floggings are administered in our
22 schools. Nor am I in any doubt about bruised buttocks,
23 which show scars long after the event. This would be
24 particularly the case when special thin pants cover the
25 behind. These are, of course, made of 'ordinary cloth'.

1 The instrument is a light tawse. What is 'light'? It
2 is all quite legal, but at times so brutal that boys
3 defecate when awaiting the next whack. I am sure that
4 if outside medical officers were reporting publicly on
5 the effect of such a flogging many members of the public
6 would be glad to know that these young 'thugs' were
7 getting the right medicine. The more humane minority
8 would be shocked."

9 This is written by an Approved School inspector, who
10 was appointed in 1950, and by 1967 had been in post
11 17 years.

12 A. Mm-hm.

13 Q. What's your reaction to what I have just read?

14 A. Well, I would like my reaction to be one of surprise and
15 shock and horror. It is shock and horror, but not
16 necessarily surprise. And it does, I think, illustrate
17 the dangers that we have been talking about for much of
18 this afternoon, which is trying to regulate the
19 provision of corporal punishment, but at the same time
20 leaving it up to the personal influence of the nucleus
21 of heads who are anxious not to be considered soft.
22 I think that's very consistent with the fears that we
23 were expressing earlier.

24 Q. But he is describing a general picture, rather than
25 a bad apple situation.

1 A. Oh, absolutely; yes.

2 Q. He is saying this privately to officials.

3 A. Yes.

4 Q. This isn't a public document, but clearly he is
5 expressing quite strong views based on experience?

6 A. Yes, yes, but he is also expressing, in that very, very
7 last point, that many members of the public would be
8 quite sanguine to learn about this, and I can't read it,
9 but did you say, "The right-thinking minority"?

10 Q. "The more humane", is it?

11 A. "The more humane ..."

12 Q. Is the expression he used, forgive me, I will get it
13 back to you:
14 "The more humane minority would be shocked ..."

15 A. The minority.

16 Q. He is saying that the public wouldn't necessarily have
17 a problem with what is being described --

18 LADY SMITH: That reflects what is said in the letter to the
19 Guardian.

20 A. Yes, exactly. But the point is it would be surely, if
21 that explained what was happening at ordinary schools,
22 a majority of parents would be shocked that their own
23 children were being subjected to this, whereas the fact
24 that it is done at Approved Schools, we are dealing with
25 thugs, not necessarily recognising that you are dealing

1 with care and protection cases. Approved School has
2 this image of they are in there for punishment, not just
3 the children having that perception but the general
4 public probably as well.

5 Q. Can I also just take you to, just before I leave that
6 document, to another over the page at page 49, it was
7 written in March 1967. Towards the foot it says, what
8 he has written, including the passage that I have read
9 out:

10 "All of which is a reminder of the terrifying power
11 of a headmaster in these schools."

12 I think it is a good description that he uses --

13 A. Yes.

14 Q. -- and maybe one carefully chosen.

15 A. Mm-hm.

16 Q. "Once he has his managers in his pocket, and he does not
17 require to be very clever in some cases to achieve this
18 [I think this echoes his views on management], he is in
19 an almost inviolable position in which to exercise
20 authority justly or unjustly. His power is such that
21 neither staff nor pupils will readily complain to
22 manager or inspector."

23 That's the reality, he is saying?

24 A. Yes.

25 Q. That's his reality as an inspector?

1 A. Yes.

2 Q. Who knows the system, who knows the schools?

3 A. Yes.

4 Q. Who knows the people involved?

5 A. Yes.

6 Q. That's one. If I can take you to another one briefly.

7 It is along the same lines, but at page 80 of the same

8 document. This is something that was written around the

9 same time after the publication of a Court Lees inquiry

10 report in 1967, an Approved School in England, it was

11 written by the other inspector, JS Murphy, in August.

12 I am not going to read it all out, but one thing he does

13 give us is in paragraph 2 he says:

14 "The policy of the present inspectors has, amongst

15 other things, concentrated on limiting extreme

16 authoritarian attitudes in heads and on dealing firmly

17 with irregular excessive punishments, as examples of the

18 latter these recent events may be quoted ..."

19 He gives a number of events at Kenmure St Mary's,

20 Geilsland, Dale and Mossbank of irregular punishments

21 that they have come across.

22 In relation to Mossbank he says, this is towards the

23 foot, the final sentence of that paragraph:

24 "In discussion of regular punishment which they had

25 received [I presume he means permitted punishment in

1 terms of the rules] boys confirmed that the tawse often
2 leaves markings on the posterior."

3 He is recording that at that time, this is the other
4 inspector.

5 I am not going to take that whole document today,
6 and it is maybe something we will look at, and can
7 I also say that what he also encloses -- if I could go
8 to page 86 of that document briefly -- is this is
9 a letter in 1964 from Mr Murphy to Brother GTQ, who
10 was at St Mary's Kenmure, saying that when he had
11 visited he, the writer, and Brother GTQ had
12 discussed punishment and agreed that it should be over
13 ordinary cloth trousers as required by the relevant
14 rule, rule 31 F and G, and that this clearly precludes
15 the use of light gym pants:

16 "It would also be reasonable to ensure that the boy
17 was wearing his underpants."

18 I think that indicates what was going on --

19 A. It clearly does --

20 Q. -- until then.

21 A. -- otherwise there is no point in raising it.

22 Q. There is no point in raising it.

23 Over the page at page 87, in 1965 there is a letter
24 that's sent by the same inspector to SNR
25 at Geilsland School, following a visit, where, halfway

1 down, having introduced matters, he says:

2 "I must avert to the incidence of irregular
3 punishments which you admitted as having occurred,
4 irregular punishment is wrong, both in principle and in
5 practice, and is clearly precluded by the relevant rules
6 [which are 29 and 31], which have the sanction of
7 Parliament and have been derived from wide experience
8 over many years of dealing with such problems."

9 Perhaps that does give us a clue to why these rules
10 were in place?

11 A. Yes.

12 Q. He says:

13 "Apart from self defence or action to avert imminent
14 violence to others, there is no justification at all for
15 irregular striking or cuffing, and anyone who so acts
16 renders himself liable to dismissal or other
17 disciplinary action, SNR is not exempt from this
18 and, indeed, such action on his part is even more
19 serious, as it imparts authority to a dangerous
20 example."

21 This is no doubt the personal influence aspect of
22 matters.

23 A. Mm-hm.

24 Q. So we have that as well.

25 Then if I could just go to another document briefly,

1 at SGV.001.001.8545, which was written by -- I think it
2 is the same person, it is one of the inspectors, I think
3 it is Mr Macpherson again, in fact it is, I am sure, do
4 you have that, it is entitled "A history of heads"?

5 A. Yes.

6 Q. Taking it from the second paragraph, just to get what
7 his point is making:

8 "The history of appointments to headships in
9 Scotland is not a very happy one."

10 He then goes on to deal with various examples of why
11 he is making that statement in 1967, after 16 years of
12 being involved in inspection of Approved Schools in
13 Scotland. He said:

14 "Immediately before I entered the business
15 successive heads at Rossie had been sacked. One for
16 getting his own and the firm's money somewhat confused,
17 he got three months for this, and the other probably for
18 no reason other than he and his managers could not get
19 along together. On my entry [REDACTED] my first main task
20 was to secure, against the wishes of the managers, the
21 dismissal from Dr Guthrie's School of the headmistress,
22 whose [REDACTED] years of service had been marked by sadistic
23 cruelty and many other irregularities which had brought
24 much misery to two decades of girls."

25 He then goes on:

1 "Her deputy soon followed her after a court's not
2 proven verdict for theft from the school. Soon after
3 that the head of Mossbank was transferred to a primary
4 school in Glasgow because of irregularities which had
5 gone on for a long time undetected by him, even the
6 janitor had been leathering the boys. Then SNR of
7 Wellington was up in court for indecent conduct. There
8 was a not proven verdict, which merely proved to many of
9 us that justice in the courts is sometimes not even seen
10 to be done. Another head at Balgowan retired after
11 various financial irregularities were disclosed
12 following complaints from me about boys' bank accounts
13 and the way in which they were kept. These
14 irregularities had been going on for a long time.

15 "A headmistress at Balgay was asked to retire
16 because she and the managers could not agree on certain
17 matters, her successor had to be asked to leave within
18 a few months of appointment because she was so unable to
19 run the school that girls were constantly demonstrating
20 on the roof. SNR of Kenmure was translated
21 at the request of the managers for a variety of reasons,
22 including cruelty to boys, his successor, bar one, had
23 also to go for abuse of boys, the initiative in both of
24 these cases and in some of the others quoted came from
25 the inspectorate.

1 "Another RC head to be removed for inefficiency,
2 though there was nothing against him as a person. The
3 first male head appointed at Langlands Park had to be
4 asked to resign, although I was never sure whether he or
5 his managers had been more inept. His female successor
6 had to throw in the towel within months. Another head
7 who for 30 years ruled staff and boys with a rod of iron
8 retired before his time when we were about to present to
9 the managers a rather adverse report. That is the
10 headmaster of Thornly Park.

11 LADY SMITH: Did you count how many heads were referred to
12 in that paragraph, Mr Peoples?

13 MR PEOPLES: Quite a few.

14 LADY SMITH: I am guessing a dozen or so, could it be?

15 MR PEOPLES: Well there is obviously certainly a number of
16 schools, nine schools, eight of which are identified,
17 but more than one person.

18 LADY SMITH: The head and deputy in some of them go into
19 difficulties.

20 MR PEOPLES: And nine schools is, I would have guessed,
21 around about between, maybe about, there were over 20
22 Approved Schools, 24 or 25 at peak, so it is a high
23 percentage.

24 LADY SMITH: This was in 1966?

25 MR PEOPLES: 1967, and this is written by an inspector who

1 had been in post for 17 years. So we see that, and can
2 I just again, very briefly, take you to another
3 document, which is written by Mr Macpherson, I think,
4 again. Yes, in 1959. It is SGV-000090171, page 3.

5 This is a document that was written in 1959 about
6 Wellington Farm School, and it raises two matters
7 following a visit by the inspector to that school,
8 Approved School, one is to do with a punishment called
9 the track, which seems to have caused the dismissal of
10 the previous head, but there seems to have been
11 a variation of the track still in play at the school,
12 which involved boys standing in line for 10 to 20
13 minutes after a meal, which is pointed out by the
14 inspector, this was not a form of physical punishment
15 prescribed in the regulations and might prove tiring and
16 harmful to the boy.

17 That matter was raised, as were the relevant
18 regulations, and the requirement to record all
19 punishments in the punishment records, this hadn't been
20 done, he said, since there had been no mention of this
21 particular punishment in the book. He said:

22 "I found a considerable amount of grievance amongst
23 the boys interviewed. They seemed resentful of the
24 whole atmosphere of the school, and in particular about
25 the track and the scrubbing."

1 When he talks about scrubbing, this is at
2 paragraph 2, he says:

3 "Absconders who had returned were given the job of
4 scrubbing the large hall, called the shots because the
5 tailoring and the cobbling used to go on there and the
6 cobbling still does. In order to prolong this
7 punishment, the task was repeated, although the floor
8 was still clean."

9 He says in relation to that matter:

10 "This kind of task [this is in the second-last
11 paragraph on that page] was in essence no different from
12 the much quoted pre-1940 occupation of Wellington when
13 boys darned holes in socks, only to have fresh holes cut
14 out for further darning."

15 So some things don't seem to change, according to
16 this.

17 If you turn to the next page, page 4, of this memo,
18 or minute. Towards the foot, after saying that this
19 matter was put before the managers, there had been some
20 discussions between the inspector and the managers, and
21 there were two matters that were in issue.

22 One was whether the inspector could interview boys
23 privately. The chairman didn't seem to like that, for
24 whatever reason.

25 The second thing is if you see towards the end of

1 paragraph 1 on that page, the chairman, a brigadier,
2 admitted he had only in the last few weeks learned about
3 the existence of this form of punishment. So clearly he
4 wasn't kept in the loop about what was actually
5 happening at the school at that time.

6 If we move on to page 5, towards the foot, we see
7 a reference to the significance of absconding towards
8 the foot, the last three lines, which runs over to the
9 following page, it says:

10 "Absconding is often a pointer to something being
11 wrong in a school. Bullying by other boys, failure to
12 take account of a boy's personal problems in relation to
13 his home, ill treatment by members of staff, et cetera."

14 This is on page 6. Then he goes on, just about five
15 lines down, to say, well, he obviously is saying it is
16 good to be able to interview boys privately, but he
17 says:

18 "Since it has proved so difficult to get to know
19 about irregularities in these schools."

20 He clearly is explaining the difficulties of
21 uncovering these methods, or these practices, and why it
22 is important, perhaps, that he at least has the
23 opportunity to speak to boys directly.

24 LADY SMITH: These are examples of recording not bad apple
25 incidents, if that's the way to refer to them, but

1 abusive systems?

2 MR PEOPLES: Yes, yes, it is not someone saying, "On the odd
3 occasion something has come to light, to my attention",
4 this is an across-the-board --

5 LADY SMITH: Standard practices that were plainly abusive?

6 MR PEOPLES: Yes, and clearly there is also a serious
7 criticism of both managers in general, with exceptions,
8 and also the suitability of heads of these schools --

9 LADY SMITH: Well, indeed.

10 MR PEOPLES: -- over long periods.

11 It is fairly explicit, and these are just examples.
12 I think you probably have the gist that he is not very
13 keen on management of Approved Schools by voluntary
14 bodies. I think he said that in his first document
15 I have put to you.

16 If I turn briefly to SGV-000090107, he is discussing
17 Local Authority management of schools, residential
18 schools. On page 1 he says, in the third paragraph,
19 under "Staff":

20 "The selection procedures operated by Local
21 Authorities are often inadequate. Too much emphasis is
22 laid on service and seniority and too little time is
23 given to attempt an accurate settlement of the man and
24 his suitability for a particular job. In recent
25 experience in appointments in voluntary Approved Schools

1 it has taken 30-45 minutes for interviews for senior
2 staff. Local Authority committees are quite unprepared
3 for this. The writer has been told by a Glasgow bailee,
4 who was also a voluntary manager, 'We appoint directors
5 of education in less time than you take for
6 a bricklaying instructor'."

7 He is obviously not enamoured with Local Authority
8 management either at that time. If we go over the page
9 to page 2, we see in relation to managerial duties that
10 we have been looking at in the regulations, it is
11 virtually impossible, it says this at section 4, to get
12 Local Authority managers to carry out their duties with
13 regards to licensing.

14 Then under "Managers meetings", at paragraph 5:

15 "There is an even greater failure to approximate to
16 good practice of management."

17 And indicates that it is a committee structure,
18 Approved Schools get very little time at the committee
19 because of other business, and therefore things are done
20 in a rather unsatisfactory way. He sums it up by
21 saying, under 5:

22 "The result is in effect that they do not know what
23 is being done in the schools in their name in the matter
24 of staff, premises, equipment, training of boys,
25 discipline, punishment, et cetera, save on rare and

1 major issues."

2 We have that too being said at that time internally,
3 which is not much good for the children and young people
4 in these places, and the public is kept in the dark.

5 A. It is unutterably depressing.

6 Q. Of course that person was in the know?

7 A. Mm-hm.

8 Q. And he was communicating with officials, but that wasn't
9 coming out. Okay, the Guardian had a piece, but the
10 Scottish reaction was shared internally and some frank
11 views were expressed at that time.

12 If I can just see if there is anything else
13 I wish -- I am conscious of the time, so I don't want to
14 take up too much time, but if I can just check, there
15 may be something else I would just quite like.

16 Can I just briefly take you to, in contrast to what
17 we are seeing privately being written, that we have, at
18 SGV.001.001.8990, at page 2, we have a statement by the
19 Home Secretary, Roy Jenkins, in 1967, following the
20 Court Lees Approved School inquiry, and I am not going
21 to read it all, I am only going to take you to one
22 passage, which is the public statement by the Home
23 Secretary of the day, and this is all at the same time
24 as what we have just seen, he says, publicly, that he is
25 welcoming a trend, in England at least, that there is

1 less use of corporal punishment, which he says:

2 "I welcome this trend, which accords with my own
3 view that corporal punishment is never a desirable way
4 of exercising control and should be avoided whenever
5 possible. The young people in our Approved Schools can
6 be helped to become mature and law abiding citizens only
7 by skilled treatment, not by punitive or
8 indiscriminating methods of control."

9 So we are getting these things said publicly, yet we
10 are seeing, at least in the Scottish context,
11 a situation that frankly required urgent attention, do
12 you not agree?

13 A. I agree it needed urgent attention, even before then,
14 and didn't receive urgency.

15 Q. And I would just like to take you briefly to another
16 document which is at SGV-000061831 at page 128. These
17 are actually from a file held by the Scottish Education
18 Department in the 1960s to do with discipline and
19 punishment policy, which have been preserved, and it is
20 an article in the Scotsman, I think, newspaper in 1967
21 entitled "punishment and the child in a violent
22 community" written by Hugh Macpherson, who appears to
23 have been a teacher in a school in the west of Scotland
24 and he starts with a quotation from George Bernard Shaw
25 in Man and Superman.

1 "If you strike a child, says George Bernard Shaw,
2 take care that you strike it in anger, even at risk of
3 maiming it for life. A blow in cold blood neither can
4 nor should be forgiven."

5 And this is him saying that in the context of the
6 Court Lees inquiry, but also perhaps of more relevance
7 is if you go halfway down the first column, he says:

8 "I spent a year teaching in a school in the west of
9 Scotland with a very high proportion of delinquent boys.
10 A considerable number had been through the courts and
11 quite a number had spent some of their lives in remand
12 homes or Approved Schools. In conversation with them it
13 swiftly became apparent that they accepted a level of
14 violence directed towards them which most other
15 countries would view with disbelief. One lad recounted
16 how he had been punished after he had run away from his
17 Approved School. He had been stretched on a table with
18 his trousers removed and struck across his bare buttocks
19 with a thick leather tawse. His story was not recounted
20 in complaint, but rather to explain how much more
21 fearsome punishment could be than anything that this
22 particular school had to offer."

23 So in the same vain as some of the comments being
24 made by the inspectors themselves on these matters being
25 written at that time.

1 And then if I could finally turn to a couple of
2 statements that Mr Murphy gave. Mr Murphy died in 2010
3 or 2011, but in the context of litigation about List D
4 Schools he gave certain statements. One of which is, if
5 I could take you to it, is SGV.001.005.2436 at page 8.
6 And he sets out who he is, Mr Murphy, and he had been
7 a schools inspector from 1961 to 69. He sets that out
8 at the beginning of page 8. And then on page 9 he gives
9 his description of Approved Schools in the 1960s, when
10 he joined. This is the top of page 9.

11 LADY SMITH: Sorry, was this a signed statement, Mr Peoples?

12 MR PEOPLES: No.

13 LADY SMITH: No.

14 MR PEOPLES: It is the best that we have been able to -- it
15 has been recovered and I think it is worth --

16 LADY SMITH: Well, I am not saying you can't read it, I just
17 wanted that detail. Do you know when it was taken from
18 him?

19 MR PEOPLES: Yes, I think it was taken around March 2006, in
20 the context of litigation involving the schools. So
21 I just, what's being said there is, according to the
22 statement:

23 "When I took post the Scottish Approved Schools were
24 backward - by comparison to those inspected in England."

25 He had been an inspector in England.

1 "And those seen on study tours in Denmark and Sweden
2 in 1964/65. They were overcrowded and many were in
3 large barracks style buildings with limited facilities.
4 Some of these, for older boys were in a pre-riot state.
5 School education and trade training were not highly
6 advanced and TC Smout's view of 1986 would have applied.
7 'In short anything but the most basic curriculum taught
8 in the most traditional way was regarded as superfluous
9 in most schools'."

10 So he is not very flattering about the quality of
11 the educational provision.

12 If we go on to page 10, he discusses a particular
13 school, St Mary's, an intermediate school for over 100
14 boys aged 13 to 17, he said:

15 "It was overcrowded and full of troubles. The staff
16 were generally not of high quality and heads varying
17 from the permissive to the sadistic. SNR
18 had to be removed after a prolonged investigation for
19 terrorising staff and sexual misconduct with boys."

20 And he later goes on to give more detail and I am
21 not going to take you to that at this stage, I don't
22 think I need to, it is just to make the point.

23 But he also says is the page 11, according to the
24 statement, he eludes to the difficulties about finding
25 out about these things, and he says at the top of

1 page 11:

2 "The closed community of a residential school is not
3 easy to penetrate. On such occasions religious protect
4 their colleagues - not least in wrongdoing and
5 subordinate staff are always in awe of their religious
6 superiors."

7 So he makes that practical point of what the
8 situation was like. And on page 14, just a little bit
9 of information about the light tawse, if I could just
10 deal with that.

11 LADY SMITH: Certainly.

12 MR PEOPLES: If I may. On page 14, he is talking about his
13 inspection practice, and he says at the bottom that when
14 inspecting the punishment book he would ask to see the
15 tawse. He said under the Approved School Rules only
16 a light tawse could be used, ie the lightest of the
17 three grades manufactured by Dick of Lochgelly. So it
18 does appear as if there were different grades that could
19 be used. And on the next page he says:

20 "Sometimes by tip off it was possible to discover
21 a heavier strap hidden in a desk or cupboard. This was
22 confiscated and the head was warned that such abuse
23 might render him liable to dismissal."

24 He then goes on about abuse of boys in residential
25 schools. This would generally take place at night in

1 dormitories, staff owned rooms or downstairs in the
2 head's offices or other rooms.

3 And he says, in the same paragraph, that colleagues
4 seldom blew the whistle on colleagues then, and then he
5 queries "and now", and then he says:

6 "Domestic staff and nightwatchmen, reverential
7 towards professional staff, failed to report misconduct.
8 Headmaster and senior staff, even when resident on the
9 premises, did not seem to suspect or detect staff
10 concern nor spot telltale signs from boys. In theory
11 boys should have raised such matters with their welfare
12 officer or housemaster, but small boys hesitate to do so
13 where they see a fellow staff member involved.
14 Complaints to headmasters - seen as a remote figure -
15 were rare. Communication with parents when visiting on
16 leave was not highly developed in this culture and for
17 adolescent boys any admission of such relations would be
18 painful and very difficult. The secrets are guarded by
19 all concerned and revelations usually come from the boys
20 much later."

21 And he then says that:

22 "The perpetrators exhibit cunning and knowledge in
23 their choice of boys, time and place, and a great
24 capacity to cover up. Even two sentinels posted from
25 outside agencies would find acts virtually impossible to

1 detect because of switch of time and place. In all of
2 these circumstances, the chance of a visiting official
3 walking into the right corner at the crucial time were
4 almost as remote as winning the lottery."

5 Although he does give one exception to that that he
6 has.

7 So if I can just finally conclude by going back to
8 your report to just one matter that you raise, and
9 I didn't deal with this morning, it is your report at
10 LIT.001.001.5968 at page 68. I would just like to take
11 you to there in conclusion. You say there:

12 "In Parliament during the bill stage of what became
13 the 1948 Act it was said 'there has been on the part of
14 too many voluntary bodies and public authorities
15 a failure to give those under their care' --"

16 LADY SMITH: Sorry, did you say page 68?

17 MR PEOPLES: Sorry, page 68.

18 LADY SMITH: I can't find the passage you are reading. It
19 might be my fault.

20 MR PEOPLES: It is quoted, I think, halfway down.

21 LADY SMITH: Oh, it is the quotation.

22 MR PEOPLES: Sorry, sorry.

23 LADY SMITH: It is not Kenneth who is --

24 MR PEOPLES: No, he is taking it as a quote from a debate at
25 the bill stage:

1 "There has been on the part of too many voluntary
2 bodies and public authorities a failure to give those
3 under their care the personal sympathy and human
4 understanding so necessary to the wellbeing of children
5 who lack the love and affection of their parents."

6 You state on the same page what I think is
7 an interesting and insightful observation, which I would
8 just like to sort of finish off with, that:

9 "... provision can seldom if ever guarantee personal
10 sympathy and human understanding and even when they are
11 shown, they are no substitute for an effective mechanism
12 to identify and prevent neglect and abuse."

13 Now, is that in a nutshell the holy grail, and are
14 we still searching for it?

15 A. I am not sure I would use that language, but --

16 Q. No, I am using it for you, so don't worry, I am putting
17 to --

18 A. I think clearly the end result of good legislation
19 dealing with children who are being accommodated away
20 from their parent is, an absolutely essential part of
21 that is having a mechanism that allows, that operates in
22 reality, that reflects the reality and allows the
23 identification of potential areas of risk of harm, harm
24 to children. So that effective measures can be taken to
25 prevent injury, abuse and harm.

1 Q. But it is trying -- the search is for the effective
2 mechanisms, it is not just about having better
3 understanding and sympathy, you have to have those
4 mechanisms?

5 A. Absolutely.

6 Q. And they have to be beyond the legal provision?

7 A. Yes.

8 Q. The legal framework. Can I just ask you --

9 LADY SMITH: Is another way of putting it shorter perhaps,
10 effective child protection systems?

11 A. Systems. You need --

12 LADY SMITH: Child protection.

13 A. -- an appropriate system that works, that is accessible
14 by the most vulnerable people.

15 LADY SMITH: And do not think that if you, for example,
16 mandate that anyone involved in working with such
17 children must love them, that's enough. You cannot
18 mandate that somebody whose job is to be involved in
19 caring for children who are not their own, that they
20 love them, nor will that of itself achieve the
21 protection from abuse that the child needs, have I got
22 that right?

23 A. I am not sure you would want professionals to be loving
24 the people under their professional care. What you
25 would want is sympathy and understanding and empathy.

1 LADY SMITH: Empathy.

2 A. And an ability to recognise the real vulnerability that
3 these children are under.

4 LADY SMITH: And an ability to understand that many, very
5 many of the children for whom they are responsible have
6 got trauma in their background.

7 A. Yes.

8 LADY SMITH: And they come to them in care already carrying
9 the burden of trauma that will be with them all their
10 lives.

11 A. Yes, absolutely.

12 LADY SMITH: And will affect the way they behave.

13 A. Absolutely, and to be able to respond appropriately.

14 MR PEOPLES: Can I ask one final question, if I may. We
15 have looked at lots of things, and maybe what should
16 have happened and didn't happen, and how long things
17 have taken to change. Looking at the post '48 period,
18 it crossed my mind, and you have said before, I think,
19 in the reports, that this was the beginning of the
20 modern welfare state.

21 A. Yes.

22 Q. If that's the case, why was the State prepared for so
23 long to tolerate the care of vulnerable children with
24 complex needs, many of them, by unqualified, untrained
25 and inexperienced staff? Because it crossed my mind no

1 one would have tolerated in 1948 or since, the newly
2 created NHS or the current NHS being staffed
3 predominantly by unqualified, untrained doctors and
4 nurses, so what's the difference?

5 A. I don't know what the difference is.

6 Q. Is it an arguable difference, or?

7 A. In the sense you are dealing with groups of people who
8 are vulnerable in one situation, you want professional,
9 trained, qualified individuals to provide the training,
10 to provide the treatment and the support needed. And
11 another, you are making do with what you have got, and
12 what you have got is inadequate.

13 And I suppose the other difference is even though
14 the National Health Service came in in about 1948,
15 health provision had for many, many decades before that
16 been a highly professionalised situation. Education and
17 particular care of children had not been. And it just
18 went on.

19 Q. It is not excusable. Whatever the position was
20 historically, by 1948 it seems to me that if you do
21 something to address the National Health Service and you
22 have a state care system, then surely there has to be
23 a degree of equivalence in terms of the importance you
24 attach?

25 A. It is inexcusable.

1 MR PEOPLES: Well, thank you very much, that's all. I am
2 sorry it has been a long day, but it has been a very
3 useful exercise to explore some of these with you, and
4 I thank you again, Professor Norrie.

5 LADY SMITH: I began the day by thanking you and recognising
6 how much you have given us. Can I repeat what I said
7 this morning; it is such valuable work and I am acutely
8 conscious of the way you have helped us in so many
9 different areas. And the cross-over of what we have
10 just been talking about in relation to training, of
11 course, I think we touched on in foster care.

12 A. Yes, we did.

13 LADY SMITH: And we have touched on other subjects as well.
14 It is really, really good to have had your assistance.

15 A. Good, I am glad to have helped.

16 LADY SMITH: I am delighted to now say you can go and have
17 a rest, and in particular I wish you well for whatever
18 happens in the next ten days from now, did you say?

19 A. I did say that.

20 LADY SMITH: I think you have earned it.

21 A. Thank you very much indeed.

22 (The witness withdrew)

23 LADY SMITH: Well, I will rise now until 10 o'clock tomorrow
24 morning, and I think are we starting with Maree Allison
25 tomorrow?

1 MR PEOPLES: Yes, evidence about the SSSC, and Mr Sheldon
2 will be taking that witness tomorrow.

3 LADY SMITH: Yes, thank you. Somebody else who we are
4 welcoming back for the third time, possibly.

5 MR PEOPLES: She has been here, certainly, before.

6 LADY SMITH: Thank you.

7 Until tomorrow morning.

8 (4.26 pm)

9 (The hearing adjourned until 10.00 am the following day)

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I N D E X

Professor Kenneth Norrie (affirmed)1
 Questions from Mr Peoples2

