

Tuesday, 3 October 2023

1

2 (10.00 am)

3 LADY SMITH: Welcome back to the third week of our hearings
4 in this case study. We move on today to more evidence
5 in relation to prison accommodation in Scotland.

6 Mr Peoples, I think that our witness is ready, is
7 that right?

8 MR PEOPLES: Yes. Good morning, my Lady. The next witness
9 is Wendy Sinclair-Gieben, who is the current Chief
10 Inspector of Prisons for Scotland.

11 LADY SMITH: Thank you.

12 Wendy Sinclair-Gieben (sworn)

13 A. So I do have to apologise, I came home at midnight last
14 night -- from a delayed flight from Sunday morning --
15 and got a cold on the way, so I'm a bit deaf. So
16 I apologise.

17 LADY SMITH: We'll try shouting through the microphones
18 then, maybe that will help. No need to apologise and
19 indeed if you're feeling under the weather and you need
20 a break, please just let me know.

21 I do break anyway about 11.30 am for a mid-morning
22 break.

23 My first question is: how would you like me to
24 address you? I'm happy to use your first name or your
25 surname, which would work?

1 A. Definitely my first name.

2 LADY SMITH: Thank you, Wendy, for that.

3 You will see you have the red folder there that has
4 the document in it that was very helpfully completed for
5 us in response to all the questions we had in writing
6 and we'll be looking at that this morning, but obviously
7 we'll have other questions for you as well to flesh out
8 some of the matters that are touched on there.

9 I see you have some notes with you. If it helps to
10 refer to your own notes, feel free to do that and if at
11 any time you have any queries, or we're not making
12 ourselves clear, that's our fault not yours, so please
13 speak up. Is that okay?

14 A. That's fine, yes.

15 LADY SMITH: I'll pass on to Mr Peoples now and he'll take
16 it from there if you're ready.

17 Mr Peoples.

18 Questions from Mr Peoples

19 MR PEOPLES: Good morning, Wendy.

20 Can I just begin by asking you to confirm that
21 you're currently His Majesty's Chief Inspector of
22 Prisons for Scotland?

23 A. I am.

24 Q. You've been in that position since around 2018, I think?

25 A. July 2018, yes.

1 Q. To assist the Inquiry, your Inspectorate has provided
2 a report to the Inquiry, which was dated February 2023,
3 which was essentially answering some questions which we
4 put, which we were interested in a response to.

5 Just for the record, can I just take it at this
6 stage, to put it into the transcript, that the report
7 that has been provided is IPS-000000017, I don't think
8 you need to concern yourself with that, but I will make
9 reference to that report as we go along.

10 A. Okay.

11 Q. Perhaps I can begin by just getting a little bit about
12 your background. I think you have quite -- I have
13 something that appears to be quite an extensive CV, but
14 I'll try and see if I can take some of it to get some
15 idea of your background experience, particularly before
16 you started as Chief Inspector.

17 In terms of your qualifications, educational
18 qualifications and background, I picked up that you have
19 a Bachelor of Education in Economics and Business
20 Studies from the University of the West of England at
21 Bristol, is that correct?

22 A. Yes.

23 Q. That you also have a Masters Degree in Criminology and
24 Management from Cambridge University?

25 A. Yes.

1 Q. What I can also see -- you can maybe help me with
2 this -- it is said that you have something described as
3 "prison governor with STBIC accreditation", can you tell
4 me what is that?
5 A. "Suitable to be in charge".
6 Q. I see. You also have another description as a systems
7 analyst followed by the acronym "SSADM"?
8 A. Structured Systems Design and Methodology.
9 Q. Right. You also have referred to the fact that you have
10 qualified teacher status?
11 A. Fundamentally by doing a Bachelor of Education in
12 England you get a qualified teacher status, so it's
13 slightly different in those days from Scotland, where
14 you didn't have to have that QTS.
15 Q. In terms of your work experience and background before
16 you became Chief Inspector in 2018, I think it was in
17 July 2018 is the date I have here, your CV indicates
18 that you have an extensive experience in what they call
19 justice?
20 A. Yes.
21 Q. One of your responsibilities and functions was to
22 influence, process improvement and drive
23 transformational change, I think I picked that up as
24 part of --
25 A. Very much so.

1 Q. -- your responsibility in the various posts you've held.

2 You have listed a number of core competencies in
3 your CV, including strategic planning, process redesign
4 and change management, stakeholder relationship
5 development, operational management acumen, profit and
6 loss management, business development and also
7 international best practice knowledge?

8 A. Yes.

9 Q. Would that apply as much to prisons as it would to any
10 other role you've had in your --

11 A. Very much so, yes.

12 Q. -- employment history?

13 As far as your employment background before you
14 became Chief Inspector is concerned, I think you worked
15 for a considerable period of time between I think about
16 2006 and 2018 with basically a multi-national group
17 called Serco?

18 A. Yes.

19 Q. Including working for one of its subsidiary companies,
20 Serco UK and also Serco Australia, are they separate?

21 A. Yes.

22 Q. I think that between 2006 and 2012, working for both
23 Serco UK and Australia, you held various director
24 positions. Is that correct?

25 A. Yes.

1 Q. I have here Director of Operations and Change, Regional
2 Director and simply Director, are these sort of the
3 designations you had during that period?

4 A. Yes.

5 Q. One of the things you tell us about that period is that
6 you were responsible for managing a project workforce
7 involving six custodial contract facilities, which held
8 in excess of 3,000 adult and young offender prisoners,
9 with an overall annual budget of GBP 130 million, is
10 that correct?

11 A. Yes.

12 Q. Basically is that Serco managing, for example,
13 prisons --

14 A. Yes.

15 Q. -- and young offenders institutions?

16 A. Yes, and secure training centres.

17 Q. Would that be the equivalent of a secure care setting in
18 Scotland?

19 A. No, not at all. The Local Authority secure children's
20 homes are the equivalent of secure care in Scotland.
21 Secure training centres are more like a young offenders,
22 but a kind of hybrid between secure care and young
23 offenders.

24 Q. What age range would --

25 A. 12 to 18.

1 Q. These centres are for children --

2 A. Yes.

3 Q. -- not for people who might go to a young offenders in
4 Scotland, who are between 18 and 21?

5 A. That's right.

6 Q. You tell us that during that period you oversaw, among
7 other responsibilities, the day-to-day management of
8 a young offenders institution in England at Ashfield.
9 Is that correct?

10 A. Yes.

11 Q. That you had previously had a similar role at HMP
12 Kilmarnock?

13 A. Yes.

14 Q. I think that is still today a private prison?

15 A. Yes, it is, until March 2024.

16 Q. What is happening then?

17 A. It's coming back into the public sector.

18 Q. Is there any reason for that or is it just the end of
19 the contract?

20 A. End of contract, a 25-year contract.

21 Q. You tell us the sort of numbers involved, I see
22 a reference to 600 staff and 400 prisoners. Is that for
23 Ashfield and Kilmarnock or is that --

24 A. No, that's just Ashfield.

25 Q. One of the things you say is that Ashfield achieved,

1 during your stewardship, top-ranking young offenders
2 institution through development of child-focused
3 innovations, including restorative justice, family group
4 conferencing and ADHD management, maybe you can
5 translate that for us?

6 A. Sorry, say that again?

7 Q. ADHD?

8 A. Yes, not a problem. It is ADHD, so it is a form of
9 autism.

10 Q. Oh I see, sorry.

11 LADY SMITH: Attention deficit hyperactivity disorder,
12 I think.

13 A. Yes.

14 MR PEOPLES: Was it a specialist facility for autism --

15 A. Not at all, no. Fourteen to 18-year-old young offenders
16 institution.

17 Q. But it did have a population that included people that
18 had some form of autism?

19 A. Definitely. A very high percentage actually.

20 Q. You tell us that between 2012 and 2018, again working
21 I think with both Serco UK and Serco Australia, you had
22 a senior operating executive role, is that right?

23 A. Yes.

24 Q. That involved dealing with a range of services, which
25 included -- the one that catches my eye is Acacia Prison

1 in Perth, Australia, so was Serco Australia managing
2 that facility?

3 A. There were a number of prisons in Australia that Serco
4 managed, two of which were in Perth, Western Australia,
5 one of which I opened up, called Wandoo, and the other
6 one was Acacia, which was already established.

7 Q. Just maybe tell us briefly, Acacia Prison, was that for
8 a particular --

9 A. Acacia Prison was everybody who was convicted, it held
10 25 per cent of the prison population of Western
11 Australia, convicted male.

12 Wandoo was 18 to 25-year-olds, a very small prison,
13 it only had 70 prisoners.

14 Q. In the age range 18 to 25?

15 A. Yes.

16 Q. You describe it as "Wandoo Reintegration Facility"?

17 A. Definitely. So I was extraordinarily fortunate to be
18 asked to help write the bid for Wandoo and the Western
19 Australia Correction Service wanted something innovative
20 and different, and I was able to design a regime around
21 this 18 to 25-year-old age group of convicted young men,
22 and I opened it up and ran it.

23 Q. Is there any equivalent in the UK to that --

24 A. None.

25 Q. -- at present?

1 A. None.

2 Q. For example, you have mentioned a range of secure
3 accommodation in England and I think was it secure care
4 training centres?

5 A. Yes, secure training centres.

6 Q. Also there were secure units run by Local Authorities?

7 A. Yes.

8 Q. Then they presumably also had young offenders
9 institutions in England?

10 A. Yes.

11 Q. Is that still the position?

12 A. It's still the case in England, yes.

13 Q. In Scotland at the moment --

14 A. We have secure care and young offenders.

15 Q. But young offenders in Scotland is the Prison Service --

16 A. Yes.

17 Q. -- and secure care is managed by other providers?

18 A. Yes, a range of four private providers.

19 Q. You then moved on, I think, as you have told us, to
20 being appointed Chief Inspector of Prisons for Scotland
21 in July 2018. I think in your CV, just to take it
22 short, you say that you lead a team of professionals and
23 partner organisations to carry out regular inspections
24 of prisons and that would include young offenders
25 institutions?

1 A. Yes.

2 Q. And that you also have overall responsibility for the
3 monitoring of prisons, which, as we now know, is carried
4 out using an independent prison monitoring system?

5 A. Yes.

6 Q. Since 2015?

7 A. Yes.

8 LADY SMITH: We may be going to deal with this later,
9 Mr Peoples, but I'm interested to understand the
10 essential differences between the work of inspecting,
11 which can involve follow-up inspections, and the work of
12 monitoring. I don't know whether now is the time to
13 deal with that or later, Mr Peoples.

14 MR PEOPLES: We can take it short.

15 Inspection is about once every four years,
16 monitoring happens on a weekly basis.

17 A. That's right.

18 Q. In short.

19 A. More to the point, if you think of it as breadth and
20 depth. So depth is approximately every four years, you
21 are correct, with a whole range of partner agencies,
22 about 22 people go and pick holes in the whole prison
23 over one to two weeks, depending on what is necessary.

24 And a monitor is a series of lay people who are
25 volunteers and they go in every week into the prison,

1 the prison is visited weekly. There are times when
2 where we couldn't go in weekly, for instance over COVID,
3 and then we ring in and we will talk to a member of
4 staff and a prisoner.

5 LADY SMITH: Right. The lay people, the lay monitors, can
6 report and should report, I take it, to the appropriate
7 agency, it may not be you --

8 A. It is us.

9 LADY SMITH: Do they only report to you?

10 A. Yes.

11 LADY SMITH: Then you take forward as you think fit what
12 they're telling you; is that right?

13 A. It's quite structured. We have four prison monitoring
14 co-ordinators who run four separate regions of Scotland
15 and they co-ordinate the volunteers.

16 LADY SMITH: That is a separate statutory appointment from
17 the lay monitors?

18 A. No, it's separate, they are paid staff who belong to me,
19 yes.

20 LADY SMITH: I see. Thank you.

21 We might go back to that, but it seems important
22 that I get clear in my head how two types of work are
23 fulfilling what is needed.

24 MR PEOPLES: Maybe just a few more questions before we go
25 on.

1 The volunteers, who selects them?

2 A. We do.

3 Q. They are not professionals, whereas the inspectors -- at
4 least the core inspectors are professionals, whose job
5 it is to inspect?

6 A. That's right.

7 Q. According to standards?

8 A. Yes.

9 Q. Under a general framework.

10 In terms of -- just to take your -- just to compare
11 that with visiting committees, I don't know how much you
12 know of the history of visiting committees, and tell us
13 if you don't, but they were the previous body
14 responsible for regular visiting of prisons for a very
15 long time?

16 A. Yes, they were and certainly I met the visiting
17 committee when I was in Kilmarnock prison as the
18 governor there, or director as it is called in the
19 private sector. I also knew the independent monitoring
20 boards when I was a governor in England.

21 Those three are very different.

22 The visiting committee, organised by the Local
23 Authority, would come in once a month. We would have
24 a good meeting. They would walk round the prison, they
25 would see things. They could come in at any other time

1 if they wished. Certainly when I was in Kilmarnock that
2 was rare, whereas our volunteers go in every week. They
3 are supported by a prison monitoring co-ordinator. They
4 look at not only monitoring and co-ordination but they
5 also take prisoner requests.

6 We do a kind of, what is the word I'm looking for,
7 interaction between monitoring and inspection, so before
8 we inspect we will talk to the monitors about what they
9 see are the issues and pressures, which can focus to
10 some degree how our inspection goes.

11 Equally, once the inspection is done, the
12 recommendations that come out of that are given to the
13 monitors, independent prison monitors, to develop
14 an action plan as they see fit.

15 Q. To an extent then I suppose you could say that the
16 monitors are your eyes and ears between inspections?

17 A. Very much so. They definitely give us the breadth that
18 we need.

19 Q. You mentioned that they may take prisoner requests and
20 these are carried forward and they'll come to your
21 Inspectorate in the first instance?

22 A. No, no, by no means. The monitor may go and talk to
23 a prisoner. It may be a simple request like, "Help me
24 fill in this form". It could be an attempt to try
25 an alternative form of complaints handling. It could be

1 support through a complaints process. It could be just
2 a generalised need to talk to someone about what they're
3 experiencing. Not all of that comes up to me.

4 Q. Suppose it's a complaint about treatment in the
5 establishment and it's disclosed to a prison monitor,
6 broadly speaking what happens in that situation?

7 A. Okay. We advise people to follow the complaints
8 process. There are two. There's the NHS complaints
9 process and the Prison Service complaints process, both
10 of which can end up at the Scottish Public Services
11 Ombudsman.

12 So we advise them to use that process. We can help
13 them use that process, but we can't interfere with that
14 complaints process, but it does give us a level of
15 intelligence and a rich picture of what the pressures
16 that are happening in the prison.

17 Q. Yes. I think it's fair to say that the visiting
18 committees did have a role in investigation of
19 complaints historically?

20 A. Yes, they did, as far as I know.

21 Q. I think we'll find that out, but, don't worry, you can
22 take it from me that that was part of their function, as
23 well as visiting and generally looking at conditions
24 they could receive and deal with complaints as
25 a committee and did so in practice in some instances,

1 but the monitors don't have that form of jurisdiction?

2 A. No, they don't.

3 Q. I don't think you have either as an inspectorate?

4 A. No, I don't.

5 Q. I may come back to that at some point, but one of the
6 other functions of the Inspectorate is to undertake from
7 time to time thematic reviews on behalf of the Cabinet
8 Secretary for Justice?

9 A. Yes.

10 Q. I think you have carried out a number of these and
11 I think we'll see examples in the report you've provided
12 to the Inquiry; is that right?

13 A. Yes. The biggest one really was the mental health
14 review of young people in Polmont and the Death in
15 Custody Review, both of which were commissioned by the
16 Cabinet Secretary.

17 Q. Do you only undertake these reviews at the request of
18 the Minister or can you undertake them if you feel it's
19 appropriate to do so?

20 A. Yes, we have recently undertaken a segregation review
21 and published it. That was actually commissioned by
22 a combination of reasons. One was that the CPT,
23 prevention of torture, came in and was very, very
24 critical of the use of segregation in Scotland, so we
25 felt that we should follow that up with a full review,

1 which we did and published.

2 Q. I'll come to the CPT, but can you tell us what -- that
3 is the Committee for the Prevention of Torture?

4 A. Yes.

5 Q. What is that part of?

6 A. Yes, not a problem.

7 Basically the UK signed up to the European
8 Convention on Human Rights and OPCAT, the Optional
9 Protocol to the Convention against Torture and Inhuman
10 or Degrading Treatment. As part of that we agreed to
11 various organisations and bodies coming in who have the
12 right to visit anywhere and talk to anyone in the UK.
13 The Committee for the Prevention of Torture produced
14 a report in 2018 and 2019, and the 2019 report was very
15 critical of the use of segregation, particularly for
16 mental health.

17 Q. Was that any particular age group or just a general
18 criticism?

19 A. General.

20 Q. But it would apply therefore to use of segregation for
21 young people, whether between 16 and 18 or 18 to 21?

22 A. Yes, it would.

23 Q. And OPCAT, I think you tell us in the CV, I'm just
24 looking at this, it requires that all places of
25 detention are visited regularly by independent bodies?

1 A. Yes.

2 Q. And these are known as the National Preventive
3 Mechanism?

4 A. Yes.

5 Q. Which monitors treatment of and conditions for
6 detention?

7 A. Yes.

8 Q. That's the set up?

9 A. Yes.

10 Q. The Inspectorate is part of the National Preventive
11 Mechanism?

12 A. Yes, it is.

13 Q. Along with a lot of other bodies?

14 A. Twenty other bodies, yes.

15 Q. Is the Care Inspectorate a member?

16 A. The Care Inspectorate are also a member of the NPM.

17 Q. And HMIE?

18 A. And HMICS as well, but not Healthcare Improvement
19 Scotland interestingly.

20 Q. If this is up to date, I think you say that you
21 currently chair the UK NPM, which has 21 members in all.
22 Is that still the case?

23 A. Yes, I do, yes.

24 Q. But presumably the chair revolves?

25 A. It does revolve, yes. It used to be a paid appointment,

1 it is currently rotated among the members.

2 Q. If I could go the report that you've provided at
3 IPS-000000017, if I may, and it's on the screen if you
4 need to use it there. If I could start on page 2, which
5 will be the introductory section.

6 I think my copy has the pagination of the report, so
7 I need to add --

8 A. I have a 2 and a 3.

9 Q. I think my copy has only a 2, which is unfortunate.
10 Hopefully we can manage to hopefully find it.

11 It's on page 3 of the copy on screen. The first
12 section is headed "Overview of HMCIPS".

13 You tell us there that the chief inspector of
14 Prisons for Scotland, the current statutory authority
15 for that appointment is found in the Prisons (Scotland)
16 Act 1989?

17 A. Yes.

18 Q. I think there is something in section 7, if I recall,
19 about appointing a chief inspector?

20 A. Yes.

21 Q. You tell us that the general duty is to inspect and
22 monitor the conditions in which prisoners are held and
23 the treatment they receive.

24 Just before we go on, just to get some idea, you are
25 Chief Inspector of Prisons as a statutory appointment as

1 an individual. You have what is on the website
2 described as the HMIPS, the service, there is no
3 separate body which is the service as such, is there, in
4 terms of the statutory framework? It's just that's the
5 collective description of the team that you have to
6 assist you to carry out your functions?

7 A. Yes. If you look on the legislation it's not just
8 prisons, it's also prison transport as well as the
9 monitoring.

10 LADY SMITH: I think we can actually filter that into the
11 transcript. It is section 7(2)(a), your first function
12 is to inspect or arrange for the inspection of prisons
13 and the treatment of prisons, the conditions in which
14 they're transported and the prisoner escort
15 arrangements, all in addition to actually going to see
16 the prisons.

17 A. Yes.

18 MR PEOPLES: The staff consists of a body of inspectors or
19 team of inspectors that will carry out the inspection
20 functions?

21 A. The staff is --

22 Q. That is one part of the staff, it's not the full
23 complement.

24 A. By no means.

25 Q. I just wanted to know -- can we give a general breakdown

1 of the size of the organisation and the number of
2 inspectors and what other staff the Inspectorate has?

3 A. Not a problem.

4 There's myself and a deputy chief inspector.

5 Underneath that we have a business manager, who also
6 does inspections, who manages the finance, the HR,
7 freedom of information, subject access requests,
8 et cetera, et cetera, but she also does inspections in
9 prisons and she also does inspections in court custody
10 units or prisoner transport. She manages all our press
11 and all our media. In fact she is just a miracle
12 worker.

13 I have one executive assistant who reports directly
14 to me.

15 I have an operations manager, whose role is to
16 manage the inspections of the court custody units. He's
17 also the prison monitoring co-ordinator support on
18 training. We're all multiple jobs.

19 I have one lead inspector, who organises all the
20 inspections and also undertakes an inspection.

21 I have four prison monitoring co-ordinators and they
22 manage their own recruitment as well as all the prison
23 monitoring co-ordination. They also write regular
24 reports on the prison monitoring, which is separate to
25 the inspection reports.

1 We have two admin assistants, and that's really
2 about it?

3 Q. How many inspectors are there?

4 A. My apologies, we also have a researcher and a half-time
5 NPM co-ordinator, National Preventive Model
6 co-ordinator, who doesn't do any work within the
7 Inspectorate. It's just hosted by us.

8 Q. You are an inspector and could visit and inspect or
9 observe. I think sometimes you do one or both, do you?

10 A. I do both.

11 Q. The Deputy is an inspector who --

12 A. Does both.

13 Q. Is that a he or a she?

14 A. We all --

15 Q. Is the deputy --

16 A. We all inspect. Apart from the admin assistants we all
17 inspect in one way or another.

18 Q. Are you telling me that if I can just list then the
19 chief inspector inspects?

20 A. Yes.

21 Q. The deputy inspects?

22 A. Yes.

23 Q. The business manager inspects?

24 A. Yes.

25 Q. The executive assistant?

1 A. No.

2 Q. The operations manager?

3 A. Yes.

4 Q. The lead inspector?

5 A. Yes.

6 Q. The prison monitoring co-ordinators?

7 A. They don't inspect.

8 Q. No.

9 A. Or rarely.

10 Q. The researcher?

11 A. No.

12 Q. The half-time NPM co-ordinator?

13 A. No.

14 Q. I reckon that's about six, but maybe my arithmetic is

15 failing.

16 LADY SMITH: I wasn't counting.

17 MR PEOPLES: It sounds like there are six people that make

18 up the inspection team?

19 A. Yes, that's about right.

20 Q. Is that about right?

21 A. Yeah. But the inspection team is much bigger than that,

22 because we have all the partners who come in as well.

23 Q. I'll ask you about that perhaps and you say there is

24 something that could be as many as 20-plus people on

25 a typical inspection?

1 A. Yes.

2 Q. How many of the Inspectorate's inspectors go on such
3 an inspection usually?

4 A. Four.

5 Q. In comparison to the Care Inspectorate, it seems that
6 you are a much smaller organisation?

7 A. Tiny in comparison to the Care Inspectorate, yes.

8 Q. As you've said, inspectors have to perform other roles?

9 A. Very much so.

10 Q. Can I just ask you this: would you like more staff for
11 inspection?

12 A. I don't think there's anybody anywhere that wouldn't
13 like more staff, but I would dearly love to have the
14 funding to have full-time guest inspectors, if you like,
15 people I could call on to come in and do inspections,
16 who needn't necessarily be full time.

17 Q. If you were wanting core inspectors actually within the
18 Inspectorate, assuming there are around about six at
19 present, do you consider that sufficient for the work
20 you have to do?

21 A. It's sufficient for the inspections, yes.

22 Q. If you had more would you be able to do more inspections
23 at more regular intervals?

24 A. We would be able to do more thematic reviews, so issues
25 that come up with inspections or through the independent

1 prison monitors, identify issues that we would like to
2 be able to do more of.

3 As an example, prison food. We would like to be
4 able to do a short thematic review on food, on
5 complaints and complaint handling. So we would be able
6 to do more of the issues that come up and be able to do
7 short, in-depth understanding.

8 Q. Just on that subject, because I did wonder, obviously
9 you have done thematic reviews and you gave us examples,
10 death in custody, the approach to mental health issues
11 in prison --

12 A. We have done a few.

13 Q. With young people.

14 Can I ask you this: has there been any thematic
15 review by the Inspectorate of the treatment of young
16 people in prison, meaning people under 21, including 16
17 to 18-year-olds?

18 A. Not during my tenure.

19 Q. I think there has been such a review in England.
20 I think some time ago, by the then Chief Inspector,
21 David Ramsbotham, in 1997, I believe?

22 A. There's been a more recent one by the current Chief
23 Inspector, Charlie Taylor.

24 Q. When was that approximately?

25 A. Within the last three years.

1 Q. There's been two reviews in England?

2 A. Yes.

3 Q. Is it just lack of time and resources that makes it
4 impossible to carry out a similar review in Scotland?

5 A. It's slightly different anyway, because we only have one
6 prison -- unless a young person is held overnight for
7 court or whatever in another prison, the reality is all
8 young people and children are held in Polmont, so we
9 keep a very regular eye on Polmont. Not only do the
10 independent prison monitors go in, but I go in
11 regularly, my prison monitoring co-ordinator goes in
12 regularly.

13 Q. I think we'll find out that obviously the intention on
14 the part of Scottish Government is to remove under 18s
15 from the prison system, and that's currently I think the
16 subject of a --

17 A. It can't come too soon. One of the things we have been
18 looking at with the Care Inspectorate is until that
19 happens whether we increase our frequency of inspection
20 for children under the age of 18 to annual inspection in
21 line with secure care.

22 Q. I think there have been, in the past, in England
23 independent reviews of restraint in juvenile secure
24 settings and I have one reference -- I don't know if
25 you're familiar with -- I think two individuals called

1 Smallridge and Williamson did a review in 2008; is that
2 something --

3 A. I'm not familiar with it.

4 Q. I think they did it on behalf of the Ministry of Justice
5 in 2008. Have you done a similar review?

6 A. No, not quite. So following a case, a Sheriff
7 determination, the Scottish Prison Service was asked to
8 undertake a review and I was asked by the Cabinet
9 Secretary to do an assurance on that review. So
10 I've done that assurance and sent it to the Cabinet
11 Secretary. But because of that, that was two years ago
12 now, we're undertaking a thematic review next year into
13 use of force, which is the use of restraint.

14 One of the things that came out of that is a move by
15 the Scottish Prison Service towards pain-free restraint
16 as a first option, which I absolutely approve of.

17 Q. I think we heard on Friday from another witness that
18 they are piloting two projects -- at Polmont and the new
19 prison at Stirling --

20 A. Yes, and it's moving on to Lowmoss prison.

21 Q. Yes, I think they plan to extend it.

22 A. Given all of that, then next year when they've piloted
23 it, evaluated it and hopefully rolled it out, we'll then
24 do a secondary thematic review on use of force.

25 Q. Is that a big issue for the Inspectorate over the years?

1 A. Yes.

2 Q. The use of restraint and the use of force during
3 restraint?

4 A. It's in one of our standards, we always look at it. Not
5 only how often it's used, when it's used, how it's
6 followed up, how many times they video it, things like
7 whether it's planned or spontaneous, you know, who
8 reviews it, what assurances are in place to make sure
9 lessons are learned.

10 Q. Has it been a cause of concern over the years?

11 A. No.

12 Q. No?

13 A. No.

14 Q. Are you satisfied then that the use of restraint has
15 been both appropriate and carried out using a lawful
16 method?

17 A. Mostly. We have had issues, which we have raised in
18 inspection reports, but largely with the assurance
19 process rather than the actual use.

20 LADY SMITH: Can I take you back one moment, Wendy, I was
21 interested in what you told me about joining with the
22 Care Inspectorate to look at how you might change your
23 practices for Polmont in the near future.

24 You said that you are considering increasing the
25 frequency of your inspection for children to annual

1 inspections in line with secure care.

2 Do you envisage inspecting with them or are you
3 telling me that you would at least want to be there as
4 often as the Care Inspectorate are?

5 A. The Care Inspectorate comes with us on every inspection.

6 LADY SMITH: I know that, but --

7 A. My theory is that if we're going to do what I would call
8 interim inspections between the main inspection, we
9 would develop bespoke standards for young people more in
10 line with the secure care standards. Basically leaning
11 on their expertise to develop a shortened version of
12 inspections.

13 LADY SMITH: Right. Would that mean you don't necessarily
14 need to be there at the same time, but you have worked
15 together for the planning of how best to do the
16 inspection work?

17 A. No, we would do it together.

18 LADY SMITH: You would do it together?

19 A. Definitely. Yes.

20 LADY SMITH: Thank you.

21 MR PEOPLES: When you talk about secure care, you don't mean
22 secure care services outwith the SPS?

23 A. I do mean secure care services outside the SPS. The
24 Care Inspectorate inspects the secure care homes. They
25 have developed a level of expertise around that, that

1 I want to tap into to be able to look at how we amend,
2 if you like, our standards to match their secure care
3 standards if we develop a bespoke thing for annual
4 inspections of under 18s in Polmont.

5 Q. Yes, but the actual services that you would be
6 inspecting perhaps --

7 A. Would be a young offender institution, not the secure
8 care service, yes.

9 Q. I suppose if the under 18s are removed from the system
10 then --

11 A. We don't need to do it.

12 Q. You don't need to do it.

13 Sorry, forgive me, I thought you were suggesting at
14 one point that the Inspectorate would get involved in
15 inspecting secure services run by some other
16 organisation?

17 A. Not at all, no. But I do think there is merit in
18 looking at this for under 25s as well.

19 Q. I suspect you are not alone in that. I think
20 Sue Brookes maybe has a similar view on the matter, that
21 we shouldn't just focus on under 18s. She thinks that
22 we should look at more broadly and take it up to perhaps
23 even up to 25 or thereabouts, based on current
24 understanding of development of brain --

25 A. Brain maturation argues that we should be looking up to

1 25.

2 Q. Just on the question of inspections, I think there was
3 a relatively recent inspection of HMP Kilmarnock, which
4 is one of the prisons you have managed, and it's being
5 operated by Serco, which was I think, as you said, under
6 a 25-year contract.

7 I think one point you made there was that you were
8 commending them in the report I am referring to --
9 commending the use of body-worn cameras for staff?

10 A. I need to make clear two things.

11 One is I recused myself from the HMP Kilmarnock
12 inspection, having worked for Serco and been the
13 governor of Kilmarnock I felt that if it was a bad
14 inspection that I would be seen as biased. If it was
15 a good inspection I would be seen as biased, so
16 I absolutely recused myself.

17 In terms of body-worn cameras, I have been
18 recommending those ever since I came into post, having
19 used them in Australia. I think they are invaluable in
20 supporting staff and hopefully preventing abuse.

21 Q. I take it that if someone was wearing a body camera that
22 would be able to capture restraint incidents?

23 A. Absolutely.

24 Q. Would there be any safeguards in terms of privacy, given
25 human rights issues about where the camera would be

1 worn, for example in a room or a cell?

2 A. There certainly weren't when we used them in Australia.
3 If we ended up using restraint in a room or a cell then
4 there was no question that the camera would be used and
5 there was no issue around data protection or
6 surveillance at that point.

7 I wouldn't be able to answer authoritatively on how
8 that would be handled in Scotland.

9 Q. Can I ask you this though: did the young people in
10 Australia have any problem with that?

11 A. None.

12 Q. Do you think it made them feel safer?

13 A. It made them feel safer, but what was interesting,
14 despite initial staff resistance, was that the staff
15 also felt safer.

16 LADY SMITH: Were the young people told about the use of
17 body cameras in advance?

18 A. Absolutely. The model we ran was that there was a huge
19 amount of co-design and co-regulation.

20 LADY SMITH: That must be important?

21 A. Hugely important.

22 MR PEOPLES: That to some extent is a much more flexible
23 thing than putting CCTV into fixed locations within
24 prisons, which is always a controversial issue, is it
25 not?

1 A. CCTV is always a controversial issue.

2 As is collecting fingerprints when people come in,
3 so visitors come in and they take a fingerprint and then
4 they ... yes.

5 Q. As is searching, which we'll come to.

6 A. We will.

7 Q. Just going back to the composition of the Inspectorate,
8 you have told us it's a tiny organisation in comparison
9 to the Care Inspectorate and you have told us the number
10 of inspectors that carry out the functions. Just so
11 I'm clear, who are they employed by?

12 A. We are employed by Scottish Government, so we're civil
13 servants.

14 Q. Essentially you are an independent statutory
15 appointment, but your staff are employed by the Scottish
16 Government?

17 A. Correct.

18 Q. And your funding --

19 A. Is from the Scottish Government.

20 Q. Their remuneration comes from the Scottish Government?

21 A. Correct.

22 Q. You tell us, if we go back to your report, on page 3, in
23 the overview section that the Inspectorate is required
24 to inspect 17 prisons across Scotland to establish the
25 treatment of, and conditions for prisoners and to report

1 publicly on the findings.

2 Is it still 17 prisons?

3 A. It is recently 17 prisons, because of the two community
4 custody units that came into being, yes.

5 Q. I think we have heard that Cornton Vale closed this
6 year, but Stirling opened?

7 A. Stirling opened, yes.

8 Q. And two community custody units in Dundee and Glasgow
9 for women opened in 2022, and what closed?

10 A. Nothing closed --

11 Q. Apart from Cornton Vale.

12 A. -- so it was 15 and it's now 17.

13 Q. Cornton Vale has been the only one that has closed in
14 recent times?

15 A. That's right.

16 Q. Although I think --

17 A. Previously there were a number of other prisons that
18 closed, yes.

19 Q. I think you are on record -- in fact I think you were on
20 public record the other day advocating the closure of
21 some other institutions, such as Barlinnie --

22 A. I certainly am, yes.

23 Q. Inverness, I think was another?

24 A. Barlinnie, Inverness, Greenock and Dumfries.

25 Q. Do any of these hold young people?

1 A. No.

2 Inverness does temporarily, in the sense that if
3 they're in court in Inverness it's unfair to ask them to
4 be transported down overnight to Polmont.

5 Q. I think Grampian may do the same?

6 A. Yes, Grampian is the same.

7 Q. I think we are told, by Sue Brookes, that currently
8 there are five young people under 18 in the Scottish
9 prison system as of last week?

10 A. Yes.

11 Q. Four in Polmont and one in Stirling?

12 A. One in Stirling, yes.

13 Q. I think that is significantly different in numbers to
14 perhaps even fairly recent times, maybe four or five
15 years ago. Is that correct?

16 A. It has certainly gone down. It's been a going-down
17 picture, but I think the best thing is to look back at
18 the early 2000s when there were 300, 400, 500, and that
19 whole systems approach, it would be lovely if we could
20 take the lessons from that and apply it to the adult
21 estate.

22 Q. You tell us that the legislation, which introduced
23 independent monitoring, was the Public Services Reform
24 (Inspection and Monitoring of Prisons) (Scotland) Order
25 2015, made under the 1989 Prisons (Scotland) Act, is

1 that correct?

2 A. Yes.

3 Q. That came into force on 31 August 2015 and that's when
4 the independent prison monitoring system came into being
5 and you assumed responsibility for that scheme?

6 A. Yes. It's also worth noting that people who were on the
7 visiting committee were invited to join the independent
8 prison monitors, so a proportion of our independent
9 prison monitors are ex-visiting committee.

10 Q. They are volunteers, they are selected by the
11 Inspectorate. They monitor weekly. How many will go
12 typically into a particular establishment on a weekly
13 basis?

14 A. It completely varies. We have Polmont and Grampian,
15 both of whom have very committed volunteers and who go
16 in very regularly, more than once a week.

17 Other prisons manage once a week. That is it. Some
18 like to go in ones and twos. Some like to go in threes.
19 Some like to go in on their own. It's absolutely up to
20 them. We have prison monitors who always prefer to go
21 in in twos, and I understand that.

22 Q. Do they get specific training from the Inspectorate?

23 A. Yes, they do, yes. They get training from the
24 Inspectorate and also from the Scottish Prison Service.

25 I think I forgot to mention, and I should perhaps

1 mention we also have a secondment from the Scottish
2 Prison Service who helps us with our thematic reviews.
3 There is a huge thematic review going on at the moment
4 about prisoner progression for convicted prisoners,
5 their prisoner journey until release.

6 Q. Just on the composition of the monitors, do they vary in
7 age?

8 A. They vary hugely in age, yes.

9 Q. Do you have young people?

10 A. We have young people.

11 Q. Do you have care-experienced people?

12 A. We do have care-experienced people.

13 Q. Do you have people who have been in the prison
14 environment?

15 A. We have a prison expert group, which we use as
16 an advisory body, if you like, who are people with lived
17 experience. We haven't to date had a prison monitor
18 with lived experience that we know of.

19 Q. Would that be a problem?

20 A. It isn't a problem for me. On the contrary, I would
21 welcome it.

22 Q. Would it be a problem for the service?

23 A. I think it might be, yes.

24 Q. Why would that be?

25 A. The question is the disclosure difficulties we have to

1 go through ... I don't think it will be too much of
2 a problem.

3 Q. Do you see that happening in the future?

4 A. I hope it will certainly encourage it. I think there
5 does need to be some distance between serving a prison
6 sentence and becoming an independent prison monitor, but
7 it hasn't happened as yet. We will encourage it.
8 Certainly our prison expert group, one of our
9 researchers, one of the people on there is doing some
10 research with Dundee University on the effectiveness of
11 inspections for prisoners.

12 LADY SMITH: Can I just ask you, Wendy, why do you think
13 there needs to be a gap between release and becoming
14 involved in one of the ways that you are discussing with
15 Mr Peoples?

16 A. It's a personal belief actually rather than one founded
17 in evidence or fact, but I think there is a power
18 imbalance between prisoners and staff and that there
19 needs to be a gap in order for people to feel confident,
20 because as prison monitors you do meet quarterly with
21 the governor and raise issues and there needs to be
22 a level of confidence to do that.

23 LADY SMITH: Is there also a practical reason in that
24 a person who has been released hasn't necessarily
25 completed their sentence, they may still be on licence.

1 A. That's a very practical reason, getting the Disclosure
2 Scotland through will be difficult.

3 LADY SMITH: Yes. Thank you.

4 Mr Peoples.

5 MR PEOPLES: Can you just perhaps summarise what the
6 advantages of having monitors who have lived experience,
7 as you put it, which is basically experience of being in
8 a prison or a young offenders institution?

9 A. For me there is an advantage in having a diverse range
10 of independent prison monitors, in the sense that their
11 life experience and their fresh eyes approach means that
12 they are very comfortable doing what I would call the
13 daft lassie questions, you know: why are you doing it
14 like that and what are you doing? I really value that,
15 but I also value, we have independent prison monitors
16 who have huge professional experience and we have
17 independent prison monitors who are very young and are
18 just starting at university and have a very different
19 level of experience.

20 What we don't have is someone with lived experience,
21 who would provide an extra dimension.

22 Q. Presumably you have liaison and discussions with the
23 monitors as to what they see, how they react and so
24 forth to the job they're doing?

25 A. Very much so.

1 Q. Does it open their eyes to the reality of prison?

2 A. I think that's one of the most important things they do
3 actually. I firmly believe that prisons are very hidden
4 societies and they shouldn't be. By having monitors who
5 go in and look at prisons and see the reality and deal
6 with the reality, that has a ripple effect back into the
7 community, where they can talk a bit about what they do.

8 Obviously they can't talk about individual cases,
9 but they can talk about the reality of the big clanging
10 doors and the too-small cells and all the rest of it.

11 I think that's really important.

12 Q. Do they do that in practice?

13 A. Yes, they do.

14 Q. They go to the community and speak about what they do?

15 A. Yes, they do. In fact, we have a fairly strict or
16 fairly clearly understood training on what they can talk
17 about and what they can't talk about. Two of our
18 monitors have very strong twitter blogs, which they talk
19 about things, but we have made it clear what they can
20 talk about and what they can't talk about.

21 Q. But it is a way of connecting with certain people who
22 use that medium?

23 A. Yes, we certainly use social media to recruit.

24 Q. Do they use other forms to communicate the message of
25 what they're seeing and doing, apart from twitter and --

1 A. I wouldn't know about the rest of their social media,
2 I've seen the ones on twitter.

3 Q. The reason I ask that is I think we have heard some
4 evidence about various regulators trying to look at
5 creative ways of connecting or communicating,
6 particularly with young people, about settings, partly
7 to explain what they do and what they're not or dispel
8 myths and so forth, but they're trying to find a way
9 which will actually get that message through that
10 doesn't involve perhaps the traditional methods of
11 communication. Apps for example?

12 A. Absolutely, absolutely, yes. We'll wait and see how
13 that works.

14 I certainly do a considerable degree -- I hesitate
15 to call it public speaking, because I talk to church
16 groups and all sorts of people, just about my role and
17 what I see in prisons. So as well as the traditional
18 production of the annual report, I do a lot of working
19 towards understanding of what our prisons are.

20 Q. If we are looking at lived experience, people being
21 prison monitors, is there a possibility or real
22 possibility that those who are detained might be more
23 likely to disclose to them how they feel, how they're
24 treated and so forth?

25 A. We'll be testing that out in the next year. I've asked

1 my inspection lead to include one of the prison expert
2 group or two of the prison expert group in our
3 inspection process, so we do a pre-inspection survey.
4 We then have focus groups with staff and prisoners, and
5 I've suggested that the prison expert group could be
6 involved in the focus group, because they might achieve
7 a level of understanding that perhaps we as inspectors
8 are not getting.

9 Q. How willing are young people to talk freely to
10 inspectors who come as strangers once every four years
11 or thereabouts, in your experience?

12 A. They talk extensively to the monitors.

13 Q. I was going to ask about them separately. Just looking
14 at inspectors at the moment, do they get much from the
15 young people?

16 A. I was surprised when I went in. We did a Year of
17 Childhood Survey of the under 18s and as part of that
18 I met with them individually. At that point there were
19 13, and also pooled them together as a group. They're
20 not comfortable speaking in a group, but individually
21 they were very comfortably speaking to me.

22 Q. When was this done, roughly?

23 A. 2021, I think. I can't remember the exact date.

24 Q. Is this the Year of Childhood Survey?

25 A. Yes.

1 Q. I think it was 2021.

2 A. I think so too.

3 Q. Do monitors get more out of the young people because
4 they see them on a regular basis?

5 A. They do. They get known, because they go in weekly and
6 they're there regularly and the ones in Polmont
7 certainly are -- we have a biggish group and they're
8 well known. Then they go and have a chat and young
9 people are very happy sharing.

10 What is noticeable is the request to see a monitor
11 and the level of complaints we get from young people.
12 They're very low in comparison to the complaints we get
13 from adult males.

14 Q. It appears from what you are saying that they developed
15 a good relationship, the volunteers, the monitors, with
16 those that they see on a regular basis?

17 A. Yes.

18 Q. There is a continuity, because they're seeing them every
19 week or maybe more often. They're telling them things?

20 A. Yes.

21 Q. Disclosing and so forth.

22 In comparison with what they might tell the prison
23 staff, do they see them as different in terms of the
24 work they do, because they may see the prison staff as
25 the authority figure? Do they see the volunteers in

1 a different way?

2 A. I don't know, I haven't tested that out.

3 Q. Is it worth maybe finding out?

4 A. It certainly is, yes.

5 Q. I'm just thinking, just to see the extent to which

6 someone might want to say something to a prison officer

7 and whether they're more likely to say something to

8 someone who might be described hopefully as a trusted

9 adult, or at least someone who you are prepared to trust

10 to tell them something?

11 A. The independent prison monitors always make it very

12 clear that they're independent of the Scottish Prison

13 Service, and as a result we are told things or they are

14 told things and I, as an inspector, am told things that

15 they wouldn't tell an officer, but that's anecdotal.

16 I don't have the evidence or the research to prove that,

17 nor do I have the capacity to research that at the

18 moment.

19 Q. It might be a useful piece of research if you had the

20 resources?

21 A. Hopefully the research that one of the prison expert

22 group is doing with Dundee University will get that out,

23 yes.

24 Q. When is that research likely --

25 A. It's started. He's doing his PhD on it. That is his

1 PhD subject. He's started. It will probably take two
2 or three years.

3 Q. You tell us, and I'm not going to go back over it,
4 I think you have told us a bit about that in 2003 the
5 United Kingdom became a signatory of the Optional
6 Protocol to the Convention Against Torture, OPCAT for
7 short. You tell us there about the National Preventive
8 Mechanism that was established in 2009 and that HMIPS is
9 one of the 21 bodies that comprise the UK's NPM.

10 You say there is a Scottish subgroup of the UK NPM,
11 which works collaboratively on matters of shared concern
12 to protect the rights of people detained across
13 Scotland. What exactly is the subgroup doing there?

14 A. A combination of things. We have a work plan, but
15 I think the biggest and best part of it is that we meet
16 regularly and share information, so for instance one of
17 the issues that came up was the cross-border transfer of
18 children. The Children's Commissioner raised it as
19 an issue, the Care Inspectorate was able to give
20 information to the Scottish subgroup on the role that
21 they play in monitoring that and inspecting that.

22 So it was really interesting actually, because
23 I wasn't aware of the issues.

24 Q. The Scottish subgroup I take it is made up of a number
25 of relevant bodies, you mentioned the Children's

1 Commissioner as one?

2 A. No, the Children's Commissioner raised it with the
3 Scottish subgroup, they are not part of the Scottish
4 subgroup. One of the things that the national NPM is
5 doing at the moment is doing a survey of whether we have
6 the right people in the NPM. For instance the
7 Children's Commissioner for England and Wales is in the
8 national NPM, but the Children's Commissioner for
9 Scotland and Northern Ireland is not.

10 Q. It seems a bit curious?

11 A. Yes, very curious. What we do is we invite the
12 Children's Commissioner to a Scottish subgroup meeting,
13 theoretically as an observer, but certainly if they have
14 any concerns they can raise it.

15 The other one that is invited regularly is the
16 Healthcare Improvement Scotland, because CQC in England
17 is invited onto the national body but the RQIA in
18 Northern Ireland and Healthcare Improvement Scotland in
19 Scotland is not invited as a national body.

20 Q. So there is a discrimination, does it appear to have any
21 justification?

22 A. I don't think I can argue that. Certainly it's
23 something we are reviewing as we speak and they invite
24 the RQAI to the Northern Ireland subgroup and we invite
25 HIS to the Scottish subgroup.

1 Q. Can I put it this way, you would favour them being
2 members of the group --

3 A. I would.

4 Q. -- rather than invitees?

5 A. I would.

6 Q. Just who is on the group then, rather than who isn't?

7 A. Not a problem. There is the Mental Welfare Commission,
8 ourselves, the Care Inspectorate, HMICS -- my brain's
9 gone dead -- I think the Independent Prosecution
10 Inspectorate.

11 Q. Who determines the composition of the group?

12 A. Oh SHRC, that's the other one, the Scottish Human Rights
13 Commission.

14 Q. Who determines the composition of the group at present?

15 A. It was determined in 2009 when they set it up and the
16 only change was the terrorism person who was invited in
17 since then.

18 Q. This all has a legislative footing?

19 A. Yes.

20 Q. That is what restricts who can be members?

21 A. It doesn't quite have enough of a legislative footing,
22 in the sense that of the 21 bodies, not many of them
23 have legislation in their own legislation to say they
24 have to be part of OPCAT. I do.

25 Q. Did you say Education Scotland or HMIE is part of the

1 Scottish subgroup?

2 A. No, Education Scotland isn't.

3 Q. But they are part of the NPM --

4 A. No, they are not.

5 Q. Although they perform an inspectorial function?

6 A. They do.

7 Q. At the moment at least?

8 A. They do.

9 Q. That may change, I think we have learned --

10 A. I think they are still going to perform an inspection

11 function, but in perhaps a different body.

12 Q. I think we were told, although we're not clear what

13 exactly "independent inspectorate" means at the moment,

14 but that there has been a commitment to establish a more

15 independent inspectorate than there is at present for

16 HMIE.

17 A. Yes. I'm not really qualified to judge, but my

18 understanding is they're going to try to separate out

19 the policy arm and the inspection arm.

20 Q. If I can maybe just ask one question before I leave this

21 section: what was perceived to be wrong about the system

22 of visiting committees?

23 A. I don't know, that was before my time.

24 Q. We can maybe ask Professor Coyle, who will be coming to

25 see us this week. I think he had a hand, I think, in

1 the background to these changes, so maybe he can tell us
2 the answer to that question.

3 You have a section:

4 "History of HMIPS."

5 Basically the first inspector was appointed to sit
6 on 29 October 1980 by Royal Warrant. You then say that
7 what you describe as the Inspectorate itself was
8 established on 1 January 1981. We have clarified there
9 is an inspector who has an Inspectorate, which is
10 a team, it's not a separate body as such?

11 A. No.

12 Q. That followed the publication in 1979 of a report by the
13 Committee of Inquiry into the United Kingdom Prison
14 Services, which was the May Committee, which
15 recommended, as you tell us on page 4 of the report,
16 that there should be a system of inspections in the
17 Prison Service which was distanced as far as practicable
18 from the Prison Department.

19 I take it from that that until then although there
20 have been chief inspectors of prisons for a very long
21 time, they were really attached to what is called the
22 Prison Department --

23 A. Yes.

24 Q. -- and therefore they weren't independent, they were
25 simply part of that department. Is that correct, in

1 broad terms?

2 A. As far as I know.

3 Q. I think you have told us about -- there is quite a bit
4 on that page about the monitoring system. I'm not going
5 to repeat it, we can read it for ourselves.

6 What you tell us is that since 1980 there has been
7 eight chief inspectors in post. The first being
8 Philip Barry from 1980 to 1986. You list them all --
9 including yourself -- and we've heard a bit about some
10 of them. We know your background as the current
11 inspector. David Strang was a former Chief Constable,
12 wasn't he?

13 A. You will notice that I'm (a) the first woman and (b) the
14 first one with prison experience.

15 Q. I was going to ask you about that, because there are
16 those that might say that to some extent independence
17 might mean you haven't worked in the system?

18 A. Yes.

19 Q. I don't know whether you are a proponent of that?

20 A. Not at all.

21 Q. No, clearly not. Obviously if you applied and felt you
22 were the best person for the job. But you say the
23 others weren't, they didn't have experience of prisons?

24 A. No.

25 Q. In any capacity?

1 A. No.

2 Q. They seem to have come from various walks of life. We
3 know Andrew McLellan and we have heard a bit about
4 David Strang.
5 Brigadier Munro I assume has a military background?

6 A. Very much so.

7 Q. I think Clive Fairweather as well?

8 A. Yes.

9 Q. I'm not so sure about the first three, can you tell us
10 anything about them?

11 A. I know nothing about them.

12 Q. One matter I was interested in, is that you have
13 a deputy chief inspector?

14 A. Yes.

15 Q. Who is that by the way?

16 A. It's Stephen Sandham.

17 Q. Does he have a prison background?

18 A. No.

19 Q. Is that deliberate?

20 A. Yes.

21 Q. Historically, as I understand it, deputy chief
22 inspectors did have a prison background, even if the
23 chief inspector didn't?

24 A. Historically the deputy chief inspector was a secondment
25 from the Scottish Prison Service. Under the NPM

1 guidelines, that would be a conflict of interest, so
2 while we recognise that we need sector experience,
3 up-to-date sector experience, we now second people from
4 the Scottish Prison Service to be guest inspectors.
5 They're not regular members of the team, although we do
6 have one secondment who helps us with thematic leads.

7 Q. Yes, you have told us about that.

8 I'll come back to this, because I think we have
9 evidence, of at least one person, who had some concerns
10 about the use of guest inspectors. I'll maybe come back
11 to that.

12 A. Sure.

13 Q. You believe it's a good thing?

14 A. Yes. I think you do need up-to-date sector experience
15 and understanding.

16 LADY SMITH: Why do you use the term "guest inspectors"?

17 A. Because they're not regular employed staff by us, so
18 when I took over the deputy chief inspector was seconded
19 from the Prison Service. The lead inspector was
20 seconded from the Prison Service. Both of those could
21 go back to the Scottish Prison Service and I felt that
22 there was, to some degree, a conflict of interest in
23 that way. Therefore both of those appointments, even
24 though the lead inspector did come from the Scottish
25 Prison Service, he's employed by us, he could choose to

1 apply to go back to the Scottish Prison Service but he
2 was not a Scottish Prison Service employee.

3 LADY SMITH: Thank you.

4 MR PEOPLES: It might be thought by some that what you have
5 described with the arrangement of the deputy and the
6 lead that the Service had a foot in both camps?

7 A. You might.

8 Q. Maybe I can ask you about this, we have been given
9 evidence by an individual called Ian MacFadyen, who has
10 provided us with a statement and will be giving evidence
11 in due course, who has experience of having been
12 a senior social worker in Cornton Vale in the 1990s, but
13 he also had a spell as an inspector on secondment with
14 the Inspectorate in Scotland for 11 months in 2015, when
15 the then Chief Inspector I think was David Strang.

16 I can maybe also tell you that he had long
17 experience as a prison inspector with the HMIP in
18 England and Wales, between 2002 and 2020, except for the
19 period of secondment.

20 He had some reservations about the use of guest
21 inspectors serving on inspection teams. He said that it
22 didn't happen down south and they had what he described
23 as a team of professional inspectors who were
24 independent of the service. Is that perhaps one of the
25 arguments against the use of guest inspectors?

1 A. It's not my understanding of how HMIP works either in
2 England and Wales. So the Deputy Chief Inspector in
3 England is a man called Martin Lomas, on secondment from
4 the HMPPS, the English prison service.

5 Q. Do we know the position in 2015 or before?

6 A. That's just now.

7 Q. They do use seconded individuals?

8 A. They certainly do, yes.

9 Q. But does the team of inspectors who go round the various
10 many institutions -- do they include guest inspectors?

11 A. I don't know, but I do know of at least two people who
12 are seconded from the HMPPS, which is the English prison
13 service, into the Inspectorate.

14 Q. Is there a danger if you have a guest inspector that
15 they may have worked in the place in relatively recent
16 times or indeed they may know people who work there
17 currently?

18 A. The Scottish Prison Service is so small that they do
19 know most people and also many of our guest inspectors
20 have worked in the prisons before. They do move around
21 significantly. I think there is a danger, which is
22 offset and carefully managed by myself and my inspection
23 team. So there is a very rigorous process. They go
24 through some initial training with our lead inspector.
25 They're briefed at the beginning of the inspection by

1 me. During inspection we have daily catch-up sessions,
2 where we share information. For instance, Education
3 Scotland can say the library facility is absolutely
4 dreadful, the inspector could say the library system is
5 one of the best he's ever seen, the guest inspector. We
6 then have at the end of that deliberations meetings,
7 where we check and counter check and cross that
8 everything is absolutely evidence led, if you like, and
9 it's not just one person saying something. It's always
10 evidenced across, triangulated.

11 Then they send in their written report. That
12 written report is checked carefully. It goes through
13 a three-way review, a technical edit, and then we check
14 that against all the human rights information. So
15 I think there's a level of assurance in there that were
16 there to be bias we could resolve it.

17 Q. Could you not get the information -- if you are wanting
18 to, for example, compare what you are seeing with what
19 may be happening in some other part of the service, can
20 you not simply do that without inviting them on to the
21 team?

22 A. I don't have enough staff to do that. I really do want
23 up-to-date sector experience, I'm very clear about that.

24 Q. I'm not suggesting otherwise. I can see the full force
25 of what you're saying. It's just whether this is the

1 way to get it?

2 A. Yeah.

3 Q. If you had more resources you might do things
4 differently?

5 A. If we had more resources we might do things differently,
6 but I think there's a combined benefit, which is that
7 the Scottish Prison Service actually lets people see
8 what the Inspectorate's about, what the human rights
9 issues are, the whole panel principles that we offer, or
10 support, that they get to see other prisons, they get to
11 take away ideas that are good. It's a sharing of good
12 practice and also a kind of, "Oh dear, they've picked
13 that up". So I think there are benefits both ways, but
14 certainly in dissemination of good practice it's a help.

15 Q. As far as the chief inspector role is concerned, I take
16 it there is no fixed period of appointment?

17 A. Yes, there is. Very much so. I was appointed initially
18 for three years and then that was extended for a further
19 two and then because of the COVID crisis extended for
20 a further two, so July 2025 is the end of my appointment
21 permanently.

22 Q. It's just, I saw some of the previous inspectors seemed
23 to have served for quite a long time. I just wondered
24 if they were free to do so and the answer is only if
25 invited to --

1 A. Only if invited to do so. It starts with a three-year
2 appointment.

3 Q. I suppose if someone didn't like what a vocal chief
4 inspector was saying, they have the means to change the
5 voice?

6 A. They do.

7 Q. There could be something to be said for a different
8 system of tenure; do you see what I'm saying?

9 A. I would have said that four years ago. I thought there
10 was a real need to have a permanent say, so that you
11 couldn't be removed. I've now changed my mind.
12 I actually think that five years is sufficient. When
13 you do five years you then start the round of
14 inspections again and although during COVID we went to
15 every single prison, actually doing the in-depth
16 inspection of Addiewell and then my second in-depth
17 inspection of Addiewell highlighted to me that actually
18 the fresh-eyes approach has legitimacy.

19 Q. I suppose I'm putting it to you that I take everything
20 you say, but I would probably just say this, I would
21 like it to be my choice is the proposition, rather than
22 someone telling me I have to go.

23 A. I'm not sure. I think there's legitimate arguments both
24 ways in having a fixed tenure and having a permanent
25 post. If you have a permanent post with someone who is

1 not particularly effective at actually achieving much,
2 then you would like to think you have an automatic
3 cut-off.

4 Q. You get rid of bad leaders, but that's maybe not
5 a justification for a fixed period?

6 A. No, it isn't. I think there are justifications both
7 ways.

8 Q. It's a difficult one. Also talking about the
9 composition, I think Dr Chiswick if I remember says when
10 he was on this committee that looked at Glenochil,
11 another member of the working group or working party was
12 the governor, Alec Spencer.

13 In this day and age that would be unusual, to say
14 the least, that someone sits in judgment or sits as part
15 of a group that's reviewing the institution they work
16 in. Would you not agree? You might have something to
17 say about that --

18 A. Except that we do that all the time by our guest
19 inspectors and our seconded lead on thematic reviews.
20 I think they bring a level of expertise and knowledge
21 which is invaluable.

22 Q. I'm not suggesting that he didn't bring that to that
23 particular inquiry, and I think Dr Chiswick said as
24 much --

25 A. It is unusual, yes.

1 Q. You were asked, I think -- if we can turn to page 5 --
2 a number of specific questions about the Inspectorate
3 that you have been in charge of since 2018.

4 If I could turn to those now and look at some of
5 these.

6 The first question is concerned with the
7 effectiveness of the Inspectorate since its creation in
8 or around 1981. I think it's broken down into
9 effectiveness in various ways --

10 A. Yes.

11 Q. -- I think you then explain, to some extent, the role
12 and function of the Inspectorate as part of your
13 response and what we should appreciate about what it
14 does and doesn't do. Is that correct?

15 A. Yes.

16 Q. I suppose people perhaps assume, maybe too readily, that
17 an inspector has a very direct function in child
18 protection. That may be a common misconception?

19 A. I think it is a common misconception and I think let me
20 provide some context. I think it's important to
21 remember with an inspection that we come in, we don't
22 wear Scottish Prison Service uniform. We announce we're
23 coming in. We put up big notices. We do
24 a pre-inspection survey, which is anonymised. We do all
25 of those things to try to understand and get to the

1 heart of perhaps the issues that are affecting the
2 treatment and conditions for prisoners.

3 But the reality is that we come in and we are very
4 visibly different and therefore any abuse that may occur
5 is highly unlikely to happen for us to observe. We
6 would rely heavily on people telling us. That, for me,
7 is the major issue between detection and prevention.

8 Q. I think the question in terms of this aspect of
9 question 1 was how effective has the HMIPS been in
10 detecting abuse of young people under 18 in penal
11 establishments run by the Prison Service, SPS, and/or
12 abusive practices. I think you effectively capture the
13 response to that in the second paragraph under that (i)
14 on page 5, where you say:

15 "The statutory remit of the Inspectorate is to
16 inspect or arrange for the inspection of prisons and
17 report on treatment and conditions in which they are
18 held. The [chief inspector's] view is that in
19 performing this role we contribute to preventing rather
20 than detecting abuse, as detection is not part of our
21 statutory remit, and our ability to detect is
22 necessarily inhibited by our limited presence in
23 prisons. For context, full prison inspections occur on
24 average every four years for each establishment."

25 I think that's what you have just effectively said?

1 A. Yes.

2 Q. So you are not exercising a specific child protection
3 function?

4 A. No.

5 Q. Just as, I suppose, an inspector of education would say
6 their principal concern is the quality of education,
7 although I think they've told us that to an extent they
8 concern themselves with child protection and
9 safeguarding as part of their functions?

10 A. Yes.

11 Q. I think the Care Inspectorate is similar, that they
12 don't perform a detection function as such or
13 investigate individual complaints in a very specific way
14 as part of their functions?

15 A. I can't obviously speak for the others, but we certainly
16 don't do that.

17 MR PEOPLES: This might be -- perhaps it's not a good time,
18 I'm just looking at the time, maybe it might be best to
19 have --

20 LADY SMITH: If you are turning to something new,
21 Mr Peoples.

22 Wendy, if it will work for you I'll take the morning
23 break now and sit again at about 11.45 am.

24 Thank you.

25 (11.28 am)

1 (A short break)

2 (11.45 am)

3 LADY SMITH: Wendy, are you ready for us to carry on?

4 A. Absolutely, yes.

5 Can I just say thank you for a very welcome cup of
6 tea?

7 LADY SMITH: I hoped that helped.

8 Mr Peoples.

9 MR PEOPLES: My Lady.

10 Just before the break, we were looking at the role
11 that the Inspectorate performs and we referred to page 5
12 of the report in the passage there, in the second full
13 paragraph under (i).

14 Just so we have some general idea of the
15 differences, perhaps in broad terms, between your
16 Inspectorate and other regulatory bodies that we've
17 heard from, can I just ask you this or at least can
18 I put this to you and just see whether you do things
19 that some of the other bodies don't and vice versa?

20 Can I start? We have heard some evidence from the
21 SSSC, which is the regulator for the social care
22 workforce, and I don't expect you'll be too familiar
23 with the detail of what they do, but what the witness
24 who represented the Council on 21 September 2023 said
25 was that the SSSC does not perform any monitoring or

1 inspection role. It regulates the workforce and it
2 relies on referrals to it where there is some concern
3 about a worker.

4 I think that is a difference between your
5 Inspectorate and that body, that do you have
6 a monitoring role and you do have an inspection role?

7 A. Yes.

8 Q. What they did say is that so far as monitoring of care
9 services is concerned, the Care Inspectorate deals with
10 the monitoring of such services. Can we say that in
11 a sense the Inspectorate, your Inspectorate, really
12 deals with the -- through the IPM, and indeed the
13 inspectors, you carry out a monitoring inspection of
14 Prison Services, if you like?

15 A. We do.

16 Q. What the witness did say was to stress the importance in
17 this field of collaborative working and information
18 sharing between regulatory bodies, inspectorates,
19 providers, law enforcements agencies, social work
20 departments and so on. I take it that you would agree
21 with that being a very important aspect of maybe a more
22 co-ordinated approach to various issues, including child
23 protection and safeguarding?

24 A. The reality is that within my tiny team we don't hold
25 the expertise to be able to judge authoritatively on

1 a number of issues. That is why we invite other
2 scrutiny bodies to join us, yes.

3 Q. Apart from inviting them to join you on inspections, do
4 I take it that at least there are other arrangements for
5 mutual sharing of information? We have heard that some
6 have memoranda of understanding or protocols or so
7 forth. Do you have such things with these bodies?

8 A. Yes, we do. We have memorandums of understanding, plus
9 we do collaborative work. We have recently published
10 a Diversion from Prosecution report, which was a range
11 of scrutiny bodies, including ourselves.

12 Q. In broad terms, are these various agencies, including
13 your own, seeking to work together as far as possible?

14 A. Yes, we do.

15 Q. Are you a corporate parent by any chance?

16 A. No.

17 Q. I just thought I'd ask.

18 LADY SMITH: That couldn't follow, because under the
19 legislation you are an individual appointed as
20 an individual.

21 A. That's right.

22 LADY SMITH: You can't at the same time be a corporate body.
23 As I understand it, there is no corporate body that's
24 the inspectorate of prisons?

25 A. No.

1 LADY SMITH: Thank you.

2 Mr Peoples.

3 A. Plus we don't have --

4 MR PEOPLES: If I had said instead a statutory parent, do
5 you see yourself to some extent in that general role or
6 not?

7 A. No, I think. Without fully appreciating the entire
8 legal basis for that, when I look at Polmont for
9 instance, where the staff there do act as a corporate
10 parent, we don't, because we don't have the management
11 and care of children under our remit.

12 Q. Those who are responsible directly, such as those who
13 run Polmont, are corporate parents?

14 A. Yes, they are, but we're not.

15 Q. Just as much as we have corporate parents in --

16 A. Yes.

17 Q. -- providers in other services.

18 We also heard some evidence from the Care
19 Inspectorate through Helen Happer and Andrew Sloan on
20 26 September of this year. I am not going to run
21 through this, other than just to pick out a few things
22 which I hope reflects what was said, that the Care
23 Inspectorate was asked about how it saw its role.
24 I think to some extent it very much echoed what you have
25 just said, that it sees its role as an Inspectorate as

1 preventative, rather than one of detecting abuse.

2 I think that very much is the way you see your
3 Inspectorate?

4 A. Very much so, yes.

5 Q. It says it regulates and inspects the service not the
6 placements. I think that's probably what you do as
7 well?

8 A. We do a range of inspections. Although we look at the
9 prisoner outcomes and the service, we also look at the
10 fabric and condition of the prison and mattresses and
11 interesting things like that.

12 Q. You're not concerned with the protection of individual
13 young people who are sent to Polmont as such, that is
14 not your direct responsibility?

15 A. No.

16 Q. Indeed you don't deal with complaints that they may
17 make. You may hear of them and you deal with them and
18 send them to the appropriate quarter, I suppose?

19 A. Correct, yes.

20 Q. What the Care Inspectorate said is that over the period
21 of the existence of the Care Commission and the Care
22 Inspectorate from 2001 through to date, there have been,
23 firstly, structural changes within these bodies and
24 changes in approach and methodology.

25 Has that been very much the case with your

1 Inspectorate since its creation in 1981?

2 A. Very much so.

3 Q. What they said is that something that was very important
4 to them is data collection. Analysis of data, they
5 said, influenced their approach to inspection.

6 I detected in your report and we'll come to this,
7 that perhaps you don't have the same form of data
8 collection and analysis that they may be doing within
9 the Care Inspectorate; is that fair?

10 A. I wouldn't be able to argue how ours is different, but
11 we do a significant amount of data collection and
12 analysis, yes.

13 Q. How do you collect that data then?

14 A. A range of issues.

15 One is we ask the Scottish Prison Service and under
16 the legislation they're obliged to give it to us, which
17 is very nice. We look at the range of data that they
18 collect. There are areas where they don't collect data
19 and we would prefer to be able to have that data.

20 For instance, time out of cell is not collected.
21 Nor is activity collected. But we ask for and receive
22 a huge amount of data.

23 We also ask the prison governor, when we're doing
24 inspections, to do a self-evaluation.

25 We look at their quarterly review, which they hold,

1 they have a quarterly business review which looks at the
2 key performance indicators. We get, for instance,
3 a copy of that. We get for instance a copy of their
4 staff data. We look at the numbers of use of force. We
5 look at the number of people held in segregation. There
6 is a significant amount of data that we get, look at and
7 analyse.

8 We supplement that with our independent prison
9 monitor reports, with the pre-inspection survey, which
10 is collected and analysed, the reports from the focus
11 groups that occur, et cetera, et cetera.

12 LADY SMITH: Is this, what you're doing, in exercise of the
13 power you have to examine any prison records at all,
14 other than personnel records?

15 A. Yes.

16 LADY SMITH: A very wide power, you obviously have found
17 a way to use it --

18 A. First you have to know the prison records exists.

19 LADY SMITH: That is another matter.

20 Mr Peoples.

21 MR PEOPLES: You collect a considerable amount of data, but
22 you would say that there are gaps in the data collected
23 by Scottish Government that you would like to see
24 filled. One example you gave was time out of cell.

25 I get the impression that a recurring theme in

1 reports by the Inspectorate over the years has been the
2 issue of time out of cell and meaningful activity,
3 particularly for young people and particularly for young
4 people on remand. It's been almost a constant since the
5 Inspectorate was established?

6 A. An absolute constant, yes.

7 Q. You might think that that being so, that it might have
8 been sensible of Scottish Government to collect data and
9 provide it?

10 A. Yes, you might.

11 Q. Have you asked for that?

12 A. Yes.

13 Q. Frequently?

14 A. Not too frequently, because I know precisely how
15 difficult it is for the Scottish Prison Service.

16 The two private prisons have a method of data
17 collection that is routine and automatic and it's very
18 easy for us to get that information.

19 In order for the Scottish Prison Service to do it,
20 it's both onerous, time consuming and resource
21 intensive. Therefore, we ask for it very infrequently
22 indeed and on the contrary tend to rely very heavily on
23 our own observations.

24 Q. Is that because they have a lack of a proper IT system?

25 A. Correct.

1 Q. So they really need that to be able to collect what you
2 regard as quite important data that will allow you to
3 develop a picture over time?

4 A. I think there is an urgent need -- and have thought for
5 five years -- for the Scottish Prison Service to have
6 significant investment in information technology in
7 various sorts.

8 Q. I think that's probably what Sue Brookes told us as
9 well, unless I'm mistaken?

10 LADY SMITH: I think she did.

11 MR PEOPLES: She did say that it's the age-old problem of
12 resources.

13 A. Yes.

14 Q. You presumably get those pressures with the resources
15 you would like?

16 A. I think you have to do the best with what you have been
17 given. I think in the Inspectorate we do do that.
18 Likewise, the Scottish Prison Service, but technology
19 needs to move forward in the Scottish Prison Service for
20 a variety of reasons.

21 Q. Like Oliver Twist, you can ask for more, can't you?

22 A. You can ask for more and you can but hope.

23 Q. So this is just reflecting reality --

24 A. Yes.

25 Q. -- of the world we live in and the pressure on

1 resources. I think to take an example, you've said
2 earlier today that you would wish certain Victorian
3 prison establishments to close down as quickly as
4 possible. That now appears to be delayed again,
5 HMP Barlinnie is not going to be replaced by HMP Glasgow
6 for some time yet?

7 A. No.

8 Q. Presumably that does come down to that the funding and
9 resources are not available as yet?

10 A. I think we all understand that. In a time of fiscal
11 restraint it is difficult to prioritise prisons.
12 I think we all understand that.

13 Q. It's not one that perhaps the public are necessarily
14 sympathetic to prioritising, is it, in reality?

15 A. In reality, although I do think that understanding why
16 prisons need to be replaced is quite important and there
17 needs to be a media campaign around that.

18 Q. I think this theme of understanding is something that
19 again Sue Brookes emphasised, understanding no doubt of
20 society, understanding also of staff, of the people that
21 they're caring for, or managing and that's the building
22 block before you can really build the appropriate
23 arrangements and deal with them in an appropriate way?

24 A. For me, it's a method of community safety. In the sense
25 that if someone goes to prison it keeps the public safe

1 and I fully expect that. It's the job of the Prison
2 Service to do that. But it's also a current cultural
3 understanding that we look at the criminogenic factors
4 that caused them to tangle with the police in the first
5 place and reduce their risk to the community on release.
6 Currently we can't do that.

7 Q. In terms of methodology, I don't want to get too
8 detailed on this, but what we understood is that the
9 Care Inspectorate, which is inspecting care services,
10 uses what they describe as a quality framework, which
11 I think was developed on the back of national standards,
12 care standards. Do you use a quality framework based on
13 national standards?

14 A. No. We developed our own standards, but our standards
15 were based, for instance, where the Care Inspectorate
16 are involved, our Standard 7, transitions from custody,
17 was based in conjunction with the Scottish Human Rights
18 Commission to look at human rights issues and with the
19 Care Commission, so that they could use their standards
20 and put it into Standard 7.

21 Standard 9 for instance, which is the healthcare,
22 was designed with the Scottish Human Rights Commission
23 and Healthcare Improvement Scotland. Those are going to
24 have to be amended to take account of the recently
25 developed MAT standards.

1 Q. Could you just help us with the last bit?

2 A. MAT standards are the standards by which healthcare are
3 delivered.

4 Q. Do you use quality indicators?

5 A. Yes, we do.

6 Q. Does that involve, to some extent at least, a number of
7 key questions?

8 A. Yes, it does.

9 Q. Do you have guidance as to how the inspectors and others
10 who are being inspected, how they should understand
11 these questions and what they're designed to look for?

12 A. Yes, they're all on our website. They're easy read, if
13 you like. They're very accessible. Each standard has
14 an explanation of what the standard is. There is also
15 an explanation for each quality indicator. Before
16 inspectors are guest inspectors, we go through their
17 standard with them and we do all that.

18 The Prison Service have invited us in to explain our
19 standards. We have done that. They're readily
20 accessible. Readily understandable.

21 Q. Do you, like the Care Inspectorate, use a grading system
22 of --

23 A. Yes, we do, yes.

24 Q. They have six grades from unsatisfactory, weak,
25 adequate, good, very good and excellent. Do you have

1 similar standards?

2 A. Very similar, yes. It starts with good and ends up with
3 poor.

4 Q. How many do you have?

5 A. Six.

6 One of the things we looked at recently was whether
7 we could just reduce that to a RAG rating and just make
8 it red/amber/green, which is a whole lot easier, but we
9 decided that actually the six standards are very readily
10 understandable and they have a very clear definition of
11 what they all are.

12 Q. RAG rating, it might sometimes be colloquially called
13 a "traffic light system"?

14 A. Correct.

15 Q. Is that something that's been used down south?

16 A. Yes. It's been used in various locations actually. As
17 I say, we looked at various systems. If you look at
18 Ofsted for instance, they come out with a one symbol and
19 we felt that was inappropriate and actually it's better
20 to have a couple of goods, some satisfactorys, some
21 generally acceptables and if they have a poor we'll go
22 back in and look at that.

23 LADY SMITH: Did you think of using it in conjunction with
24 your grading?

25 A. What is that?

1 LADY SMITH: Did you ever think of using it in conjunction
2 with your grading?

3 A. As in the RAG system?

4 LADY SMITH: Yes.

5 A. Yes, we do. If you look at the independent prison
6 monitor reports on our website they use a RAG system
7 against all the nine standards. One of the difficulties
8 that the Scottish Prison Service has is that where each
9 month or each bimonth or each quarter, depending how
10 often it's produced, has amber, but by the end of the
11 year we have turned it to red they don't understand
12 that.

13 I said, hang on a minute, if it's been amber all the
14 way through then basically you have not tackled it and
15 it's still poor so in our opinion it's now red at the
16 end of the year.

17 LADY SMITH: That may not be too difficult to follow if you
18 do it on the basis of a persistence of a red flag risk
19 is going to make it higher and higher a risk the longer
20 it goes unaddressed, yes?

21 A. That's my contention too.

22 LADY SMITH: Mr Peoples.

23 MR PEOPLES: In terms of methodology, again keeping it at
24 a fairly high level, I don't think we need to get into
25 too much detail, but the Care Inspectorate I think told

1 us that they look at a range of matters in the course of
2 an inspection and they're looking at and evaluating
3 matters such as the quality of care, the environment,
4 staffing, management, leadership.

5 I suspect you're no different?

6 A. No different.

7 Q. What they did say is that they use specialist inspectors
8 for inspecting children's services and they felt that
9 was important. I don't think you have the resources to
10 do that, have you?

11 A. I don't. Hence why when we do go in with children we go
12 in with the Children's Commissioner, who comes in with
13 us.

14 Q. You don't have what we would call a specialist team of
15 inspectors for young people or even young people under
16 18?

17 A. Or women, health or all of those things.

18 Q. You are trying to bring with you on particular
19 inspections people who may have a sufficient expertise
20 to make up for that --

21 A. Yes. For instance, in our recent inspection of Polmont
22 we had two members of the Children's Commissioner with
23 us and we also had a member of the CYCJ, Children and
24 Young People's Crime and Justice or whatever. So, yes.

25 Q. I think it was Helen Happer who said that when she --

1 there are key questions and she said there was
2 particularly certain key questions within their quality
3 indicators of Key Question 7, if I remember, was one
4 that they focused on particularly for the Care
5 Inspectorate, but at the end of the day she reduced the
6 matter to a single question during evidence, although
7 there were a number of key questions.

8 She said the \$64,000 question which they really ask
9 themselves in the broad sense is what difference is this
10 service -- the one being inspected -- making to children
11 and young people, when they are examining children's
12 services. Is that a similar question to the one that
13 you might pose?

14 A. I think when you have a look at quality indicators,
15 there is a real risk that it can become an audit and my
16 job in particular is to make sure that it isn't
17 an audit. That we look at the thing in the round and
18 come up and say: what difference are we making as
19 an Inspectorate?

20 One of the reasons I'm working with Dundee
21 University is to look at that, to find out what
22 prisoners think we make a difference.

23 Q. This is also directed at what difference the service is
24 making to children and young people, which is an equally
25 important broad question --

1 A. Very important, yes.

2 Q. -- that should be asked?

3 A. Yes.

4 Q. I accept you have the effectiveness of the inspection
5 body, but also how effective is the service?

6 A. Yes.

7 Q. Even if you depart from the key questions or the quality
8 indicators you should still be looking at the big
9 question?

10 A. Yes, what difference does it make to --

11 Q. And stand back from the trees and look at --

12 A. Yes. It is that helicoptering approach that makes my
13 role and my deputy's role very important.

14 Q. At the end of the day, you may be an inspector as such
15 on a particular inspection, you may just be an observer
16 or you may simply be back at headquarters and will then
17 see the results of the inspection in draft and you'll
18 have an input, will you?

19 A. Apart from Kilmarnock, where I had no input, yes.
20 I certainly do have an input. I write the overview at
21 the front, which is literally that.

22 Q. Does that, on occasions, mean that you disagree with the
23 initial, perhaps, assessment of certain matters?

24 A. It does. It does on occasion, yes.

25 Q. I presume your team realise that you're doing that for

1 very good reasons, it's not a criticism of them, but

2 your judgment might be different from theirs?

3 A. Everything we do goes through a three-way review and

4 where my judgment is different, they come to

5 an agreement that they allow me that difference, yes.

6 Q. What we were also told ... I think this is something

7 that you have told us already, that your Inspectorate

8 uses as part of the methodology, the use of

9 self-evaluation.

10 I think the Care Inspectorate now have changed their

11 approach. They don't do a pre-inspection

12 self-evaluation, they do it during the inspection

13 because they decided it was better to do it that way, in

14 their view. I'm just telling you that, because I think

15 you still do it before inspection?

16 A. We do.

17 Q. You ask them to submit something to you?

18 A. We do.

19 Q. Is it a questionnaire basically?

20 A. It's not a questionnaire. It's a list of questions.

21 One of which is to take for example the previous

22 recommendations from the previous inspection report and

23 give us an idea of where they are on progress on that.

24 We do ask for that during the four years anyway, but

25 I want their view, because the governor may change,

1 things have changed. Their view of how they're doing,
2 yes.

3 Q. You have made a point there, which maybe I'll just pick
4 up, it's not just that by the time of the next
5 inspection you are looking at whether they've progressed
6 or not, you are doing that between the two
7 inspections --

8 A. Yes, we are.

9 Q. -- and seeing if any recommendations have been
10 progressed or not.

11 Say between inspections, a four-year cycle, that you
12 had made several recommendations and you felt there was
13 a degree of urgency in what you were recommending and
14 what you are getting back isn't, in your view,
15 satisfactory progress, how do you deal with that?

16 A. That's always a difficult one. If it's an urgent one,
17 right, when we're in the middle of inspection, we will
18 escalate immediately and it depends on the severity as
19 to how or where we escalate it.

20 It may be up to the Chief Executive of the Health
21 and Social Care Partnership, it may be up to the Chief
22 Executive of the Scottish Prison Service, it may be up
23 to the Cabinet Secretary. It varies very much on what
24 it is and where it is and the level of severity. It may
25 be I just trot in to the governor and say, "Hang on

1 a minute, son, we need to sort this one out".

2 Q. You don't have powers of enforcement?

3 A. I don't have powers of enforcement.

4 Q. Unlike the Care Inspectorate?

5 A. Unlike the Care Inspectorate.

6 Q. You can't just initiate something. You can simply

7 recommend monitored progress with a recommendation and

8 if it's not satisfactory you have to hand it over to

9 others --

10 A. Yes.

11 Q. -- at whatever level to take some appropriate action?

12 A. Yes.

13 Q. I don't suppose in the case of prisons the ultimate

14 sanction of closure is really -- it doesn't happen?

15 A. I find there's a very good relationship with both

16 myself, the Scottish Prison Service, Scottish Government

17 and the Cabinet Secretary. There is a degree of

18 responsiveness that I appreciate.

19 Q. I follow that. But in the care sector a care service

20 can ultimately be closed down?

21 A. There have been times I have wanted to close down

22 a prison, yes.

23 Q. But you don't have that power?

24 A. Not at all.

25 Q. I suppose in theory the Minister could do it, but it's

1 not really seen as part of the ultimate sanction in
2 terms of the scheme?

3 A. No.

4 LADY SMITH: Of course the way it works in the Care
5 Inspectorate system is the service has to be registered
6 in the first place, so there has been an assessment of
7 whether they're fit for registration.

8 A. Yes.

9 LADY SMITH: And the sanction is to examine the state of the
10 service and a view may be reached that this service is
11 not only not meeting the standard required, but we have
12 no confidence that they're going to be able to meet it,
13 so we deregister and that means they can no longer
14 operate.

15 With prisons, there is no prior registration. There
16 is no ability to register.

17 A. No.

18 LADY SMITH: I'm interested in this, though, bearing in
19 mind, and sparing your blushes, the good relationships
20 you have may be because of you and the good work you do.

21 If one were to go down the road of looking for
22 a sanction that your role would have available to them
23 as one of the tools in their knapsack, what could it be?

24 A. I genuinely don't know. I've spent some time, because
25 that question is in here and my overwhelming feeling was

1 that to have the powers of enforcement would mean that
2 we would then have a managerial responsibility in one
3 dimension, and I think that is so different.

4 I know the Care Inspectorate can take away the
5 registration and close the thing, but let's say we
6 didn't like the way one prison was being run, what
7 sanctions could we actually impose? The only sanction
8 realistically is to insist that the prison is run
9 differently. That would mean us taking a managerial
10 responsibility for how it's run, and I don't think that
11 is appropriate for a scrutiny body.

12 LADY SMITH: Or, indeed, having say, the power to direct
13 that the governor must be removed?

14 A. Correct.

15 LADY SMITH: You are telling Scottish Ministers then that
16 they have to dismiss somebody possibly, unless they can
17 move them into another role.

18 A. Yes.

19 LADY SMITH: That is a huge power to have and I can see that
20 it may just not feel right that the Inspectorate hold
21 that power.

22 A. I'm very clear that it's not right the Inspectorate
23 holds that authority.

24 LADY SMITH: Mr Peoples, are there any follow-up questions
25 that you want to ask on this?

1 MR PEOPLES: I want to come back to that, but I'm not at
2 this moment --

3 LADY SMITH: Not just now, thank you.

4 MR PEOPLES: What you are saying, to her Ladyship, is that
5 in the context of the what I could call prison services,
6 and some of them are private, they are not all run by
7 the State.

8 A. Yes.

9 Q. There is no system of registration of prison services,
10 private or State-run?

11 A. No.

12 Q. Also just on that point, there's no workforce regulator
13 for the prison workforce?

14 A. No.

15 Q. Unlike the social care workforce?

16 A. Yes.

17 Q. There is no requirement to have any particular
18 qualifications to be part of the prison workforce in
19 a particular post, is there? It may be --

20 A. There is no legislative requirement. However, the
21 Scottish Prison Service has a series of accredited
22 qualifications for prison officers.

23 Q. They decide what they want?

24 A. They decide, yes.

25 Q. It's not determined by an external --

1 A. There is no external accreditation. Although there used
2 to be on the use of force.

3 Q. Whereas the SSSC, the workforce regulator for social
4 care, does have the ability and has done, has laid down
5 minimum qualifications and indeed they're trying,
6 I think, over time, to increase these qualifications for
7 particular levels of care workers --

8 A. Yes.

9 Q. -- and social workers and so forth. I think ideally
10 they might like to move to a degree level qualification
11 if possible.

12 We don't have that in the prison workforce context?

13 A. No, we don't.

14 Q. Of course, we don't, therefore, have, when it comes to
15 discipline, any external authority that can remove
16 a person from the environment even if the employer might
17 want to keep them.

18 We have the General Teaching Council for Scotland
19 that was established in 1964, which effectively can end
20 your employment as a teacher.

21 We have the NMC that can do that for doctors and we
22 have the -- sorry -- GMC, but we also have the NMC for
23 nurses. They can also be subject to proceedings and
24 that can effectively terminate their employment, because
25 they don't have the necessary registration to continue?

1 A. Yes.

2 Q. There is nothing of that kind with the prison workforce,
3 is there?

4 A. None.

5 Q. Any disciplinary action is very much down to the
6 Scottish Prison Service; is that correct?

7 A. Yes.

8 Q. Under their own internal disciplinary procedures and
9 policies?

10 A. Yes.

11 Q. Is that the position?

12 A. Yes.

13 Q. In that regard, just so I'm clear, the Prison Service is
14 part of an executive agency of Scottish Government and
15 operationally to a degree independent. If it came to
16 removal of an individual within the service, at whatever
17 level, whether governor or lower, who decides?

18 A. The Scottish Prison Service, I think, decide for their
19 own staff. Obviously there is the issue if it's
20 a criminal matter then the police will take action. In
21 terms of the Chief Executive of the Scottish Prison
22 Service, that is decided at a Cabinet Secretary,
23 Scottish Government level.

24 Q. That's the only one?

25 A. Yes, as far as I know.

1 Q. If there was, say, someone hypothetically wanted to
2 remove a governor, that would have to come through the
3 chief executive and the processes within the service?
4 A. Yes.
5 Q. It couldn't be done under current arrangements by, for
6 example, the Scottish Ministers?
7 A. I don't know, I wouldn't be able to answer
8 authoritatively on that.
9 Q. They might be able to put informal pressure. No doubt
10 these things may happen, but you're not sure how that
11 would operate in that situation?
12 A. My understanding is, but I could well be wrong -- it's
13 not something I've looked at -- it's entirely down to
14 the Scottish Prison Service who they employ, how they're
15 employed and how long their employment lasts.
16 Q. Just on that matter, is there any form of mandatory
17 training that prison staff are required to undertake
18 and, if so, who's mandating that?
19 A. The Scottish Prison Service mandates it.
20 Q. They may for example, and I don't know if this is the
21 case, but let's assume that they mandate child
22 protection training, training on restraint, these are
23 two examples that maybe are particularly relevant for
24 our purposes, that would be a matter the Prison Service
25 would do --

1 A. Yes.

2 Q. -- and say all officers must do a certain amount to
3 a certain standard and refresher training and so forth?

4 A. Yes.

5 Q. That would be done --

6 A. And they do, yes.

7 Q. -- across the board?

8 They do?

9 A. They do, it's one of the things we check when we do
10 inspections.

11 Q. In terms of professional development and supervision and
12 apart from what is mandatory, how much discretion does
13 an individual governor have on an establishment as to
14 how the workforce develop?

15 A. I think that's a question you have to ask the Scottish
16 Prison Service.

17 Q. You don't concern yourself with that?

18 A. We notice discrepancies and differences between each
19 prison in terms of what I would call the key training,
20 use of force, suicide prevention, health and safety, all
21 of those things. Some prisons have a higher percentage
22 compliance rate. Other prisons have less of a compliant
23 rate.

24 Q. You are noticing differences across --

25 A. We do notice, we do raise it.

1 Q. Even if, for example, restraint might be a mandated
2 area --

3 A. And it is.

4 Q. You see differences across the establishments?

5 A. Yes.

6 Q. Would that reflect similarly differences in how the
7 training is applied in practice rather than differences
8 in the training?

9 A. It doesn't seem to, to date, but we'll find that out
10 when it comes to the use of force review.

11 Q. You'll be able to get some idea from that?

12 A. Yes.

13 Q. Just in terms of the collection of statistics, are there
14 any statistics on these matters?

15 A. Yes, there are.

16 Training is, the statistics and data are well held
17 and we can analyse them and do. In terms of both the
18 mandatory training, but also the additional training,
19 mental health, first aid, trauma-informed practice, all
20 of those things. The things we pick up when we do the
21 inspection.

22 Q. You can work out if you go to a particular place what
23 training they should have received --

24 A. Yes.

25 Q. -- and you can compare it with whatever records --

1 A. Yes.

2 Q. -- show about the training actually received?

3 A. Yes.

4 Q. How can you check the accuracy of the record?

5 A. We can. (a) so it says, "Wendy has had this training,
6 that training and that training". We can then go and
7 talk to Wendy and say --

8 Q. And you do?

9 A. -- when did do you it?

10 Q. You do that?

11 A. Yes.

12 Q. That is your cross-check?

13 A. Yes.

14 Q. You don't just rely on what you are told or what the
15 records show?

16 A. No.

17 Q. I'm just asking.

18 A. No, not a problem. Everything is triangulated.

19 Q. This is presumably the modern methodology anyway about
20 doing some sort of scrutiny. You want to look at
21 a range of sources, check one against the other --

22 A. Corroboration.

23 Q. -- to see if they match or don't match and then you
24 start asking questions if they don't match?

25 A. Yes, and start digging for the evidence.

1 Q. Or call for improvements?

2 A. Or call for improvement.

3 Q. Just going back to what we heard from the Care
4 Inspectorate, Helen Happer was asked about
5 self-evaluation. How she put it was: it's a tricky
6 concept. You are nodding, so I take it you are not in
7 disagreement with that expression.

8 She said it was a tricky concept for a regulator.
9 What she said I think in essence was that for
10 self-evaluation to be effective it must be honest, as to
11 strengths and weaknesses, and that that can be difficult
12 if the disclosure is being made to a regulator. Do you
13 think along --

14 A. I absolutely agree. We looked at what we could do in
15 terms of self-evaluation, particularly looking at the
16 Education Scotland version of self-evaluation, and came
17 to the conclusion that actually what we had wasn't as
18 rigorous perhaps, but was possibly more effective.

19 For instance, one of the things I do pre-inspection
20 is I go and visit the prison and talk to the governor
21 and/or his team or her team, and say: be honest with us,
22 tell us (a) your good things, of course we want to hear
23 that; and (b) where you really are struggling or where
24 you are experiencing challenges and what your planning
25 is to overcome those challenges.

1 The last thing you want is for us to walk in there
2 being told the garden is rosy and we find that actually
3 the garden is dead. Please be honest with us. And they
4 are incredibly honest. It's really interesting.

5 They're very upfront and say:

6 "This is something we recognise is an issue. We
7 have not managed to resolve it."

8 Q. On the issue of recognition, you feel that they do
9 recognise sometimes where the weaknesses are and what
10 the issues are?

11 A. Yes.

12 Q. It's not a matter of simply they take a rather misplaced
13 view of how good they're doing?

14 A. No, no. Rarely. I've not met that -- I've met it once.

15 Q. In terms of an inspection now, I'm just going back to
16 what I think Mr MacFadyen may tell us, that he seems to
17 recall in 2015 that one thing he recalled was that when
18 inspectors went to inspection one of the things that
19 happened, that he recalls, is it started with
20 a presentation by the prison governor, which to some
21 extent you are not going to present something in a bad
22 light. You are going to try and be as positive and
23 highlight all the good things and maybe play down any
24 bad things.

25 Does that happen today?

1 A. I made that absolutely clear, that's not what we're
2 looking for.

3 Q. Does it happen? Do they make presentations these days?

4 A. I've only noticed one. I've done all the prisons, some
5 of them twice. Only one has put a rosy glasses spin on
6 what they were trying to do.

7 Q. But they have done a presentation?

8 A. Yes, they all do.

9 Q. They all do anyway?

10 A. Yes.

11 Q. It does happen?

12 A. It does happen.

13 Q. But they're being honest and transparent?

14 A. Yes.

15 Q. So far as you can judge?

16 A. We send a pro forma suggestion of what the presentation
17 should look like, which includes a slide on challenges.

18 Q. I suppose if you saw a perfect presentation it would be
19 too good to be true, wouldn't it?

20 A. A perfect presentation is one which shows us all the
21 good things they're doing, because that's really
22 important, the challenges they face --

23 Q. We are using a different definition of "perfect". If
24 perfect was meant to say we're doing everything well --

25 A. I've only seen one of those, and I was a little

1 surprised.

2 Q. Yes.

3 What was also said about self-evaluation is that it
4 was important for those making the evaluations to
5 understand that there has to be continuous
6 self-evaluation between inspections. I assume you agree
7 with that, the need for continuous self-evaluation
8 outwith the procedures?

9 A. We don't ask as an inspection team for an update on
10 self-evaluation. What we ask for is where we have made
11 recommendations. We tend to make a lot of
12 recommendations, many of which could be seen as advisory
13 points. We choose up to ten, but usually around seven,
14 key recommendations.

15 After six months, we ask them how they're doing.

16 After a year, we ask them how they're doing.

17 Then, we then wait until the next inspection.

18 If we have an area of the inspection that comes out
19 as poor, we come back in very, very quickly.

20 If one of the key recommendations is not showing any
21 progress, we come back in as well.

22 Q. I think she was making a more general point that the
23 service must understand that they don't just have to
24 think about how they do things around the time of
25 inspection. They have to be continuously, without

1 reporting back to you --

2 A. Correct, yes.

3 Q. You agree with that?

4 A. Yes, absolutely.

5 Q. Perhaps this is also a difference between your
6 Inspectorate and the Care Inspectorate. The Care
7 Inspectorate told us about the notifications process,
8 which is mandated by legislation relevant to that
9 particular Inspectorate. That there are certain things
10 that the provider of the service must report to the
11 Inspectorate, "notifiable events" I think was the
12 description.

13 That could, for example, be an allegation of abuse
14 or the use of restraint. There's no equivalent, is
15 there, in the case of your Inspectorate?

16 A. No.

17 Q. Is that something you would like?

18 A. I ask the Prison Service for a range of things.

19 For instance, we are routinely recorded into all the
20 population statistics, significant incidents, any staff
21 notices that go out, so we get those anyway and then
22 I can always ask for anything else.

23 Q. We have already covered that you don't have
24 a responsibility for investigation of complaints. You
25 don't have powers of enforcement as such, or the ability

1 to issue an improvement notice. You have explained that
2 there are differences in any event about how you could
3 deal with a problem with a prison.

4 A. Yes.

5 Q. There is obviously no power to cancel registration
6 because there is no registration process?

7 A. No.

8 Q. I think what was said -- again this is maybe going back
9 to the \$64,000 question and also the general way of
10 looking at these matters, is that whatever their precise
11 role and function, they said child protection is a key
12 consideration in all inspections of children's services.

13 Can I ask you the same question: is that something
14 that would be a key consideration in all inspections by
15 the Inspectorate?

16 A. Yes. For instance, to give an example of that, we took
17 advice when we do our pre-inspection survey as to
18 precisely how we would manage child protection in that
19 instance, particularly since it's a very small number in
20 Polmont. We approached the English prison service to
21 see how they do it and talked to the Children's
22 Commissioner and talked to the Care Inspectorate and we
23 vary slightly our approach to how we do the
24 pre-inspection survey for under 18s.

25 Q. Can I just be clear about one point, because I don't

1 think I brought this out? There are only five young
2 people under 18 currently, four in Polmont and one in
3 Stirling. But Polmont has a number of young people
4 between 18 and 21, maybe in the 100s, 150 maybe,
5 thereabouts?

6 A. Yes.

7 Q. Not the numbers we had in the early 2000s, but they
8 still have a significant young person population?

9 A. They certainly do.

10 Q. It's a mixed population these days?

11 A. Yes.

12 Q. Having said that child protection was a key
13 consideration, they added, "The primary role in
14 providing a safe environment rests with the provider".

15 Is that your view as well?

16 A. Absolutely.

17 Q. Just trying to finish off this sort of comparison, if
18 you like. Education Scotland also gave evidence to us
19 on 28 September this year and this was to do with the
20 work of the HMIE, the Inspectorate arm of Education
21 Scotland.

22 As I understood it, if the Inspectorate, either
23 during inspection or otherwise, had safety concerns,
24 particularly if they felt a young person or a group of
25 young persons were at significant risk, their response

1 is they would just raise it with the police as the
2 appropriate authority.

3 Is that the same with your Inspectorate?

4 A. If we have significant concerns we have a policy whereby
5 we will raise it with the police if we think there is
6 an issue.

7 Q. You are no different in one sense?

8 A. No.

9 Q. They, I think -- this is the same as your
10 Inspectorate -- have no power, unlike the Care
11 Inspectorate, to take enforcement action and indeed
12 I think their powers, as I understood it, were pretty
13 limited actually?

14 A. I don't know what powers they have, but --

15 Q. Very few I think is what they said. In terms of -- they
16 don't have power to take action themselves. They have
17 to effectively send it to someone who they consider is
18 the party who has the power to take the action they
19 desire?

20 A. Yes.

21 Q. I think in a way that is the way you operate?

22 A. Absolutely the way we operate.

23 Q. I suppose unlike your statutory appointment, Education
24 Scotland and the Inspectorate currently, at least as
25 an executive agency, although it was said they operate

1 independently of ... I think the expression was Scottish
2 Government policy colleagues, so there is a form of
3 operational independence, but ultimately their masters
4 are Scottish Government?

5 A. It's a very difficult question and one we have debated
6 in the National Preventive Mechanism. Given that the
7 Scottish Government employ and pay my staff, as opposed
8 to the volunteers, then what independence do we actually
9 have? The other issue is the independent prison
10 monitors, who exactly are they independent of?

11 So the visiting committee, ex-visiting committee
12 people, are divided on whether they're independent of
13 Government or whether they're independent of HMIPS.

14 My argument is that as volunteers they're not
15 independent of HMIPS, since we recruit them, train them
16 and provide appraisals, but they are independent of the
17 Scottish Government. Although I'm paid by the Scottish
18 Government, I have been appointed by the Queen, and then
19 King, and I see myself, as my independence, that I can
20 publish without any interference and that's where my
21 independence comes from.

22 Q. In terms of -- you publish an annual report?

23 A. Yes, I do.

24 Q. You can publish other reports from time to time and your
25 inspection reports are published?

1 A. Yes.

2 Q. In terms of the annual report, is that submitted to
3 Parliament not to the Scottish Government?

4 A. Yes, it is.

5 Q. So you are accountable to Parliament --

6 A. Yes.

7 Q. -- not to the Scottish Government?

8 A. Correct.

9 LADY SMITH: That's in terms of the legislation?

10 A. Yes, in terms of the legislation.

11 MR PEOPLES: There is an important distinction?

12 A. There is very much an important distinction, yes.

13 I think for me the biggest issue is that I'm allowed
14 to publish, if you like. There are no blocks or bars in
15 my publication. So if you look at Ireland, when they do
16 an inspection report it has to go through the Minister
17 for approval before it's published. I don't have that.

18 Q. I think the Inspectorate within Education Scotland, it
19 was explained to us that the purpose of the inspection
20 is to report on quality of educational provision. There
21 was no power to investigate complaints as such and no
22 role in detecting abuse.

23 In a sense there is a similarity between that and
24 your Inspectorate as well --

25 A. Yes.

1 Q. -- and a difference between that and the Care
2 Inspectorate?

3 A. Yes.

4 LADY SMITH: Wendy, a short question. When you said
5 "Ireland" a moment ago, do you mean Ireland or Northern
6 Ireland?

7 A. I mean Ireland, not Northern Ireland.

8 LADY SMITH: I thought it probably was. Thank you.

9 MR PEOPLES: Then we are back to the issue of reform. What
10 I think we were told is that so far as Education
11 Scotland and particularly the inspection function, that
12 the Scottish Ministers took a decision in June 2021 to
13 remove the inspection function from Education Scotland
14 in recognition of the need for an independent
15 inspectorate. We're told there is no draft bill as yet
16 on the matter, although I think there is an expectation
17 it might be included in the programme for 2023/2024.

18 Is that your understanding?

19 A. That is my understanding as well.

20 Q. At the moment we don't really know what powers the new
21 body will have and whether they'll be similar to the
22 Care Inspectorate powers, including powers of
23 enforcement. Although there was a suggestion in the
24 evidence of Janie McManus that there was some doubt
25 whether they would have the full enforcement powers that

1 the Care Inspectorate have?

2 A. The Care Inspectorate, yes.

3 Q. I don't know if that's something --

4 A. I couldn't comment on that.

5 Q. Ultimately it will be a matter of what the final

6 legislation says?

7 A. Yes.

8 Q. That was something I think she, if I understood her,

9 indicated might be the case, that it wouldn't

10 necessarily be as full a power --

11 A. Which will be interesting, because when they come into

12 prisons with us they actually operate under my

13 authority. So there may be a conflict, although there

14 hasn't been with the Care Inspectorate.

15 Q. HMIE and the Care Inspectorate do join the inspections

16 that you carry out under your functions?

17 A. They do.

18 Q. To assist?

19 A. Yes.

20 Q. But you are still leading those inspections?

21 A. That's right.

22 For example when there is an urgent escalation

23 required, it comes through me.

24 Q. In terms of conclusions in the inspection reports that

25 are issued by the Inspectorate, albeit with any

1 assistance for the inspection, ultimately it's the
2 Inspectorate's views that will prevail, is it?

3 A. Yes.

4 Q. Although you'll take account of what may have been said
5 by the other bodies that were involved in giving the
6 assistance, is that the position?

7 A. Yes. They hold the expertise, I would be very foolish
8 to undermine that.

9 Q. No, but ultimately it's your call?

10 A. It's my call. It's my decision. It's my authority.

11 LADY SMITH: Wendy, you were talking a few moments ago about
12 the matter of the independence of your role and the work
13 of your team. Under the legislation, Scottish Ministers
14 do of course have the power to refer any matter to you.

15 A. Yes, they do.

16 LADY SMITH: Which at first blush one might think indicates
17 an ability on the part of Scottish Ministers to
18 interfere or make requirements of you.

19 Tell me how it actually works, if there is
20 a referral.

21 A. Not a problem. The Scottish Minister will instruct me
22 to do whatever, look into whatever, and set out very
23 clear terms of reference and parameters. For instance,
24 the Death in Custody review, it was very, very clear
25 that we could not look at the Fatal Accident Inquiry

1 process. We could comment to some degree, we couldn't
2 not avoid comment on that to some degree.

3 So where that might interfere with our own work we
4 can ask for and receive additional resource support.

5 LADY SMITH: Otherwise, it sounds as though you are left
6 with a wide discretion as to how you go about your task
7 of responding to your terms of reference?

8 A. I certainly am, and I rather enjoy it.

9 LADY SMITH: This is sounding a bit like chairing a public
10 inquiry.

11 Thank you.

12 A. Yes.

13 MR PEOPLES: Except there is a salutary lesson from
14 Dr Chiswick that he was given a narrow remit about
15 Glenochil, but considered with justification that he
16 could look at wider issues of the service and how it
17 approached Mental Health Services in 1985. When he
18 produced his report it clearly didn't go down with the
19 Ministers on the bigger issues and I think he felt that
20 in some ways they didn't fairly represent his
21 conclusions and indeed to some extent simply focused on
22 how there was no evidence that the particular regime
23 played any part in the deaths that had led to the
24 report.

25 A. Yes.

1 Q. So there are dangers, even if you think you have quite
2 a wide remit and a freedom to investigate, that at the
3 end of the day you will present something and they will
4 assess what, how they will respond to it?

5 A. They will, yes. We see that, and you mentioned it
6 before, with time out of cell. That's been recommended
7 by six or seven successive chief inspectors, but it
8 doesn't alter much.

9 Q. That maybe brings us back to your report on page 6, if
10 I may come back to it.

11 This is the question of how effective the service is
12 in detecting abuse and you have made your position clear
13 what the view is. What you do say is, I think, that
14 inspection reports over the years have raised a range of
15 concerns. I think you are seeking to give us some
16 examples in the report that you've produced for us and
17 perhaps the first example is quite a good one, because
18 we've just been discussing time out of cell, otherwise
19 probably known as "social isolation", is it?

20 A. Yes, that's my term.

21 Q. It may be a perfectly accurate way of describing it.

22 You say that that is something that has been
23 frequently referred to in reports and has been really
24 a concern since the Inspectorate was formed in the early
25 1980s?

1 A. Yes.

2 Q. I think, by way of illustration of that, you refer us,
3 do you not -- in that section, under "Social isolation,
4 time out of cell", page 6 -- to what was said in
5 an inspection report in 1990, relating to Polmont, and
6 what was said in a recent annual report of 2021/2022?

7 A. Yes.

8 Q. I'm not going to read it all, but I think basically it's
9 the same concern, is it? The concern about the amount
10 of time out of cell or rather the lack of time out of
11 cell and to some extent the absence of purposeful
12 activity or meaningful activity, particularly of the
13 remand prisoners?

14 A. Yes, it's still a major concern.

15 Q. That is 40-plus years on?

16 A. Yes.

17 Q. Can I ask you this, you might want to think about how
18 you answer this one? In your opinion, is it an abusive
19 practice to keep prisoners in their cells for very long
20 periods without sufficient purposeful or meaningful
21 activity?

22 A. Yes.

23 Q. I suppose the consequence of that is keeping them in
24 a locked cell for example for up to 23 hours a day is
25 involving them, I suspect, in your view, a denial of

1 fresh air and exercise for most of the day and that that
2 maybe is one of their basic human rights?

3 A. There are two basic human rights, well laid out in the
4 Mandela Rules.

5 One is for an hour in the fresh air.

6 The other one is two hours of meaningful
7 conversation, whether that's with other prisoners or
8 with staff.

9 Both of those are conflicted in keeping people in
10 a cell 23 hours a day.

11 Q. The Mandela Rules are an international set of rules that
12 have been agreed by --

13 A. Yes, agreed by the United Nations.

14 Q. That are meant to look at -- particularly it's at the
15 application ... is this to all persons who are kept in
16 detention or to a particular group?

17 A. Yes, everybody.

18 LADY SMITH: These are the fundamentals of meeting the basic
19 needs of both body and mind, aren't they?

20 A. They are. They absolutely are, yes.

21 MR PEOPLES: Now --

22 A. There was some justification I think during COVID,
23 because the number of deaths that occurred were very low
24 indeed, but there was no justification in my mind for
25 that happening to young people.

1 Q. By way of other matters, you have picked up over the
2 years, not just during your stewardship but earlier on,
3 is that you can find scattered in the reports mention of
4 high incidence of young people being placed on report
5 and the apparent trivial nature of the offences. Has
6 that continued to be a theme that you pick up?

7 A. No.

8 Q. Has that been addressed?

9 A. It's been addressed but recent reports haven't found it
10 and, on the contrary, Polmont in the last
11 year-and-a-half, has seen a significant shift, to the
12 extent that their segregation unit has at times been
13 completely empty.

14 Q. I think we heard some evidence from Sue Brookes that
15 having been a previous governor of Polmont from 2012 to
16 2017 that she made various efforts to reduce the use of
17 the orderly room as a punishment --

18 A. Significant efforts, yes.

19 Q. And deal with matters in a very different way --

20 A. The current governor is the same.

21 Q. Using various techniques, including mediation --

22 A. Restorative justice, yes.

23 Q. Are you seeing the fruits of that?

24 A. Yes, very much so.

25 Q. Sanitation, on page 7, you mention that the early

1 reports during the period of the Inspectorate made
2 mention of concerns. Not just the sanitation within the
3 accommodation, the dormitory accommodation. I suppose
4 there is also the issue of slopping out, I suppose --

5 A. Yes.

6 Q. You haven't mentioned it as such, but I think we're all
7 aware that that was another concern?

8 A. Yes.

9 Q. Just looking at what you described you mean by the
10 sanitation provided that was mentioned in the earlier
11 reports, you quote from one report, I take it:

12 "Sanitation is provided by porta potties and in some
13 small dormitory accommodation up to three people may
14 have to share one of these. Furthermore, there is no
15 water to wash hands after using the potties during
16 periods of lock up, although disinfectant wipes help in
17 this respect."

18 That was happening in the 1980s?

19 A. Yes.

20 Q. Slopping out I think survived until well into the new
21 century?

22 A. They did, yes, unfortunately, yes.

23 Q. The description here, bearing in mind the human rights
24 angle, how close are we getting to being in Article 3
25 territory? I'm sure that's something you have thought

1 about.

2 A. I think they were reaching breach of Article 3 at that
3 point, but not any more. They all have in-cell
4 toiletries and sinks.

5 Q. Slopping out, I take it, would also fall into Article 3
6 territory in your view?

7 A. Yes.

8 LADY SMITH: I think that was successfully argued before the
9 courts, Mr Peoples --

10 MR PEOPLES: I'm sure it was.

11 LADY SMITH: -- at the time of the challenge.

12 MR PEOPLES: I'm sure it was.

13 Carrying on with another example of matters you have
14 picked up. It's contact with family and friends.

15 The reports have raised a number of issues over the
16 years, including remand prisoners being unable to earn
17 an income and therefore unable to use the phone to
18 contact families, although you say this has now been
19 overcome with the standard issue of free phone calls.

20 How long did it take to get to that point?

21 A. The free phone calls actually occurred at the beginning
22 of the COVID crisis, when they introduced in-cell
23 telephony and they got 300 minutes a week or whatever it
24 is. It's wonderful.

25 Q. It was an issue raised in a statement that was read by

1 a person whose daughter died in Polmont. Linda Allan
2 gave a statement to the Inquiry and had some concerns
3 about the communication facilities available, not simply
4 the phones, some of which weren't working she said, but
5 also even the rather -- I think she said draconian
6 system of how emails can be sent and responded to.

7 A. Yes.

8 Q. What is your view about that?

9 A. I completely agree. I think there is three or four
10 reasons why prisoners should access telephony and
11 information technology.

12 One of them is the evidence that contact with family
13 and friends has one of the positive factors of
14 rehabilitation and we need to recognise that.

15 Secondly, for children whose parents are
16 incarcerated. It's really important those children are
17 able to keep in touch. There should be a level of
18 privacy around that and the number.

19 My third one is that if we don't have free phone
20 calls and people are on remand and cannot earn any
21 money, the money to get calls is forced upon the family
22 and that can lead to destitution.

23 Q. There are a number of strands to that. You have
24 mentioned the need for regular visiting opportunities?

25 A. Yes.

1 Q. I think that's a point you mention about the number of
2 permitted visits were too few?

3 A. I think so, yes.

4 Q. Obviously privacy, because I think Linda Allan mentioned
5 that when she spoke to her daughter on the telephone,
6 when the daughter was in some sort of general area and
7 there was lots of people around, it wasn't easy to have
8 a private conversation?

9 A. Correct, yes. The introduction of in-cell telephony has
10 overcome that. Although you may have to share a cell.

11 Q. The other issue, I suppose, is the accessibility of
12 communication. If you have to have a money-based system
13 and you don't have the money, then effectively there's
14 no effective access?

15 A. Correct. That has been overcome by the issue of in-cell
16 telephony and free telephone calls.

17 Q. But only very recently?

18 A. But only very recently.

19 Q. How long should it take in a civilised society to get to
20 that point?

21 A. I'm not going to answer that.

22 Q. Not 2020? No?

23 We can maybe make that judgment for ourselves.

24 You say that food is something that does arise in
25 reports?

1 A. All the time.

2 Q. But you haven't found any evidence it was being used as
3 a form of punishment. I think in the good old days, in
4 certain institutions and care settings, and indeed
5 prison settings, you could use food as a punishment?

6 A. I think the punishment in the 18th century was bread and
7 water, wasn't it?

8 Q. Yes, but I think in the 19th and 20th centuries there
9 may well have been powers to restrict diet and other
10 forms of punishment of that nature in prisons?

11 A. Definitely. I've not seen any evidence of that at all
12 and having just finished our inspection of Polmont, the
13 quality of the food was good. The young people all
14 complained about the quantity.

15 Q. I think in fact we'll no doubt find this out when we
16 hear from the Scottish Prison Service, in relatively
17 modern times there was the power to deprive the person
18 of a mattress. Does that surprise you?

19 A. No, sadly not.

20 Q. You have a section on page 7 that starts, it is headed
21 "Treatment by staff". You say that in that context
22 there are difficulties in detecting abuse. You have
23 made that point already so far as the Inspectorate is
24 concerned. You say a number of comments have been made
25 to inspectors and recorded in various reports of

1 shouting down the hall and allegations of verbal abuse.
2 That is shouting by staff and verbal abuse by staff --
3 A. Yes.
4 Q. -- towards those in custody?
5 A. Yes. Not shouting abusively, but shouting for
6 information, like:
7 "Wendy, please come to the desk because you have
8 a medical appointment."
9 That means that the whole prison or the whole wing
10 then knows you have a medical appointment.
11 LADY SMITH: I think that is one of the examples you cite in
12 the report.
13 A. Yes, and it is still happening.
14 MR PEOPLES: Would it be "Wendy" or would it be your
15 surname? Does that vary?
16 A. It varies prison to prison. It's not happening in
17 Polmont at the moment, but it's still occurring.
18 Q. You mention a report in 2015 in relation to
19 Cornton Vale, which has now closed of course. There is
20 a quote from a report:
21 "We did not observe this directly, however, over the
22 course of the inspection we continued to receive
23 comments from women that a small number of staff had
24 an intimidating effect on some prisoners by subjecting
25 them to verbal abuse. When asked what action they had

1 taken about this alleged abuse, the issue of their lack
2 of confidence in the complaints system was raised."

3 That was 2015. Is there still a lack of confidence
4 in the current complaints system?

5 A. Absolutely.

6 Q. What is the problem with this system?

7 A. One of the small thematic reviews that we would like to
8 do is the complaints system. Every inspection we do
9 prisoners tell us that they have no confidence in the
10 complaints system. Even though there is significant
11 evidence that complaints are generally answered, often
12 resolved and rarely get through to the SPSO and the
13 Scottish Prison Service are found wanting. That's very
14 rare. It does happen, but it is rare.

15 I think the complaints system has issues. We all
16 know there is a lack of literacy skills in prisoners.
17 Therefore having a system that requires literacy skills
18 arguably isn't the easiest way to register a complaint.

19 The model complaint system by the SPSO is more or
20 less aligned with the Scottish Prison Service and the
21 NHS, but what prisoners tell us varies from, "They just
22 rip it up in front of me", I've seen no evidence of that
23 and can find no evidence of that. On the contrary, when
24 we have looked into it and we followed a complaint
25 through, we find that the process has been followed.

1 That the answer they get isn't acceptable. Again,
2 answers vary between those that are somewhat dismissive
3 and then promptly go on to the next level of complaint
4 or very full and thorough and properly answered, with
5 staff sitting down to explain it. We do see a variety.

6 The one thing that is consistent is a lack of belief
7 that the complaint system works, either NHS or SPS.

8 Q. There are two issues here: one is there is a mixed bag
9 anyway, but also that whatever has been done and
10 whatever you have seen done, even if you think that's
11 an appropriate response, there's a perception or
12 a belief that the system, they don't have confidence in
13 the process --

14 A. Yes.

15 Q. -- or the outcomes of the process?

16 A. Yes.

17 Q. Is there a real problem when the complaint relates to
18 treatment by staff, because presumably in those cases
19 the investigation may -- I'm sure will -- ask the staff
20 for their response and if you get a situation where the
21 person in custody, young person, says X and the staff,
22 one or more, say Y, and then --

23 A. There is a problem. One of the problems is that unless
24 it meets the threshold for police involvement, then it
25 is the Scottish Prison Service investigating their own

1 staff.

2 We found when we have raised allegations that have
3 been raised with us and we've taken them to the Scottish
4 Prison Service that they've always been very responsive,
5 they've dealt with it thoroughly, staff are, if there is
6 sufficient evidence, suspended, it's looked into
7 properly. I do not have an issue with that.

8 However, I think there is for prisoners a lack of --
9 what is the word -- belief that the Scottish Prison
10 Service will investigate their own staff thoroughly.
11 They would prefer for an independent body to do so.

12 The Prison Service are very clear that if it meets
13 the threshold of police involvement, they will involve
14 the police and we have seen evidence of that. We have
15 also been told of allegations of abuse which we have
16 raised with the police and the prison has always known
17 about them and raised it themselves.

18 Q. Can I just put a hypothetical to you? Say I'm the young
19 person in one of these SPS establishments and my
20 allegation is that the staff on duty at some point came
21 in numbers and beat me up for whatever reason, something
22 I'd done or something I hadn't done. Then they know
23 what happened and they try to make a complaint.

24 It doesn't take too much imagination to imagine the
25 difficulties of trying to establish that complaint if

1 the whole staff in interview say, "It never happened, we
2 don't do that sort of thing".

3 A. I'm not going to comment on the staff investigations
4 that the SPS do, but there is a significant level of
5 evidence that they can look at. They can see on the
6 CCTV if a number of staff go into a room or that person
7 is pulled out of a room and into another room. Staff
8 are surprisingly willing to whistleblow.

9 Q. Is that your experience now?

10 A. Yes.

11 Q. Was that always the position?

12 A. I don't know if it was always the position, but
13 certainly it's been my experience, where we were made
14 aware of allegations of serious abuse I have raised that
15 and always been impressed by the response and also how
16 interestingly at times those have been raised by other
17 staff.

18 LADY SMITH: Is the problem here, Wendy, to convince the
19 inmates and prisoners that there is an independent
20 proper investigation, because their perception is it can
21 never be anything other than an investigation that
22 involves the Prison Service siding with their own?

23 A. Yes.

24 LADY SMITH: It is shifting perceptions is your difficulty,
25 is it here?

1 A. I think it is a very difficult one for the Scottish
2 Prison Service to resolve.

3 I have asked for how many allegations of abuse by
4 prisoners, because it would be interesting for me and
5 I'm not entitled to get that information and have not
6 been given that information, but I think it is a very
7 difficult thing for prisoners to see the SPS marking
8 their own homework. They would prefer to see something
9 independent.

10 Judging by the level of concern raised with us, that
11 remains an issue, that the credibility of the complaints
12 system and the credibility of the SPS investigating
13 their own staff is not high.

14 LADY SMITH: Mr Peoples, it's just after 1 o'clock. I think
15 we'll take the lunch break.

16 MR PEOPLES: I'll follow up with some of that after lunch.

17 LADY SMITH: We'll pick up again at 2 o'clock.

18 Thank you.

19 (1.02 pm)

20 (The luncheon adjournment)

21 (2.00 pm)

22 LADY SMITH: Welcome back.

23 Wendy, are you ready for us to carry on?

24 A. Absolutely.

25 LADY SMITH: Thank you so much.

1 Mr Peoples.

2 MR PEOPLES: Good afternoon.

3 We finished before lunch on some questions about
4 perhaps the difficulties at times on complaining in the
5 perception of those who might be considering whether
6 they should complain or not.

7 Just on a general question about CCTV evidence and
8 I appreciate what you said, that's certainly one way
9 perhaps of trying to decide what happened beyond the
10 recollections of the individuals involved, particularly
11 where there is an imbalance perhaps between a person
12 detained and the number of staff on the scene. Can you
13 maybe help us, and maybe you don't know the answers, but
14 when was CCTV routinely installed in prisons in
15 Scotland? Has it been there for a long time?

16 A. I really can't answer that, but all of my prison career,
17 and that was a very long time ago.

18 Q. It's been a feature --

19 A. Yes.

20 Q. But I take it, like all arrangements like that, they
21 would only place cameras in certain places, in parts of
22 the prison?

23 A. Yes. It can vary prison to prison. New prisons will
24 have a far greater degree of coverage, with newer pan
25 and tilt, better recording CCTV. Older prisons,

1 particularly if they're about to be replaced, will
2 perhaps not have the range and the modernness of the
3 most recent technology, yes.

4 Q. If something happened in a cell or a room --

5 A. There is no CCTV in the cell.

6 Q. No doubt complaints sometimes relate to what happened to
7 someone in their cell?

8 A. Yes.

9 Q. At night often, do they see --

10 A. Night is difficult. Certainly I'm sure you can talk to
11 the SPS about this, but staff don't carry keys at night
12 and if they do carry keys they have to break open
13 a pouch and that's recorded.

14 Q. That's a way least of checking if the cell has been
15 opened?

16 A. Yes. Also the CCTV would show if that cell had been
17 opened.

18 Q. I suppose the other thing -- I just have in mind that
19 I seem to have come across a FAI determination where
20 there was an issue about what happened but unfortunately
21 the CCTV footage was unavailable, either because there
22 was some fault in the system or the footage was no
23 longer obtainable.

24 A. Yes, I knew that. I was a Deputy Governor at
25 HMP Blakenhurst where there was a death in custody

1 following use of force, and it was prior to my time,
2 prior to the Prison Service taking over, but the CCTV
3 was absent.

4 Q. I suppose this idea of body cameras might at least solve
5 that issue, if we're talking about some sort of physical
6 intervention or restraint, it ought to do least?

7 A. It ought to do, yes. They do vary in type. There are
8 cameras that are on automatic record all the time and
9 then deleted unless something happens and there's the
10 sort that you have to press a button to say, "I'm now
11 recording".

12 Q. Do you have a preference?

13 A. No.

14 Q. Not continuous recording?

15 A. No, I don't think I would have a preference for
16 continuous recording, because it's frankly not worth it,
17 whereas if you're about to go into a cell or whatever
18 you are automatically expected to do that.

19 Q. Just on the question of, if someone has made some sort
20 of allegation of abuse, did I understand you correctly
21 to say that in terms of getting general information as
22 an inspectorate you don't have access to the number of
23 complaints over a given period or how many were upheld?

24 A. That's correct.

25 Q. That seems to me to be something that you ought to be

1 able to access?

2 A. I think if you look at our legislation it specifically
3 excludes personnel records.

4 Q. Surely they could still -- even if you can't see the
5 source, they could give you something from the source
6 that says, even if it's anonymised, how many complaints
7 in a given period were made and the nature of them and
8 whether the percentage that were upheld in that period.
9 Surely that's possible?

10 A. That is certainly what I asked the Prison Service for.

11 Q. What was their reaction?

12 A. No, that the level of complaints was sufficiently small
13 that I would be able to identify the staff or something
14 like that anyway. I can't quite remember the exact
15 detail, but I haven't had that information.

16 Q. What's wrong with being able to identify who was the
17 subject of an allegation if you're an inspector? Is
18 there anything wrong?

19 A. I think there is actually, yes. I think reputational
20 damage, so I do think there is an issue with someone for
21 whom there has been an allegation but it hasn't been
22 upheld and there's no evidence against them, then
23 arguably it's reputational damage, particularly to
24 an outside agency, as us.

25 Q. If you keep an open mind, it also might be that

1 an allegation isn't upheld for one reason or another,
2 but it may be that if someone else --

3 A. I think the SPS is entitled to withhold personal records
4 and I'm comfortable that they are entitled to do that.

5 Q. That is in the legislation?

6 A. Yes.

7 Q. That was a deliberate decision by the legislator?

8 A. Yes.

9 Q. I'm just curious, I still find it difficult to see why
10 you can't get general information, but maybe you find
11 the same difficulty at times?

12 A. I do.

13 LADY SMITH: Is it a matter of how the records are kept?
14 You do not have the right to demand sight of personnel
15 records. A straightforward understanding of that term
16 is that if a file, electronic nowadays, is headed "ABY",
17 a particularly person, and it has everything about them
18 and their work in the prison in it, you can't get to see
19 it, including anything in there about a complaint
20 against them.

21 A. That is correct.

22 LADY SMITH: But if you have a separate complaints record,
23 that's not a personnel record.

24 A. What we asked for was the number of allegations against
25 staff over a month, without saying which prison or any

1 naming of any particular staff, how many of those and
2 then at the end of the year how many of those had been
3 investigated and how many had come to a disciplinary
4 conclusion.

5 I'm not looking for individual detail at all, just
6 to have a look at the scope of allegations, if you like.

7 LADY SMITH: I could see the answer to that might be you're
8 entitled to prison records, that is records which the
9 prison has made in the course of its management of the
10 prison. But you're not entitled to demand us to create
11 a record by collating data from a whole number of
12 prisons, but that is a different issue.

13 A. I think it is a different issue, but certainly there's
14 a reluctance to give it to us and arguably there is
15 little we can do with it as well. For me it would just
16 paint a picture.

17 MR PEOPLES: With respect, if you were told on a generalised
18 basis that there were 2,000 complaints in a given
19 period, of which 1 per cent were upheld, it might raise
20 questions in my mind least, would it not in yours?

21 A. Absolutely. That's one of the reasons I asked for it,
22 yes. I know, for instance, I sent an example that the
23 Independent Monitoring Board gets those kind of
24 statistics for the English Prison Service, HMPPS, so
25 I sent the example that they gave us to the SPS to ask

1 them to consider it, and hopefully they will.

2 Q. Equally, if you received the same 2,000 complaints and
3 there was a sizeable percentage, say even half, that
4 were upheld in whole or in part, that might cause
5 prisoners, if they understood that, to have more
6 confidence in the system?

7 A. Yes, exactly.

8 Q. It could have a benefit for the service?

9 A. I'm a great believer in the you said we did system. You
10 complained about the food, we did this type of thing.

11 Q. Going back to the report that you've provided us with at
12 page 8, there's a section headed -- what we're doing
13 here is what you've done in this report is to look back
14 on available material and pull out issues of concern
15 that have been raised over the years, based on what
16 you've seen in the reports?

17 A. Yes.

18 Q. Is that essentially what you have done? When it comes
19 to bullying, because the reason I ask you is you say,
20 "... bullying was mentioned but we could find no
21 evidence of staff bullying."

22 Do you mean that there was no direct evidence on
23 inspection that bullying was taking place, because you
24 obviously have the example of Cornton Vale, where people
25 told you that they were being intimidated by some staff,

1 subjecting them to verbal abuse?

2 A. Yes.

3 Q. While you didn't maybe see any direct evidence --

4 A. That is correct.

5 Q. -- you certainly had the indirect evidence of what
6 those --

7 A. Where it says:

8 "There was evidence of bullying, and, at the time of
9 our visit, one inmate was being held in the punishment
10 cells at his own request."

11 What we weren't clear about -- what I am clear about
12 is the context, it was being bullied by other prisoners.

13 Q. Yes. I suppose it's perhaps not unfamiliar to you,
14 that's a report in 1987 and I think Dr Chiswick in his
15 report found that some people took refuge in the
16 punishment cells to get away from the main block for,
17 among other reasons, the way they were being treated
18 within the block by other inmates at the time. I think
19 that was one of the things he says.

20 A. If you look at our segregation review that was published
21 this year, you'll find that many people prefer to be in
22 segregation because they cannot cope with, for a number
23 of reasons, being on the main location.

24 Q. One reason could be the way they're being treated by
25 either the staff or the other people, the other persons

1 that are being detained?

2 A. On the whole, it was other prisoners. None of our
3 people surveyed for that segregation said it was a staff
4 issue.

5 Q. That is the 2021 survey?

6 A. 2023.

7 Q. Sorry, yes.

8 In fact, you say, if we go back to your report,
9 there was frequent mention of young people bullying each
10 other, although the reports are inconsistent in the
11 approach by management to tackle this, but you do refer
12 to the 1987 report about Polmont and how at least one
13 inmate, it's recorded or reported --

14 A. Yes.

15 Q. -- was being held at his own request in the cells, the
16 punishment cells?

17 It appears from another example you have pulled out
18 for Polmont, 2012 report, inspection report, that
19 there's been concern or at least a comment about whether
20 there is a sufficiently clear and transparent policy or
21 approach to respond to allegations of bullying.

22 I think you gave, as an example, Polmont at that
23 time --

24 A. Yes.

25 Q. -- in that there was a lack of clarity regarding the

1 existence or content of such a policy on the part of
2 staff?

3 A. Yes. That's still the case unfortunately. I can point
4 to most of our inspections, where there's a lack of
5 adherence to the think-twice policy, which is precisely
6 about bullying.

7 Q. I suppose it's very easy for an organisation to say,
8 "Come in, here's our policy", but really what matters is
9 whether that policy is applied --

10 A. Translating rhetoric into reality, yes.

11 Q. Also the policy is understood by those who have to apply
12 it?

13 A. Yes.

14 Q. I think you mention there, and I'm not going to go over
15 the detail, that in a report in 2015 about Cornton Vale,
16 the lack of confidence within the group about raising
17 issues?

18 A. Yes.

19 Q. That is a constant theme and it's still a theme?

20 A. It's still an issue.

21 Q. Indeed, some appear to have had concerns, if we go over
22 to page 9 of the report, just on the top of the page,
23 the same report 2015, about Cornton Vale. Although you
24 say it was small but not insignificant minority stated
25 they had suffered repercussions as a result of raising

1 a complaint?

2 A. Yes.

3 Q. That was being reported?

4 A. Yes, 2015, yes.

5 Q. We know or we hear about, and I think it's common
6 knowledge, that there are prison norms. You will
7 probably be familiar with that, one of which seems to be
8 that you don't grass, either on other persons in custody
9 or even the staff when you have an issue.

10 Is that something that you can give us any sense of?
11 Is that still a norm or is that --

12 A. It might well be a norm. It's certainly not something
13 I experience. When I talk to prisoners and staff they
14 seem to feel very comfortable telling on each other.

15 Q. Your experience hasn't been that they were not prepared
16 to speak and volunteer information?

17 A. Correct.

18 Q. Including information about how they were treated by
19 other detainees or staff?

20 A. On the contrary, our segregation review identified
21 a number of prisoners who were very clear about their
22 allegations, and named names.

23 Q. Just on the question of bullying in general, even if
24 it's predominantly according to what your reports have
25 shown is really between those who are in detention,

1 I think historically it was an endemic problem, I think
2 that was the way it has been described by someone,
3 I'm sure we will hear that expression used. Currently
4 is it still an endemic problem?

5 A. I think there is a level of tolerance and complacency in
6 prisons. There is a huge power differential, which we
7 all know about, inevitably, but there's also
8 an acceptance of conditions in prison. So when I look
9 at some of the very tiny cells holding two people that
10 were designed for one, are frankly appalling conditions.
11 I'm not prepared to monitor my words anyway differently,
12 and yet there is an absolute complacency that you're in
13 prison and that's all you are entitled to. I think that
14 is also true of the culture of: those people are in
15 charge or other prisoners are dangerous, it's my job to
16 look after myself rather than somebody else's job to
17 make me safe.

18 Q. That culture is still, in your view --

19 A. Slightly there, yes.

20 Q. Is that --

21 A. But that's not wholly borne out by the evidence, so in
22 our pre-inspection survey -- we'll be doing comparator
23 publications fairly soon, once we have done enough
24 prisons -- one of the questions we ask is: have you ever
25 been abused or bullied by another prisoner? Have you

1 ever been threatened or abused or bullied or whatever,
2 I can't remember exact words, by a member of staff? Or
3 have you ever witnessed bullying?

4 That is very interesting. It's an anonymised survey
5 and we are getting some very decent answers back.

6 Q. Bullying, if I put it this way, however you want to
7 precisely characterise it, is still a feature of prison
8 life?

9 A. Very much so.

10 Q. In terms of anti-bullying strategies, which the SPS do
11 have, how does the Inspectorate seek to assess the
12 effectiveness of the measures to combat bullying?

13 A. There's a quantitative analysis, if you like, in that we
14 do the pre-inspection survey.

15 There's a qualitative analysis and it is tackled, if
16 it comes out in a feature in the pre-inspection survey
17 it's something we'll talk about in the focus groups.

18 We do talk to individuals. A number of individuals
19 do claim they're being bullied. We do follow that
20 through when we're on inspection and look it through.
21 Like the complaints, "I've made a complaint, nobody's
22 answered me", actually we have followed it through and
23 there it is. Or, "I've made a complaint, nobody's
24 answered me". You're right, they have no record of that
25 complaint, let us help you get that in now.

1 So we do follow it through.

2 I think there is, sadly, a recognition that prison
3 is a place that holds those people in conflict with the
4 law and then inevitably, if you like, or there is
5 a perception it's inevitable that some bullying will go
6 on. Certainly that's evidenced by our results from the
7 pre-inspection survey.

8 Q. Just on the question of conditions, some of which you
9 have described as appalling, those that have to endure
10 these conditions -- is part of the problem that perhaps
11 given their prior experience these conditions might not
12 seem as appalling to them as it might be to you or I,
13 because it's not a reason why they shouldn't get better
14 conditions, but it may be that they don't realise how
15 appalling they are because of some of the experiences
16 they've had before. Is that a way of looking at it?

17 A. It's not a way I would look at it.

18 Q. I --

19 A. The tolerance of poor conditions is worrying and
20 I remain worried by it.

21 Q. I think the tolerance in the past of perhaps physical
22 punishment, including quite excessive punishment at
23 times, some people have explained perhaps that for them
24 it was the norm. It was the norm before they went into
25 the setting --

1 A. Sure.

2 Q. -- and it's the norm in the setting --

3 A. Sure.

4 Q. -- so in some ways it doesn't jump out as saying, "Gosh,
5 this is different and I shouldn't be treated like this".

6 A. Sure. I agree with you and that for me is almost more
7 worrying. When we do meet prisoners who are incredibly
8 good at writing to us on a weekly basis telling us
9 everything that is wrong, I'm always grateful for them,
10 because they are the people that are raising issues that
11 other people don't think to raise.

12 Q. If bullying has been and remains a feature of prison
13 establishments, then obviously the service needs to
14 consider ways of reducing the prevalence of bullying --

15 A. Yes.

16 Q. -- whether it is by staff or perhaps it would appear
17 mostly by other detainees.

18 Has the creation of smaller units in modern times
19 been one way of at least partially addressing that
20 problem, so that you have either smaller prison
21 environments as a whole and/or single cells for example,
22 rather than shared cells?

23 A. I'm a great believer in single cells, except where, that
24 you might, argue the better interest of the individual
25 is by being in a shared cell. I think there's room for

1 both. But enforced sharing of a cell with a total
2 stranger, who may not have the same hygiene as you is,
3 in my mind, unacceptable.

4 Q. You wouldn't probably share a hotel room with a total
5 stranger that you had never met before.

6 A. I certainly wouldn't.

7 Q. If we go back to your report, page 9, I'm not going back
8 through the complaints, because I think you've told us
9 quite a bit about the complaints system already and you
10 still have concerns about that system and how it
11 operates in practice.

12 Another question you were asked concerned the
13 effectiveness of the Inspectorate since its creation in
14 reducing levels of violence, abuse, bullying, whether by
15 staff, other adults or other young people under 18 in
16 SPS establishments.

17 I'll just take this short. I think basically you
18 tell us this can only be evidenced by the SPS, that the
19 Inspectorate itself does not hold or receive all of the
20 data on violence, abuse, bullying or threats of violence
21 within Scottish prisons?

22 A. Correct. One of the interesting things is when we look
23 at the data in a prison and we look at complaints for
24 example, what we find is that quite a lot of complaints,
25 even those about bullying, are dealt with immediately,

1 so a young person will have gone to a member of staff
2 and said, "I can't mix with him", and they'll think,
3 okay, tell me the reasons why, well these are the
4 reasons, okay, that's fair you feel you're being bullied
5 or you're not. Unless that member of staff records it,
6 it won't go on the data. But if they resolve it like
7 that, by moving cell or whatever, then staff sometimes
8 don't record it and so therefore the data is incomplete.

9 Q. Even if they find a solution, and act on the appropriate
10 solution they ought to record it, so you have it?

11 A. Yes, correct, so we know the scale, absolutely.

12 Q. And that they also know the -- they have intelligence
13 then as well that's on record --

14 A. Yes.

15 Q. -- to show these two people ... or at least one of them
16 isn't keen on sharing with that other person?

17 A. One of the ways we triangulated that was that we looked
18 at the 'keep separate' -- it's called 'keep separate'
19 but basically where one person is seen as an enemy of
20 another, 'keep separate'. If you have say 600 keep
21 separates in Polmont and then you say how many reports
22 of bullying do we have? How many people do we have
23 registered as being bullied, how many people do you have
24 registered as bullies? How many people do you have on
25 the Think Twice programme? So you have 600 'keep

1 separates' and yet you only have four on the Think
2 Twice, then there's clearly a mismatch. That's why
3 I say that we don't hold or receive all the data on
4 violence, abuse, bullying or threats of violence.

5 LADY SMITH: Wendy, you have mentioned Think Twice before.
6 Can you tell me a little more about it, what does it
7 mean?

8 A. It's the Prison Service policy on bullying, which is --
9 they can go through the detail with you, but basically
10 if you have an identification of someone who says
11 they're being bullied, how do you handle them? The
12 victim management, if you like? Or if you have
13 identified somebody who is potentially a bully, how do
14 you manage them? But one little part of that is if one
15 person is complaining about being bullied by another,
16 for all sorts of reasons, then you do keep them separate
17 until you have resolved it.

18 LADY SMITH: Is that the "twice" element of the Think Twice
19 or what?

20 A. No, I think the "twice" element or the name of the
21 policy is Think Twice and my overwhelming feeling is,
22 yeah, I don't know why they've called it that.

23 MR PEOPLES: Maybe to pause and do a bit more reflection
24 than you might otherwise do when --

25 A. Possibly.

1 Equally, the suicide prevention is Talk To Me and
2 there is various reasons.

3 What is interesting and I think it is worth
4 mentioning is one of the questions we ask is: do you
5 feel safe? Over 90 per cent of the Polmont respondents,
6 that's not just the people under 18, but all of them,
7 said they did feel safe. It's a very, very high
8 percentage.

9 Q. I'll come to that, because we ask questions about that.
10 Just on the problem of bullying and no doubt we can all
11 understand it in a closed community, with all different
12 people, there will be weaker and stronger, younger,
13 older?

14 A. Yes.

15 Q. Which is always a --

16 A. But there is also the issue of what went on on the
17 outside must also come into the inside, so one of the
18 biggest issues is people who have developed drug debts
19 and the thought, when they come into prison, those might
20 just disappear, but in reality they don't.

21 Q. I was going to ask you also, because I think certainly
22 in the past -- I don't know what it's like today -- that
23 we certainly had some evidence from Linda Allan about
24 her daughter saying there were cliques in Polmont in her
25 time, 2018, and that presents problems?

1 A. It does.

2 Q. Is that still a situation that people will know each
3 other from the community, others will not or will be
4 seen as outsiders --

5 A. Yes.

6 Q. -- and that can create difficulties?

7 A. Yes, very much so.

8 Q. In fact maybe stimulate some degree of bullying or other
9 forms of coercive behaviour?

10 A. Yes.

11 Q. That's still a feature of --

12 A. It's still a feature.

13 Q. -- a locked environment?

14 A. Yes.

15 Q. Where you can't choose your housemates?

16 A. No.

17 Q. Also there is some suggestion that even when there are
18 cliques if they come from different geographical areas,
19 like Edinburgh and Glasgow, if you put them together in
20 Falkirk, somewhere in between, that's also a bit of
21 a recipe for problems?

22 A. You also have gang violence, so you have some major
23 gangs that you have to make sure aren't quite in the
24 same area. It's a very complex population for the
25 Scottish Prison Service to manage.

1 Q. Another question you were asked under this heading of
2 "Effectiveness", I suppose, is the effectiveness in
3 bringing about changes to make the establishments safer
4 and more humane places to accommodate young people under
5 18.

6 What you do say there, and I think you may have said
7 this this morning, but I'll just repeat, is that the
8 chief inspector's experience is that the Scottish
9 Government and the SPS generally respond positively to
10 recommendations made by the Inspectorate. I'll just
11 come to examples, so that is the general feeling?

12 A. Yes. I think there are systemic issues: overcrowding
13 being one of them; aged buildings being another, which
14 require a significant financial investment; technology
15 being a third; I would say healthcare is a fourth.

16 Those are major issues that require systemic change.

17 On the more easily managed recommendations, then
18 they are received very positively, yes.

19 Q. You can understand why they might receive the easier
20 ones and maybe try and give a body swerve to the more
21 difficult ones. Maybe we are back to resources and
22 other implications?

23 A. Yes.

24 Q. Would that be your sense?

25 A. I can understand the financial restraints, when you have

1 an overall budget then where do you prioritise your
2 spending. I can see why prisons aren't prioritised
3 either, by the general public.

4 Q. We hear the same thing with children's services, I would
5 have thought the public might be more sympathetic in
6 prioritising children's services?

7 A. I have a general belief that if children are in conflict
8 with the law then it's society at fault and we need to
9 therefore pump the resources necessary in order to give
10 them a fulfilling and productive life and hopefully make
11 them into responsible citizens.

12 Q. You give us some examples of positive responses to
13 recommendations. One being the removal of routine body
14 searching, which was seen by young people as intrusive
15 and risked retraumatisation. This has been replaced by
16 technology and intelligence-led searching. I think we
17 heard about that from Sue Brookes, but that only
18 happened in 2019, didn't it?

19 A. That is correct.

20 Q. It happened a lot earlier in England, I believe.

21 A. I think -- I don't know, I can't argue for England.

22 Q. If I suggest it may have happened not that long after
23 the Corston Report and other things that followed from
24 that, maybe 2012?

25 A. Against that, the Corston Report recommended the

1 development of community custody units and England

2 doesn't have one and we have two, so --

3 Q. I accept that she said that. I think what one can see
4 from what the report suggests and should be done, it
5 takes a long time, Cornton Vale, the Angelini
6 Commission, or Inquiry, said that it should close?

7 A. Yes.

8 Q. And it's only closed now?

9 A. Yes, and it's a long time in coming, isn't it, I know.

10 Q. Maybe south and north of the border have a few lessons
11 to learn?

12 A. I would like to see routine body searching got rid of
13 throughout all the prisons, regardless of their young
14 people, women, adults, I just think it's resource
15 intensive, retraumatizes people and frankly degrading
16 and unnecessary.

17 Q. I think that Linda Allan, according to her evidence,
18 what she was told was that her daughter was given some
19 body searching by way of a demonstration or a training
20 exercise, would you condemn --

21 A. I couldn't evidence that, but certainly the small number
22 of women in Polmont at that time and the Scottish Prison
23 Service has a percentage target, the small number of
24 women means that the women were disproportionately
25 searched more often.

1 Q. As a routine search?

2 A. Routine search.

3 Q. Not based on intelligence?

4 A. Not based on intelligence.

5 Q. If someone perceived this to be actually a training
6 exercise --

7 A. Yes, I heard that from Linda herself. I found no
8 evidence of that. I mean it's not my job to look into
9 that.

10 Q. If that did happen and that was why it was done, what
11 comments would you make? I'm not asking you to accept.
12 I'm just saying assume that was what happened, what is
13 your comment?

14 A. If we have to routine body search, which if you look at
15 the prison rules is in there, and nobody's changed that
16 legislation as yet, then staff do have to be trained.
17 That's a reality. So if Mrs Allan's daughter was used
18 as a training exercise, I would understand if that was
19 necessary.

20 Q. Couldn't they use staff, prison staff for a training
21 exercise?

22 A. No, because you do actually strip people -- bottom half
23 first and then top half -- to absolute nakedness.

24 Q. If they all agree and at least it's consensual,
25 presumably the person who is detained doesn't have any

1 say in this?

2 A. Exactly. Hence why I don't think routine body searching
3 is necessary. If it had any evidence whatsoever that it
4 delivered positive results in finding hidden weapons and
5 contraband I would argue it's worthwhile keeping, but to
6 date that's not been the case.

7 LADY SMITH: Wendy, do you have any objection to routine
8 scanning to identify --

9 A. No, I don't. Provided there's no health and safety
10 issues, I have absolutely no objection to that. Every
11 time I walk through the airport I'm subject to it.

12 LADY SMITH: An efficient and effective way of identifying
13 any unusual objects in bodily orifices, if I can put it
14 that way.

15 A. Yes, and the Prison Service has three examples of that.
16 They have what is called a BOSS chair, which you can
17 sit in.

18 They have a body scanner, just like the one in the
19 airport.

20 They have a portal scanner, which will pick up
21 anything metal.

22 So I think the technology exists that routine body
23 searching is redundant.

24 LADY SMITH: Thank you.

25 MR PEOPLES: Am I right in thinking that not that long ago,

1 Barlinnie got some new technological --

2 A. Yes, they do, they have a body scanner.

3 Q. So even the one that you want to see closed as soon as
4 possible has at least done that much?

5 A. That can go with them to their new place, it's
6 transportable.

7 Q. It can be done?

8 A. Yes.

9 Q. Going to another question that you were asked, if I move
10 away from the first question and the various subheads of
11 that question. You were asked: "Given that [the
12 Inspectorate] can only report and recommend (unlike the
13 Care Inspectorate) does it need more powers? For
14 example powers of enforcement?

15 I think we have covered a bit of that, but what you
16 have told us is:

17 "It's the opinion of the current [chief inspector]
18 that no enforcement powers are required, such powers
19 would move the role of the [chief inspector] away from
20 that of a critical friend ..."

21 Is that your expression?

22 A. Yes.

23 Q. "... driving continuous improvement, by offering
24 a balanced opinion, to that of an enforcer. That would
25 fundamentally change the relationship between the [chief

1 inspector] and the bodies it scrutinises. Additional
2 powers would also require a change in the governing
3 legislation, workforce capacity and [Inspectorate's]
4 skills base ..."

5 I'm not so concerned about the latter sentence,
6 because I think that's clear that there would have to be
7 certain things done to achieve these additional powers,
8 so you are really setting yourself against the Care
9 Inspectorate approach that they have these powers, you
10 don't, but you don't want them?

11 A. That is correct.

12 Q. If I go back to Mr MacFadyen, I'm going to summarise,
13 I think he has some concerns about how you describe your
14 relationship with those that you scrutinise and inspect
15 and monitor, and particularly the use of "critical
16 friend".

17 His position, as I understand it, is that by
18 describing the relationship in that way you are not
19 really demonstrating a sufficient separation and
20 independence from the body being inspected, the service,
21 and you are not operating I think, to use his
22 expression, as a fully independent Inspectorate.

23 What do you say to that?

24 A. It's an interesting point, because one of the
25 accusations that is frequently levelled at me is that --

1 well, there are two actually, and they're opposing.

2 One is that I'm too close to the SPS and that that's
3 unfortunate.

4 The other one is that I'm too critical of the SPS,
5 which is interesting.

6 And I get both fairly regularly.

7 I really do worry about having the powers of
8 enforcement, partly because I can't quite visualise what
9 that enforcement power would be.

10 Secondly, that given all of our recommendations, and
11 the areas I've discussed before, that are systemic and
12 endemic or entrenched issues, and we have made no
13 changes, I'm not sure how I would enforce that change
14 anyway. Even if I did have powers of enforcement. So
15 it's a difficult one. Whereas at the moment, I think we
16 provide very balanced point of view. I've talked about
17 triangulating the evidence and I've also talked about
18 helicoptering above and saying: what are the issues?

19 If you were to read for instance our recent report
20 on HMP Addiewell, you would not think I was in league
21 with the SPS.

22 Our forthcoming progression thematic review, which
23 will publish in November, you would not think I was in
24 league with the SPS.

25 Equally, I am very critical in both of those reports

1 and will continue to be so, because it deserves
2 criticism and it deserves airing and it needs
3 a highlight on it, a spotlight on it, to say this is not
4 working.

5 I'm very comfortable with that.

6 To have additional powers, I really can't see the
7 advantage, because where I am, I am very, very
8 comfortable raising, escalating, raising concerns and
9 making it publicly aware that we have those concerns
10 from a position of authority.

11 Q. Can I put it this way then? Perhaps the use of the word
12 "friend" might cause concern to some, because it might
13 seem not to describe in an appropriate way the
14 relationship that ought to exist. Friends are
15 friends --

16 A. Yes, but I think a "critical friend" is contextualised
17 by "driving continuous improvement".

18 Maybe "friend" isn't the right word, but that is
19 a nomenclature issue rather than a philosophical stance.

20 Q. But it's a perception issue as well, it's like the
21 confidence in the complaints system, terminology may
22 require to be considered at times carefully, I'm not
23 suggesting --

24 A. I'm comfortable changing that.

25 Q. I suppose the Care Inspectorate may not see themselves

1 as a "critical friend". They have enforcement powers
2 and I'm sure that they, like you, want to carry out the
3 responsibilities to drive improvement, just as you want
4 to do by offering a balanced opinion. Yet they can
5 quite happily say, "At the end of the day, if we need to
6 be, we'll be an enforcer too"?

7 A. I don't want to be an enforcer. I don't think the role
8 is right to be enforced. I think that brings with it
9 a level of managerial responsibility that I don't think
10 a scrutiny body should have. I think the decision to
11 enforce the recommendations we have should be with
12 a different organisation, not us.

13 Q. Can I put another point? This is a good enough
14 opportunity as any, to Mr MacFadyen, this is based
15 I think on his experience in 2015 and I'm sure that you
16 have told us this this morning quite a few things have
17 happened since 2015 within the Inspectorate.

18 A. A huge amount --

19 Q. We'll see some perhaps just briefly in due course.

20 His concerns include that in his estimation the
21 Scottish Inspectorate, at least based on his limited
22 time there, albeit, were taking account in some of the
23 reporting of constraints and pressures faced by the
24 service and staff who were operating the service,
25 whereas the report, in his view, should be simply

1 a report against standards, laying out objective
2 findings and leaving it to others to address the
3 constraints and pressures that are barriers to
4 improvement.

5 What do you say to that?

6 A. Well, I mean, that is his opinion. He's absolutely
7 entitled to it. I think there is a legitimacy in some
8 of his argument. However, I think it's an unrealistic
9 argument.

10 I think you have to, when you are writing
11 a report -- that's the whole point about balance -- say
12 where something is wrong, say where something is right,
13 say where something needs urgently addressed, say when
14 something is really good and also recognise the
15 constraints in which you work.

16 If I can give an example of that. I was horrified
17 when I went into HMP Barlinnie to discover that the
18 reception holding areas, which the staff and prisoners
19 referred to as "dog boxes", were completely unacceptable
20 and I was very clear about that.

21 However, while I understand there are financial
22 constraints, I was not prepared to accept that financial
23 constraints should in any way allow those boxes to
24 continue to be used. So they've gone.

25 Q. When did they go?

1 A. Oh, blimey, I think they went two years later, because
2 it requires getting the funding, getting the permission,
3 recognition that you're going to have to have building
4 work done, et cetera. But what they did do was, in the
5 interim period, accept our recommendation that there
6 should be a maximum time that people are held in there
7 or not held in there if at all possible.

8 Q. Would these "dog boxes" historically have been used for
9 young people at times?

10 A. They will have been in Barlinnie, yes.

11 Q. It wasn't always an adult prison?

12 A. That is correct.

13 Q. Another point that Mr MacFadyen says, I think based on
14 his experience, was that he felt to some extent perhaps
15 the challenges made by the Scottish Inspectorate were,
16 as he described it, weaker than the equivalent
17 Inspectorate down south, who were pretty forceful when
18 they would come in and make statements. Basically we
19 will tell you what you have to do and you listen.
20 I think that was reflecting what he thought was
21 a difference in approach.

22 Do you think there's --

23 A. Let me put some modern thinking on that, I think he has
24 a legitimate point.

25 Charlie Taylor, who is the Chief Inspector of

1 England, and I meet regularly and we discuss things. He
2 recently sent me an email saying:

3 "Be aware, your annual report reflects exactly what
4 we think and we may well just plagiarise it for our next
5 report."

6 The reality is they have a very different system of
7 reporting. They are under the auspices of the Ministry
8 of Justice. I'm not. We don't have that equivalent,
9 I report directly to the Cabinet Secretary.

10 If they have something of deep concern, they have
11 a system where they raise an urgent notification and
12 that goes to the Minister for Prisons, not even to the
13 Cabinet Secretary. I don't need that, I have a much
14 closer relationship. I don't need an urgent
15 notification. I have her mobile phone number. I can
16 ring her if necessary, or I could the previous two
17 Cabinet Secretaries. I certainly can write a letter and
18 it's responded to immediately.

19 I don't need the urgent notification system.

20 I accept that many of their reports are harsher in
21 their language than mine are. I am not sure that
22 achieves the desired outcome. I think there is always
23 a view that providing balance, I call it the hamburger
24 technique, if you are going to give bad news, at least
25 put the soft, fluffy buns around the outside.

1 Where prisons deserve praise, I think it's important
2 to do that. We recently inspected a prison that was
3 extremely worrying. My report was very adversarial,
4 very critical, but they had some wonderful areas of
5 excellence and it's important to recognise that.

6 Q. Is there any reluctance, on your part for example, to
7 make recommendations?

8 A. No, none.

9 Q. None?

10 A. Just read our reports.

11 Q. I'm just asking the question. Insofar as there is
12 a process of feedback, do the draft findings get seen by
13 the service?

14 A. They do, it's called "matter of fact findings". We
15 would write a draft report and send it to them for
16 matters of fact. We will have referred to it as
17 "HMP Polmont" and they will say, "It's 'HMPYOI
18 Polmont'."

19 We then look at their draft findings, and it's them
20 and the NHS and the Scottish Government and whoever, and
21 we decide whether or not we agree with them or disagree
22 with them. If we don't agree with them, our original
23 statement stands.

24 Q. In your experience, do they ever attempt to tone down
25 the criticism?

1 A. Oh, yes.

2 Q. Do you accept the toning down?

3 A. Absolutely not.

4 Q. Is that fairly rare?

5 A. It's only happened on one prison.

6 Q. They're trying, but yet they're not succeeding?

7 A. Correct.

8 Q. I think I covered this this morning, but it's a question

9 ... we talked about complaints generally and you have

10 concerns about the complaints system, which you are not

11 directly involved in.

12 Can I ask again, what happens if a young person

13 makes a disclosure during an inspection to the

14 inspection team?

15 A. It depends what the disclosure is.

16 Q. I'm thinking about maybe an allegation of mistreatment

17 or abuse?

18 A. Allegation of mistreatment. It depends. If we think it

19 meets the bar of criminal or a police matter, we will

20 report it directly to the police.

21 If it is minor, "I ordered a vegetarian meal but

22 there weren't any vegetarian meals when I got to the

23 counter", we will escalate it either to the unit manager

24 or right up to the governor, it depends.

25 Where there are allegations of poor behaviour by

1 staff, misconduct by staff, we direct it to the
2 governor. If we think it meets the requirement to
3 involve the police, we will do so.

4 Q. That would be your judgment?

5 A. Yes.

6 Q. Going back to the report, again at page 10, if I can
7 move on and I can take this one fairly short. This
8 question:

9 "Has [the Inspectorate] based on its own work,
10 including inspections, any idea of the nature and scale
11 of abuse of young persons under 18?"

12 I think the dates there were between 1981 and 2017,
13 but I think we can also take it forward to the present
14 day, because I think your answer, if I'm correct, is
15 that the Inspectorate's not in a position to provide
16 evidence on the nature and scale of abuse of young
17 people under 18, because of the nature of the function
18 they perform. I think this goes back to your earlier
19 point that you are seeking to effectively be part of
20 a preventative mechanism --

21 A. Yes.

22 Q. -- rather than being a detection agency or
23 an investigation agency?

24 A. Yes.

25 Q. Is that really what you are saying?

1 A. Yes.

2 Q. So you don't have that information to hand?

3 A. No.

4 Q. Although would you hope that others do?

5 A. Yes.

6 Q. For example, if you just, out of interest, asked the
7 Scottish Government about the nature and scale of abuse
8 between 1981 and now, would you hope that they would be
9 in a position to provide you with --

10 A. Yes.

11 Q. -- information on that?

12 A. Yes.

13 Q. Backed by relevant data?

14 A. Yes.

15 Q. Moving over to page 11, just on the same question,
16 I think we have already covered at the top of the page
17 the inspector doesn't have authority to request
18 information concerning staff misconduct, and you've told
19 us about that.

20 You add in the first full paragraph that the
21 Inspectorate policy is that complaints of abuse made,
22 I suppose, to Inspectorate staff or monitors are
23 escalated to the service itself?

24 A. Yes.

25 Q. Unless it involves perhaps a police matter?

1 A. Yes.

2 Q. The next question is on page 10, question 4, and it's
3 whether in the opinion of the Inspectorate --

4 LADY SMITH: Is that actually page 11? It's come up
5 page 11. Thank you.

6 MR PEOPLES: Did I say page 10?
7 I probably did.

8 LADY SMITH: Yes, but somebody is ahead of you.

9 MR PEOPLES: I should have remembered.

10 LADY SMITH: That's fine, this is the right one.

11 MR PEOPLES: Page 11, question 4, what question 4 is
12 designed to seek is whether establishments that
13 currently accommodate young people under 18 are places
14 of violence, bullying and abuse.

15 We obviously know how many people are accommodated
16 at present, but just in terms of how you answer that
17 question, can I take you to the first full paragraph?
18 I think you say:

19 "It's a reality that people in prison may be there
20 for violent and refractory behaviour. The growth of
21 organised crime also indicates that some of the
22 behaviours experienced in the community that led to
23 incarceration may be replicated in establishments.
24 However, the picture of penal establishments as places
25 where violence, bullying and abuse routinely occurs is

1 not evident from [the Inspectorate's] reports or
2 experience."

3 You are not getting that picture?

4 A. No.

5 Q. But obviously you are not there all the time?

6 A. Correct.

7 Q. Even the prison monitors are only there part of the
8 time?

9 A. That's right.

10 Q. So there is a gap?

11 A. There is a gap.

12 Q. I suppose in some ways the best people to answer that
13 question are the people who are in custody all of the
14 time or the staff that are there all of the time?

15 A. Correct.

16 Q. But there might be a conflict of view when that question
17 is asked?

18 A. There might be. I find the majority of staff are
19 compassionate, caring, well respected and do a damn good
20 job.

21 Q. I think Sue Brookes said the same thing, albeit she is
22 coming from the SPS service angle, as --

23 A. In any large staff group there are bound to be people
24 who are either corrupt or are in the wrong job. That is
25 inevitable. It is a question of being rigorous of

1 rooting them out and getting rid of them.

2 Q. Can the problem be if you have someone who fits that
3 description and they're in a more senior role and are
4 leading more junior staff, there is a danger that their
5 way of doing things is the way that things are done?

6 A. I think that's a very real and present danger and one
7 that the Scottish Prison Service is fully aware of and
8 there is a whole pile of processes, procedures and
9 assurances that are in place in order to.

10 Firstly, try and prevent that happening.

11 Secondly, identifying when it does happen.

12 Thirdly, dealing with it.

13 Q. Yes.

14 LADY SMITH: Then of course, Wendy, as you have already
15 identified, these staff are civil servants, they're in
16 the employment of Government actually, because the
17 Scottish Prison Service is an agency of Government.

18 A. Yes.

19 LADY SMITH: So getting them out of a prison where it's not
20 working should not be difficult. It doesn't mean that's
21 the end of their employment. There must be the ability
22 to redeploy them somewhere else, even doing something
23 else.

24 A. That happens, I mean I can only speak anecdotally of
25 course but I have known staff who have been subject to

1 a police enquiry, subsequently convicted and ended up in
2 prison themselves and I have known of staff who have
3 been suspended pending enquiry and found not guilty or
4 no case to answer and I have known of staff who have
5 been moved to other locations, yes. No question.

6 LADY SMITH: Do you come across instances of, if I can put
7 it this way, members of staff getting to the end of
8 their shelf life of being able to do that work?

9 A. Yes, I do. One of my constant issues that I raise and
10 have raised with Scottish Government is that the retiral
11 age for prison officers is 67, whereas if you are in the
12 police or the fire service the idea that you can roll
13 around the floor with a very fit young offender who is
14 intent on attacking you at 67 is insane, so there should
15 be the opportunity to move to other jobs in the prison
16 that are no longer prisoner facing.

17 LADY SMITH: Thank you.

18 Mr Peoples.

19 MR PEOPLES: The current retirement age matches the State
20 retirement age, 67.

21 A. That's right.

22 Q. Whereas, as you have said --

23 A. In the emergency services it is younger.

24 Q. It is younger in the police, I think it used to be 55 or
25 thereabouts that they could retire, but that's not the

1 case with the Prison Service?

2 A. No.

3 Q. Just on the point of staff and staff movement. Is it
4 normal for prison staff at all levels to move around
5 frequently or not?

6 A. No. But certainly those who are promoted will move
7 around. That is very normal. If you look at the shift
8 of prison governors, they move around a lot.

9 Q. They also move to headquarters from time to time --

10 A. Yes.

11 Q. -- and back to a particular establishment?

12 A. Yes.

13 Q. The large majority of prison staff on the coalface, as
14 it were, may well stay in the same place for a very long
15 time?

16 A. Absolutely.

17 Q. If they went in in their youth and they came out at 67
18 they've been there a very long time?

19 A. Yeah, and they tend to be some of the best staff.

20 Q. On page 11, under question 4, you make reference to the
21 Inspectorate's Year of Childhood survey, I think you
22 have told us about that a bit --

23 LADY SMITH: What year was that, Wendy?

24 A. Oh, blimey --

25 MR PEOPLES: 2021.

1 A. 2021.

2 LADY SMITH: Thank you.

3 MR PEOPLES: I think we see that on page 12, footnote 17.

4 I'll ask you just a few things about that.

5 You tell us that that survey indicates over

6 90 per cent of young people under the age of 18 felt

7 safe. Can you give us an idea of how extensive that

8 survey was?

9 A. Tiny, there were only 13 children in at the time.

10 Q. This is maybe not a completely reliable guide to the

11 general picture over time?

12 A. It's a completely reliable guide for those 13 children.

13 Q. It's not a large chunk of the young people who have been

14 through the system --

15 A. Not at all.

16 Q. -- in even say the last five, ten or 15 years, whatever?

17 A. No.

18 Q. At least we can take comfort from the fact that

19 90 per cent of the 13 felt safe?

20 A. Yeah.

21 Q. Did they say they felt safe all of the time --

22 A. Those were all of the time. What was really interesting

23 was that the majority of them are in for the first time

24 and they were terrified before they came in and they

25 said they were really scared and they came in and they'd

1 heard terrible stories of what happened to children in
2 prison and the staff on reception and the staff on the
3 wing were incredibly friendly, they felt safe, and they
4 calmed down and relaxed within about 24 hours. So that
5 was very rewarding and reassuring actually.

6 Q. Where would these children have been accommodated at the
7 time of the survey?

8 A. In Polmont.

9 Q. I think one of the things the survey said is -- this is
10 reading about five lines from the bottom of page 11:

11 "Children who are detained are entitled to
12 additional protections and special treatment as children
13 under international human rights law and standards.
14 From this survey, it is clear that, while children were
15 largely physically well cared for, their psychological,
16 educational, social or cultural rights and needs were
17 often not met in prison (and often not before prison
18 either)."

19 That was the conclusion, was it, at that time?

20 A. Yes, and that's one of the reasons we went ahead and did
21 the proposal for the Cabinet Secretary about removing
22 children from prison. If I can just give a stark and
23 clear example.

24 My fundamental belief is that those under the age of
25 18 need a therapeutic environment that looks at their

1 identified needs and starts to work with them. If you
2 look at the staff who work in Polmont, they start with
3 10 to 12 weeks' training and they then have additional
4 bits and pieces of training added on.

5 If you look at what is happening in the secure care,
6 you have qualified social workers. It's a whole
7 different ball game in terms of dealing with staff and
8 staff having to deal with very vulnerable, complex and
9 awkward children. I think that in itself is sufficient
10 to say that they should not be in prison, apart from
11 anything else, the UNCRC says they shouldn't be in
12 prison.

13 Q. It's not really in accord with international rights,
14 conventions and standards?

15 A. Not at all, no.

16 Q. In any event, you say that when you compare it with the
17 secure services, that are not run by the Prison Service,
18 then there is a difference of treatment?

19 A. There is.

20 Q. You would be advocating that anyone who is required to
21 be kept in secure conditions should be treated the same
22 as any other person in that environment, whether it's
23 run by the SPS or the secure services?

24 A. I think while we recognise that children have very
25 different needs as adults and take away the argument

1 about under 25s and brain maturation, I still think, we
2 as a society, should be concentrating on our young
3 people. To have the facilities of secure care where the
4 building is different, the staff clothing is different,
5 it's a therapeutic environment, it's a very different
6 environment to a prison. However wonderful that prison
7 is, it's a very different environment and I think our
8 children deserve it.

9 Q. You are really -- it may go back also to a principle
10 mentioned in the context of how you meet the mental
11 health needs of people in custody, that I think
12 Dr Chiswick as far back as 1985 was advocating the
13 principle of equivalence, that they should get the same
14 services as they would get if they were in the
15 community?

16 A. The principle of equivalence under health is really
17 interesting, because the health inequalities in prison
18 are stark. I don't think people in prison should have
19 health under the principle of equivalence, I think it
20 should be bespoke.

21 Q. In the sense of equivalence that they received no less
22 favourable treatment. You may be saying they should get
23 more favourable treatment because there are special
24 factors in play, but I think he was picking up the point
25 that at that time if you were confronted with

1 a situation that was confronting people at Glenochil,
2 these young people should have been treated in a far
3 different way, they should not have been stuck in
4 a cell, observed at 15-minute intervals and basically
5 left to their own devices. That in --

6 A. We can all agree on that. I have a belief that the
7 Norwegian philosophy of prison deprives you of your
8 liberty but in all other respects you hold the same
9 rights and principles as you would in the community, is
10 one that we should aspire to.

11 MR PEOPLES: I'm conscious it's 3 o'clock.

12 LADY SMITH: Would that be a good point to break?

13 MR PEOPLES: It's as good as any.

14 LADY SMITH: Wendy, we'll take a very short break at this
15 stage, it gives the stenographers a breather and then
16 get back between five and ten minutes from now.

17 (3.03 pm)

18 (A short break)

19 (3.11 pm)

20 LADY SMITH: Mr Peoples.

21 MR PEOPLES: My Lady, can I just go back to page 12 of the
22 report? We had been looking at the response to
23 question 4 and we had looked at what needs were being
24 met and what needs were not being met, based on the
25 survey and the conclusions that were drawn. It is there

1 mentioned that under the prison rules the use of
2 pain-inducing restraint is permitted, and I think that
3 remains the case --

4 A. No, not any more. Under the prison rules it does, but
5 the SPS have changed it.

6 Q. I was going to say we learned that there are now two
7 pilot projects that I think it's called Control &
8 Restraint Phase 2 now, which are piloting the use of
9 non-pain-inducing restraints in Polmont and Stirling --

10 A. Yes.

11 Q. -- so that they are reviewing that whole area of
12 restraint and techniques and so forth, although it would
13 be misleading to think that all restraint would be
14 pain-free, because I think there is a situation in which
15 pain-inducing restraint might still be used?

16 A. Definitely, if it escalates to that extent, yes, but the
17 first defence is non-pain-inducing.

18 Q. The prison rules themselves still remain at the moment?

19 A. They do, there are many anachronisms in the prison rules
20 which I have raised repeatedly.

21 Q. Do you think the prison rules are due another revision
22 and review?

23 A. Urgently.

24 Q. Am I right in thinking the prison rules, as was the case
25 historically, apply across the board?

1 A. Yes, yes. There was no differentiation for different
2 cohorts of prisons, no differentiation for children, nor
3 for women, nor elderly.

4 Q. I think to some extent there is now change and I think
5 we heard evidence from Sue Brookes at least in terms of
6 perhaps gender-specific and trauma-informed practices
7 the management of women offenders has certainly changed
8 in approach in recent years, although I think the
9 management of male offenders, including young male
10 offenders, is still to catch up on that?

11 A. It has, yes, but you also have to remember that the
12 largest women's prison in Scotland is Polmont, not
13 Stirling.

14 Q. How many women are still in Polmont then?

15 A. Not still in Polmont, they have quite a lot of women in
16 Polmont. I think it's 124, whereas it can only take 100
17 in Stirling.

18 Q. Are you telling me that there are 124 in Polmont today
19 and 100 in Stirling as well?

20 A. Yes.

21 Q. But we know from information given that only one young
22 woman under 18 is in either, I think?

23 A. Yes.

24 Q. The survey I think, one of the conclusions, was that
25 based on the children's own description was high levels

1 of isolation within their cells and two-thirds
2 experiencing daily time out from their cells of two
3 hours or less, with the proportion with less than one
4 hour out of cell increasing on weekends.

5 That echoes what you said earlier, that time out of
6 cell is still a continuing issue, it would appear?

7 A. You have to remember this was during the pandemic, 2021,
8 so there was a whole system approach to keeping people
9 separate in order to protect their lives.

10 Q. Since the restrictions have been eased --

11 A. Significantly different.

12 Q. So there is more time out of cell?

13 A. Very much more.

14 Q. Is there still a concern about the amount of time that
15 a person spends in their cell without meaningful
16 activity?

17 A. Very much so, yes.

18 Q. It's not being addressed totally?

19 A. For those under 18, I think it has, to a large extent
20 been addressed. It's an awful lot better than where it
21 was.

22 They also have developed a wonderful thing called
23 a social inclusion team, where those people who choose
24 not to come out of their cell or who are not coming out
25 of their cell for whatever reason are tackled by the

1 social inclusion team. It's quite an impressive --

2 Q. That is a relatively recent development?

3 A. Yes.

4 Q. You think that is a good development obviously?

5 A. A superb development, yes.

6 Q. If we move on to question 5. I can take this relatively

7 short, because I think you have already answered it, but

8 the question really was whether generally speaking at

9 least young persons, particularly under 18, were

10 currently held in safe, secure and humane conditions in

11 Scottish Prison Service establishments.

12 I think that you just made clear that in your

13 opinion young people are, generally speaking, currently

14 held in such conditions and you felt that some evidence

15 for this, this was the year of the childhood survey and

16 the percentage that said they felt safe?

17 A. Yes.

18 Q. Is that correct?

19 A. Yes. Interestingly, nobody felt unsafe, which is

20 perhaps the better evidence.

21 Q. There is a qualification, you do say, in any event,

22 however safe they may feel, it's your clear view they

23 shouldn't be in a prison environment --

24 A. Yes.

25 Q. -- and they should be in some sort of alternative secure

1 accommodation elsewhere. Is that correct?

2 A. Yes.

3 Q. Indeed you say that in 2022 you provided a proposal to
4 that effect, to the Minister for Children and Young
5 People and the Cabinet Secretary for Justice and
6 Veterans?

7 A. Correct.

8 Q. Did the initiative come from the Inspectorate on that
9 matter?

10 A. That initiative came from the Inspectorate. I know it
11 was in the Government Manifesto and there was also The
12 Promise, which more or less said the same thing, so,
13 yes, there is a tripartite approach. I think there is
14 a general agreement it needs to happen. The speed with
15 which it's happening is a little less obvious.

16 Q. I think I referred Sue Brookes to that this was being
17 said some time ago as well --

18 A. Yes.

19 Q. -- even before 2020 or 2019 --

20 A. Yes.

21 Q. -- that this should be happening?

22 A. For me my views are that as the Inspectorate, I do have
23 to raise these issues, if I think it's important enough.

24 Q. Moving on page 12 to question 6, this was really seeking
25 to identify what in your view within the period of the

1 Inspectorate's existence had been major changes to
2 practice, policy and legislation that had materially
3 improved protection against abuse of young people under
4 18 and/or abusive practices in establishments run by the
5 Scottish Prison Service.

6 You mention a number of changes and I'm not going to
7 go through them all. I am just maybe going to pick out
8 one or two, but we can read them all. You do say on
9 page 13, in the second paragraph:

10 "In common with other UK jurisdictions, Scotland has
11 adopted a structure of independent prison
12 accountability; one built around systems and
13 institutions of monitoring and inspection."

14 You have told us quite a lot about that earlier
15 today.

16 In terms of major changes to practice, you give us
17 some changes that in your view should be considered
18 major changes. Some of them are probably more concerned
19 with keeping children out of the criminal justice system
20 or seeing that their sentence reflects their age and
21 maturity.

22 I'm not going to dwell on this, I think we know what
23 they are and I'm not going to spend time directly, but
24 they are there. One that you do mention is: "On
25 28 October 2021, the CYPCS produced a guide for young

1 people in conflict with the law, developed with young
2 people held at [Polmont] and in collaboration with [the
3 Inspectorate]."

4 That was a guide for young people about their rights
5 and entitlements in custody, is that correct, it was
6 quite a simple document which was produced for their
7 benefit --

8 A. Yes.

9 Q. -- as users?

10 I don't know whether you are able to help me. Do
11 such guides make a difference, in your view?

12 A. One of the things that I'm constantly aware of is that
13 people in custody, in prison custody, are rarely aware
14 of their own rights and that it's really important for
15 me that they're at least aware, whether it makes
16 a difference is yet to be seen.

17 For instance, one of my IPMs has been writing
18 a plain English guide of the prison rules, with the
19 thought that they will train prisoners to become
20 champions, that they can read them and understand them
21 and explain them, so that prisoners who for instance are
22 subject to disciplinary procedures are aware that they
23 can have someone with them as support or can call
24 witnesses.

25 In reality, prisoners very rarely have

1 an understanding of their rights. If you look at the
2 Howard League, they produce a children's rights or
3 a prisoner rights leaflet, but that wasn't readily
4 available in the prison. The Children's Commissioner
5 didn't have a rights and neither did CYCJ, so actually
6 that work producing the rights, it will take time to see
7 if it's had any effect.

8 Q. Is it standard practice to give a copy of that document
9 to any young person who comes into custody on admission?

10 A. Yes. They have a booklet that is given to them now on
11 admission, also written by prisoners in Polmont, which
12 describes all sorts of things that happen in prison and
13 what they do. But also has a statement of, "You're
14 entitled to/your rights are ..."

15 Q. Do they get the guide as well?

16 A. Yes.

17 Q. It's --

18 A. I don't know if they get that guide, but they get
19 elements of that guide in the booklet.

20 Q. Who is that guide addressed to then, if they don't get
21 it?

22 A. The guide -- it's addressed to -- my theory is it's
23 addressed to the kids. Whether or not the SPS give it
24 to them, I don't know. I do know that I checked the
25 booklet when I was in there on inspection and was quite

1 impressed.

2 Q. It wouldn't do any harm to give it to them, would it?

3 A. No, it wouldn't, no.

4 Q. It might make a difference. Do you sense that young
5 people have a better appreciation in more recent times
6 of the fact that they have rights and what these rights
7 are? I think you said that sometimes they come in
8 without really any understanding of them, they think
9 that they leave their rights behind perhaps?

10 A. I think they do.

11 Q. Do you think that's changing? Slowly?

12 A. No, I think there is a tolerance of conditions in prison
13 that is not questioned.

14 Q. You might feel if you are in a closed environment it's
15 quite a different place to assert rights?

16 A. There are a number of people who have no problem with
17 that.

18 Q. It's easier perhaps to be in a free and open environment
19 and say, "This is my right, to protest, to do X, Y and
20 Z", but if you're in a closed environment and perhaps
21 you can't escape that environment having exercised your
22 rights could be difficult?

23 A. It could be very, very difficult. I just know of a fair
24 number of prisoners who have no problems doing that.

25 Q. Perhaps --

1 A. I'm grateful to them, because I think they reflect what
2 other people don't feel they can or don't have the
3 capacity to do.

4 Q. That is the problem of those who at least are willing to
5 complain or assert their rights and those that are the
6 silent percentage?

7 A. Yes.

8 Q. Is it the latter that are in the majority at prison?

9 A. Yes.

10 Q. In terms of major changes to policy, can I just touch on
11 that briefly? On page 14, one of the things that you
12 say, and this is a change of policy within the
13 Inspectorate, is that in 2018, using a right-based
14 approach, the Inspectorate reviewed their inspection and
15 monitoring standards. These are your standards?

16 A. Yes.

17 Q. I think all the different bodies have their own
18 standards at the moment. There is no universal set of
19 standards, is there?

20 A. No, there's not. There are UN guidelines for the
21 inspection and monitoring of a closed establishment.
22 They are there. Along with everybody else, we'll look
23 at those --

24 Q. Domestically there is no --

25 A. No.

1 Q. -- uniform set of standards?

2 A. No.

3 Q. Is there a uniform set of underlying common principles?

4 A. Yes, it's based on the United Nations.

5 Q. What about domestic expression of general principles, is
6 there a common --

7 A. If you look at the domestic law, which reflects the
8 United Nation's law, then it's the acceptance of things
9 like the Mandela Rules, Havana Rules, Bangkok Rules,
10 et cetera. So, yes, I think there is a universal
11 understanding that those are the universal rights but
12 then adapted, I should imagine, by each inspectorate to
13 their own use.

14 Q. You tell us that these are set out in a document,
15 "Standards for Inspecting and Monitoring Prisons in
16 Scotland"?

17 A. Yes.

18 Q. That was from 2018?

19 A. Yes.

20 Q. Do you routinely review these standards --

21 A. Yes.

22 Q. -- on a regular basis?

23 A. Yes.

24 Q. For example, I suppose a question has been asked of some
25 others, whether reviews of one kind or another have

1 taken place following the publication of The Promise.
2 I don't know whether in your context that has happened
3 or is happening or has happened?

4 A. Yes. I know The Promise has been reviewed. I was
5 speaking to the chair of the implementation thing, the
6 report he's just produced or they've produced, so I know
7 that happens. I also know that we reviewed our
8 standards to see whether the English standards, which is
9 the four tests, would be more applicable to Scotland.
10 Decided that these were just fine just as they are.

11 As part of that, we reviewed the grading system that
12 I talked about before. We do that routinely.

13 The other thing we did was review it as to whether
14 we needed to have bespoke standards for women or young
15 people and we decided there were elements that needed to
16 be bespoke for both women and young people.

17 Q. When you say you did all of that, was that post-2018?

18 A. Yes.

19 Q. Insofar as you had to have bespoke standards, before
20 that, am I right in thinking that the standards were
21 generic standards?

22 A. I presume so. I don't know what the standards were
23 before 2018.

24 Q. It's the 2018 standards that are still applicable?

25 A. Yes.

1 Q. Are you saying in a sense that to make them more bespoke
2 they're adapted -- the general standards still apply but
3 they are adapted to particular groups?

4 A. Yes, just to see whether they needed to be adapted for
5 additional groups.

6 Q. If someone was going to inspect a young offenders
7 institution or an establishment for women offenders,
8 they would have the standards but they would also
9 perhaps have some adaptation?

10 A. That's right. In fact we haven't changed them at the
11 moment at all.

12 Q. Are you planning to?

13 A. No. The only standard that will change at the moment
14 will be Standard 9, where we're going to incorporate the
15 new MAT standards. I'm not quite what "MAT" stands for,
16 but it is the new standards for healthcare and therefore
17 they need to be incorporated into Standard 9.

18 Q. Just on the issue of standards, what we're talking about
19 here are the Inspectorate's "Standards for Inspecting
20 and Monitoring Prisons in Scotland"?

21 A. Yes.

22 Q. That is what we are talking about here.

23 I think you have listed them in your report, but
24 just to get an idea that what you are doing, I suppose
25 in inspecting and making findings, is considering the

1 extent to which there is compliance with the various
2 standards that you are inspecting against --

3 A. Yes.

4 Q. -- and you'll make findings on these matters in the
5 reports. You may identify recommendations or -- are
6 action points something different from recommendations?

7 A. No.

8 Q. They're the same effectively?

9 A. They're the same.

10 Q. You do that and you've told us how you would monitor
11 that in due course. The standards themselves, you say
12 there are nine and I think they are set out in the
13 report, but for example Standard 3 is concerned with
14 personal safety?

15 A. Yes.

16 Q. That would embrace areas such as suicide prevention
17 measures and strategies like Talk To Me, for example?

18 A. It would, yes.

19 Q. Standard 4, just to pick another one, is effective,
20 courteous and humane exercise of authority. Is that
21 really trying to evaluate and assess to what extent the
22 authority is used in an appropriate way?

23 A. Yes. So we all look at the disciplinary procedures for
24 instance, yes.

25 Q. Standard 5 is I think respect, autonomy and protection

1 against mistreatment, is that right?

2 A. Yes.

3 Q. That to some extent is looking perhaps broadly at

4 relations between staff and --

5 A. And use of force.

6 Q. The relationships though between the staff and those in

7 custody, but also the use of force also does it include

8 access to family, to information, to recreation and so

9 forth?

10 A. Yes, and visits and phone calls, letters, all of those

11 things.

12 Q. Standard 6 I think is one which used to be a familiar

13 and perhaps still a current theme, purposeful activity

14 within the prison --

15 A. Education, employment, et cetera.

16 Q. It's access --

17 A. Library.

18 Q. -- education, employment opportunities or opportunities

19 to improve your employability and so forth.

20 A. Yes.

21 Q. Life skills, parenting skills?

22 A. All of those things.

23 Q. Then Standard 8, to take another one, is organisational

24 effectiveness. That will take in matters such as

25 staffing and --

1 A. Training.

2 Q. Leadership, governance?

3 A. To some degree, leadership and governance. It is
4 something we do look at, it is not specified what we
5 mean by "leadership" -- governance is covered, but it's
6 not specified what we mean by "leadership", but you'll
7 find some reports that specifically mention the "dynamic
8 leadership", the one on Polmont that is about to come
9 out, will have exactly that.

10 Q. Historically an expression that appeared in regulations
11 in other settings was the personal influence of the
12 person in charge of an establishment. I just wonder how
13 much that still counts in terms of the personal
14 influence of the person in charge, the governor of
15 a particular establishment, how important is that?

16 A. I wish it wasn't as important as it actually
17 evidentially is. The person at the top sets the tone
18 and direction. There is no question about that.

19 Q. You have to get the right person to set the right tone?

20 A. You do. They need to be supported by the right team.

21 Q. When you say the right team, do you mean the senior
22 management team?

23 A. I do mean the senior management team.

24 Q. Outwith the establishment?

25 A. Within and outwith the establishment.

1 Q. They all have to be the right people?

2 A. Yes, but I think within a closed environment of a prison
3 the headquarters is a particular function, but the
4 prison itself is very much the tone and direction is set
5 by the governor, very clearly, or the director in the
6 private prisons.

7 Q. How autonomous in practice are establishments and how
8 autonomous is the governor in the sense of the
9 day-to-day operations in the way in directing the
10 culture, the attitudes, the approach to various issues,
11 how important is that?

12 A. We find that they are hugely autonomous within a very
13 rigid structure.

14 Q. To what extent, if someone was in the cloistered
15 environments of headquarters, would they actually know
16 what was going on in any particular establishments?

17 A. I think there are -- they should know, there is the data
18 collection, et cetera, et cetera, et cetera, but
19 of course there are regular meetings. So the
20 headquarters meets with all the governors every month,
21 but there are other more meetings and specialists
22 et cetera, so, yes.

23 Q. They should have a good idea of what is going on on the
24 ground?

25 A. They should.

1 Q. In a hierarchical structure -- I think it's been seen in
2 other inquiries there can often be a difficulty in the
3 top knowing exactly what is happening --

4 A. The disconnect, yes.

5 Q. Particularly if it involves reporting from one level to
6 another?

7 A. Yes.

8 Q. It gets distilled or abridged?

9 A. We all know that sometimes the level can provide
10 a block, yes.

11 Q. They don't necessarily get all the information they
12 should be getting at the very top?

13 A. Having been an area manager of six prisons and four
14 immigration centres, I had a very specific set of
15 detailed information that I received daily, weekly,
16 monthly, which gave me a threat alert, where I was
17 concerned. I should imagine that the Prison Service
18 have exactly the same.

19 Q. Just going back to the standards, just to mention one
20 other, Standard 9 is I think health and wellbeing?

21 A. That's right.

22 Q. I think we're in the era where it's not just safety,
23 it's wellbeing --

24 A. Very much so.

25 Q. -- and promotion of --

1 A. Very much so.

2 Q. -- the development of the individual, whether in
3 a prison or indeed a care setting?

4 A. Yes.

5 Q. That is seen as the proper and modern approach?

6 A. Yes.

7 Q. In terms of health, I think I mentioned the principle
8 equivalence. I don't think you liked that expression,
9 but what I meant was there had to be at least a minimum
10 equivalence --

11 A. Yes.

12 Q. -- and that they had to have access in a prison
13 setting --

14 A. They don't have it and it is unrealistic to think that
15 they do have it. For instance, if they have an external
16 hospital appointment and the prison transport provider
17 doesn't provide transport or cancels the transport, you
18 or I could jump on a bus, we could get a taxi, we could
19 get a friend to raise us, prisoners cannot. We can
20 phone 111, they cannot. There is no principle of
21 equivalence. You have to have it bespoke, but you are
22 right, the standard of care and the access to care
23 should be, at a minimum, equivalent to that of the
24 community.

25 Q. Putting it this way, the access should be access to

1 appropriate care when needed?

2 A. Correct.

3 Q. And appropriate management when there is a healthcare
4 need, including access to specialist services?

5 A. Yes, and long-term condition management and all of those
6 things, yes.

7 Q. I think we were told by Sue Brookes that the approach of
8 the service is not to try and locate a full healthcare
9 facility on site in any prison. There may be places
10 that people can be put on a temporary basis and then
11 they could be moved outwith the prison or is that not
12 according --

13 A. I'm not sure I understand what that means. Healthcare
14 is wholly provided by the NHS and not by the SPS.

15 Q. Yes, but on site, if someone has a problem they might
16 initially be taken to some part of the site,
17 a particular room or a particular place set aside for
18 that purpose, but for example would they spend a lot of
19 time in a special room within the prison rather than
20 being taken to hospital or appropriate facility outwith
21 the prison?

22 A. No, no. In 2011 they transferred to the NHS. They got
23 rid of in-patient care altogether. If they require
24 in-patient care they are moved to a hospital.

25 Q. There will be a period between the problem emerging and

1 the transfer to the external care that is needed?

2 A. There certainly is in mental health, a worrying gap.

3 Q. I probably was thinking mostly of that, because there
4 has been some evidence about whether people might be
5 placed for example in a separation and reintegration
6 unit for a time and they could be placed there for two
7 reasons.

8 One, as a form of -- let's call it a punishment sort
9 of situation, is that rule 95.

10 Then they could be placed there because of
11 a suspected mental health issue, that's rule 41?

12 A. Yes.

13 Q. The same unit is used for both?

14 A. Correct.

15 Q. Do you agree with that?

16 A. Absolutely not. If you were to read our segregation
17 review you'll feel that our opinions on that are quite
18 strong.

19 Q. Just going back to your report on page 14, I think we
20 have covered some of the other things that have been
21 major changes, including recent developments by the
22 Inspectorate, such as the pre-inspection survey in 2021
23 and the same year the publication of the Year of
24 Childhood survey and its findings.

25 Over the page, page 15, we have the proposal to take

1 under 18s out of the prison system in 2022.

2 Then you say that there is no current research that
3 the Inspectorate is aware of -- third paragraph down --
4 which examines the effectiveness of the Inspectorate in
5 Scotland or which evidence that our work is materially
6 providing improved protection against abuse of young
7 people under 18. But that there is research underway
8 now?

9 A. That is right, yes.

10 LADY SMITH: I think you referred to that earlier,
11 didn't you?

12 MR PEOPLES: That is the PhD student --

13 A. Yes.

14 Q. -- who is looking at that matter.

15 If we go to "Major changes to legislation", page 16,
16 one matter I would just like to pick up, because we have
17 dealt with quite a lot of this in earlier evidence, is
18 that since 1 October 2010, under section 115 of the
19 Public Services Reform (Scotland) Act 2010, the
20 Inspectorate can undertake joint inspections with two or
21 more persons or bodies, including His Majesty's
22 Inspectorate of Constabulary in Scotland, His Majesty's
23 Chief Inspector of Prosecution in Scotland or Education
24 Scotland, in relation to the provision of children's
25 services and such other services as the Scottish

1 Ministers may specify.

2 I think you can also undertake with the Care
3 Inspectorate and you said you do that?

4 A. That's right.

5 Q. You have mentioned Education Scotland. Do I understand
6 from what you have told us that since you have had that
7 ability you have tended in practice to have a team of
8 over 20, which would include at least one or perhaps
9 more than one of these agencies?

10 A. Definitely.

11 Q. Albeit it is still your inspection?

12 A. Yes.

13 Q. And your report?

14 A. Yes.

15 Q. I think you deal with some of the effects of the COVID
16 pandemic. I think we can read those for ourselves and
17 you have given us some indication that there was
18 a degree of restriction during that period about time
19 out of cell. I think you contrast that, do you not,
20 with the situation in secure care services elsewhere,
21 that they were given more --

22 A. I do, yes.

23 Q. -- time --

24 A. Secure care services operated a household bubble, where
25 the whole secure care was a household bubble. Therefore

1 children continued with education, time out of room,
2 et cetera, et cetera, et cetera. Whereas in Scotland
3 the Prison Service continued with the same harsh
4 restrictions that adults went through.

5 Q. Moving on to page 17, question 7: "What further changes
6 to practice, policy or legislation or otherwise are
7 necessary to better protect young people under 18 while
8 detained in SPS establishments?"

9 I appreciate your primary position is get them out
10 of there. I think you feel that is now underway and
11 will happen, although you may be concerned about the
12 time it will take?

13 A. Yes, I just hope it happens before this current
14 administration comes up for election.

15 Q. You do say on pages 17 to 18:

16 "Secure care is a much more appropriate setting to
17 provide therapeutic support for children with such
18 complex needs. In comparison to young offenders
19 institution they have a greater staff-to-child ratio,
20 operate as a childcare rather than a punitive setting,
21 more child-centred designs and environments, with
22 therapeutic support being central to the care provided.
23 Children in secure care tend to be able to maintain
24 better family contact, as well as better educational
25 opportunities in preparation for release."

1 You obviously think that that regime is better?

2 A. Yes.

3 Q. And that is the place that if you need secure

4 conditions, they should go?

5 A. Yes.

6 Q. Just in terms of these benefits or advantages in

7 comparison, is that based on what you have seen of the

8 secure care services?

9 A. Yes, and it's also based on talking to the Care

10 Inspectorate, talking to CYCJ, talking to the Children's

11 Commissioner but actually going visiting all the secure

12 care centres.

13 Q. I think there were five services until very recently --

14 A. Now four, yes.

15 Q. There are now four. All of them pre-date 2001. They

16 have kind of re-invented themselves as secure care

17 services. There is no new secure care units that have

18 grown up since then, is that correct?

19 A. I have no idea, I only know the ones that I visited.

20 Q. I think things like Rossie, Kibble, Good Shepherd and is

21 it St Mary's and until recently Edinburgh Secure

22 Services, they all pre-dated 2001 and some were Approved

23 Schools, some were assessment centres, remand homes.

24 You can take it from me that is the situation --

25 A. I believe you completely, yes.

1 Q. -- and there has been no new registered secure service
2 since 2001?

3 A. Right.

4 Q. We have lost one this year, and while you have said of
5 the benefits, and you visited them, you will be aware,
6 I take it, that there was quite a damning report about
7 the treatment of young people at Edinburgh Secure
8 Services over a lengthy period?

9 A. That was the only one I didn't visit. Typical really,
10 but the other four were significantly better than
11 Polmont.

12 Q. I suppose the only one you didn't visit as well, if
13 I can point out, was a Local Authority-run service?

14 A. That is interesting, isn't it?

15 Q. Well, possibly.

16 A. On the other hand, it is a perfect building if you
17 wanted to have a slightly separate secure care
18 (inaudible) thing for children on remand or convicted.

19 Q. It was the old St Katharine's and Howdenhall, they were
20 kind of side by side.

21 A. I must go and visit it actually.

22 Q. Moving on to question 8, this was looking at the future
23 and I'm not going to labour this, because I think
24 basically you are proposing to take them out of the
25 system, if they need secure conditions, put them into

1 secure care places run by other providers?

2 A. Yes.

3 Q. Is that the basic position?

4 A. On the contrary, one of the things that I discussed was
5 whether it could be jointly run under secure care
6 standards with a secure care provider and the Prison
7 Service.

8 Q. I see, so you see a role for the Prison Service?

9 A. I think there could be a transitional role, apart from
10 anything else, because you need to have confidence from
11 the judiciary that the secure care could cope with
12 someone who is under the age of 18 and has a violent and
13 refractory and particularly heinous crime, yes, I think
14 there is a real concern that secure care could not cope
15 with that.

16 The evidence that the secure care people gave at the
17 Justice Committee, however, is contrary to that and I've
18 certainly seen some of the people when I visited the
19 Good Shepherd who were extremely challenging and they
20 were managing them extremely well.

21 Q. I suppose though if the final shape of the legislation
22 is such that there is no exceptional circumstances to
23 keep them in a young offenders, the judiciary don't have
24 much choice?

25 A. Yes.

1 Q. That may be the simple answer?

2 A. That is certainly what happened with the under 16s,
3 wasn't it? And that was wildly effective and done at
4 speed.

5 Q. There is probably always a danger, even if you say there
6 should be a presumption against short sentences or
7 sending young people to some sort of young offenders --

8 A. I think there is a danger with the presumption, given
9 the 750 in custody who have a sentence of under
10 12 months.

11 Q. That would be removed if it was a blanket prohibition?

12 A. Yes.

13 Q. You just have to send them to some other secure setting?

14 A. Yes.

15 Q. Just on page 20, just to pick up, can I just briefly say
16 you have talked about barriers? We can read that for
17 ourselves. I wanted to be clear about what you are
18 saying under "Financial", that there will be a need, you
19 say, to reorganise the funding model for secure care, is
20 that secure care outwith the SPS?

21 A. Yes.

22 Q. Can you just explain what the reorganisation would
23 involve? Would it involve a cost to those that have to
24 fund the secure care?

25 A. There are two different elements to that -- or three or

1 four different elements, but the two primary elements
2 are:

3 (1) That places in secure care are currently funded
4 by the Local Authority, whereas places in prison, and if
5 we take secure care as the four secure care units, are
6 funded centrally, so there is already a tension in terms
7 of costing.

8 The four secure care centres are run under a private
9 contract, where the commissioning is that, in order for
10 them to make a profit, they have to keep full and
11 therefore they could not hold places open ready for
12 anybody who needs to come there from the court, whereas
13 the Prison Service have to.

14 That funding would have to change. I would argue
15 that the funding should be centralised in the same way
16 as the Scottish Prison Service is, so that they can hold
17 that space open.

18 Q. Otherwise you would have to have a block booking system
19 for secure places to allow the secure service providers
20 to have the financial income to run the service?

21 A. Yes, but you then have the second issue, which is prison
22 costs between 35,000 and 40,000 on average a year,
23 secure care costs about 160,000, so you have that
24 financial pressure. I would argue with only five people
25 that that is not something that should even be

1 considered.

2 Then you have the other little twiddly bits around
3 the edge, which is the prisoner transport and all of the
4 other things. Currently the prisoner transport provider
5 provides the transport for children and they are
6 supposed to prioritise them for court. We have seen
7 examples where 16-year-olds are released from their
8 court case at 2 o'clock and arrive at Polmont at
9 10.30 pm. All of that will need resolved and all of
10 that will bring additional cost.

11 Q. I don't want to sound a harbinger of gloom, but
12 I suppose harking back to when there was the great idea
13 to move the approved schools and List D schools away
14 from central Government funding and become residential
15 establishments as part of the network of care, that was
16 envisaged by the 1968 Act and it took until the
17 mid-1980s to sort out the thorny issue of funding and
18 who these schools would be run by.

19 I think there was a desire to transfer them to the
20 Local Authorities, who had said no, and there was the
21 question of, central Government doesn't want it to
22 continue to be a direct financial responsibility and
23 that took a very long time to resolve?

24 A. Interestingly, England is moving directly towards
25 a secure school system at moment. They are opening

1 their first secure school in the next two years.

2 Q. How does that work? Are these --

3 A. The recommendation from Charlie Taylor was a review of

4 the youth justice and the thought was that it was time

5 it moved to a secure school, so they won't just have

6 secure training centres, Local Authority schools,

7 children's homes and YOIs, they'll also have a secure

8 school.

9 Q. Would these be operated by whom?

10 A. They're going to be operated privately by a private

11 company called, I think, Oasis.

12 Q. They will not be like education authority-type schools

13 or part of that system?

14 A. Oasis runs a number of schools across the country for

15 the education authorities, yes.

16 Q. Under contracts?

17 A. Under contract.

18 Q. The sort of thing that Serco did and do?

19 A. Yes, and do.

20 Q. Question 9, page 21, you were asked the question of the

21 best way of achieving changes in culture, attitudes and

22 practice to ensure so far as practicable that young

23 people under 18 are, if detained, held in safe and

24 humane conditions.

25 I think you go back to the point you made earlier

1 that really your belief is it is the current secure care
2 system that should be accommodating young people who
3 need to be detained and that they are better equipped,
4 for the reasons you have given, to accommodate that
5 group. Is that right?

6 A. Yes, and I have no doubts they could be improved over
7 the years, but at the moment I just think it's a very
8 different standard and one that should be adopted for
9 all children.

10 Q. Question 10, page 22, I just take this one briefly as
11 well. "How can training of staff responsible for young
12 persons under 18 in places of detention be delivered in
13 a way and form that will ensure, so far as practicable,
14 that it is absorbed and retained and, most importantly,
15 applied?"

16 I don't suppose I was saying that just directed to
17 training of staff in the Prison Service, I think it was
18 a general question. Your response is:

19 "Training that is trauma-informed, age and gender
20 specific, regularly refreshed, accredited and subject to
21 registration is considered best."

22 I suppose that could take the issue of registration
23 that we have talked about earlier, there is no
24 registration of prison staff?

25 A. There is none.

1 Q. But if they were in secure care there would be secure
2 care services registered with the Care Inspectorate and
3 there would be a workforce that would be regulated by
4 the SSSC?

5 A. Yes.

6 Q. That would solve that problem?

7 A. I think it would, or it would certainly help.

8 Q. Question 11, the question broadly was: "What are the key
9 requirements if the aim is to hold young people under 18
10 in detention in conditions that are safe, secure and
11 humane?" You mention in the context of young offenders,
12 and indeed all penal establishments in Scotland, you
13 have developed the nine standards by which you assess
14 treatment and conditions. I'm not going to go through
15 that again, but you do say that your standards are
16 heavily influenced by a number of international bodies
17 and rules that you have listed on page 2.

18 I think you mention in particular, on the top of
19 page 23, which I think we are familiar with, the UN
20 Convention on the Rights of the Child, which was 1989,
21 and the Havana Rules which you have mentioned, but
22 I think you also mentioned the Mandela Rules as well?

23 A. Yes.

24 Q. Are these all sort -- if someone is trying to devise any
25 domestic rules they would be having regard to these

1 instruments when doing so?

2 A. Yes.

3 Q. I think that the CPT, as you have said earlier, has in
4 recent times been quite critical of certain aspects of
5 the system of detention in Scotland, where children and
6 indeed others are restricted of their liberty, is that
7 correct?

8 A. Very much so, particularly the use of segregation.

9 Q. Question 12, page 24, is to do with the independent
10 prison monitoring system. I'm not going to take you
11 through that again, we have dealt with that area earlier
12 today.

13 There is a question 13 about the IPM system,
14 page 25. I appreciate that I think it's undergoing some
15 degree of some review at moment --

16 A. Yes.

17 Q. -- but you do say that there are changes that you feel
18 are necessary to the system in any event. One of them
19 is a new IT database system for analysing data to help
20 support reports that are produced by the monitors and
21 the service; is that correct?

22 A. Yes.

23 Q. Indeed there is a need for more IPMs as well?

24 A. A huge need for more IPMs, yes.

25 Q. How many are there at the moment, roughly?

1 A. Eighty-seven. We need about 130. COVID decimated us
2 really.

3 Q. Question 14, page 26, that was to do with observations
4 on the effectiveness of the current complaints process
5 in place for young people held in detention. I think we
6 have your views on that, that there is a good deal to be
7 improved there to make it an accessible and effective
8 system?

9 A. Yes.

10 Q. Am I right in thinking that at least until fairly
11 recently if you wanted to make a complaint as a prisoner
12 or detainee you had to fill in a form?

13 A. You still do.

14 Q. You still do?

15 A. PCF1, basic complaint.

16 If you want to complain about staff or directly to
17 the governor about something that you don't feel can be
18 dealt with by staff it is PCF2, and it has to be in
19 writing.

20 Q. If I had a verbal complaint and I wasn't able to put it
21 into some written form it would be rejected?

22 A. Correct.

23 Q. Really?

24 A. What actually happens -- that is the theory -- is that
25 they get another prisoner to help them write the form or

1 an IPM helps them write the form.

2 Q. It shouldn't be that way, should it?

3 A. No.

4 It's only recently that they've introduced the form
5 in different languages.

6 Q. Question 15, page 27 -- I'm coming towards the end of
7 your report on the matters I want to raise -- is you
8 were asked to make any comments or observations on the
9 quality of record keeping by the Scottish Prison
10 Service. I think your position is that in general
11 record keeping is of a relatively high quality, although
12 you have some concerns about recording in relation to
13 those with mental health issues?

14 A. Yes.

15 Q. You don't always feel that's well recorded?

16 A. Not at all.

17 Q. Can you remind me of an example of the thing that you
18 worry about?

19 A. A number of things we worry about.

20 (1) The assurance process on the suicide prevention
21 strategy, which requires a signature that a member of
22 staff has reviewed it, looked at it and seen if there's
23 anything more to do.

24 (2) The whole issue around recording of
25 isolations/time out of cell activity, but also the

1 segregation review identified that there isn't a very
2 simple way to find out how long somebody has been in
3 segregation. If they are currently in segregation it
4 looks at their current segregation. But over the life
5 of their time there, where they may have been in and out
6 of segregations over a period of years, you can't pick
7 that up easily. It needs an IT system that would do
8 that easily.

9 Q. A more effective SPS IT system should be able to provide
10 that information fairly quickly?

11 A. Yes. But you also have other areas, for instance, in
12 health. The IT system is out of date and doesn't
13 correspond with community health.

14 Q. You don't actually get the person's full medical history
15 through the system --

16 A. Correct.

17 Q. -- the systems don't speak to each other?

18 A. Correct. You have other issues, they don't have
19 electronic prescribing, so new staff who come in who
20 have never used anything other than electronic
21 prescribing have to learn to use Kardexes ... so there
22 are loads of stuff about IT that needs to be sorted out.

23 One of my other issues is that I think prisoners
24 should have access to IT, should be able to make and
25 receive emails in their room, should be able to contact

1 healthcare and ask for an appointment themselves, should
2 be able to have videolink appointments with healthcare
3 and if you've got a long-term sentence, the idea that
4 you leave prison having never used or seen a smartphone,
5 never used IT to search for information, you are putting
6 people at an immediate disadvantage.

7 We live in a technology age, we should be training
8 people to use it.

9 Q. What about mobile phones?

10 A. I think they should have mobile phones, but on the
11 contrary I think they should be mobile to their cell
12 only.

13 Q. At least they would have a means of communication with
14 them?

15 A. Yes.

16 Q. That could communicate to certain people at certain
17 times?

18 A. That's right, yes.

19 Q. Question 16, page 27, was comments on the Scottish
20 Prison Service current Child Protection Policy for
21 children under 18. What you say I think is it was due
22 for review in December 2020. I think it's still not
23 been reviewed, if I remember what Sue Brookes said.
24 What did you make of that policy? Did you think it did
25 need review?

1 A. Which one are we talking about here?

2 Q. This is the foot of page 27, under question 16. You
3 say:

4 "It was generally fit for purpose but we noted the
5 policy was launched in December 2018, it was due for
6 review by December 2020."

7 That is just at the foot of page 27.

8 You understand the review has not yet been
9 completed, and I think that remains the position?

10 A. I think that remains the position too.

11 Q. Obviously you are not saying it needs drastic review
12 like presumably the prison rules, but you think it's due
13 a review and it should be reviewed?

14 A. As with the transgender review, they need reviewed and
15 the policy needs published, yes.

16 Q. The last questions, 18 to 22, pages 29 and 30 --

17 A. Can I just mention there, though, that I do think the
18 young people's strategy is really good?

19 Q. Yes, that is the new statement in 2021 or thereabouts?

20 A. Yes, it's really good.

21 Q. They also have some -- that is the vision --

22 A. The vision.

23 Q. -- for the future for 2021 to 2025?

24 A. Yes.

25 Q. Then they have a strategy for women, 2021 to --

1 A. Both of those are very good.

2 Q. Questions 18 to 22, pages 29 to 30, I'm not going to
3 dwell too much on these. What I was really seeking to
4 get was some understanding of the relationship, if any,
5 between the Inspectorate and the Prison Service's own
6 internal monitoring mechanisms, in particular something
7 just known as the audit and assurance unit, AAU --

8 A. PRL it is also known as, Prisons Resource Library.

9 Q. Thank you.

10 You say it's not within the Inspectorate's role to
11 assess the effectiveness of the internal monitoring
12 systems or the effectiveness of the AAU or PRL. I think
13 the Care Inspectorate does look at such systems as part
14 of their overall approach. You don't do, is that
15 correct?

16 A. No.

17 Q. Would that not be quite a good idea, just to say --

18 A. No, I would rather find what we find. We look at the
19 AAU or the PRL for that particular issue when we
20 inspect. I give an example there, but the cell-sharing
21 risk assessment had been recently completed at
22 100 per cent compliant, we found out-of-date paperwork.
23 The cell-sharing risk assessment was done on the new
24 person coming into the cell, not on the old person
25 living in the cell, who was already there. Clearly it

1 was not compliant.

2 No, I don't --

3 Q. Does that mean you don't have much confidence at times
4 in the unit's ability to make --

5 A. We would rather go on our own evidence and our own
6 observations than go on theirs.

7 Q. I think we will get evidence that the service itself
8 tends to rely on getting a clean bill of health or
9 a good rating from the unit, is that your understanding?

10 A. Yes.

11 Q. Obviously if it's not necessarily doing the job as you
12 would do and coming up with perhaps different
13 assessments, that is not --

14 A. I should imagine the AAU was very embarrassed when we
15 reported that, but nonetheless we don't have any linking
16 with the AAU. They can talk to us if they wish, but we
17 would not rely on their evidence, no.

18 Q. Is the worry not that if the service itself places heavy
19 reliance on it that there is a degree of complacency
20 that can creep in, that they're saying: we're getting
21 these reports back from this exercise and therefore
22 there is nothing to worry about or at least it is
23 putting some tension between those findings and what you
24 are telling them?

25 A. I think that is a worry for the Scottish Prison Service,

1 not a worry for me.

2 Q. No doubt we can ask them about that.

3 In some ways it's attempting, is it, to do some of
4 the job you do, but you don't necessarily think it
5 necessarily does it effectively at times?

6 A. Correct.

7 MR PEOPLES: I'm not going to ask you about any more. You
8 have given us in appendix A the standards, and I have
9 asked you about those and we can read those for
10 ourselves, and you have given us other information about
11 how you carry out the methodology and the reports that
12 you have drawn upon, again I'm not going to take you.

13 I think that really concludes all my questions and
14 I just wish to thank you very much for being so patient
15 with me.

16 A. You are very welcome.

17 LADY SMITH: Wendy, can I add my thanks? It's not lost on
18 me that you began the day telling me that you were
19 rather under the weather and I'm really grateful to you
20 for, notwithstanding that, bearing with us and the depth
21 of our interrogation.

22 I know that we have asked difficult questions at
23 times, but please take that as a recognition of the
24 extent of your knowledge, wisdom and understanding that
25 we just want to benefit from. I feel that we have done

1 that today, thank you.

2 A. The question you haven't asked me is: where have I seen
3 in the world the best juvenile under-18 system for
4 incarceration?

5 LADY SMITH: Please tell me.

6 A. I will tell you that it is in Bandung in Indonesia. Not
7 in Holland, which I have looked at, not in Australia,
8 not in England, not in Scotland, not in Wales, Bandung
9 in Indonesia.

10 MR PEOPLES: What is it that so impresses you?

11 A. I have a deep suspicion it was the individual prison
12 governor that made the difference. She operated the
13 prison entirely on restorative justice principles in
14 that all children who come into the prison between the
15 ages of 10 and 18 have to be restored back to their
16 family and the family has to be restored back to the
17 community.

18 All the children who are in there, unless there is
19 really decent exclusions why not, before they leave they
20 have to reach the standard attainment test for their age
21 educationally. That education has to be provided by the
22 local education schools and authorities. They also have
23 to develop a skill that will help their family, help in
24 the community, and so all local traders have to
25 donate -- they cannot get a trading licence unless they

1 donate some of their time to delivering skills training
2 within the establishment.

3 The establishment is open from 7 o'clock in the
4 morning until 8 o'clock at night for family. They can
5 visit at any time. They can bring whatever they want,
6 like food, et cetera. They can stay and visit with
7 their child. They can do the training with their child.

8 What they can't do is take anything out, including
9 the child. But just to watch that in action, that
10 genuine belief in restorative justice principles, that
11 genuine belief in every child has to do education, they
12 have to be computer literate, they have to have key
13 skills, they learn a skill and a trade, their family can
14 learn a skill and a trade. It's just awe inspiring
15 actually.

16 As I say, I do believe it was the woman in charge
17 that did that. I'm not wholly sure that would continue,
18 judging by the male prisons I went to, were she to
19 leave.

20 Q. Is that not the worry though, that it's very much down
21 to the personal influence of the person in charge
22 sometimes?

23 A. Yes.

24 Q. And if they move on, things change?

25 A. A deep worry.

1 Q. You mentioned, if I could just follow up -- Holland
2 there and mentioned Norway today, do you see these
3 jurisdictions which are in Europe as offering at least
4 some assistance in trying to develop an appropriate
5 model for young people?

6 A. Yes, I do.

7 I think we have to look at Portugal for how they
8 manage substance misuse.

9 I think we have to look at Holland as to how they
10 manage to decarcerate by such amount that they were
11 closing prisons.

12 I think we have to look at Norway with their
13 principle that while you're in prison you are deprived
14 of your liberty, but in every other respect you are not.

15 Against that, I recognise that we are a very
16 different culture from all of those areas and we need to
17 recognise that, but I still think there are lessons to
18 be learned.

19 Q. We have to make the adaptation to reflect cultural
20 differences, but these are places we can draw upon?

21 A. Absolutely.

22 MR PEOPLES: I think we are drawing on it for the Barnabus
23 at the moment --

24 A. I think we are drawing on them, I mean I think our
25 approach to substance misuse is gradually changing for

1 the better.

2 LADY SMITH: Wendy, thank you so much. Please feel free to
3 go.

4 (The witness withdrew)

5 MR PEOPLES: It's been a long day, but we are finished now.

6 We will have a very short day tomorrow. There is
7 a read in that was postponed from Friday because of
8 pressure of time, so we'll have that and Ms Forbes will
9 be --

10 LADY SMITH: Then back to oral evidence on Thursday, but no
11 oral evidence tomorrow?

12 MR PEOPLES: We have two witnesses on Thursday and another
13 oral witness on Friday.

14 LADY SMITH: Very well, thank you.

15 Until 10 o'clock tomorrow morning.

16 (4.10 pm)

17 (The Inquiry adjourned until 10 o'clock on
18 Wednesday, 4 October 2023)

19

20

21

22

23

24

25

I N D E X

1		
2		PAGE
3	Wendy Sinclair-Gieben (sworn)	1
4	Questions from Mr Peoples	2
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

