

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

Friday, 6 October 2023

(10.00 am)

LADY SMITH: Good morning to the last day of this section of evidence in the case study, when we turn to an oral witness, who I'm told is ready to give evidence, Mr Peoples.

MR PEOPLES: Yes, my Lady, good morning.

The next witness is Professor Andrew Coyle.

LADY SMITH: Thank you.

Professor Andrew Coyle (affirmed)

LADY SMITH: The first question I have for you is, I hope, an easy one. Professor Coyle or Andrew, your choice?

A. Andrew is fine, my Lady.

LADY SMITH: Thank you, Andrew.

The red folder has your very helpful statement in it, which we'll use as the basis of the questions that we would like to ask you today.

You'll also see the statement coming up on screen, possibly other documents, I'm not sure. Probably not for you, Andrew.

Please do ask any questions you have at any time. If you want a break at any time just say. I do usually break anyway around 11.30 am, if it helps you to know that.

Otherwise, Andrew, if you're ready I'll hand over to

1 Mr Peoples and he'll take it from there.

2 A. Thanks, my Lady.

3 LADY SMITH: Thank you.

4 Mr Peoples.

5 Questions from Mr Peoples

6 MR PEOPLES: Good morning, Professor Coyle.

7 Can I begin this morning by asking you to perhaps
8 have before you your statement that you've provided to
9 the Inquiry in advance of giving evidence today? At
10 this stage could I just, for the record, give the
11 reference to that statement, which is WIT-1-000000993?

12 Could I ask you to begin with to turn to the final
13 page of the statement and confirm that you have signed
14 your statement and that you have no objection to your
15 statement being published as part of the evidence to the
16 Inquiry and that you believe the facts stated in your
17 witness statement are true?

18 A. Correct.

19 Q. With that introduction, can I perhaps begin by getting
20 a little bit about your professional background? If we
21 could begin with that.

22 First of all, you had a lengthy connection with the
23 Scottish Prison Service. I think you tell us in your
24 statement that you joined the Scottish Prison Service in
25 1973 as an assistant governor in Edinburgh prison?

1 A. Correct.

2 Q. I'll come back to perhaps this, but ultimately you
3 remained with the service until around 1991, is that
4 correct?

5 A. Correct.

6 Q. During that period you had a spell as an assistant
7 governor at Polmont borstal in 1976 until 1978?

8 A. Correct.

9 Q. Professor Coyle, I don't think I'll do justice to your
10 very lengthy CV, but can I perhaps pick out some points,
11 if I may? You provided us with a lengthy and very full
12 CV of your various achievements.

13 Can I take it first of all that obviously you have
14 your experience with the Scottish Prison Service and
15 that would be in essentially governor or assistant
16 governor roles most of the time; is that correct?

17 A. Correct, if you include the time I worked in prison
18 headquarters.

19 Q. Yes. You would have had a spell and that was quite
20 a typical career progression within the service, to have
21 spells?

22 A. There were only two or three of us, but yes it was
23 normal career.

24 Q. Then, having done that, you moved to take charge of
25 a prison down south as governor, is that correct?

1 A. I was asked to take charge of Brixton Prison in London.

2 Q. Was that from about 1991 to 1997?

3 A. Correct.

4 Q. Then did you move to academia in 1997?

5 A. Correct, I did.

6 Q. What was your role or position?

7 A. I moved to the School of Law in King's College London

8 where I had been asked to set up the International

9 Centre for Prison Studies, which was based in the school

10 of law, and I worked there for quite a number of years.

11 Q. I think that during that period at King's College you

12 were a Professor of Prison Studies until retirement in

13 2010 from that position?

14 A. Correct.

15 Q. You are currently Emeritus Professor of Prison Studies

16 at the college?

17 A. Exactly.

18 Q. As far as your career is concerned, you are now retired,

19 but you have remained active since retiring as

20 a professor, is that correct?

21 A. Yes.

22 Q. You've done a number of things and can I perhaps just

23 pick out that having left the service in 1991, and

24 having left the charge of HMP Brixton in 1997, you were

25 a professor. You wrote extensively during that period

1 and I think since then you've been involved in
2 international criminal justice and penal reform issues,
3 is that correct?
4 A. That's correct.
5 Q. A recent example of that I think is that you have
6 been -- you were a member of the International Advisory
7 Board for the UN Global Study on Children Deprived of
8 Their Liberty?
9 A. Correct.
10 Q. Did that report in 2019?
11 A. July 2019, yes.
12 Q. We'll come back to this, but prior to that you were
13 asked in 2012 by the Scottish Government to undertake
14 a review of proposals to improve arrangements for
15 independent monitoring of prisons and you provided
16 a report with recommendations in January 2013?
17 A. Correct.
18 Q. The Government published its proposals in 2014, and
19 I think, as we'll hear, that led to the introduction of
20 the Independent Prison Monitoring System --
21 A. Yes.
22 Q. -- to replace Visiting Committees?
23 A. Correct.
24 Q. You are also currently -- and you can tell me if
25 I'm wrong -- Honorary President of the Howard League in

1 Scotland?

2 A. I am, yes.

3 Q. Just going back to your time with the Scottish Prison
4 Service, so that we have this in order, you started as
5 an assistant governor at HMP Edinburgh between 1973 and
6 1976?

7 A. Yes.

8 Q. You moved, as we have heard, to be assistant governor at
9 Polmont from 1976 to 1978?

10 A. Yes.

11 Q. You then were an assistant governor -- sorry, before
12 I go on, HMP Edinburgh at that time, was that largely
13 an adult prison?

14 A. Yes, it was.

15 Q. Polmont clearly was a young offenders borstal?

16 A. Yes.

17 Q. You moved to HMP Shotts in 1978, where you were there
18 for about three years until 1981?

19 A. Yes.

20 Q. Again, was that an adult prison?

21 A. Shotts was, yes. Newly opened.

22 Q. For a period between 1981 and 1986 I think you were in
23 the operations division at SPS headquarters, which is
24 a role you tell us involved regular visits to prisons,
25 young offenders institutions, detention centres and

1 borstals?

2 A. Yes.

3 Q. From 1986 to 1988 you were governor at HMP Greenock?

4 A. Yes.

5 Q. Can you tell me, Greenock has had a history of
6 accommodating different classes of offenders, what the
7 position was at that time? If you can recall.

8 A. I can.

9 Greenock Prison opened -- if I recollect -- in 1907
10 as the local prison for Renfrewshire.

11 It later became the main prison for women in
12 Scotland and remained that until Cornton Vale opened.

13 There was then a period when the buildings at
14 Greenock were refurbished and it opened in 1986 as
15 a prison for long-term adult prisoners.

16 It remained that, if my memory serves me, until late
17 summer 1987, when there was a major reorganisation of
18 Scottish prisons because the number of prisoners under
19 the age of 21 had fallen considerably and the number of
20 adult prisoners had risen. At that point it was decided
21 that Glenochil, which had been young offenders and
22 detention centres, should become an adult prison because
23 it was one of the largest establishments and the adult
24 prisoners in Greenock would move to other prisons, such
25 as Shotts, and Greenock took on young offenders.

1 Q. When you say adult prisoners, before this changed, were
2 these both male and female?

3 A. All male.

4 Q. Then you had a spell as governor of HMP Peterhead in
5 1988 until about 1990, and I think as perhaps you may
6 tell us at some point that was after a turbulent period
7 in the life of Peterhead prison. There had been
8 a background of well-known riots?

9 A. Yes. Not just Peterhead, Mr Peoples.

10 Following the reorganisation, which I described in
11 1986/1987, there had been a series of major riots in
12 a number of Scottish adult prisons. Peterhead, Perth,
13 Shotts and even at Edinburgh, which ended up with a very
14 dramatic riot in Peterhead, with an officer dragged over
15 the roof with a chain round his neck.

16 Following that, it was decided that all the
17 prisoners who had been involved in hostage takings or
18 riots would be held in Peterhead and I was asked to go
19 from Greenock to Peterhead to take charge.

20 Q. Just on that, the period of the 1980s and these
21 disturbances, disorders and riots you tell us they were
22 happening at a number of adult prisons?

23 A. Yes.

24 Q. Were they happening in the prisoners for young offenders
25 as well or not, can you recall?

1 A. As I say, in 1986/1987 the number of young offenders in
2 custody fell considerably and that was the reason that
3 Glenochil became an adult prison, because of the
4 increase in adult prisoners and the young offenders --
5 long-term young offenders, as I remember, were held in
6 Jessiefield in Dumfries. The longer-term prisoners were
7 in Greenock and some young offenders were in other adult
8 prisons, but there was no real violence or trouble in
9 general within the young offenders system.

10 LADY SMITH: Andrew, do you remember whether at the time any
11 reason for the number of young offenders falling was
12 identified?

13 A. It would be wrong to be precise, my Lady, but I think
14 one had to see that within the general, what one might
15 call, ethos at the time. There was a recognition that
16 sending young people to custodial institutions should be
17 a matter if not of last report, then certainly not of
18 first report, and the number of -- for that reason,
19 I suppose the simple answer is the court was sending
20 fewer people to Prison Service detention. So I think
21 that's short answer, my Lady.

22 LADY SMITH: It could be. It's hard to remember and
23 of course I was working in the system myself at that
24 time, but nearly two decades on since a sea change in
25 the provision of social service resource. It could have

1 been also that the court was beginning to feel more
2 confident in the support that social work services could
3 provide for community sentences, that had grown over the
4 1970s and into the 1980s?

5 A. I think that's right, my Lady. There was a degree of
6 confidence I think in general across the wider justice
7 system about various initiatives which were taking
8 place. There was a contrast between what was happening
9 in England and what was happening in Scotland, where
10 Scotland of course never had any probation officers,
11 they had criminal justice social workers, had had since
12 the early 1980s.

13 They worked closely -- so the people who were
14 carrying out social work duties one might call them,
15 they would have been probation officers in England, but
16 in Scotland for example in Edinburgh prison, the social
17 workers were employed by the Edinburgh Social Work
18 Department and there was a much closer link I think
19 between the community and all of those bits came
20 together.

21 There was also a strong push, I'm thinking of the
22 then Chief Inspectors of Prisons, people like
23 Dr Andrew McLellan, who pushed very hard to have under
24 18s taken out of the Prison Service custody full stop.
25 I think during Dr McLellan's time that was actually

1 achieved, there were no under 18s in custody.

2 So all of these things were coming together.

3 LADY SMITH: Thank you.

4 Mr Peoples.

5 MR PEOPLES: We were told this before, but I think it's
6 correct to say that the 1980s was a period of change in
7 terms of the options available in case of disposals of
8 young people who had been convicted and that borstal
9 institutions were abolished by the Criminal Justice
10 (Scotland) Act 1980, leading for a time young offenders
11 in detention centres as custodial settings for young
12 people and that detention centres, which accommodated
13 young people as young as 14, up to about 21, which had
14 been established by the Criminal Justice (Scotland) Act
15 of 1949 -- although they had had a history in England
16 I think -- were abolished by the Criminal Justice Act in
17 1988.

18 A. Yes.

19 Q. That was happening around this time, that the 'short
20 sharp shock' treatment system was being taken out of the
21 options available to the courts, is that --

22 A. Yes. The thinking at the time was that the distinction
23 between the borstal system, which was a reform school
24 initially from the early 20th century, between that,
25 between a detention centre and also remand units such as

1 Longriggend were not the best option and it was
2 a generic sentence for convicted youngsters. There was
3 a generic sentence and it was then left to the Prison
4 Service to allocate the young person to whichever
5 institution was felt the most appropriate.

6 Q. By 1988 if you were being sent to a custodial setting it
7 was a young offenders, for whatever period the court
8 considered appropriate?

9 A. Yes.

10 Q. If you reached the age of 21 you would be transferred to
11 an adult prison?

12 A. Yes. There was also a facility for, if my memory serves
13 me, if young people were felt to be immature, to stay in
14 the young offenders system until the age of 23, but that
15 was not frequently used.

16 Q. I think we have heard some evidence that there could be
17 situations where someone as -- I was going to say "as
18 old as 23", it's not very old, but as old as 23 could
19 remain in a young offenders setting?

20 A. Yes. One reason might be the person was doing a City &
21 Guilds course or some sort of other course.

22 Q. Returning to your career, you moved to take command at
23 Brixton Prison in 1991 as governor and you were there
24 until 1997. Can I just ask you this: was that
25 a decision on your part to have some experience of

1 a different system or were you headhunted?

2 A. It was a mixture of both, Mr Peoples. I felt I had been
3 a senior governor in Scotland for quite a number of
4 years. I had no specific wish to go and work in the
5 Scottish Office or prison headquarters, which would have
6 been another option and Brixton at that time posed
7 a particular challenge. So when I expressed an interest
8 in moving the Home Office said, "Ah, we'd quite like to
9 send you to Brixton please", and I accepted that.

10 Q. Following that, that spell at Brixton, as you have told
11 us, you became the director of the International Centre
12 for Prison Studies, which is what you created at that
13 time?

14 A. Yes.

15 Q. And became a professor of Prison Studies at the School
16 of Law at King's College. I think in 2003 you were
17 appointed a Companion of the Most Distinguished Order of
18 Saint Michael and Saint George in the honours list for
19 contribution to international penal reform, so by that
20 stage you had acquired an expertise in international
21 penal reform?

22 A. Yes. Always from an early stage I'd had an interest in
23 the theory of imprisonment. For example, during my time
24 in the Prison Service I completed a part-time PhD at the
25 school of law in Edinburgh, which was into the

1 administration of the prison system. So in a way when
2 I had done my six years in Brixton again I didn't want
3 to move into the administrative side, but I had
4 maintained this interest in: what is a prison for? What
5 is a prison about? What is it meant to achieve? And so
6 that led to both my international work with the Council
7 of Europe and the UN and in a way it was a logical
8 career move for me.

9 Q. I was perhaps about to just ask a little about that.
10 You have worked over the years in various advisory and
11 consultancy roles, including for the UN, the UK
12 Government, the Council of Europe and other bodies, is
13 that fair to say?

14 A. Yes.

15 Q. I'm taking it very short. It is quite a long list of
16 them, but that would give a flavour to the sort of
17 appointments you have had over the years?

18 A. Exactly.

19 Q. I think just perhaps picking out a couple -- I think we
20 mentioned one already, you were appointed to the review
21 of the arrangements for independent monitoring by the
22 Scottish Government in 2012/2013?

23 A. Yes.

24 Q. You were also I think -- between 2006 and 2009 I see
25 that you were a member of the National Advisory Board on

1 Offender Management Scotland. Can you just tell us what
2 that was all about?

3 A. Yes.

4 Again, that happened during that period leading on
5 really from what Lady Smith asked me about, when there
6 was a -- the Scottish Government of course was ... the
7 Scottish Parliament was set up in 1999 and there was
8 increasing political interest in how the justice system
9 worked and how it might be developed. I'm searching my
10 memory now, but I think initially at that time there
11 were nine political regions in Scotland and the
12 Government set up community justice authorities in each
13 region and community justice authorities included
14 involvement of all the criminal justice agencies, such
15 as the Prison Service, but also social work, health and
16 the idea was that all these issues needed to be dealt
17 with in a much more holistic way.

18 Then when the SNP Government first came in as
19 a coalition, I think in 2007, they continued with the
20 National Advisory Board for Offender Management,
21 Kenny MacAskill was the Justice Secretary, he ran with
22 that for a number of years and eventually that changed
23 into what became CJA, the Community Justice Agency.

24 There was a recognition at that time that the
25 various bits of the system would benefit from much

1 greater co-operation.

2 Q. Was there an increasing discussion about non-custodial
3 community disposals? Was that perhaps part of this
4 movement towards community disposals rather than putting
5 more and more people into the prison setting?

6 A. That was part of the discussion.

7 Q. Was there concern -- I think there was concern and
8 I think we saw this from evidence we heard earlier about
9 the rising prison population, indeed including the women
10 offenders, and moves to reduce it over time by various
11 measures, including non-custodial disposals in
12 appropriate cases, was that where we were going at that
13 point?

14 A. Yes. There was a concern, as you say, at the increasing
15 number, as we have said already, particularly of adult
16 prisons, to the extent that Scotland had one of the
17 highest proportionate levels of imprisonment in Europe,
18 without any evidence that Scotland was much more lawless
19 than any other country.

20 There are various initiatives which went on at that
21 time. One of the most important was what later became
22 the McLeish Commission into Scottish prisons.
23 I remember there was quite a lot of concern expressed
24 when the Scottish prison population first broke through
25 the 5,000 barrier. It was felt that that really was

1 a significant change and something needed to be done.

2 There was not so much debate ten years later when it
3 went through 6,000 or when it went through 7,000, and
4 it's now about to go through 8,000, but that's by the
5 way, as it were.

6 Q. Well, perhaps --

7 A. The McLeish Commission, for example, which produced
8 a good report, one of its recommendations, which was not
9 accepted, was that Scotland should seek to cap its
10 prison population at 5,000.

11 Q. This was looking at the overall prison population and
12 McLeish was looking at ways to cap it at that and
13 alternatives to custodial disposals, was that the broad
14 remit?

15 A. In fairness -- his primary aim was not to cap the prison
16 system, his primary aim was to create a structure which
17 would mean that there was less law breaking but fewer
18 people being sent to prison.

19 Q. And alternatives to custodial sentences. It's looking
20 at the issue of, to some extent, why people offend and
21 how you deal with them if they do offend, and whether
22 you need to put them in a custodial setting?

23 A. Yes.

24 Q. We have heard from another witness, Sue Brookes -- who
25 I think you know -- about the progression certainly in

1 terms of developments of the management of female
2 offenders. There was the Angiolini Commission around
3 2012/2013, which focused on women offenders rather than
4 offenders as a general class and made various
5 representations, including the closure of Cornton Vale?

6 A. Yes. Scotland had always had a relatively low level of
7 imprisonment for women. There was the main prison in
8 Greenock, which then moved to Cornton Vale, and there
9 were small remand units in Barlinnie, Edinburgh and in
10 Aberdeen, but the population of women started to creep
11 up quite noticeably and it was recognised that women
12 should not really be an add on to the male system, which
13 they really had been in effect, all the rules in male
14 prisons applied in women's prison despite the clear
15 evidence that the needs of women who were in prison is
16 quite different from that of men.

17 The UK Government set up an inquiry in England led
18 by Baroness Jean Corston, the Corston Report, and a year
19 or two later the Scottish Government appointed the
20 former Lord Advocate, Elish Angiolini, and she came out
21 quite specifically saying what she thought might be in
22 the Prison Service -- the level of imprisonment of women
23 should be minimal and there should be other provision
24 for women.

25 There was then quite a political and operational

1 debate about how to interpret Angiolini.

2 Q. Yes, I think we have heard about how there was a shift
3 from a large new women's prison in Inverclyde,
4 eventually to something that was a much smaller prison
5 that opened this year at Stirling?

6 A. One has to codicil that by saying of course there
7 remained 100 or so women prisoners in Edinburgh and
8 a number of women in Polmont, so Angiolini's model,
9 where there would only be about 80, she thought, women
10 who really required to be in prison, was a total number.
11 You now have the new Stirling prison, plus the other
12 units in Edinburgh and elsewhere.

13 Q. There is capacity in Stirling of around 100 I think and
14 then there is the new community custody units in Dundee
15 and Glasgow, but you have told us that there are other
16 places that have capacity for women who are convicted of
17 offences?

18 A. Yes, and also remand prisoners. In Edinburgh, as
19 I understand it, for example, the number of women is
20 much higher than in Cornton Vale ... than Stirling
21 prison.

22 Q. One of the things that Baroness Corston did, and to some
23 extent it was echoed by the Angiolini Commission, was to
24 look at the causes of why particular groups offend,
25 women offend, and to some extent consider the question

1 of needs against that understanding, so that you would
2 get an appropriate form of disposal in the event that
3 they committed an offence?

4 A. Yes.

5 Q. That has developed over recent times and has resulted
6 certainly in modern prisons and modern units, smaller
7 units for women. I think Sue Brookes told us that that
8 development hasn't really been replicated as yet for
9 male offenders?

10 A. Correct.

11 Q. That there's a need there to effectively achieve some
12 degree of equivalence of understanding and from that
13 some form of strategy going forward?

14 A. Yes.

15 Q. What we now know, and I think it's something you have no
16 doubt advocated for a very long time, is that the
17 current plan, as we understand it, is that young people
18 under 18 will be taken out of the penal system?

19 A. There will be a need for a small number of youngsters to
20 be in some sort of closed provision, but it's a moot
21 point whether that should be the responsibility of the
22 Prison Service.

23 Q. I think we heard one view from Sue Brookes, who is the
24 current Director of Strategy, that she would favour
25 a blanket provision that said that you don't go to

1 an adult SPS establishment or one for over 18s. She
2 would prefer them, if they have to be in some sort of
3 secure setting, in a different form of setting. It
4 wasn't associated with the idea of being part of
5 a Prison Service.

6 I don't know what you feel about that, do you have
7 a view?

8 A. Absolutely at one with Sue Brookes on that and of course
9 the point should be made that the number of such young
10 women or older young adult women is so small that really
11 we should be able to do something which is almost
12 focused on the individual and we should be able to
13 achieve that. The Prison Service is not equipped to
14 deal with that at all.

15 Q. In terms of other appointments, you also in 2010/2011
16 were a member of the Reference Group for Review of the
17 Youth Justice System Northern Ireland, so was that
18 a root and branch review that was being proposed or more
19 a tinkering around the edges?

20 A. It was a bit of both. It turned out to be tinkering
21 around the edges, again after the peace settlement in
22 Northern Ireland the total number of prisoners, the
23 proportion of prisoners in Northern Ireland has always
24 been much lower than in Scotland and even more so of
25 young offenders and of women. There was a real push at

1 that point to say this problem should be manageable
2 because, as I've just said about Scotland, they are such
3 a small number.

4 The problem, given that it is such a small number
5 of course, is that it then becomes quite resource
6 intensive and very often what you do is you have a unit
7 within a male prison, which is not ideal.

8 Q. We mentioned you have had a number of advisory and
9 consultancy roles for various international bodies, and
10 I'll just pick out one or two by way of example.

11 Between 1992 and 2010 you were an expert consultant
12 on prison matters to the Council of Europe?

13 A. Yes.

14 Q. You have been, since 1997, an expert adviser on prisons
15 to numerous national governments?

16 A. Correct.

17 Q. You have also been between 1997 and 2004 an expert
18 consultant on prison matters to the UN High Commissioner
19 for Human Rights?

20 A. Correct.

21 Q. You have also, between 1998 and 2004, been an expert on
22 prison issues for the European Committee for the
23 Prevention of Torture?

24 A. Yes.

25 Q. You were, between 2003 and 2005, expert adviser to the

1 Council of Europe on revising the European prison rules.
2 I'll come back to them maybe later on about what they
3 are and the significance, but if I could leave it there
4 just now.

5 Indeed, between 2009 and 2011 you were an expert
6 adviser to the Council of Europe on drafting a code of
7 ethics for prison staff?

8 A. Yes.

9 Q. You were an expert adviser between 2011 and 2012 to the
10 UN Office on Drugs and Crime on review of UN standard
11 minimum rules for the treatment of prisoners?

12 A. Yes.

13 Q. That is prisoners in general?

14 A. Yes.

15 Q. As you've said to us earlier, you were a member of the
16 advisory board to the UN Global Study on Children
17 Deprived of Their Liberty, between I think 2017 and
18 2019.

19 You have given evidence in various cases and been
20 involved in litigations that have been quite
21 significant, including I think, to name but one, Napier
22 v Scottish Ministers in 2003, with which I think we're
23 all familiar.

24 A. Correct.

25 Q. You have also been involved in other cases in other

1 jurisdictions as well?

2 A. Yes.

3 Q. In terms of publications you have a very extensive list
4 of publications. I'm not necessarily going through them
5 all, but there are a lot for us to see.

6 Can I pick out one or two? They maybe give
7 an indication of the sort of themes that you've been
8 writing about over the years and so maybe I could just
9 pick out one or two. There is a publication in 1991,
10 which was around the time you left the Scottish Prison
11 Service, called "Inside: Rethinking Scotland's Prisons".

12 Can I just ask you this: what was the rethink you
13 were writing about?

14 A. That actually was the writing of my PhD. That is what
15 my PhD was about. My PhD was basically examining how
16 the Scottish Prison Service had been set up, what it was
17 meant to achieve. How it moved from being locally
18 administered to centrally administered and then also
19 a debate particularly in the early 20th century to the
20 purpose of imprisonment and how the administration of
21 the Scottish Prison Service developed within what was
22 then the Scottish Home and Health Department.

23 As many people do, I took the opportunity to convert
24 the PhD into a publication.

25 Q. Can I ask you this: I think we'll come back to that,

1 because you mention some of this in more detail in your
2 statement, but in terms of the rethink, was it looking
3 at the historical position but were you also, having
4 done that, making any proposals for change, reform --
5 it's just the word "rethink", whether it was also
6 an attempt as part of that work to see if there was
7 a new way of doing things?

8 A. Yes, it was. It began with the historical review, which
9 explained why we were where we were in the late 1980s
10 and 1990s, but it moved on to make recommendations for
11 the future. I suggested that one of the difficulties
12 was that the Scottish Prison Service, in terms of being
13 an operational service was -- it's not too strong to
14 say -- unique in being totally under the control of
15 central Government. Unlike the police or other
16 services, fire service or even health, which were either
17 controlled locally or a mixture of central and local
18 control, the Scottish Prison Service was totally under
19 the control of the Scottish Government, and specifically
20 the Home and Health Department.

21 I argued that that was not helpful and suggested
22 that we should return to the original model, where there
23 was much more local involvement and prisons served their
24 localities, rather than being places of exile, largely
25 like Peterhead or wherever. They should serve their

1 local communities.

2 That received a mixed reaction in the Scottish Home
3 and Health Department.

4 Q. On that, because I'm going to ask you to what extent ...
5 because it seems to have coincided with at least some
6 significant changes in the structure of the Scottish
7 Prison Service in the early 1990s. I just wondered if
8 there was a connection between the two, because
9 obviously what we now call the Scottish Prison Service,
10 which is an executive agency of Scottish Government,
11 I believe it was established formally around April 1993.
12 Shortly before that a senior civil servant, with I don't
13 think any prison background, Eddie Frizzell, had been
14 appointed to head the service in 1991 and drive through
15 some changes to the structure and the way that the
16 service operated.

17 I'm just wondering, did your contribution in any way
18 play a part in that, or was this completely independent
19 and coincidental?

20 A. I don't think I could claim that, Mr Peoples. But there
21 was a mood for change at that point and a mood for
22 greater local involvement in general, which led ...
23 another strand of that was to the National Advisory
24 Board that you have asked me about before and the
25 greater involvement between, for example, social work

1 and prison, which was the community provision.

2 I think what was more of an influence at that time
3 was the national Government, particularly the UK
4 Government, move towards setting up executive bodies.
5 There was a strong movement, particularly in the latter
6 years of the Thatcher Government, to set up arm's length
7 bodies.

8 Q. But still accountable to the Government?

9 A. Of course, because the Government ultimately retained
10 responsibility, but the argument was the operational
11 part of it should be at arm's length. Until then, as
12 you have said, the head of the Scottish Prison Service
13 was always a senior administrator. Had been since the
14 middle of the 20th century. There were people who drove
15 change through -- before Eddie Frizzell it was a man
16 called Peter McKinlay who drove through ... he carries
17 a lot of the credit for driving through the change.

18 Interestingly enough, he then went on to run
19 Scottish Homes, so that was another arm's length body,
20 so it was about the political move to arm's-length
21 bodies.

22 Q. Peter McKinlay, was he head of the service before
23 Eddie --

24 A. He was the Director of the Scottish Prison Service.

25 Q. Prior to --

1 A. To Eddie Frizzell, yes.

2 Q. Just while we are on that. I think it was suggested
3 that this development, just shortly after your PhD, was
4 an attempt to bring about a change of culture, including
5 to care more humanely for prisoners and provide them
6 with more opportunities for -- I think it was described
7 as "for personal responsibility".

8 I don't know whether that was achieved, but that was
9 the aim. Is that correct, is that what they were at
10 least seeking to do?

11 A. Yes, it was. In the Prison Service at that time there
12 was a move, very much supported by Peter McKinlay and
13 his senior colleagues, to create much more of
14 a corporate sense and also a strategy as to what prisons
15 should be trying to do and what they shouldn't be trying
16 to do. That was linked to things like training the
17 staff.

18 At that point, anyone joining the Prison Service
19 went to the college at Polmont for six weeks, and once
20 they'd been in Polmont for six weeks learning the nuts
21 and bolts of keys and locks they then went to
22 Cornton Vale prison or Peterhead prison or Glenochil
23 prison without any specific training in the group of men
24 and women that they might be dealing with.

25 What Peter McKinlay led, what he did was bring

1 together the thinking people in St Margaret's House,
2 which was the headquarters, and the doing people, who
3 were in the operations side, and try and produce
4 a series of documents. The most important of which
5 I would argue was "Opportunity and Responsibility" in
6 1990, which laid out, signed by Malcolm Rifkind, the
7 vision for long-term imprisonment, which would give
8 opportunity to prisoners, but also a responsibility to
9 them.

10 LADY SMITH: Andrew, we are still talking about what was
11 happening in the early 1990s, are we?

12 A. Yes, Opportunity and Responsibility was 1990, my Lady.

13 LADY SMITH: Then it was after that that we were beginning
14 to see the changes you have just been describing?

15 A. I think the changes had begun, but they then became
16 concretised, as it were, with the publication of
17 a number of documents, there was Opportunity and
18 Responsibility, there was another one about custody,
19 care and opportunity. It was trying to give a vision as
20 to what the Prison Service thought it could and should
21 achieve.

22 LADY SMITH: Thank you.

23 MR PEOPLES: The actual formal creation of the executive
24 agency was around April 1993, I believe?

25 A. Yes.

1 Q. You have explained the background to that and the
2 vision. I think at that stage, as I understand, and
3 I'll take this pretty short, there was a development of
4 what was described as six core principles that would
5 steer the actions and activities of the service going
6 forward, including the provision of a safe and
7 satisfying environment for both staff and inmates.

8 That was the vision or the aim?

9 A. Yes.

10 Q. To set the direction?

11 A. Yes.

12 Q. I think there were quite significant structural changes
13 to the service around that time?

14 A. Yes. I think those two things came together -- didn't
15 necessarily lead one from the other, but they came
16 together. The Government move for at-length bodies and
17 the Prison Service wishing to create a greater corporate
18 identity and give its staff, which is important,
19 a vision of what it was they would be measured against
20 and what they were meant to achieve. That was also at
21 the time when the prison numbers, although the adult
22 numbers were going up, the overall prison numbers
23 remained below 5,000.

24 Q. I suppose this is against what you told us earlier,
25 a period of turbulence in the 1980s, riots and no doubt

1 low staff morale, officers having to wear riot gear and
2 no doubt very dissatisfied prisoners as well. This
3 presumably was an attempt to turn the page and have
4 a new start?

5 A. It was exactly an attempt to take control of the system
6 rather than respond to it, because in late 1986 to 1988
7 the Prison Service was literally on its knees. Almost
8 every week there was a riot either in Peterhead, Perth
9 or Shotts. We really were on our knees and it was
10 recognised that in the short term we had to deal with
11 that immediate problem, but also we needed to create
12 a greater sense of vision and a strategy and then how
13 were we going to achieve that.

14 That didn't continue and I think partly --
15 I wouldn't wish to criticise, but partly because I think
16 there was quite a change of senior personnel who had
17 that vision and it didn't go to its logical conclusion.

18 Q. It's a good point you raise, because I think may
19 I suggest that sometimes we have talked about phrases in
20 regulations about personal influence of people who
21 either run establishments or no doubt lead
22 establishments and the importance of getting the right
23 leadership and the right person and the risks that if
24 what you have as a person who fits that description
25 moves on, there is a danger that their successor may not

1 have the same qualities, vision or skills to continue
2 the good work?

3 A. Yes, which is why, as I say, we were trying to produce
4 documents and set standards which would outlive the
5 person. The high period of that I think was during the
6 time that Peter McKinlay was the Director of the Prison
7 Service. It was then continued by Eddie Frizzell, who
8 was in a way more of a traditional civil servant but
9 still kept that vision.

10 His successor didn't really see life through that
11 lens.

12 Q. It's very much fortuitous to some extent whether
13 a change can be continued and embedded?

14 A. Yes. There were some developments which have not gone
15 away and the Prison Service is not the Prison Service
16 that it was 50 years ago, but it's not necessarily
17 serving -- it's being asked to do things which are
18 outwith its purview.

19 Q. I'll come back to some of the other things you have
20 written about, we have got into the Scottish scene, but
21 can I just also in terms of developments during your
22 period with the service, of course one other important
23 development was the establishment of the current Prisons
24 Inspectorate around 1981 and the appointment of the
25 first Chief Inspector of Prisons, I think David Barry

1 was the individual --

2 A. Philip Barry I think.

3 Q. That happened in the early 1980s --

4 A. Correct.

5 Q. -- in advance of some of these changes to the service

6 itself in the 1990s?

7 A. Correct.

8 Q. That was again a significant milestone, was it?

9 A. Yes.

10 Q. I'll maybe come back to that later on, but we have to

11 keep that in mind that that was something --

12 A. That was important. Where you might wish to come back

13 to it is the local oversight of prisons, which was

14 through Visiting Committees, and the national oversight

15 which was the inspector of prisons and the balance

16 between those two. It was the May Report of 1989, for

17 the UK, which Gordon Nicholson was a member of,

18 Sheriff Principal Nicholson, which recommended -- up

19 until that time there had been an inspector of prisons,

20 but he -- it always was a he -- had always come from the

21 service, he was a former senior governor and the May

22 Report recommended that there should be an independent

23 inspector of prisons in Scotland, Philip Barry was the

24 first such appointment.

25 Q. I think you said the May Committee -- I think it was

1 1979 was the May Committee.

2 A. 1979.

3 Q. That led to the establishment of this Inspectorate.

4 Can I go back, if I may, to -- obviously there was
5 a rethink then that you were writing about and just in
6 terms of recommending significant change, as well as
7 looking at the historical picture, you seem to favour
8 more local establishments?

9 A. Yes.

10 Q. Did you also favour therefore smaller establishments
11 where people could be held locally? Was that part of
12 your thinking?

13 A. Yes. I argued in that book that the Scottish tradition
14 over the 100 years before then had been small, local
15 prisons, linked to that relatively short sentences. It
16 was very unusual for people to have long sentences.
17 When I began in 1973 a long sentence was anything over
18 18 months, and the Scottish tradition and arguably the
19 best managed prisons were small prisons like Dumfries,
20 Inverness, Stirling, which were small, serving their
21 local community.

22 The local sheriff or sheriff principal was the
23 people who sent the people to prison and maintained
24 an interest in what went on in the prison, but then as
25 things developed the larger prisons were built and many

1 of them were built in rather remote areas, because it
2 was difficult to get accommodation in the urban centres.

3 They were built, for example, on land which was
4 already Crown land, owned by the Coal Board, which is
5 why Shotts is where it is, which is why Glenochil is
6 where it is. So that move, which happened probably
7 from -- after the Second World War to larger and larger
8 prisons, was, I argued, against the Scottish tradition
9 and we should return to the local tradition.

10 Q. Presumably the local prisons would have the advantage
11 that they sent local people there. They didn't have
12 a mixture of people from Glasgow, Edinburgh and
13 elsewhere, Fife or whatever, who would then be brought
14 together in one environment, with all the risks that
15 that entails?

16 A. Yes. The one exception obviously was Barlinnie. That
17 was the exception, because there had been two or three
18 prisons in Glasgow, Duke Street and others, and in the
19 late 1880s the current Barlinnie, which is still in
20 operation, was built, but that stood apart. All the
21 other prisons by and large were small prisons and local
22 prisons. With the exception of the one convict prison
23 that we had in Scotland, and the convict prison was
24 Peterhead.

25 Q. Going back to your publications and the sort of areas

1 you have written about and have been of particular
2 interest to you, you have obviously done research into
3 the Scottish prisons system and suggested change, but
4 you have taken an interest over the years in a human
5 rights approach to prison management, indeed you have
6 written books about that?

7 A. Yes.

8 Q. Because clearly we now live in an era which perhaps we
9 take human rights at least more for granted and we
10 understand that there are such things, but I suppose
11 when you started off in the Prison Service in 1973 was
12 anyone talking about a human rights approach to prison
13 management?

14 A. No.

15 Q. Can you perhaps indicate -- it's difficult to say when
16 these things changed, but can you give us an idea of
17 when at least the shoots of a discussion about human
18 rights approach to prison management and what may have
19 triggered that?

20 A. It was within the context of -- in a way, calling it
21 human rights was a hook. We could have called it
22 something else, but human rights was the hook.
23 I suppose my involvement began in the early 1990s with
24 the breakup of the Soviet Union and many of the eastern
25 bloc countries joining the Council of Europe and the

1 Council of Europe saw that it had a role to develop
2 a modern vision for imprisonment, when it should be used
3 and what it should be used. Because many of the former
4 Soviet countries knew that the old gulag system had to
5 change, knew that the old Soviet system had to change,
6 but didn't know what to do.

7 So partly in drafting the European prison rules and
8 also the code of ethics for staff we were building up
9 a model, which could be used, which applied to Scotland,
10 to England, to Serbia, to Russia and it was signed up by
11 all the members of the Council of Europe.

12 We managed then to take that forward. There had
13 been, since 1952, I think, UN prison rules, which set
14 a standard worldwide for how prisons should operate. At
15 that time that work in the UN was under the Human Rights
16 Department. It happened to be under the Human Rights
17 Department. So we developed a -- very often we would go
18 to these countries all round the world and prison
19 directors and director generals would say, "We know this
20 is not right. We want to change it. We don't know how
21 to change it".

22 So we developed this handbook in consultation widely
23 around the world, what became the handbook for a human
24 rights approach to prison management. My memory, it was
25 translated into 18 languages. My memory is in some

1 languages the translation wasn't "human rights
2 approach", I was told in China there was no such word in
3 Chinese for "human rights approach", so in some other
4 languages the title was changed, but the principle
5 remained.

6 Q. Can I ask you a few questions from that, just to get
7 an understanding of the development?

8 We have had the European Convention of Human Rights
9 for a very long time, since 1950. But it seems from
10 what you are saying that perhaps the Convention didn't
11 perhaps take the same interest or indeed the case law in
12 prisoners' rights and human rights in that context as it
13 now currently does. Would that be fair to say? There
14 has been an evolution in terms of the interest and
15 indeed the interest in young people in prison?

16 A. It's come both ways, I suppose because for example the
17 Court of Human Rights can only deal with the cases that
18 are brought before it and until that period there were
19 very few cases brought before the court.

20 Q. This first publication, it's in its third edition now?

21 A. Yes.

22 Q. "Human Rights Approach to Prison Management", the
23 handbook for prison staff that you have talked about,
24 the third edition is 2018, but when was the first
25 edition produced?

1 A. 2002.

2 Q. You have told us about the UN prison rules of 1952, but
3 in terms of the European rules, when were they first
4 formulated and published?

5 A. They were -- I should know this --

6 Q. Roughly?

7 A. They were the 1950s. They were then updated in 1986 and
8 then I was involved in the third update, which you've
9 just quoted.

10 Q. The code of ethics --

11 A. That moved on again. I had helped to draft the European
12 prison rules. What we saw as a gap was that there
13 needed to be specific advice for staff as to how they
14 should operate and many other bodies, professional
15 bodies, have codes of ethics. There was no code of
16 ethics for prison staff.

17 We had discussions in the Council of Europe that it
18 would be welcomed by many prison systems and by staff if
19 we could give them a simple code of ethics as to how
20 they should behave, what was permissible, what was not
21 permissible. The Council of Europe asked me to draft
22 that code, which I did, and eventually it was passed by
23 the Council Ministers.

24 Q. I don't think there is any external code of practice
25 even today for the Scottish Prison Service, if

1 I'm correct. I think that is --

2 A. You probably are correct.

3 All I can say is that the Scottish had

4 representation at the Council of Europe when it was --

5 Q. The reason I say that and ask about it is that we now

6 know obviously that other workforces, such as in

7 medicine, healthcare, social care, are now regulated.

8 A. Yes.

9 Q. There is the SSSC for Social Services --

10 A. Yes.

11 Q. -- which was established in 2001 and the NMC, the GMC,

12 the GTCS and so forth, but we don't have something

13 equivalent for those that work in the prisons?

14 A. One of the appendices to the European Code of Ethics was

15 that every member state should take these as a model to

16 develop their own code of ethics. Quite a number of

17 member states in the Council of Europe now have a code

18 of ethics for their prison staff. Scotland and England

19 have not yet done so.

20 Q. We don't have also an external regulator of the service

21 who has power to effectively deregister individuals and

22 prevent them working in a service if there's good reason

23 to do so. We have nothing like that in the prison

24 setting or the Prison Service?

25 A. No. There was a Code of Discipline for Prison Officers,

1 where if an officer breached the code of discipline he
2 or she could appear before an internal tribunal and
3 given some sort of sanction, but that's a far distance
4 away from what you are describing.

5 Q. It's an internal disciplinary process that's run by the
6 service. It's not run externally by an external body
7 such as the SSSC for example, or the GTCS?

8 A. Correct. That would be a significant step forward if
9 that were to be introduced.

10 Q. I'm sure we'll be told by the Scottish Prison Service
11 that in recent times there's been a considerable
12 emphasis on training of prison staff and giving
13 specialist training where appropriate.

14 Am I right in thinking that other than what is
15 required by the service itself, there are no external
16 qualifications such as could be laid down by the SSSC
17 for social care workers, social workers and the like?

18 A. Correct. I have given you the example before that as
19 I understand it still, the basic training for prison
20 officers is generic training, with little account for
21 whether they'll be working with women, youngsters, long
22 termers or remand prisoners.

23 Q. We may hear in recent times there has been more attempt
24 to have more bespoke training, but no doubt the service
25 will tell us if that is the case, but certainly for

1 a long period and certainly in your time any training
2 that was given would be generic training?

3 A. Yes. There is no question at the end of that six-week
4 or eight-week training that there is any examination or
5 test which has to be passed for someone to get
6 a certificate.

7 Q. The other thing that might be said is you are dealing
8 with quite a complex group, many with vulnerabilities,
9 long standing in the prison setting, and yet it doesn't
10 sound as if six weeks' training is an adequate period to
11 equip a person to manage people in that environment.

12 It was said no doubt of residential care workers
13 that they didn't have to have qualifications,
14 historically didn't get much in the way of training, but
15 even now there may be a question whether they get
16 sufficient training in comparison with other countries
17 for example?

18 A. No question. There are a number of countries with which
19 we might wish to compare ourselves. Some of the
20 Scandinavian countries for example, Norway, which is not
21 dissimilar size of population and the country is spread
22 over some urban areas, many rural areas. All their
23 prison staff have to undergo a two-year training course
24 and have to pass the examination, linked to a university
25 with a certificate at the end. It has to be updated and

1 they then get additional training, which they have to
2 complete regularly, depending on which prison they
3 settle in.

4 That is a far cry from what we have in Scotland.

5 LADY SMITH: Andrew, do you know whether during that
6 two-year training course the candidates are also working
7 in prisons?

8 A. It's what used to be called a sandwich course, my Lady.
9 I think -- in very rough terms, it's 50/50 in batches
10 that they'll start off in the prison college, which is
11 linked to a university, and they'll then do some time in
12 the prison and then back.

13 LADY SMITH: Before I forget, and I'm sorry to go back to
14 something you were talking about a little earlier, and
15 it came to mind when you mentioned historically our
16 prisons in Scotland were smaller and they tended to be
17 quite close to let's call them the population they
18 serve, where their inmates came from. I think you saw
19 as an advantage there that the local sheriff and the
20 Sheriff Court would be able to be more closely engaged
21 with the prisons and that was a positive.

22 We have to though take into account now, don't we,
23 that since some would call it rationalisation of the
24 Scottish Courts and Tribunals Service estate, many of
25 the local courts are no more and they've been closed,

1 that we have shifted into another world. Do you think
2 there is any going back?

3 A. No, what I would say, my Lady, I think it's not
4 a question of going back, it's a question of
5 readjusting. When I went to Greenock Prison in 1986 as
6 governor, one of my first ports of call was down to the
7 Sheriff Court to introduce myself to Sheriff -- was it
8 Irvine Smith at that time?

9 LADY SMITH: Yes, that would be right, well remembered.

10 A. That was just taken for granted, that there was a link
11 between -- so just as the Prison Service has centralised
12 or nationalised so the court service has, but I think
13 there is still room for a closer link, either at
14 an individual level or even at a more formal level.

15 LADY SMITH: That is the takeaway message we need to hang on
16 to, is it?

17 A. Yes, please, which is going back to what Mr Peoples was
18 asking me.

19 I suggested, and it wasn't universally welcomed,
20 that the Scottish Prison Service was not well placed in
21 the Scottish Home and Health Department. One of the
22 problems was that the umbilical link between the prison
23 and the courts had been broken and somehow or other that
24 needed to be reinstated and it's not the old model. We
25 need to find a new model, but the Prison Service

1 arguably is a servant of the courts rather than of the
2 Scottish Government.

3 LADY SMITH: Thank you.

4 Mr Peoples, my apologies, I went down a side road.

5 MR PEOPLES: I think I'm going to side roads at the same
6 time.

7 In terms of the comparison with how things are done
8 in Scandinavia, one gets the impression that at least
9 what Scandinavia is seeking to do is to establish
10 a highly qualified workforce for what we call loosely
11 the prison setting or the detention settings that may be
12 required to house certain people who require to be in
13 some sort of secure condition. Is that what they're
14 aiming for and are achieving to an extent?

15 A. They have a very low rate of imprisonment. Some of the
16 prisons only have 20, 30, 40 prisoners, they are in
17 local communities. They do have one or two
18 high-security prisons.

19 One of the models which I suggested in part of my
20 writing was that the majority of prisons, as we have
21 been discussing, should be locally based and with strong
22 local links, but there probably would still need to be
23 a national prison, which would deal with the very long
24 sentence, very dangerous prisoners. There are, we are
25 not denying, a number of prisoners who are dangerous who

1 need close security. That could be done on a national
2 basis, but that would leave the prisons, local prisons,
3 then to deal with the run-of-the-mill, if I may call
4 them that, prisoners who are known to the local
5 community, in and out the revolving door of the prison
6 system.

7 Q. I take it then you would advocate greater training,
8 mandatory training, before you can be let loose on any
9 prison establishment in Scotland? Do you consider the
10 current -- certainly the training not to be as good as
11 it could be and should be?

12 A. Yes. I think many of our prison staff do remarkably
13 well considering the lack of training that they have,
14 but I think they would get much more confidence if they
15 were given a qualification and ongoing support and
16 recognised as a professional body of men and women.

17 Q. I suppose if it were an attempt in the early 1990s to
18 perhaps introduce a greater professionalisation of the
19 service and a greater independence from Government, it
20 still has a long way to go in terms of creating
21 a structure where the staff are appropriately qualified,
22 trained, have the levels of understanding needed to
23 understand the people they manage and so forth, would
24 that be the situation?

25 A. Yes, but I'm also linking that to you can't take the

1 staff in isolation. I'm saying the whole infrastructure
2 needs to be looked at.

3 There has been -- for example, you talked about the
4 senior civil servants who directed the Prison Service
5 since Colin McConnell, he was the first prison person
6 who was appointed as Director of the prison system and
7 now Teresa Medhurst is a former prison Governor. That
8 has been a positive move, but it's not a sufficient
9 move. It's recognising that there are needs for
10 operational knowledge at that level, but I think you
11 need to have a structural change, as I've been
12 describing.

13 Q. It's not just an operational or establishment level. It
14 has to be a wholesale change. Everyone has to be
15 suitably trained, have the suitable levels of
16 understanding to be able to make the service work in the
17 way intended?

18 A. Yes. There is a contrary argument, which would be put
19 by some -- you might say unkindly with a vested
20 interest -- who would say it's all very well to have the
21 operational knowledge, but if you don't know how to work
22 with Ministers and how to meet them and write
23 a submission in the same way then you'll never really
24 survive. So there are contrary arguments going on.

25 Q. I know there are skills to get things done that you want

1 done, but no doubt there are people that are capable of
2 doing both, I would have thought in this day and age?

3 A. I agree.

4 Q. Going back to your areas of interest. Another one that
5 caught my eye was a title of a chapter of a book in
6 1997, "Achieving the Impossible, Maintaining
7 Relationships in Prison".

8 I would like to ask you, I take it that establishing
9 and maintaining good relationships in prison between the
10 staff and the inmates on the one hand and between the
11 staff themselves and between the inmates themselves is
12 quite a fundamental part of having an appropriate,
13 humane and respectful system that operates in everyone's
14 interests?

15 A. Yes. It's a cliché to say that the key to a good prison
16 system depends on the relationship between staff and
17 prisoners.

18 Q. And building those relationships by appropriate means --

19 A. Exactly.

20 Q. -- and trying to engender a degree of confidence and
21 trust of the population you are managing?

22 A. Exactly. There have been various attempts over the
23 years with schemes for -- one was what was called the
24 personal officer system, that every prisoner would know
25 who was the officer to whom they should go if they had

1 any complaints or needed any support and each officer
2 would be responsible for let's say 10 or a dozen
3 prisoners. That really has not been possible to do
4 that, because of numbers and shortage of staff.

5 I think, if my memory serves me right, that book
6 that you refer to was more about the need for prisoners
7 to maintain their relationships with families on the
8 outside and how it's impossible to maintain the family.

9 LADY SMITH: You tell us that the title of the book in which
10 the chapter is to be found to which you contributed was
11 called "Couples in Care and Custody".

12 A. That is right.

13 MR PEOPLES: I suppose if you were writing about the
14 situation in prison, you could say achieving the
15 possible and maintaining relationships in the prison
16 setting, you think that's perfectly achievable if you go
17 about it in the right way?

18 A. You mean inside the prison with the staff?

19 Q. Yes, between people in the prison, in the closed
20 environment setting.

21 A. Oh, yes. I think we managed to achieve that for example
22 in Greenock for a while. Yes, it's possible. It's very
23 difficult in a prison of 1,000 people, far less 2,000
24 which is what is promised in Glasgow.

25 Q. Obviously there is more chance of achieving these

1 relationships, the necessary relationships, in smaller
2 units than the big institutions that we see today?

3 A. Correct. It wouldn't just be with immediate family. It
4 would be with all the support mechanisms to which people
5 would be looking once they'd been released.

6 Q. I'll maybe come back to that in due course, if I may.

7 Another title that you have written or another
8 publication in 2001 is "The Purposes of Imprisonment in
9 Prisons and the Prisoner", where you contributed
10 a chapter.

11 I suppose it's important if you are devising
12 a vision and a strategy to be absolutely clear what the
13 purposes of imprisonment are. I think that is a given,
14 isn't it?

15 A. Yes, but it's very difficult to identify for the almost
16 8,000 prisoners in Scotland: why was this person sent to
17 prison and what is prison meant to achieve? But I think
18 there are -- what the book argues is that there are some
19 principles which have generic application.

20 Q. I suppose one obvious debate would be whether the
21 emphasis is on reform, education and rehabilitation or
22 more of an emphasis on punishment and protection of the
23 public. These are quite difficult things to balance,
24 and no doubt some would favour more emphasis on one than
25 the other, but does that make it difficult to get

1 clarity about what an institution does and how it can
2 serve particular people?

3 A. It's certainly difficult, but it's not impossible. Of
4 course the purpose of imprisonment might vary from the
5 individual to the individual. The same applies to
6 everyone, there will be some people -- the basis of
7 imprisonment is deprivation of liberty. That is what
8 the prison is. The prison is not per se a place of
9 reform. It's deprivation of liberty. But that needn't
10 be a negative thing in itself. But there are some
11 people who have committed offences which are so grave
12 that what they have done requires public recognition by
13 depriving them of their liberty or they pose a potential
14 threat in the future and they need to be locked up for
15 as long as is necessary. But they are a relatively
16 small proportion of the number of people who are in
17 prison.

18 If you look across the world at levels of
19 imprisonment, high and low levels, by and large the
20 countries with low levels of imprisonment are those who
21 restrict deprivation of liberty to those who the public
22 need to be protected from. Those who have very high
23 levels are those which use prison for -- as what one
24 prison academic called an omnium gatherum, a place to
25 gather people you don't know what to do with.

1 Q. Just on that, can I read to you part evidence of the
2 evidence given by another witness who has had long
3 experience of the Prison Service, Alec Spencer, who
4 I think you know?

5 A. Yes.

6 Q. He gave evidence yesterday in fact, oral evidence, but
7 he also provided a statement. Can I just read two
8 paragraphs of what he said, just to offer what he called
9 a general observation about prisons and just see what
10 you make and whether you agree or have any comments?

11 LADY SMITH: Give me the paragraph numbers, Mr Peoples?

12 MR PEOPLES: Paragraphs 7 and 8, my Lady. It is
13 WIT-1-000001166.

14 I don't have it in front of me, but I'll read it
15 out. I'll just read out what he says:

16 "I would offer a general observation: that prisons
17 are by nature coercive, probably the most coercive
18 institution in a democratic state. People do not want
19 to be in prisons. There is deprivation of liberty and
20 loss of individual agency. Prisoners are locked in
21 cells, have to follow rules and routines which they may
22 not like, are moved around the institution and are
23 imprisoned with others whom they may not like."

24 "Prison authorities have power over inmates, can
25 lock them up, order them to strip and be searched, may

1 control by force and punishments can place prisoners in
2 separation. Separation involves being in more sparse
3 conditions with loss of association with others. In the
4 past, it was also possible to extend sentences through
5 ..."

6 LADY SMITH: I think he said that should have said "extend
7 time in custody", which is correct. The sentence cannot
8 be extended.

9 MR PEOPLES: You are absolutely correct:

10 "... to extend time in custody through awarding loss
11 of remission. Staff are responsible for writing reports
12 on prisoners and for parole boards who read these
13 reports, which can affect the length of time a prisoner
14 spends in prison. While all prisoners should be treated
15 fairly and equally, it is possible by their actions for
16 staff to impact on how an inmate experiences his time in
17 prison. Clearly when one group is dependent on another,
18 abuses can occur."

19 Do you take any issue with any of that that?

20 A. No.

21 Q. I think he described it in a few words -- that is maybe
22 a description of what he termed the imbalance of power
23 in a closed environment?

24 A. Yes.

25 Q. Is that a perfectly good way of capturing what he's just

1 said?

2 A. Yes.

3 Q. That has a number of ramifications and he's spelt out
4 some of the risks where that imbalance exists?

5 A. Yes. I think he may also be suggesting, or I would add
6 to that, that different prisoners need different levels
7 of coercion and some less than others.

8 Q. Can I just say that that imbalance of power, and I think
9 this was something that perhaps he also accepted, is
10 that ultimately when for example one comes to making of
11 complaints, that that can create its difficulties?

12 I wonder if that's something you would accept, that it
13 can be very difficult in a closed environment with that
14 imbalance for an inmate even to make the complaint in
15 the first instance and, secondly, to be confident if he
16 does that he will get a fair and just outcome or
17 hearing?

18 A. Yes.

19 Q. Is that your experience?

20 A. One of the last things I was asked to do before I left
21 Scotland was to chair a working party on grievance
22 procedures, which recognised -- this was part of
23 Opportunity and Responsibility -- that there was a need
24 for a proper grievance procedure.

25 There was need for a procedure which would prevent

1 a problem becoming a complaint or a complaint becoming
2 a grievance. Historically in Scotland that was one of
3 the main roles of the prison visiting committees. The
4 inspector of prisons has no role in dealing with
5 an individual prisoner's complaints, but that was the
6 role of the visiting committees and different committees
7 exercised that role better or worse than others.

8 But the prisoner had the right to go to the visiting
9 committee, who was appointed by the local council, not
10 under any control of the prison, hear the complaint and
11 take it to the appropriate person, whether it was
12 a principal officer or the governor or the Home and
13 Health Department to deal with.

14 That was taken away with the 2014 regulation, which
15 abolished visiting committees, but the short answer is,
16 yes, there has to be an independent and transparent
17 complaints system.

18 Q. In terms of the practical difficulties themselves, even
19 if there is a process and on the face of it it seems
20 a fair process, I suppose one example or hypothetical --
21 it's maybe not so hypothetical, but can I put it in this
22 way. If for example a complaint was made and if one
23 assumes that there is an investigation and that one can
24 see a record of that, it may be in many cases the word
25 of the prisoner and the denial by the officer.

1 In that situation, without some additional
2 evidential support, the prisoner may feel disadvantaged
3 in terms of who is going to be accepted in that state of
4 matters, particularly if colleagues support the officer
5 and there is some form of closing of ranks or turning of
6 a blind eye to what they maybe know is a common
7 practice.

8 I'm not discussing something that is imaginary,
9 hypothetical or rare, am I?

10 A. No, you're not, but I think what one has to do also is
11 one cannot look at the complaint or grievance system in
12 isolation, because that will largely be decided by the
13 ethos of the establishment. If there is a degree of
14 openness and sharing and understanding and recognising
15 where the boundaries are and not to cross boundaries,
16 then that will contribute I think or will make it easier
17 when there is a genuine complaint to be dealt with
18 openly and for the prisoner not to feel aggrieved.

19 Q. There is still a difficulty if you feel as if either
20 it's a one-to-one or a one-against-four situation,
21 particularly if you say, for example, "A number of
22 officers did something to me that they shouldn't have
23 done, because they thought I deserved some form of
24 punishment that wasn't within the rules".

25 That can't be an uncommon scenario?

1 A. I would like to think it's not common.

2 Q. Today?

3 A. Yes.

4 Q. Was it common historically?

5 A. I wouldn't say it was common, but it happened.

6 Q. Not uncommon?

7 A. Let's dance on the head of a pin. When I went to
8 Peterhead probably a lot of what you are describing
9 happened, but one of the reasons for that was that the
10 staff did not feel protected. That's why I'm saying you
11 need to create the ethos which will make sure that
12 officers, if they have to put their hands up, they put
13 their hands up. And equally prisoners react in
14 a responsible manner.

15 Q. You have to have a situation where a complaint system is
16 fit for purpose, in the sense that those for whom it
17 exists will use it --

18 A. Yes.

19 Q. -- and will be confident if they use it that they'll
20 feel, whatever the outcome, that they've had a fair
21 hearing and those deciding had an open mind?

22 A. Absolutely.

23 LADY SMITH: Mr Peoples, I promised Andrew a break at around
24 11.30 am, which is where we are at now, would this be
25 a good point to do that?

1 MR PEOPLES: I just wanted to put this point on this matter,
2 because I am going to move on.

3 I think you are assenting that all of these things
4 are what you are aiming for in terms of the process, but
5 of course certainly historically -- I don't think it is
6 the situation today -- that under the rules it seemed
7 that if you made a number of complaints to the same
8 effect that were continually rejected or dismissed you
9 faced the prospect of charge of making groundless
10 complaints against officers and could be disciplined for
11 complaining?

12 A. I'm not sure if that still exists --

13 Q. I don't think it does, no.

14 A. I'm not sure that still exists.

15 Q. No, it doesn't, but I'm just saying that that's not
16 exactly an incentive to complain, is it?

17 A. No, no, certainly not.

18 MR PEOPLES: Thank you.

19 LADY SMITH: Very well.

20 Andrew, we'll take that long-promised break now and
21 I'll sit again in about a quarter of an hour.

22 Thank you.

23 (11.31 am)

24 (A short break)

25 (11.45 am)

1 LADY SMITH: Welcome back, Andrew.

2 Are you ready for us to carry on?

3 A. Yes.

4 LADY SMITH: Thank you.

5 Mr Peoples.

6 MR PEOPLES: Professor Coyle, around 2015 Sir William Utting

7 said, "Prisons are not safe places and children should

8 not be sent there", do you agree with that?

9 A. Yes.

10 Q. For international purposes, children are not simply

11 those under 16, they're those that are under 18, is that

12 the general international acceptance of a child?

13 A. Yes, that is what the international standards say,

14 conventions.

15 Q. I think you do some reflection in your statement,

16 I'll come back to some of the reflections you have of

17 comparing the development of the Prison Service and the

18 use of large institutions with how other public services

19 and care services and health services have dealt with

20 people that they have to support and assist. But has it

21 struck you that there is a bit of a paradox in the

22 Scottish system that generally young offenders under 16

23 are dealt with by the children's hearing system not the

24 criminal justice system, but young offenders between 16

25 and 18, who are still children, are dealt with by the

1 criminal justice system in the ordinary courts and not
2 even in juvenile courts. Is that something that you
3 think is a bit paradoxical?

4 A. It's the way our system has developed in Scotland. You
5 will be well aware that I think when the children's
6 hearing system was set up the age of 16 was settled on
7 as largely being the age when one might consider
8 a person a school child. I don't know how active the
9 debate is now, but there certainly was an active debate
10 15/20 years ago about whether the children's panel's
11 purview should be extended to the age of 18, and that's
12 always been a difficulty.

13 That was a difficulty right back, which you may take
14 me to later, when the borstal system was set up, what
15 age group should it -- as all parents know, you can't
16 have a hard and fast rule. Some people develop more
17 than other people. But for the sake of the
18 international conventions and standards, 18 is the age
19 it said.

20 I haven't heard recently a debate in the children's
21 panel about seriously whether it should be raised to 18.

22 LADY SMITH: Andrew, I think we probably also have to
23 remember that among the wide powers of disposal that the
24 children's hearing system has are included compulsory
25 measures of care and that can include an order as to

1 where the child is to reside.

2 A. Thank you.

3 LADY SMITH: You could end up with effectively a loss of
4 liberty because of a children's hearing order, but you
5 will have reached that stage through a different type of
6 system.

7 A. Thank you.

8 MR PEOPLES: There is no principal problem then if you can
9 by a certain order restrict liberty in appropriate
10 circumstances through the children's hearing system,
11 then one might argue that there is no reason why in the
12 case of 16 to 18-year-olds that can't be done through
13 that system.

14 A. Yes.

15 Q. I don't know whether you have a view whether that would
16 be a good or a bad thing?

17 A. I don't think I'm qualified to have a view, other than
18 to say that if you agree that should be the case then
19 there is a further question where would that deprivation
20 of liberty be imposed, in which institution?

21 Q. I think that is going to be an issue that is going to
22 have to be resolved -- if the current move towards
23 taking under 18s out of the prison estate or system is
24 going to go through as legislation, then in some cases
25 they'll have to go somewhere else. I suppose what you

1 are saying is that you are going to have to work out
2 where and in what circumstances and so forth, is that --

3 A. Just thinking on my feet, one could argue presumably
4 that such legislation would then force the children's
5 panel or whoever to deal -- each case would be dealt
6 with on its individual merits. I don't know whether the
7 children's panel would be the body to decide where that
8 deprivation of liberty should take place.

9 Q. They are not just interesting questions, they are very
10 live questions given the current direction of travel, if
11 there is a move towards changing the way that we deal
12 with those under 18?

13 A. Yes. Presumably there would be a very small and
14 specific number, you would identify the individuals who
15 would need that provision.

16 Q. I think there is certainly a recent report by
17 Sheriff Mackie on proposed changes to the children's
18 hearing system, I think he may favour some more greater
19 professionalisation --

20 LADY SMITH: For clarification we should say
21 Sheriff David Mackie, not Sheriff Kathrine Mackie, who
22 of course is involved in prisons through the monitoring
23 system.

24 MR PEOPLES: Sorry, I should have made that clear.

25 Sheriff David Mackie has produced a recent report

1 having looked at the system and I think he's advocated
2 some changes, including I think possibly a legally
3 qualified chair in a kind of panel, maybe not dissimilar
4 to employment tribunals possibly, albeit for a very
5 different purpose. Among things.

6 Whether that in some ways will contribute to the
7 discussion and the final shape of what happens then --
8 but it's all happening just now and it's a live issue?

9 A. It's a live issue, yes.

10 Q. As you've said, there are young people under 18 whose
11 liberty will have to be restricted?

12 A. Yes.

13 Q. I may take you to your statement, if I can. Page 2 of
14 your statement, under the heading "System of prison
15 inspections".

16 You have told us a little bit about this already, so
17 I'm not going to take it at too much length, but it does
18 help us to understand the development of the prison
19 system and indeed the external scrutiny or oversight.

20 What you tell us there is, as you said earlier, that
21 until 1878 all prisons in Scotland, with the exception
22 of the general prison in Perth, were under the control
23 of Local Authorities in various forms and the UK
24 Government appointed an inspector of prisons to report
25 on their management.

1 I think you said that person would be someone within
2 Government departments?

3 A. No, no, before 1878.

4 Q. My apologies, that was someone who was an independent
5 appointment?

6 A. Before 1878 -- I think it was in 1845 the UK Government
7 appointed five individual inspectors of prisons, and one
8 of those five jurisdictions was Scotland.

9 Q. Under legislation --

10 A. Yes.

11 Q. -- passed around 1845?

12 A. Yes, it was implemented in 1845.

13 Q. You say that however there was a significant change
14 through the Prisons (Scotland) Act 1877, which turned
15 the existing arrangement on its head and in the
16 following year the Scottish Prison Commission was
17 established. That would be the forerunner to the
18 Scottish Prison Service?

19 A. Yes.

20 Q. It took over management of all prisons in Scotland. You
21 say in parallel at that time the system of visiting
22 committees was set up for each prison, with membership,
23 including a representative of each of the Local
24 Authorities which sent prisoners to that particular
25 prison.

1 That was how things developed in the 19th century?

2 A. Yes. Some Local Authorities were not terribly happy
3 that their prisons, as they saw them, were now managed
4 centrally, so the accommodation in the legislation was
5 that the visiting committees would be set up and the
6 members of the visiting committees were from each
7 council where the court sent prisoners to that prison.

8 Q. To some extent that was a solution to perhaps appease
9 the Local Authorities who were losing control?

10 A. Not perhaps to appease, but to still give them a feeling
11 that their prisoners from the local community still had
12 a voice to which they could turn. In a way that is what
13 you were asking me before about the complaints system.

14 Q. The visiting committee members would be drawn from the
15 local community?

16 A. On adult prisons they were all appointed by the local
17 council.

18 Q. Would they include elected members --

19 A. Yes, most of them were elected members.

20 Q. You refer to the fact that I think from 1879 the Prison
21 Commissioners produced annual reports?

22 A. Yes.

23 Q. We'll come back to Polmont borstal, but you do say that
24 it opened in 1911 under powers conferred on the
25 Secretary of State by the Prevention of Crimes Act.

1 A visiting committee was appointed to that particular
2 borstal at that time; is that right?

3 A. Yes.

4 Q. You tell us in paragraph 7 of your statement that the
5 Scottish Prison Commission was abolished in 1923 and
6 administration of prisons was transferred to a division
7 in what became in time the Scottish Home and Health
8 Department, with an assistant secretary appointed as
9 director of the Prison Service.

10 Then in 1993, as we have discussed earlier today,
11 the SPS became an executive agency of the Scottish
12 Government, following the -- I think that's the May
13 Committee that you referred to earlier today?

14 A. Yes.

15 Q. That the thinking was that that was to distance the
16 inspection system from the service it was inspecting?

17 A. Yes.

18 Q. That a distinction was made between the work of visiting
19 committees, which was to monitor treatment of prisoners
20 on an ongoing and regular basis and to investigate
21 complaints made by individual prisoners.

22 That was to be distinguished from the Inspectorate,
23 which was to carry out an in-depth inspection of each
24 prison on a regular basis. You say in practice this was
25 generally every three or four years, but was not to

1 consider complaints raised by individual prisoners.

2 That was the way it was structured?

3 A. Yes, and that remains the position.

4 Q. I suppose we have canvassed this with some of the
5 current inspectors and regulators about what their
6 function is. I think broadly speaking they sought to
7 say that their function isn't to be a detector of abuse
8 or to investigate abuse, more to be part of hopefully
9 an effective mechanism to prevent so far as possible
10 abuse or ill-treatment of persons in prisons. I think
11 that is how they see their role.

12 Would that accord with your understanding of how it
13 would operate?

14 A. Yes. You mentioned before, Mr Peoples, that the Cabinet
15 Secretary appointed me in 2011 or 2012, I think, to
16 consider his proposals then, which basically had been to
17 abolish the prison visiting committees and to
18 incorporate them full stop within the Inspectorate.

19 I consulted widely and concluded that there is, as
20 I mentioned there, a distinction between inspection,
21 which is arguably what the inspectors and the regulators
22 have been telling you, and complaints. It takes us back
23 to the discussion we were having before the break about
24 complaints and prisoner access to complaints.

25 The visiting committee as was had no comment to make

1 about the management of the prison, they looked
2 specifically at treatment of the individual and dealt
3 with complaints. I recommended that with changes that
4 model should remain. There should still be
5 a distinction between the visiting committee and the
6 Inspectorate.

7 In the event, the Cabinet Secretary accepted I think
8 almost all of my recommendation but did not accept that
9 one, because he -- well, he compromised by agreeing that
10 there would be three or four people appointed in each
11 prison to deal with prisoner complaints, but they would
12 come under the Inspectorate. That is the situation now,
13 the inspectors -- are they called "complaints
14 adjudicator"? I'm not quite sure what their title is,
15 they report to the inspector of prisons.

16 My view remains that that is not an ideal
17 arrangement. The reason these changes came about was
18 because the UK became a party to the UN Convention,
19 I've forgotten which one it was --

20 Q. Was that the United Nations, the Optional Protocol?

21 A. Exactly.

22 Q. The Optional Protocol to the Convention against Torture
23 and other Cruel, Inhuman or Degrading Treatment or
24 Punishment, I think that is OPCAT for short?

25 A. Exactly.

1 Q. That was 2003?

2 A. Exactly. In signing OPCAT, the then current situation
3 of inspection and monitoring needed to be reviewed,
4 because the visiting committees were funded and had some
5 administrative support from the Prison Service and on
6 that basis they were not considered to be OPCAT
7 compliant, because they weren't independent.

8 That led to my inquiry and the recommendations
9 I made. When I was questioned by the Justice Committee
10 about what was proposed I said in announcing the changes
11 the then Cabinet Secretary said that this was to be the
12 gold standard, that was his phrase, for prison
13 inspection and monitoring. The Justice Committee asked
14 me would this proposal meet the requirements of OPCAT
15 and I said in my personal view it would meet the basic
16 requirements, but it would certainly not be the gold
17 standard and that's the situation now.

18 The prison monitors report directly to the inspector
19 of prisons and the distinction between them I think has
20 become elided.

21 Q. Would you have favoured at least some form of inspection
22 body that was independent of Government and also
23 separately a complaints body, probably the Independent
24 Prison Monitoring System, that would look at individual
25 complaints and have some powers of adjudication in

1 relation to those. Is that what you were favouring?

2 A. Adjudication or investigation of the complaint, yes.

3 That's broadly the model which exists in England, but

4 it's no longer the model in Scotland.

5 Q. There would be this separation. I think the current

6 inspector doesn't see herself as having a direct

7 complaints jurisdiction for individual complaints

8 anyway?

9 A. The complaints monitors come under her, they report to

10 her and I think it would be quite hard to maintain that

11 position.

12 LADY SMITH: You said complaints monitors, are you talking

13 about the prison monitors?

14 A. Yes. I've forgotten, my Lady, what their actual title

15 is, is it prisoner monitors?

16 MR PEOPLES: There are co-ordinators to do with prison

17 monitoring, co-ordinators under her general umbrella and

18 then there are the prison monitors themselves, the

19 volunteers, who are appointed through the Inspectorate

20 to do the regular visits.

21 A. Yes.

22 Q. I think that is how she described it.

23 A. That is correct.

24 LADY SMITH: They are all volunteers?

25 A. Yes, they are.

1 LADY SMITH: There is a smallish group of them, but they
2 have the power to bring in other people as well, guests,
3 they call them guest monitor?

4 MR PEOPLES: I think that is the guest inspectors --

5 LADY SMITH: Guest inspectors, sorry --

6 A. There are guest inspectors, that is different.

7 LADY SMITH: There are currently I think eight volunteer
8 members of the Independent Prison Monitoring Advisory
9 Group. They run their monitoring as they think fit
10 separately, but it's monitoring, and they can certainly
11 uncover a cause of complaint, I've heard evidence to the
12 effect that because they have the potential to build up
13 close relationships or closer relationships, if you
14 like, there's more scope for prisoners to talk to them.
15 But they don't take the complaints anywhere, other than
16 relay what they know to what is the right place, which
17 will include the Inspectorate, but not just the
18 Inspectorate I think.

19 MR PEOPLES: Yes. I think certainly the chief inspector's
20 understanding of the complaints process was she didn't
21 adjudicate on complaints, individual complaints. The
22 independent prison monitors didn't do so. If complaints
23 came to their attention as part of their respective
24 functions, they would direct them to -- to use that
25 loose expression -- the appropriate authorities. It

1 could be the police, it could be the service itself, it
2 could be Social Services or all three. But they didn't
3 themselves seem to concern themselves with the handling
4 of the complaint, the investigation or the
5 determination, which seems to be almost less clear than
6 the pre-2015 position, if that is the case.

7 A. Yes. That is the case, Mr Peoples. It's a very
8 cumbersome arrangement.

9 Also, if one reads the reports of whether it's the
10 monitors or whoever, which are not all, but some are
11 publicly available, they're really quite anodyne
12 reports. I'm not sure that they are an improvement on
13 the old visiting committees, which each published annual
14 reports. They were far from ideal and needed to be
15 improved, but least they were seen as being part of the
16 establishment.

17 Q. I suppose the benefit, if you have effectively
18 a complaints body other than the internal complaints
19 process that might reach the governor. If you have
20 a visiting committee or an external complaints body that
21 can entertain and decide things, then at least the
22 person with the complaint, whatever that be, has
23 immediate access to a process --

24 A. Yes.

25 Q. -- and will get some form of determination in

1 a relatively short time, is that the way it should work?

2 A. Indeed.

3 Q. That's not how it works currently?

4 A. No, no.

5 I think, I stand to be corrected, that we must also
6 bear in mind that prisoners have no access to the Public
7 Service Ombudsman, I don't think. The argument for that
8 was that there was a visiting committee.

9 Q. I wasn't sure that that was what the inspector said, but
10 I may be wrong. There might have been a route
11 eventually, but probably not a route that is well
12 travelled, I suspect.

13 A. Not one that a prisoner who is waiting for an answer to
14 his or her complaint --

15 Q. It might be offputting to say, "You have five different
16 tiers of complaint or options" when you want an answer
17 now.

18 A. Yes.

19 LADY SMITH: Where, Andrew, there is some scope -- but
20 I think you would say not enough -- for the inspector to
21 become interested in the adequacy of complaint systems
22 is in choice of thematic reviews.

23 We heard evidence about particular thematic reviews,
24 for example, on control and restraint, prisoner
25 transport and another recent one I think was on

1 progression within the sentence.

2 Interestingly, if you look at the current annual
3 report, it does record that the largest number of
4 complaints raised by independent prison monitors with
5 the Inspectorate have been about progression. That is
6 something that perhaps the Inspectorate could take
7 forward as a theme itself, namely access to an effective
8 complaints system.

9 But, just before I finish, I don't know if you know,
10 but there is obviously a continuing frustration on the
11 paucity of resource available to the inspector. She
12 appears to be doing very well with very few people and
13 not enough by way of resources. It's a very tight team.

14 Does that match your experience?

15 A. Her team has expanded considerably and I think there is
16 room for looking closely at what she actually does and
17 priorities, but I would hesitate to criticise her.

18 MR PEOPLES: What she told us was that it's basically what
19 one might call the core inspectors that she has, about
20 six or so, tended to be involved in other duties as
21 well. While I think she said she had sufficient
22 inspectors in her personal opinion, she certainly said
23 she didn't think she had enough volunteers and that the
24 IPMs and the Inspectorate needed a better IT system as
25 well, to be able to identify trends, directions and

1 problems on a broad basis.

2 A. One thing I might comment in that respect is I wonder
3 whether the lack of volunteers has anything to do with
4 the fact that the local link has been broken, whereas
5 the local councils previously appointed people and some
6 of them took their job very seriously, some did not take
7 it seriously, but nonetheless each prison had its ten or
8 11 people appointed. Whereas now I'm not sure how she
9 advertises and how she seeks recruits.

10 Q. There is an argument for and against this, but did the
11 membership of these committees tend to remain stable?
12 In terms of people served for an appreciable period of
13 time?

14 A. They were generally after each set of local elections
15 the council would be appointing the various committees.

16 One has to say that the appointment of the visiting
17 committee was not very high up the pecking order, it
18 wasn't terribly popular. After each election, the
19 council would either change or confirm their appointees.

20 Q. It wasn't necessarily seen as a plum job if they were
21 local elected members?

22 A. They received their travel expenses to Peterhead, but it
23 really wasn't something they --

24 Q. Some may say the same problem with boards of management
25 of approved schools, where they had local elected

1 individuals on the board, that their priorities maybe
2 lay elsewhere?

3 A. Yes.

4 Q. Just as when Local Authorities ran schools, they managed
5 them through committees, which had, in their estimation,
6 far more important things perhaps to occupy their
7 time --

8 A. Yes.

9 Q. -- and gave little time to the business of the school?

10 A. Yes, and it wasn't a matter of great local political
11 importance. That in a way comes back to your earlier
12 request about complaints and complaint systems.

13 Q. Can I just then, while we have been discussing the
14 current mechanisms involving inspection and monitoring
15 of prisons in Scotland, which is the HMIPS and the IPMs.
16 You have set out between paragraphs 8 and 9 what you
17 have told us just now about some of what you consider to
18 be the shortcomings of the current system and how it
19 didn't follow the route that you were recommending in
20 terms of separation and so forth.

21 Can I ask you this, two things?

22 The Care Inspectorate that is the successor to the
23 Care Commission which was established in 2001, and the
24 Care Inspectorate in 2011, had and have powers of
25 enforcement, improvement notices and powers to take

1 action against a service and indeed close the service
2 down ultimately if not satisfied with performance.

3 The current Chief Inspector of Prisons, when asked
4 by me whether it would be a good thing for her to have
5 powers of enforcement, as well as powers of inspection,
6 seemed to not favour that. She seemed to think it might
7 destroy the good relationship she enjoyed with the
8 prisons that she was inspecting and that her
9 description, although I think she might modify it in
10 future, was that she saw herself as a critical friend
11 rather than an inspector that could enforce, if
12 necessary.

13 What do you think of that?

14 A. I don't think she's correct.

15 LADY SMITH: In fairness to her, Mr Peoples, she readily
16 accepted "critical friend" is probably not the right way
17 to put it, but it was a fear of always been seen as
18 somebody who is a threat to the job security of the
19 governor, as opposed to somebody who if they are
20 an effective inspector can really talk with the governor
21 and, through discussion, bring about change.

22 I think that was what she was seeing as the
23 difference.

24 Now, you are going to tell us.

25 A. Critical friend is a well-used phrase from the past.

1 This is not an ideal arrangement and differs
2 significantly from the arrangement in England and Wales,
3 where over the years what was the visiting committee --
4 the "visiting committee" was the short term for the
5 "committee of visiting magistrates". They were people
6 appointed to come to the local prison. It then became
7 the board of visitors, it then became the independent
8 monitoring board, which is what they are now, quite
9 separate from the Inspectorate.

10 In England there is also a Prisons Ombudsman, who
11 deals with individual cases, given the fact that the
12 prisoners have no access to the Public Service
13 Ombudsman. There is a Prisons Ombudsman in England, we
14 don't have an equivalent in Scotland.

15 Q. I'm putting the point -- I think I'm not doing her
16 an injustice, I think she readily accepted that perhaps
17 using a term that you say was in long usage when
18 inspectors didn't have powers and really had to
19 persuade, they didn't have any other function generally
20 in public services, but leaving that aside, you can
21 still adopt her approach to dealing with services but
22 have, in your armoury, powers of enforcement if
23 necessary.

24 You don't have to be gung-ho and start using them
25 all the time, but surely it's better as an independent

1 inspectorate to have those powers at your disposal and
2 it may require some thought as to how you deal with
3 a prison rather than shutting a service, but do you not
4 agree that some powers of enforcement are a desirable
5 thing?

6 A. What I am agreeing is that the present situation is far
7 from ideal. In particular if I could take a particular
8 example, which I refer to at the end of paragraph 9.

9 The recent report of the European Committee for the
10 Prevention of Torture, which came to Scotland and
11 published its last report in 2018 -- they visited in
12 2018 and they were very critical of finding that there
13 were a number of prisoners in Scotland who had been held
14 virtually in segregation for long periods of time,
15 including one who had been in held in segregation for up
16 to ten years.

17 That is what the European Committee for the
18 Prevention of Torture said in its report. If that is
19 the case, and there is no argument that it is the case,
20 the named prisoner who is known, then one has to ask
21 what was the chief inspector doing and what were the
22 monitors doing in allowing this to happen?

23 Interestingly, what has happened since then is that
24 just a few months ago the Chief Inspector of Prisons
25 published, I think in June this year, a report into the

1 use of segregation in Scottish prisons, which she had
2 never done before.

3 Q. Perhaps lessons have been learned and maybe they're
4 taking on board what's happening internationally in
5 terms of their commentary on the state of the service.

6 I just really wanted to seek your view that if you
7 are an inspectorate and other inspecting services appear
8 to have their own independent powers of enforcement,
9 rather than relying on Government or Ministers to take
10 some action, I'm just asking if you think in principle
11 that's a good thing, even for the prisons Inspectorate,
12 whatever those powers might be?

13 A. I wouldn't like to be in the Inspector's shoes if she
14 had that power when she is inspecting Barlinnie, because
15 it would be hard to avoid the conclusion that Barlinnie
16 should be shut down and of course the Government and the
17 SPS would say, "We can't shut down Barlinnie", but if
18 you look at the Committee for the Prevention of Torture
19 reports over the year on Barlinnie, the situation in
20 Barlinnie, the situation in reception, the situation in
21 the punishment cells, extremely critical and nothing
22 happens.

23 It would be a very brave inspector who took it on
24 herself to say: close Barlinnie down.

25 LADY SMITH: Sorry, Andrew, I think we have strayed from the

1 central point we were looking at, which is if you
2 compare prisons for example to other forms of
3 institutional care, where the people who work there must
4 be registered with SSSC and are regulated by SSSC and
5 can have their registration cancelled if SSSC conclude
6 they're no longer fit to hold the registration.

7 It's nothing like that in prisons. None of the
8 staff, including the governor, have to be registered
9 with any particular body. It may well be that the
10 thinking behind that is giving a power to the inspector
11 to enforce would be disastrous, because it must be
12 implied that that would have to have a power to close
13 the prison because the governors are the apex and the
14 governor has led a disaster in human rights matters, for
15 example.

16 I think we're wondering whether there is nonetheless
17 some power the inspector should have to be able to
18 intervene where she sees bad governance, without the
19 obvious corollary being that means the prison must be
20 shut down. Do you see what I mean?

21 A. I would agree with that, my Lady. If it is a question
22 of bad governance, then we may be moving away from the
23 individual complaint, if it's a generic problem about
24 bad governance then I would have thought that is
25 certainly within her -- she should be reporting on that

1 and perhaps privately or saying to the Scottish
2 Government or Ministers, "Something needs to be done
3 about this".

4 MR PEOPLES: I think the point her Ladyship and the point
5 I'm trying to make is that while it may be a matter of
6 saying -- the first question is: should you have powers
7 of enforcement at all?

8 The second question is: what these powers of
9 enforcement should be and what action and sanctions you
10 can take if there's non-compliance? It may be, unlike
11 like the Care Inspectorate that is dealing with services
12 across Scotland, they have power to close the service,
13 but it may be given that we only have a limited number
14 of prisons and that we do need some sort of settings,
15 that in the real world that power can't be the sanction
16 if non-compliance is found.

17 But surely there is some way of finding something
18 else that will give her the teeth to say that if you
19 don't do what I'm telling you and requiring you to do,
20 there are certain things and actions I can take. I may
21 not be able to close you, that is maybe a matter for the
22 politicians, but I can certainly take other serious
23 action, whether against those in charge of the
24 establishment, those in charge of the service, I don't
25 know.

1 These are for discussion. There is not an all or
2 nothing here --

3 A. Indeed.

4 Q. -- do you agree?

5 A. Yes. No, I do agree, yes. I take the point.

6 I'm thinking again to the inspector's reports in
7 England, which have been very strong over the years,
8 different inspectors, in their recommendations at the
9 end they have clearly laid out who is responsible for
10 implementing.

11 For example, there will be recommendations to the
12 governor about changes, there will be representation to
13 the Prison Service and there will be representations to
14 Ministers.

15 Q. I'm going a step further and saying, "I'm not just
16 recommending this, I'm telling you it is a requirement
17 you are going to do this".

18 I'm saying that the inspector then must have some
19 means to say that if you don't do it, these are the
20 options available to me under my statutory powers.

21 She doesn't have that at the moment. She doesn't
22 think it's a good thing to have that power. I was
23 suggesting perhaps she ought to think whether it would
24 be a useful reserve power, even used sparingly. I just
25 wanted to know what you think.

1 A. I think we're all agreed that the present system is not
2 ideal and indeed arguably it's not quite fit for
3 purpose, and if this was to make it fit for purpose,
4 then I would agree with you.

5 Q. The other thing that I just pointed out is that in terms
6 of contrasting the different inspectorates, the Care
7 Inspectorate is a statutory body, independent of
8 Government.

9 The Prisons Inspectorate is an executive agency of
10 Government, as matters stand. I'm just wondering is
11 there any particular reason not to make them more
12 independent of Government by making them also
13 a statutory inspectorate that is independent of
14 Government. What is the problem with that?

15 A. None. I think in the big picture we're back to one of
16 my earlier positions, that having the management of
17 prisons directly under a Government department leads to
18 these sort of problems. Without placing it too
19 strongly, there is sometimes an argument on behalf of
20 Government to resist even recommendations.

21 I know, having read Derek Chiswick's report on
22 Glenochil, that was a problem he faced when his report
23 came out, that Government was reluctant, accused him of
24 going beyond his remit and so on.

25 The root of the problem is that this is in the hands

1 of Ministers and, through them, civil servants.

2 Q. If I could move on then to another section of your
3 report, which is focusing more particularly on your time
4 with the Scottish Prison Service.

5 It's headed:

6 "Abuse in young offenders institutions and detention
7 centres."

8 It's page 5 of your statement. I'll come back to
9 paragraph 10 about the international covenants and
10 standards, if I may, at a later point.

11 What I'm more interested in at present is to look
12 at -- I think, in paragraph 11 of your statement,
13 page 5, you tell us a bit about two institutions that,
14 as you say, stand out when considering the historical
15 position of abuse in penal establishments in Scotland.

16 Maybe you can help us with that one, you have
17 Longriggend as one and Glenochil as another.

18 They seem to have achieved in your time in the
19 service a certain notoriety. I was just wondering if
20 you could explain to us what you are saying about them.

21 Would you like me to read it?

22 A. No, no, no. Would you like me to --

23 Q. Take your time.

24 In paragraph 11 you tell firstly us about
25 Longriggend and a bit about that. Then you go on to

1 deal at the final five lines or so about Glenochil
2 detention centre, which we have heard some evidence
3 about already from --

4 A. Shall we take Longriggend?

5 Q. Yes, take whichever one you want first?

6 A. Which paragraph was that?

7 Q. It's paragraph 11, Professor Coyle.

8 A. Yes, yes.

9 Q. You said you visited it on a number of occasions in the
10 early 1980s, when you were in SPS headquarters.
11 Obviously you give its history as a former 'fever
12 hospital' on a desolate site in Lanarkshire.

13 You describe the internal layout, do you see that
14 there, it is bleak and unforgiving with no redeeming
15 features and very few facilities. Is that a fair
16 summary?

17 A. Yes.

18 My responsibilities when I worked in the operations
19 division in prison headquarters was primarily for
20 staffing matters, but also for security matters. Within
21 that context I visited all the prisons in Scotland
22 fairly regularly and went to Longriggend on a number of
23 occasions.

24 I never worked directly in Longriggend. But it was
25 a unit which stood apart from the Prison Service.

1 Longriggend was different, as it were, from all other --
2 it wasn't a prison. It was a remand unit.

3 It was, as I say there, the main secure unit for
4 juveniles remanded from all courts in the west of
5 Scotland. So they were all remand prisoners, none of
6 them were convicted. It had been a fever hospital. Its
7 facilities were very, very limited. It was, I perhaps
8 unkindly described it as being in a bleak part of
9 Scotland. No staff really wanted to go and live there
10 or to work there. There was a big turnover of
11 prisoners, who would be going out and coming back in
12 each day to all the Sheriff Courts in the west of
13 Scotland.

14 The boys were all young and there was very little
15 activity for them. They were locked up most of the day
16 and it was known, I suppose, within the Prison Service
17 as something that we -- how can I put it -- should not
18 be proud of. It really was being asked to do something
19 that ... particularly given that most of the boys there
20 were young boys, to be held in those conditions.

21 It had a number of critical inspection reports and
22 I think one of the last ones was in 1989, when the Chief
23 Inspector described it as a breeding ground for
24 criminals. It was severely criticised on all parts and
25 eventually, as you know, was closed in 2020.

1 Q. I think you say young people -- you say many were under
2 18?

3 A. Yes.

4 Q. They would be the children with which our Inquiry is
5 concerned?

6 A. There could be 14-year-olds, 15-year-olds.

7 Q. You say remand. Obviously young people can be remanded
8 between conviction and sentence, but was it mainly
9 people who were on remand before trial?

10 A. Yes.

11 Q. A large number came from the west of Scotland?

12 A. It served the courts in the west of Scotland.

13 Q. You say halfway down paragraph 11 on one matter:

14 "Bullying, staff on boys and boys on boys, was endemic."

15 Does that really sum it up? Is that what it was
16 known as, a place where bullying was endemic, both as
17 between staff on boys and boys on boys or staff --

18 A. My personal knowledge, I repeat, is based on I suppose
19 half a dozen visits to look at buildings and other
20 matters. But there was a knowledge within the prison
21 system. The boys were there for a short period of time,
22 although it could be repetitive. They would go out to
23 court and come back and that they were locked up either
24 in cells or in units with comparatively little
25 supervision. It was a very unpleasant place for the

1 young boys.

2 Q. When they were locked up, would they be locked up in
3 single rooms or cells?

4 A. My memory is that some were in cells, maybe in double
5 cells, and some were in slightly larger units. If you
6 remember, it had been a fever hospital, so there were
7 different styles of accommodation.

8 Q. You use the term bullying, I suppose one could say that
9 could take many forms?

10 A. Yes.

11 Q. Do you have any particular form in mind when you used
12 that term? Is it intimidation, coercion, threats?

13 A. The boys of that age, I think it was known that the
14 older experienced boys, some would make life difficult
15 for the younger boys. Did the staff collude in that?
16 I give the example that it was well known that most of
17 the boys, many of the boys had close shaven heads and
18 that there was a medical reason for this apparently,
19 that they had nits, but it was well known that if
20 someone stepped out of line one way of cutting them
21 down, as it were, to size was to say that he needed to
22 have his head shaved.

23 Q. The ostensible reason was because you had nits, but it
24 was something that would happen effectively as
25 a punishment?

1 A. Yes.

2 Q. That was a well-known form of punishment?

3 A. Yes. None of that would be recorded of course. It
4 would be informal.

5 Q. No, quite.

6 You mentioned the other notorious institution, in
7 paragraph 11, was Glenochil detention centre, which as
8 we heard indeed yesterday had opened in 1966 to replace
9 two original detention centres, I think one was at South
10 Inch House in Perth?

11 A. Yes.

12 Q. Can you remember what the other one was?

13 It doesn't matter.

14 A. No, I can't.

15 Q. Don't worry. It was the sole detention centre from 1966
16 onwards; is that right?

17 A. Yes.

18 Q. This was the 'short sharp shock' regime that we have
19 heard evidence about, to frighten boys and young men out
20 of law breaking. That was the thinking, at least in
21 broad terms, as to what it would do?

22 A. Yes. It came really from the UK Home Secretary, it was
23 William Whitelaw, who remembered his time in the forces.
24 He, I think, was the one who used the phrase, "short,
25 sharp shock".

1 Q. You say in the closing sentence of paragraph 11, page 5,
2 that this regime was interpreted by some staff at least
3 as a licence to impose additionally harsh treatment. Is
4 that again based on what you were hearing and seeing
5 when you visited?

6 A. I didn't comment on detail in my report, Mr Peoples,
7 because I knew that Dr Chiswick was going to come before
8 you and that he had completed his report.

9 Q. You don't disagree with --

10 A. He hit the nail on the head, absolutely.

11 Q. That would have accorded with what you were hearing and
12 to some extent seeing, because you must have formed
13 an impression of the general nature of the regime?

14 A. Yes.

15 Q. Did you not?

16 A. To be honest, I'm not sure. It was part of the main
17 young offenders institution and on my visits I would be
18 looking at specific issues. I'm not sure that I looked
19 terribly closely at the detention centre per se, and
20 that was why I left that to Dr Chiswick and others.

21 LADY SMITH: Can you give me any indication of how many
22 times you went to Glenochil?

23 A. I worked in prison headquarters from 1981 to 1986 and
24 I probably would have visited most prisons once a year
25 and some more often, depending on what the issues were,

1 so I probably would have been there half a dozen times.

2 LADY SMITH: A bit like Longriggend?

3 A. Yes.

4 LADY SMITH: Thank you.

5 MR PEOPLES: Just moving on to paragraph 12 of your

6 statement, page 6, you say:

7 "Evidence suggests that the overt violence which
8 existed in the past in some institutions for young men
9 and boys is now much reduced, particularly physical
10 violence inflicted by staff on inmates. Bullying
11 between inmates is another matter and Polmont Young
12 Offender Institution in particular has been severely
13 criticised from various quarters in recent years for the
14 prevalence of self harm and suicides. Concern has also
15 been raised, for example, by the CPT, [the Committee for
16 the Prevention of Torture] about conditions for young
17 women in Cornton Vale."

18 Of course we now know Cornton Vale has closed as of
19 this year, having been recommended for closure as long
20 ago as 2012, so is it your understanding, based on
21 evidence that you are aware of, that at least bullying
22 remains a serious problem?

23 A. I'm really not in a situation to comment in detail on
24 the current situation. My comment in the first sentence
25 of paragraph 12 is based on my reading on reports and

1 secondhand information; I've no direct knowledge.

2 Q. What you are reading and hearing suggests to you that
3 the situation at least is improving in the sense of the
4 extent of physical violence that may be taking place
5 today, in comparison to what was happening historically?

6 A. That is what I read from the reports and hearing other
7 people talking.

8 Q. Bullying doesn't necessarily involve physical violence?

9 A. No, of course, no.

10 Q. And perhaps is more difficult to detect and police?

11 A. Yes.

12 If you are talking about Polmont, I go on, you will
13 probably take me to it in the next paragraphs, that if
14 you have 400 young men in one institution and they all
15 have their own problems, then it's almost inevitable
16 that there will be bullying.

17 Q. We can now turn to Polmont, you have dealt obviously
18 with Longriggend and Glenochil.

19 As you say, you have a section headed "Polmont Young
20 Offenders Institution". You give us a history in
21 paragraph 13, page 6 of Polmont and how the first formal
22 proposal for separate institutions for young adult
23 prisoners was made in the Gladstone Report in England in
24 1895, and that that report suggested that those between
25 the ages of 16 and 23, that that was a crucial age range

1 in the maturation of habitual criminals and that they
2 should be reformed rather than punished.

3 That this found acceptance officially and in 1900
4 part of the convict prison near Rochester in Kent was
5 set aside to provide a reformatory regime for young
6 offenders, and that the prison itself was situated in
7 the village of Borstal and the name of the village
8 became associated with that type of institution and was
9 subsequently enshrined in statute with the enactment of
10 the Prevention of Crime Act 1908.

11 That gives us a history and I suppose at that time
12 the idea was that borstal is an alternative to prison,
13 but now it's become one of the types of prisons which
14 young people can be accommodated in?

15 A. Yes. That came from the Victorian age, when there was
16 a belief in the efficacy of large institutions and that
17 if people were, in this case young men, taken out of
18 their own environment and placed in a positive
19 environment, then they would either be prevented from
20 further offending or would not go into offending.

21 Borstals initially, if you read the history of the
22 borstal system, they were pale reflections of the
23 English public school system. Polmont is an example of
24 that, because Polmont as a building was previously
25 a school for the sons of gentlemen.

1 Q. You tell us that in paragraph 14. Interestingly, the
2 Scottish Prison Commissioners decided to follow
3 an English example and in 1911 purchased Blairlodge
4 School, a large private boarding school for gentlemen's
5 sons that was situated in Polmont, Stirlingshire to
6 house these young people.

7 A. Yes.

8 When I went to Polmont in 1976 that ethos at least
9 in part remained. There were no fences round the
10 institution. There was a cricket square, a large
11 playing field and a cricket square. There was
12 a swimming pool inside. All left over from the time of
13 when it was the public school, so it still retained at
14 least a bit of that history.

15 Q. You say that it was a locked institution?

16 A. Locked?

17 Q. When you saw it it was obviously a locked institution
18 though?

19 A. The external doors were locked, but within it people had
20 freedom of movement and they would go either to the
21 football field or to the cricket square and it was
22 accepted, or not accepted but understood, that from time
23 to time some youngsters would run away.

24 Q. You have said there was no perimeter fence or wall?

25 A. The canal is just on the side.

1 Q. If they went out for work activities for example or
2 training of some description they would be out and at
3 least they would have the means to escape and abscond?
4 A. Yes.
5 Q. And some did?
6 A. Yes.
7 Q. For whatever reason.
8 A. It wasn't regular. It was accepted that from time to
9 time and that person then would be subject to another --
10 he would be accused of breaking away from secure
11 accommodation and wouldn't be likely to be sent to
12 a young offenders institution.
13 Q. Possibly punished to boot?
14 A. Oh, he would do times in the punishment cells, yes.
15 Q. There were a range of lawful punishments, but I suppose
16 the risk is that other forms of punishment might have
17 been meted out for absconding?
18 A. Not formally, it was more a question of the official
19 punishment. He would be brought back to Polmont, he
20 would be in the punishment cells, he would go before the
21 governor on a formal charge and he may indeed face
22 a criminal charge of escaping from custody.
23 Q. If you were the prison officer in charge of the squad
24 which someone ran away from, apart from taking him to
25 see the governor you might want to provide some

1 additional punishment of your own? Surely that is not
2 beyond the bounds of --

3 A. I go on to talk about one example.

4 Q. It doesn't surprise you that that could well have
5 happened and if we have evidence that that did happen,
6 that is not going to come as a shock to you, is it?

7 A. No, no. There was what were known colloquially at the
8 time, you may have heard the phrase "jankers", which was
9 from the military. Jankers is an acronym for "judicial
10 action by non-commissioned officers", it happened in the
11 forces, that rather that put the prisoner who had done
12 something wrong on a charge, then the NCO would give
13 them the choice of -- the NCO would put him on extra
14 duties, would put him on very unpleasant duties, would
15 make him do physical exercises, would make him stand to
16 attention. There was a version of that, jankers, in
17 Polmont. I give the example of one principal officer
18 who was known to -- very few of the boys of his wing
19 would be placed on governor's report, as it was called.

20 Q. I'll maybe come to that, if I may.

21 Just taking paragraph 14, what is perhaps
22 interesting is that you quote from the annual report of
23 1911 on page 6 and describe the new institution, the
24 Blairlodge School that's been taken over. The
25 Commissioners describe it in the report as:

1 "The buildings are very extensive and comprise a
2 large central covered hall and gymnasium, surrounded by
3 spacious classrooms in the form of a hollow square,
4 above which are two floors of single bedrooms, in each
5 of which a boy can be accommodated."

6 There is actually single rooms at that time for boys
7 to be accommodated, that is being said in the 1911
8 report?

9 A. Yes, I'm not sure they were all single rooms.

10 Q. I don't think they were, if we read on, but there is
11 an early establishment that has single rooms?

12 A. Yes.

13 Q. Although they have other rooms for more than one person.

14 A. For dormitories, as it would have been --

15 Q. What is interesting is they do talk about them as being
16 bedrooms, not cells?

17 A. Yes.

18 Q. Maybe that was an attempt to show that it was something
19 other than a prison?

20 A. They were known as boys, they were borstal boys. They
21 weren't prisoners. Indeed the report that you are
22 quoting said, "We have got no armed guards, because it's
23 not a convict prison".

24 Q. If we go over to page 7 of the same quote, I think it
25 says -- actually, "The grounds ..."

1 The foot of page 6/top of page 7:

2 "The grounds themselves extended to 30 acres in
3 all."

4 That was a sizeable plot?

5 A. Oh, indeed, yes.

6 Q. It says:

7 "Parties of boys are now engaged in joiner work,
8 mason work, blacksmith work, plumbing, painting, also
9 gardening and labouring. The classrooms and dormitories
10 have the windows barred."

11 There we see that clearly were dormitory
12 accommodation as well as single rooms?

13 A. Yes.

14 Q. There are no walls outside or round the grounds.

15 I suppose you have added, no fence either?

16 A. Yes.

17 Q. Of course:

18 "No armed guards, as it is not a convict prison."

19 It was seeking to make the contrast at a very early
20 point?

21 A. Yes.

22 Q. It says:

23 "To prevent escape reliance is placed on the good
24 behaviour of the lads and the vigilance of the warders
25 instructing the working parties."

1 I'm sure that was an aspirational statement?

2 A. It worked most of the time.

3 Q. It says:

4 "A professional schoolmaster carries on school in
5 the evenings."

6 They were saying that someone would have been
7 teaching in ordinary schools --

8 A. Yes.

9 Q. -- or had the same qualifications was teaching in the
10 evenings?

11 A. Yes.

12 Q. "... and the gymnastic instructor gives instruction in
13 physical drill and gymnastics. It is anticipated the
14 numbers in the institution will grow rapidly,
15 notwithstanding that only those are eligible to be
16 sentenced who are over 16 and under 21 years of age, and
17 who are convicted on indictment."

18 That was the position in 1911?

19 A. Yes.

20 Q. That was how it was described then.

21 You go on to deal in paragraph 15 with the fact that
22 in the 1970s, in addition to young men sentenced to
23 borstal training, Polmont held a number of young people
24 from List D schools who had been considered to be too
25 unruly in those institutions. That is the unruly

1 certificate cases?

2 A. Correct.

3 Q. They hadn't necessarily committed any offence?

4 A. Correct.

5 Q. Yet, they were in a borstal run by the Prison Service?

6 A. Correct.

7 Q. It doesn't seem to accord with the great philosophies of

8 why borstals were set up in the first place or juvenile

9 courts or care in protection rather than custody?

10 A. What had happened over 50 years was that aspirations had

11 been tempered by experience.

12 Q. You tell us there -- I think we heard the evidence to

13 this effect from Alec Spencer yesterday -- that the

14 first six weeks were spent around that assessment centre

15 and they were interviewed by, among others,

16 a psychologist and psychiatrist, who were visiting

17 part-time from the Douglas Inch Clinic in Glasgow. Then

18 at the end of the assessment period there was a decision

19 made as to whether the young man would serve his

20 sentence in the semi-secure conditions at Polmont or be

21 sent to one of the open borstals, Castle Huntly or

22 Noranside?

23 A. Yes.

24 Q. You try to capture in the next paragraph how things were

25 in the mid-1970s, both how you felt at the time and how

1 you sought to describe it later on.

2 Do you want to deal with that one or do you want me
3 to read it? Would it be easier for me to read it out?
4 I'm quite happy to do so?

5 A. If there is anything specific you want me.

6 Q. I'll read it out, if I may. I think it's important to
7 see how you sum it up.

8 You say:

9 "When I took up post in Polmont in 1976 some of the
10 original ethos remained. All staff wore civilian
11 clothing, there was no external perimeter security and
12 the borstal lads, as they were known, all had a full
13 day's activity. Charles Hills, the governor at the
14 time, had an enlightened reputation and encouraged
15 a variety of positive activities within the community.
16 At the same time, there was a darker side to life in
17 Polmont, which I later recorded."

18 I quote:

19 "The abnormality of this environment was compounded
20 by locking up 400 young people in early manhood in
21 a single-sex society. The worst excesses of
22 an exclusively male culture inevitably came to the fore.
23 Success was measured by physical achievement.
24 Sensitivity was interpreted as weakness. In such
25 an environment it was no surprise that the edge between

1 discipline and brutality became blurred. This applied
2 to the way the young men responded to each other and the
3 way the staff dealt with them. The rules did not allow
4 for any form of corporal punishment. It was known,
5 however, that in one particular wing if a young man
6 broke any of the rules in a minor way he would be given
7 the option by the principal officer of having the charge
8 dealt with formally by the governor or being given
9 speedy physical punishment."

10 Then you add:

11 "That principal officer was generally regarded as
12 one of the better members of staff."

13 But he had devised a procedure of his own, which sat
14 outside the rules?

15 A. I referred to it earlier by the acronym "jankers",
16 judicial action by NCOs. Many of the staff,
17 particularly the principal officers, as was the case
18 here, had done National Service or had been in the army
19 and knew that there was this form of rather than putting
20 a young man on report, which meant that it was marked
21 against him and may affect how he's treated in the
22 future, then he would be offered the option of
23 an unofficial punishment, which might involve cleaning
24 toilets, doing some other job, doing physical exercise,
25 which is quite demanding.

1 I had no indication at the time that it involved
2 physical assault, but the principal officer -- whose
3 name I can't remember -- I remember at the time had
4 indeed been an NCO in the army and many of the young men
5 accepted that that was the way life was.

6 Q. Did they really have any option?

7 A. If they refused to do the press ups or clean the toilet,
8 whatever it was he was saying, then he would put them on
9 record and they'd go before the governor.

10 Q. There was an awareness this was happening at the time,
11 this option was --

12 A. It was known. It wasn't throughout the whole
13 institution. But it was known that this one officer,
14 who had many other qualities, ran a very tight ship and
15 he saw it as a matter of pride that he could consume his
16 own smoke without having to call the governor in and
17 most of the boys understood that and got on with it.

18 Q. There was no attempt to stop it then by the governor?

19 A. It wasn't acknowledged that it was happening.

20 Q. It was known to happen, but it wasn't formally --

21 A. I give you -- I don't want to absolve myself. I never
22 worked on that wing. I knew nothing directly about it
23 and it wasn't spoken about much, but this officer,
24 principal officer, was known to have his own form of
25 informal discipline.

1 Q. I know we're talking about -- as lawyers we can get too
2 exercised by hearsay, but in a closed institution word
3 gets about, about what happens in places and what is
4 happening to people without it being directly observed.
5 Is that not the way things are?

6 A. Yes.

7 Q. There is no reason to disbelieve what you are hearing?

8 A. I repeat, there was no indication that I was aware of
9 that this involved physical punishment, which would have
10 been a different matter.

11 Q. You have a paragraph at 17, page 8 --

12 LADY SMITH: Just before you develop that further, what
13 about the risk that a direction to do press ups or
14 cleaning work actually could amount to excessive
15 sanction for whatever it was that was being addressed by
16 the officer.

17 The reason I'm raising this with you, Andrew, is
18 I've heard countless instances of children, let's say
19 particularly by prefects in boarding schools, being
20 directed to do certain things by way of punishment that
21 haven't amounted to corporal punishment or physical
22 attack on them, but they've been unjustified for the
23 incident in question and excessive and therefore
24 amounted to a form of abuse. What about that? Was that
25 in anybody's mind at the time?

1 A. I don't think it was at the time, my Lady. It certainly
2 would not happen now, but I think it was -- I'm not
3 saying it happened everywhere and at all times, but it
4 was known that life was tough in borstal, and for some
5 it was more tough than for others.

6 LADY SMITH: Thank you.

7 MR PEOPLES: I suppose to find out how tough it was for some
8 we can hear from them personally as to what their
9 experiences were?

10 A. Oh indeed.

11 Q. If they say they were bad, is there any reason to doubt
12 the description they give?

13 A. No, indeed. A number of former prisoners have written
14 their biographies, prisoners who went on to Peterhead
15 and elsewhere, have written their biographies, which
16 takes us back to their time in List D schools, their
17 time here and I would believe everything that was
18 written there.

19 MR PEOPLES: If I could move on to paragraph 17.

20 I'm just wondering -- I'm seeing the time, I think
21 possibly rather than start --

22 LADY SMITH: There is quite a bit in paragraph 17 that would
23 be interesting to hear Andrew on that. Perhaps after
24 I've let him have another break and get a bite of lunch.

25 Andrew, I'll rise now for the lunch break and sit

1 again at 2 o'clock.

2 Thank you very much.

3 (12.58 pm)

4 (The luncheon adjournment)

5 (2.00 pm)

6 LADY SMITH: Andrew, welcome back.

7 Is it all right if we carry on now?

8 A. Yes, please.

9 LADY SMITH: Thank you.

10 Mr Peoples.

11 MR PEOPLES: My Lady.

12 Good afternoon, Professor Coyle.

13 Before the break for lunch we were looking at your
14 statement on page 8, I was about to turn to
15 paragraph 17. I suppose this is an example of what you
16 discovered was happening when you arrived and also what
17 might be seen as illustrative of, I suppose, testing the
18 new governor. Can you tell us about this episode and
19 what happened?

20 A. Yes.

21 I had worked for two or three years in Edinburgh
22 Prison with the adults and then was transferred to
23 Polmont. The borstal was divided into various houses,
24 sort of wings, and the new assistant governor
25 traditionally went into what was called the assessment

1 unit, which was where the new arrivals were and where
2 the discipline was really quite tight. As I say, it was
3 almost my assessment period as well as the borstal
4 boys'.

5 I recount the experience in my statement about one
6 morning when there was a wing orderly room, in which if
7 the borstal boy had done anything remiss or broken any
8 of the rules in a minor way then he would be brought
9 before the wing governor for a hearing and a decision.

10 That was different from the main orderly room, which
11 was for more serious offences which the governor himself
12 dealt with.

13 One of the first mornings I was there a young man
14 was brought in and he had -- I can't remember what it
15 was he was charged with, but the principal officer who
16 brought him in was the reporting officer and stated what
17 the situation was. I asked the young man did he have
18 anything to say and he did. He was quite emotional and
19 quite outspoken and arguably quite aggressive, although
20 I didn't think it was excessive. I felt I was still in
21 control.

22 Suddenly the principal officer, who was standing
23 behind him, raised his hand and gave him an almighty
24 crack on the back of his head. As I say in my
25 statement, I think I was more surprised than the young

1 man was and I had to think quickly what am I going to do
2 here.

3 I continued with the orderly room, found the young
4 man guilty of doing whatever it was he had been accused
5 of, but instead of giving him a punishment I warned him
6 and told him not to do it again. The normal procedure
7 then would have been that the principal officer would
8 march him out formerly and that would be that.

9 On this occasion I asked the principal officer to
10 march him out, but the principal officer to stay behind
11 and I said to him:

12 "That was quite wrong what you did there. It's
13 quite unacceptable. I should report you to the
14 governor. I'm not going to report you to the governor,
15 but just let me be quite clear, you'll never do that
16 again while I'm the assistant governor on this wing."

17 The principal officer wasn't happy, but he didn't
18 say anything and that was that finished. I think the
19 point I'm making, it does relate I suppose to what we
20 were discussing this morning about the other wing and
21 the informal punishments, was that it was me being
22 tested out as much as the young man. If I had said
23 nothing at all then the principal officer would have
24 seen that as a green light that this is the way the
25 governor wants the wing run. From then on, of course,

1 nothing like that happened in my presence. I won't say
2 it didn't happen at all, but it didn't happen in my
3 presence.

4 Q. You did say, towards the end of this paragraph:

5 "I was conscious that the principal officer had been
6 testing my reaction and that from then on he would
7 ensure that while I was about discipline would be
8 enforced according to the regulations."

9 I suppose, as you have made the qualification that
10 you wouldn't always be about and therefore you couldn't
11 be confident that he wouldn't behave in this way when
12 you were not there?

13 A. That's true, but at the same time I think it was a clear
14 message as to what the governor would put up with and
15 staff are still a discipline service and they would take
16 account of what was and was not acceptable.

17 Q. You might say that an experienced officer on one view
18 was taking a risk doing that in front of an assistant
19 governor if it was contrary to the rules, but you might
20 infer from the fact he did it without any concern that
21 that was something he was used to doing and was
22 tolerated or accepted by those in authority; is that
23 a fair inference?

24 A. I think both those assumptions might be made. I can't
25 remember who was the assistant governor before me,

1 whether that was saying that the other assistant
2 governor would have allowed it, I don't know, but what
3 I was reading into it was that he was testing me out to
4 find out what were the limits of his authority, what
5 could he do and not do.

6 LADY SMITH: Just following up on that, Andrew, was there
7 any system whereby you could bring to the attention of
8 the governor a practice, such as that, that you were
9 concerned about?

10 A. Yes, indeed.

11 I think I comment in my written report that perhaps
12 with a bit more seniority or experience I might indeed
13 have done that, I was thinking on my feet, but I think
14 I decided that I was being tested out and therefore if
15 I passed the message that would be sufficient.

16 30 years on, I might reconsider my decision and were
17 it to happen today I think I would not have any doubt
18 that that would be reported to the governor.

19 LADY SMITH: What about even if you had still decided as you
20 did and you let the officer go and didn't formally
21 report it to the governor, but, having reflected,
22 remained concerned, was there a system within which you
23 could have brought that up, without naming the officer,
24 as a problem you were worried about?

25 A. If I brought it up with the governor himself he might

1 have felt obliged to take it formally. What I could
2 have done, and indeed what I may have done -- it's so
3 long ago I can't remember -- I think there were probably
4 eight or ten assistant governors in the borstal at that
5 time, and we had a common room and we met regularly and
6 I imagine ... I honestly can't remember, but I may well
7 have brought it up with them and said, "Has this
8 happened to you? This is how I responded. Did I do
9 right thing?" I can't remember that detail, but I can
10 clearly remember this.

11 LADY SMITH: I'm just wondering whether sometimes there's
12 more than one way to skin a cat, as they say. And other
13 channels of communication that you could get to
14 a governor, to alert him to a problem, without seeking
15 to stir it up in directing proceedings against one
16 officer, but wanting the governor (a) to know about it
17 and (b) to do something about getting the message across
18 to everybody about the way in which inmates may and may
19 not be treated?

20 A. I might have done that. As I say, with hindsight
21 perhaps I should have. But I took the view at that
22 point that this was -- I wouldn't say a one-off event,
23 but this was me being tested and the word would get out,
24 everyone in the borstal, including all the other
25 principal officers, would know what Coyle had done in

1 the orderly room that morning and that message would
2 percolate. That I thought was sufficient.

3 LADY SMITH: I'm not seeking to condemn you for the way you
4 dealt with it at the time, Andrew. I'm just seeking to
5 explore other ways in which something like this might be
6 addressed more effectively for the benefit of future
7 youngsters.

8 A. I would like to think it would not happen now and
9 I equally would like to think that principal officer
10 never did that again, but also if I discussed it with my
11 colleagues, then perhaps we might have decided that this
12 is an endemic problem, this is something we should bring
13 to the governor's attention, but all I can say now is
14 I didn't.

15 LADY SMITH: Thank you very much.

16 Mr Peoples.

17 MR PEOPLES: Professor Coyle, I suppose you'll never know
18 who knew what then about this practice or indeed what
19 went on in the other wing in terms of this other type of
20 discipline? You can't tell us now whether, for example,
21 if this particular officer had gone before the governor
22 with a young person whether he might have done a similar
23 thing if he thought the boy was being lippy or out of
24 turn. You just don't know?

25 A. I would be very confident that the principal officer

1 would not have done that in front of the governor.

2 Q. Why do you say that?

3 A. Because that's a much more formal -- in this situation,
4 it was the assistant governor sitting at the desk, the
5 boy standing in front of him and the principal officer.

6 In the main orderly room, there would be several
7 staff, including the chief officer, it's a much more
8 formal arrangement. It would not have happened,
9 particularly with that particular governor,
10 Charles Hills.

11 I repeat, I did think it was me being tested out and
12 word would get round what was acceptable when Coyle was
13 in and what was not acceptable. As I say, one of the
14 sad things perhaps, my Lady, in reference to what you're
15 saying, was that I was more surprised than the boy. The
16 boy just seemed to think that's fine, that's what
17 happens.

18 Q. Well, he might have been used to getting a slap on the
19 head if someone thought he was speaking out of turn?

20 A. That's the point you're making.

21 Q. I suppose one can speculate a lot about that and what
22 you can read into this, if it wasn't something you think
23 this officer would have done in front of the governor
24 for the reason you explained, it is still troubling that
25 he was prepared to do it for someone in a less senior

1 position. Perhaps whatever message the governor was
2 trying to convey to his staff, it wasn't getting through
3 in an entirely effective manner because this should
4 never have happened in the first place?

5 A. Yes. I think it was testing out the new assistant
6 governor. I had only been in the service for three
7 years. I had come from Edinburgh. Who is this new
8 fellow? Is he going to stand up for things or can we
9 get him to do what we want?

10 Q. They might have wanted to be in a position to have
11 an endorsement that that was okay?

12 A. He was checking. Indeed, that's my point, I think, that
13 he was checking would that be an endorsement. If I had
14 said nothing -- if I said nothing, that would have been
15 quiet approval, this governor's not worried if we give
16 them a cuffing now and again.

17 Q. If he's not worried about me doing it in front of him,
18 I can possibly do it in other contexts as well?

19 A. Yes.

20 Q. Can I move on then in your statement to another section,
21 which is on page 9, headed "Some contextual issues"?

22 You have told us, and I'm not going to repeat what
23 you told us, you obviously told us about the situation
24 in the 1980s and your appointment to Peterhead prison.

25 What you do say is that the first day in charge at

1 Peterhead, you were having to deal with men who had been
2 labelled as the most dangerous and violent in the
3 country and you were wondering no doubt how they were
4 going to respond to seeing you in this role. You tell
5 us:

6 "In the event I discovered I had met the majority of
7 them two decades previously at Polmont, when I was
8 an assistant governor and they had been borstal
9 trainees."

10 That although your career path, as you put it, had
11 followed quite different routes, you had all ended up in
12 what you described as the bleak fortress in the
13 north-east of Scotland.

14 You had both made the journey, but in different
15 ways.

16 You say:

17 "Each of them had committed serious crimes, usually
18 of violence and had 'graduated' through successive
19 levels of the Scottish secure custodial system, from
20 remand centre, to List D/Approved School, to borstal and
21 young offenders institutions, on to adult prisons and
22 finally the 'end of the line' in Peterhead."

23 In saying that, from your experience, that was not
24 an unfamiliar journey. You worked in adult prisons, you
25 worked in Polmont in the 1970s, but presumably when you

1 worked in adult prisons, and you worked in a number over
2 the period 1973 to 1991, it would be apparent to you
3 that there were people that had made this journey, quite
4 a lot of them? They'd been in other settings, some more
5 secure than others?

6 A. Yes.

7 Q. Whether starting with the children's home, for example,
8 going to a List D or Approved School?

9 A. Yes.

10 Q. Going to some sort of secure setting outwith the Prison
11 Service, in a remand home or remand centre, whatever?

12 A. Yes.

13 Q. Finally ending up in borstal or young offenders. That
14 wasn't an untypical picture in your day?

15 A. On the contrary, it was quite typical. The Prison
16 Service is -- it's hard to describe it as a family, but
17 people know each other, both staff and prisoners. At
18 different stages in their progression you meet the same
19 people again and that in a way relates back to your
20 questions to me this morning about all the other work
21 I was doing, academic even at that time, trying to get
22 my head round what was this all meant to be about.

23 The point I'm making here is that these men were the
24 60 or 70 men who had been categorised as the most
25 dangerous and difficult in the Prison Service and I was

1 thinking, "who are they going to be?" And I walk in and
2 they say, "Oh hello, governor, you have come a long
3 way", and I would say, "Yes, you've come a long way
4 too".

5 That then leaves you with the question at what point
6 might we have prevented this coming to all the harm and
7 violence that they'd done and at what stage could we
8 have guided them down a different path.

9 Q. It sounds as if to some extent a high proportion were
10 a product of the system, the care system in its widest
11 sense, from starting whether you were taken away into
12 care from a children's home in the beginning when you
13 skipped school or whatever, to going to an Approved
14 School to take you away from your environment and
15 ultimately into some more secure setting, that a lot of
16 them were in that category?

17 A. I think that's exactly the point I'm making, Mr Peoples.
18 That this is almost an inevitable path that these young
19 men have gone down and at what point, as I say, in the
20 path could they have been diverted elsewhere.

21 As we touched on this morning, if you read the
22 biographies that a number of these quite articulate men
23 have written about their time in the prison system, they
24 will tell you how it began by they got a hammering in
25 St John's List D school and then they went to

1 Longriggend and then so on and so on.

2 You link that with, for example, work which was done
3 by Roger Houchin in 2005, who found that so many
4 prisoners come from a very narrow area in the country.
5 Somehow or other one has to break that circle and that's
6 what we are not doing.

7 Q. These are areas of social deprivation and poverty and
8 often they have a very difficult pre-care background?

9 A. That is exactly what Houchin is saying in his report.

10 Q. The way you put it is you reflect and the question you
11 are saying is one is left with a lingering question
12 about the extent of all of this had been inevitable, how
13 might they have been guided away from the increasing
14 involvement in crime and to what extent their early
15 custodial experiences may have contributed to their
16 present situation?

17 The system might have to some extent been
18 responsible for getting them to that point?

19 A. I wouldn't take away their agency. They were
20 responsible for the things that they had done.
21 Nonetheless, I think we must recognise that the system
22 as it exists really doesn't lead to rehabilitation in
23 that way.

24 Q. I suppose if you come from perhaps a background where
25 violence and mistreatment is commonplace and then you

1 are put in an environment where you encounter the same
2 situation, then it is a bit of a recipe to get to the
3 situation you saw when you went to Peterhead?

4 A. That was why they ended up in Peterhead, as it were.
5 It's not to absolve them from ... but the others, having
6 said that, particularly when it's violence among
7 neighbours or people who are working together, there's
8 the thinness of a knife as to who is the victim and who
9 is the aggressor in many cases. That's not in all
10 cases.

11 Q. You have left with that lingering question which you
12 have included in your statement. I suppose the question
13 I might ask is: was this a question you were asking
14 yourself in the 1980s or earlier? At what point did
15 this really start to trouble you or become a question
16 that you have asked yourself?

17 A. I think right from the first day I went into Edinburgh
18 Prison, I knew what the ordinary man or woman in the
19 street knew about prisons in those days, but I knew
20 nothing inside the walls. From a pretty early stage
21 I was asking myself: what is it I'm meant to do here?
22 Why am I in this field of work? That was what led me,
23 for example, to embark on my PhD, which was about the
24 Prison Service.

25 Q. I think in paragraph 19, to some extent what you gained

1 from that research, you tell us a little bit about:

2 "... prisons in Scotland are creatures of the
3 19th century, a time when there was a general belief in
4 the reformative value of large institutions. The theory
5 that individuals could be educated, treated and reformed
6 within large closed institutions has long since been
7 discredited in most contexts. The orphanages and mental
8 institutions of the last century are largely relics of
9 the past, remembered today mostly by ongoing public
10 inquiries into the terrible abuse which was perpetrated
11 within many of their walls."

12 To some extent we have moved on in our thinking
13 about the benefits of what no doubt in the 19th century
14 was seen as enlightened thinking, but you tell us that
15 unfortunately in the late 1970s there was a new high
16 security prison that opened in Shotts, and you tell us
17 that it was opened only a mile or so from Hartwood
18 Psychiatric Hospital, which you describe as an imposing
19 19th century citadel, which then held over 1,500
20 patients.

21 I think that opened in around 1895, if I'm not
22 incorrect, around then, don't need to worry about the
23 date. Then you go on that within 20 years of the
24 opening of Shotts, Hartwood Hospital was no more, the
25 patients had been removed, the majority to be cared for

1 within their communities and the empty building stood as
2 an abandoned relic of a bygone social philosophy.

3 Then you make a comparison with how things have
4 developed in the Prison Service and you say:

5 "Shotts Prison, on the other hand, has not only
6 expanded in size but has been completely rebuilt in the
7 process. It would be inconceivable in the
8 United Kingdom today that we should build a psychiatric
9 hospital to hold 1,500 men and women in conditions of
10 close confinement. Yet we continue to adhere to and
11 expand this concept in our prison systems, attempting to
12 put a 21st century gloss on 19th century principles
13 which have been abandoned long since in other settings."

14 That's your assessment?

15 A. Yes, it is.

16 I think that's a pretty good example with Hartwood
17 Hospital cheek by jowl with Shotts prison and what has
18 happened. Not only Hartwood, but many of the other
19 large psychiatric hospitals have gone. I'm certainly
20 not a prison abolitionist, I don't think my professional
21 life has been wasted, but I think we could, in a way as
22 we were saying this morning, go back to the original
23 model of the Scottish prisons, which were small, locally
24 based, in their community and with throughcare and
25 attention.

1 At the same time, I think we would also need a small
2 national prison, high-security prison, for the small
3 number of men who are dangerous and cannot be released
4 for a long period of time, but that's quite different
5 from the idea of saying we are going to solve the
6 problems of Barlinnie, which has been criticised so
7 often, by building a new prison for 2,000 men in the
8 east end of Glasgow.

9 Q. I think, as you said earlier, while there are people
10 whose liberty has to be restricted for a very long time,
11 the vast majority of people in prison settings leave it
12 and go back to their community. One has to remember
13 that, do we not, when we consider how we manage them in
14 the custodial environment?

15 A. Yes.

16 Q. The point you have made with this example is that our
17 approach to how we deal with those who have some form of
18 mental health problem or mental illness is generally
19 speaking to try to deal with it with more
20 community-based services and support, and insofar as we
21 have residential settings which are necessary, they tend
22 to be small and very specialised units?

23 A. Yes, with close community links.

24 Q. To some extent I think -- perhaps to a large extent now
25 with the care environment, residential childcare has

1 moved in the same direction, because the large
2 institutions, like the orphanages of Aberlour or the
3 Quarrier's Village and establishments of that size, have
4 disappeared and the modern, I think, approach insofar as
5 residential childcare is needed is smaller units with
6 specialised services, catering for young people with
7 particular needs, complex needs, that cannot be provided
8 in the community setting.

9 A. Agreed.

10 Q. We're not going that way as yet in terms of the Prison
11 Service, particularly the service insofar as it deals
12 with young people?

13 A. I suspect that many of my ex-colleagues in the Prison
14 Service would like to see us going that way.

15 Q. Certainly, if the current bill becomes law and it takes
16 the under 18s out of the prison system then they may
17 well be looking at something that is more akin to what
18 happens in social care or in mental health?

19 A. Yes.

20 Q. But there will still be a large number of young people
21 between 18 and 25 for example who at the moment still
22 face a future that is not dissimilar to the past,
23 particularly male offenders?

24 A. That also needs to be dealt with.

25 Q. What I would like to do if I may at this point, if

1 I leave your statement behind, is I have asked you about
2 a number of matters and themes. I just want to pick up
3 on a few things arising out of that, if I may.

4 Just to have your views and to make sure
5 I understand your views. We have discussed the
6 inspection and monitoring of prisons currently in
7 Scotland, and you've expressed certain views on the
8 current system. Did you want to add something at this
9 point about some of the things you may have said earlier
10 or make some additional comments?

11 A. Yes, if I may.

12 It was with reference to the discussion we had about
13 the powers of enforcement for the chief inspector, and
14 whether she should have them or not.

15 I said I didn't think that would be helpful because
16 could you ever envisage closing down Barlinnie? I think
17 that was probably an unhelpful answer. I don't think
18 she would recommend that. But over lunch I was thinking
19 of more specific examples.

20 There have been criticisms over the year from
21 inspectors and from the Committee for the Prevention of
22 Torture in its visits to Barlinnie, specifically about,
23 for example, the state of the reception area in
24 Barlinnie Prison and the reception cubicles that the
25 prisoners are put in, locally known as the 'dog boxes',

1 where they can sit for hours.

2 That has been criticised again and again and again.
3 That possibly is an example where the Chief Inspector of
4 Prisons should have the power of enforcement, to be able
5 to say: I want this place closed immediately.

6 Another example, which is not about the building, is
7 the reference that I made to the prisoners who are on
8 what is known as the carousel, the merry-go-round, of
9 moving from one segregation unit to another unit, and
10 how the CPT, when it visited in 2019, found that one man
11 had, and may well still be for all I know, been held in
12 those situations for ten years.

13 That may be another example where the chief
14 inspector might well welcome the power to say: this
15 treatment of this prisoner must stop, you must find
16 another way.

17 To that extent, I agree that there may be some
18 instances where the chief inspector should have power of
19 enforcement.

20 Q. I suppose it's not just inspectors that have called for
21 closures of prisons. I mean the Angiolini Commission
22 was calling for the closure of Cornton Vale in 2012 or
23 2013, I actually think the present Chief Inspector has
24 publicly stated that Barlinnie should close today, if
25 possible, but she recognises the difficulty because the

1 replacement is not even under construction?

2 LADY SMITH: She said it a few days ago, sitting where you
3 are.

4 A. Yes.

5 LADY SMITH: She also told us the 'dog boxes' have gone in
6 Barlinnie.

7 A. They've gone.

8 MR PEOPLES: There have been some advances in also screening
9 and searching facilities at Barlinnie, for example they
10 brought in technology rather than necessarily resorting
11 in all instances to strip searching. There are things
12 that are happening and I think she did say that should
13 Barlinnie close she would hope that they would take the
14 technology to the new prison, or certainly have it in
15 the new prison --

16 A. The point I wanted to make to you was I do agree that
17 under the present regime it might be helpful for the
18 chief inspector to have the power of enforcement in
19 specific cases.

20 Q. I'm grateful.

21 I'm not going to go back over -- I think we're at
22 one and I don't think you are alone that of the
23 importance of leadership at all levels within a large
24 organisation like the SPS, the senior management team
25 and at the establishment level.

1 What I'm not sure I took from you or asked you about
2 was, obviously there is a framework of prison rules and
3 I think if I'm not mistaken certainly the chief
4 inspector, the current one, said that they were perhaps
5 long overdue for some form of review or revision.
6 I don't know if that is something that you have any
7 views on?

8 A. I think all institutional rules need to be regularly
9 reviewed and updated. When I was in the service the
10 prison rules dated from 1952, so when I started they
11 were 20 years old and when I left they were 50/60 years
12 old.

13 They were rewritten and I'm not quite sure when, so
14 I'm not sure if the answer to your question is all of
15 these rules need regular updating.

16 Q. A phrase that was used historically in regulations,
17 certainly in other contexts like approved schools, was
18 the personal influence of the headmaster or person in
19 charge.

20 What I did want to ask is -- I think I can sense
21 that what you have told us is that that is an important
22 consideration, because it can materially influence
23 culture, atmosphere, the approach and attitudes of staff
24 towards prisoners, is that your view?

25 A. Certainly.

1 Q. I think you did think that as an example you felt that
2 Charles Hills for example at Polmont was attempting at
3 least to set the right tone. Whether he achieved it in
4 practice to the degree he wanted is maybe another
5 question, but you felt he was a good example of a good
6 leader?

7 A. Yes, he was.

8 Q. His personal influence was important?

9 A. Yes.

10 Q. What I wanted to ask as well is against that, these
11 answers, is certainly in your period with the service,
12 how much autonomy did an individual governor in charge
13 of an establishment have? I know there were rules, but
14 how much autonomy ultimately did they have which could
15 influence the way that the particular establishment was
16 run, the culture, atmosphere and so forth? Can you give
17 us any idea?

18 A. It's a given that all governors must apply the rules as
19 they exist, so that restricts the autonomy, but equally
20 the point that you have been making so far, the tone,
21 the governor, her or himself, sets the tone of the
22 establishment.

23 I gave you the one small example of me in the
24 borstal in the assessment centre. That, I would like to
25 think, set the tone, at least for when I was there.

1 Now writ large you can look across many of the
2 troublesome prisoners we've had, the violent prisoners
3 we've had, and you can draw a line almost between the
4 different styles of ... governors who have different
5 styles of -- every governor needs to be a manager, but
6 not every governor is a leader, and leading also means
7 devolving power.

8 That was one of the major issues when I left the
9 Scottish service, when I went to Brixton, which was the
10 sort of equivalent in London of Barlinnie, was this
11 balancing out between leadership, devolution of
12 leadership and setting the ethos, which I think we did
13 in Greenock prison. When I was there it was known --
14 the prisoners knew what sort of prison it was and
15 equally prisoners elsewhere in Scotland knew what sort
16 of prison Barlinnie was, knew what sort of prison Perth
17 was. Much of that was done to the person who was in
18 charge.

19 Q. If that person, as you say, to some extent devolves as
20 well as sets the tone, the hope presumably is that that
21 will spread that message to them and in due course even
22 if that person leaves, they leave a legacy that will
23 survive?

24 A. Yes. The devolving of course is not a question of
25 washing hands. There needs to be a structure of regular

1 support to each level further down, but, yes, you raise
2 a separate issue about the way governors are moved from
3 one prison to another for a variety of reasons and are
4 not able to create a long-term culture.

5 Q. I suppose it's been described in another context about
6 headteachers of approved schools, that just when one
7 reflects it's been described as a terrifying power, in
8 the sense that it is a power and it's a power that can
9 be used benignly and a power that can be abused. That,
10 to some extent, perhaps may be mitigated if that power
11 just doesn't rest exclusively on the person on top, who
12 doesn't in any way involve those below in what they're
13 doing, in how they're running the organisation?

14 A. Absolutely. It must be throughout -- and it goes up the
15 way as well, which is taking us back to my point this
16 morning about the mainstream Civil Service administering
17 the Prison Service on behalf of the Minister, who may
18 have different priorities.

19 When I went to Peterhead and when I was sent to
20 Peterhead in 1988, the Prisons Minister said to me:

21 "Governor, I've only got one thing to say to you,
22 get Peterhead off the front pages of the newspapers."

23 That is the political priority and reality and
24 somehow you need to separate that political influence
25 from actually the institutional and operational

1 influence.

2 Q. We have looked at your period with the SPS between 1973
3 until around 1991, a period of around 18 years.

4 It's maybe a difficult question to ask, but what
5 would you consider were the main changes in that period?
6 I know there has been change since to some extent, we
7 have spoken of that, but even if that period, the 1970s
8 and 1980s, were there particular changes that you feel
9 were for the better in terms of the service that you
10 joined in 1973 or did you think that that was still to
11 come?

12 A. In many ways the Prison Service has changed beyond
13 recognition. In other ways, it's old wine in new
14 bottles. Certainly the conditions in prisons are much
15 better than they were in 1973. The daily slopping out,
16 the procession of people taking their chamber pots to
17 the recesses have gone. The smell of the place has
18 gone. There is more humanity and I think the staff are
19 more professional than perhaps some of their
20 predecessors were.

21 But the pressures on the system mitigate against
22 real progress. The pressures of numbers. The pressures
23 of having a Victorian estate, you still have Inverness
24 Prison from the 19th century, promise to rebuild. You
25 have other prisons like that. The estate still needs

1 progress. Also I think there are still uncertainties on
2 the part of some serious prison leaders as to what
3 exactly society expects of them. Do you screw the place
4 down -- which is what happened in Peterhead and then it
5 erupted -- or do you have a Charles Hills approach? And
6 how do you get that message across to politicians and to
7 senior administrators and down to staff.

8 I think the whole issue of staff training is
9 a major, major issue. That really hasn't improved
10 dramatically over last 50 years. As I understand it, we
11 talked this morning briefly about Norway and the
12 two-year training programme. There's still basic
13 training done at Polmont and the rest is learning on the
14 job. Coping.

15 There was a period when it was said Barlinnie's
16 motto, it probably may still be the same -- at that time
17 the Prison Service had a motto which was, "Dare to
18 care", Barlinnie's motto was, "Hope to cope". In a way
19 that sums up the pressure between the aspirations and
20 the daily reality.

21 Q. For the period that you were in the service, I don't
22 think I asked a general question. We had some
23 discussion about the Inspectorate and how it's operating
24 now. We know that it was established in 1981 or
25 thereabouts as a new service, albeit there had been

1 a Chief Inspector of Prisons before.

2 Have you any observation or comments to make about
3 the performance of the Inspectorate in those years
4 between 1981 and 1997? You obviously had dealings with
5 inspectors and the Inspectorate in that period and
6 various presumably chief inspectors. Can you help us
7 whether --

8 A. In a way it takes me back to your earlier question about
9 leadership. The way the Inspectorate operates depends
10 very much on the chief inspector. We can look back to
11 some who have done an excellent job and some who have
12 done a less good job.

13 That's not necessarily their own personal fault
14 entirely. It depends on the extent to which they're
15 confident enough to have -- I mentioned the former
16 Moderator --

17 Q. Andrew McLellan?

18 A. Yes, thank you.

19 He was the first and he called me in to help him to
20 draw up a set of standards for the inspection, which
21 would be the basis of inspection, so that every prison
22 that he was going into knew what he expected and he had
23 his red markers, his amber markers and his green markers
24 and that was a tremendous help to know.

25 A lot does depend -- the May Report recommended that

1 there should be an independent inspector of prisons,
2 previously the inspector of prisons had been a former
3 prison governor. It also said that that person should
4 not come from the mainstream Civil Service and should
5 not be a former prison governor. In other words it
6 should really be an independent.

7 If we look at inspectors we've had over the last
8 30/40 years, the best ones have been people who have
9 come from elsewhere. One who was a Moderator of the
10 Church of Scotland brought one set of values with him
11 and ability, another who had been a Chief Constable of
12 Police brought another set of knowledge and expertise
13 with him. A lot depends on who the inspector is.

14 But if there's a clear set of standards, then that
15 percolates down to the prison staff, because governors
16 and the staff under them know what is expected of them
17 and what inspector is going to be looking for when he or
18 she arrives.

19 Q. I didn't ask you -- I said I would come back to it and
20 I've just remembered when you were saying that -- it is
21 the practice today of the current inspector to carry out
22 inspections, and they are generally I think joint
23 inspections with other bodies who have got inspection
24 functions, but the practice is to invite serving SPS
25 governors and so forth to join the inspection team as

1 guest inspectors on -- it sounds like an ad hoc basis
2 generally. I did ask whether one might criticise that,
3 bringing someone in who is not a core inspector for
4 a one-off inspection, who has not gone through the same
5 levels of training and isn't working from day to day or
6 from year to year.

7 I think the present chief inspector felt it was
8 a good thing and it gave up-to-date knowledge to the
9 team and to contribute to the assessments, but I wonder
10 if you have any views on the use of guest inspectors as
11 part of the team, rather than just as people that could
12 be gone to for information if you need it?

13 A. There was a practice in the early days that given that
14 the chief inspector did not have a prison background,
15 that the deputy chief inspector would be a former senior
16 governor and that was subject to some criticism, because
17 a period as deputy chief inspector for some was seen as
18 a stepping stone to becoming a more senior governor.
19 That was not seen as a helpful arrangement.

20 What I think is very healthy is that the chief
21 inspector should bring in outside inspectors, either --
22 and I think she does indeed, as far as I know, who have
23 an healthcare, who have an educational background. She
24 will presumably do a preliminary visit, or her team, to
25 an institution and will identify particular areas of

1 concern. She should then be able to say, "We have
2 a problem on Healthcare, I want someone from the
3 healthcare Inspectorate" or whatever. So guest
4 inspectors are a good thing, but I'm not sure that guest
5 inspectors from inside the service are.

6 Q. I take the distinction, I understand the distinction.

7 Can I ask you just shortly about prison norms? In
8 particular, the concept of grassing, which might mean
9 there's a reluctance to complain formally about
10 treatment or whatever.

11 Can I ask you this, and you may not be able to
12 answer, is this just a thing of the past or is it ever
13 present, from your experience of seeing prisons
14 everywhere?

15 A. Are you talking about prisoners being reluctant --

16 Q. Being reluctant because they're seen as grassing, even
17 if it's saying something about a staff member but
18 certainly if they're saying something about another
19 prisoner. Is that still something that is inherent in
20 the prison system?

21 A. To some extent, in a very closed community, particularly
22 a single-sex community, these pressures will always be
23 there. You have that in the army, you have that in the
24 police and other similar organisations.

25 If you can create an environment of openness, where

1 criticism is welcome, then individual cases are much
2 less likely to happen. When you have a closed
3 environment, which is a fault-finding environment, the
4 inspector of prisons just doesn't go in to find fault.
5 She should go in to identify good practice and recommend
6 good practice.

7 But, yes, there are always pressures, as in any
8 institution, that people don't want to be seen to be
9 stepping out of line.

10 Q. Historically at least would grassing, as it might be
11 described by the prisoner, be seen as a sign of
12 weakness?

13 A. I think you need to be a bit more specific about what
14 you are referring to, if it's --

15 Q. They can't stand the system and they have to tell
16 someone, whereas other people will say, "Well, I'll just
17 have to cope, deal with it and keep it to myself and try
18 and survive it". I don't know if that is something that
19 you sense would be the attitude of many of the young
20 people, that they felt there was risks in saying
21 something, how it would be perceived by others if they
22 found out and also the risk perhaps that they didn't
23 know what the consequences would be for them if they did
24 complain?

25 A. I think it would depend on the circumstances and also if

1 it was a young person rather than a more mature
2 individual, but I think in the present climate it's
3 actually quite difficult not to -- the things that are
4 going wrong are more openly seen, because of methods of
5 communication and all sorts of other -- it's much more
6 difficult. I'm not saying that grassing is no longer
7 necessary, but I think -- I wouldn't say -- I certainly
8 wouldn't say it's a thing of the past.

9 I think there are local rules and regulations about
10 behaviour and about whether it's -- if something were
11 seriously going wrong, then I think it would be very
12 difficult now for the organisation or an individual to
13 cover up and for it not to be known.

14 Q. You say that. I was going to go, in turning away from
15 the issue of a prisoner complaining, to the issue of
16 a staff perhaps raising a concern while they're
17 a serving member of the organisation.

18 I think it's not outwith common experience that
19 people who are labelled whistleblowers often blow the
20 whistle anonymously, they often do it after they've left
21 the organisation and those that do it when they're in
22 the organisation sometimes feel that it prejudices their
23 own situation and their future within the organisation.

24 I think we could find lots of examples. I think the
25 health service has had these issues recently, and no

1 doubt historically, and no doubt they're not alone. So
2 if you are trying to be open and telling people to
3 report what is wrong so that it can be corrected, how do
4 you deal with it if that's the perception of
5 whistleblowing, that people are rather afraid to blow
6 the whistle?

7 A. By creating a context which doesn't allow that to
8 happen, by having the prison as open as it can be,
9 either by welcoming professional and other members of
10 the public to come in, so that there is nothing hidden,
11 by having methods where staff can report things that are
12 going wrong or that should -- I think it's much more
13 difficult nowadays to cover up serious wrongdoing.

14 Having said that, as you say, there are many
15 examples which tell us that it still goes on, but
16 I think it's much more difficult nowadays.

17 Q. We're making progress?

18 A. I think the Prison Service is alert to that. The people
19 who are at the top of the Prison Service now know that.
20 They've made it clear they want that and there's more
21 movement I think of people, which is healthy, into the
22 Prison Service at a senior level and out again, which is
23 healthy.

24 So you create an environment which discourages
25 misbehaviour.

1 Q. I would like to turn shortly to the international side
2 of things to ask a few questions, but before I do so,
3 can I just be absolutely clear on a few questions, just
4 to make sure I've understood the tenor of your evidence?

5 Do you agree that penal establishments in Scotland,
6 including borstals and young offenders institutions,
7 detention centres, were historically -- I'm looking at
8 the period you were in the service, 1973 to 1991 in
9 particular -- places of violence in which bullying was
10 endemic?

11 A. That's a very broad statement to answer. Put it another
12 way: was there violence in prisons? Yes, there was
13 violence in prisons. Were they places of violence?
14 Well, we could discuss that.

15 I think there was much more secrecy before and
16 things which happened then should never have happened
17 and would not happen now, because of the openness, which
18 goes on. But, yes, of course there was violence in
19 prison. You just need to read the front of the
20 newspapers in the 1980s.

21 Q. It wasn't an uncommon situation that violence was taking
22 place, bullying was taking place. I think you used the
23 expression endemic --

24 A. Yes, more so in some places than in others. There were
25 good examples but also people knew there were good

1 prisons and bad prisons.

2 Q. I just want to check what your position is.

3 Following on from that, whether you agree, I think
4 the service itself has told us as much, that young
5 people at times were subjected to practices and
6 punishments and conditions that resulted in harm,
7 suffering or injury and these were abusive practises and
8 unacceptable practices in some instances?

9 A. Yes.

10 Q. I think from what you've told us that you and others
11 within the service had at least a general awareness that
12 that was the state of affairs? Without trying to pin it
13 down to specific examples, you knew that there were
14 problems and issues and that these things were
15 happening --

16 A. There were many instances from what you are describing,
17 to issues like slopping out -- I could name half
18 a dozen -- which should not have happened.

19 Prison was not a happy -- not a place where you woke
20 up in the morning and said: oh, good, I'm going into the
21 prison today. Let's get on with it, but one continually
22 tried to change things for the better and I think there
23 were many people who did. But there were many things
24 that went wrong, and some that still are.

25 Q. If I was to ask you about contributing factors to that

1 state of affairs, to what extent in your view did
2 long-standing problems, such as overcrowding, cell
3 sharing, social isolation, ageing prisons, lack of
4 access to purposeful and rehabilitative activity
5 contribute to that state of affairs?

6 A. Yes, to all of that.

7 Q. Were there other contributing factors that come to mind?

8 Do you want me to read them again?

9 A. No, don't.

10 I think going back to a comment that I made I think
11 in my report and made this morning, talking for example
12 about Polmont, if you take 400 young men from the
13 margins -- most of them, not all of them -- of society,
14 who have had a very disorderly and violent upbringing
15 and who feel alienated from society, and put them all
16 together in an institution on the banks of the Forth and
17 Clyde Canal with the doors locked, you must expect that
18 things will go wrong. That is why we are questioning
19 the system as well as the individual --

20 Q. To a large extent -- perhaps I'll ask this question
21 first: to what extent was staff selection a contributing
22 factor?

23 A. I've already, I think, mentioned the poor training.
24 That staff need to be professionally trained. They need
25 to have professional standards. We talked about the

1 code of ethics and I think that remains a problem,
2 because it's the staff, apart from the other prisoners,
3 who are the greatest influence on prisoners. They need
4 to be confident about what they do and what they can do.

5 Q. A lot of the problem is a systemic problem, a historical
6 systemic problem, which to a large extent remains
7 a systemic problem within the prison estate. You have
8 mentioned the old prisons for example, the overcrowding
9 at Barlinnie, the living conditions?

10 A. Yes, we would not do that in any other walk of life that
11 I'm aware of.

12 Q. You have already commented on the current inspection and
13 monitoring systems, so I'm not going to return to that.

14 I suppose one thing that this Inquiry is asked to
15 consider is whether there needs to be any changes to
16 legislation, regulation, practice or procedure and so
17 forth on policy to improve protection for children
18 against abuse.

19 Can I ask you, first of all, do changes to
20 regulations as such make any material difference to the
21 prevalence of violence, bullying and other forms of
22 abuse, just changing the regulations?

23 A. If you want a single answer to that then it's "yes".

24 Q. They do?

25 A. Yes. Provided they are then observed, the regulations

1 and instructions are observed.

2 Q. It's the next bit that's important, provide they are
3 observed. How do you ensure you get, at least in
4 general terms, compliance with not just the letter of
5 the regulations but the spirit, because it does appear
6 that at least maybe historically there were regulations,
7 but they certainly weren't effective in preventing
8 violence, bullying, assaults, whatever?

9 A. We have come a long way from the time within living
10 memory when the standing orders, which are below the
11 statutory legislation -- standing orders used to be
12 hidden, they were not public documents. Prisoners
13 weren't allowed to know, nor was the public, what the
14 standing orders were. We have moved from that.
15 Everyone knows what the rules and regulations are.

16 You are back again to the leadership that we talked
17 about, which makes sure that specific rules and
18 regulations are applied, but also I would suggest that
19 you need to create an environment which is one of
20 openness, where you welcome the outside world into the
21 prison.

22 There is a cliché that says that high prison walls
23 are built not just to keep the prisoners in, they're
24 there to keep society out, so that you don't know what
25 goes on behind the walls. That is no longer true, but

1 that was once upon a time. If you create a whole
2 atmosphere of openness and in a way you are back again
3 to the visiting committees and so on, encouraging people
4 to come and see what is happening, then you are more
5 likely to create an environment which will be decent and
6 humane for everyone, staff as well as prisoners.

7 Q. Can I put it this way then? While no doubt changes to
8 the legal framework -- there may be some changes that
9 are desirable, for example giving powers to an inspector
10 that they don't have, that's not the answer really at
11 the end of the day, because is it not more a matter, as
12 you have been saying, changing culture, changing
13 attitudes of those who work in the places, having
14 an understanding of the people that you are managing and
15 having appropriate training and skill to carry out the
16 job in a humane and respectful way? Is that more
17 important than what the actual rules are precisely --

18 A. Well, that's part of the jigsaw and there is a whole
19 jigsaw. There is also part of the jigsaw looking
20 outside the prison system. We have talked about
21 overcrowding, one of the problems in Scottish prisons
22 now is the highest I think we've had forever proportion
23 of prisoners who are on remand. That's not the fault of
24 the prison system. That is the responsibility of
25 another part of the justice system. That creates all

1 sorts of problems in the management of prisons, because
2 people who have not been convicted have other
3 entitlements which people who have been convicted have
4 and also much of the -- not much, but a great deal of
5 the overcrowding in a prison like Barlinnie is because
6 a quarter of the prisoners -- I don't know what the
7 figure is in Barlinnie, but overall I think it's about
8 20 per cent of prisoners are on remand.

9 MR PEOPLES: I see the time, I'm not far to go, but I think
10 a break would be useful.

11 LADY SMITH: Andrew, I usually take a break in the middle of
12 the afternoon, partly to let the stenographers have
13 a breather.

14 If that all right if we take five minutes now?

15 (3.05 pm)

16 (A short break)

17 (3.12 pm)

18 LADY SMITH: Thank you.

19 Andrew, are you ready for us to carry on?

20 A. I am.

21 LADY SMITH: Thank you.

22 Mr Peoples.

23 MR PEOPLES: My Lady.

24 Professor Coyle, you mentioned earlier the report
25 that was presented to the UN General Assembly in

1 November 2019, the report of the International Advisory
2 Board for the UN Global Study on Children Deprived of
3 Their Liberty.

4 I just wondered if it had anything in particular to
5 say about children in Scotland who were deprived of
6 their liberty or other general points were made that you
7 think have relevance to the Scottish context?

8 A. I suppose the short answer is everything.

9 Just to give a bit of background. The General
10 Assembly appointed an independent expert to lead this
11 study, I think 2017 it started.

12 He set up an International Advisory Board of I think
13 ten people, of whom I was one. We met several times in
14 Venice and contributed to his final report.

15 My comment to you wasn't entirely facetious, the
16 whole report I think has relevance to Scotland. It
17 starts from the general principle, which I think we
18 wouldn't digress from. The independent expert strongly
19 recommends that States make all efforts to significantly
20 reduce the number of children held in places of
21 detention and prevent deprivation of liberty before it
22 occurs, including addressing the root causes and
23 pathways leading to deprivation of liberty in a systemic
24 and holistic manner.

25 Opening recommendation sort of sets the scene, which

1 I don't think any of us could disagree with. He then
2 goes on to cover many of the issues which I suspect this
3 Inquiry will be looking at over succeeding months.

4 The importance of this document was (a) that the
5 General Assembly thought this was sufficiently important
6 to appoint the independent expert to carry out
7 an inquiry and make these recommendations and then,
8 having done so, they were presented to the General
9 Assembly and the General Assembly of the United Nations,
10 including the UK Government, endorsed them. They are
11 now a very helpful checklist, for all of us really.

12 Q. I suppose that's 2019.

13 We also need to go back to 1989 and remember what
14 the UN Convention on the Rights of the Child said.
15 Perhaps it's just as good a time as any to remind
16 ourselves that Article 37 I think is particularly
17 relevant. Perhaps you can confirm, I think there are
18 certainly four points I would wish to bring out and you
19 can confirm if I have any of them wrong.

20 Article 37 I think says to the effect no child shall
21 be subjected to torture or other cruel, inhuman or
22 degrading treatment or punishment.

23 It also says that detention shall be only used as
24 a measure of last resort and for the shortest
25 appropriate period of time.

1 It also says that every child deprived of liberty
2 shall be treated with humanity and respect for the
3 inherent dignity of the human person and in a manner
4 which takes into account the needs of persons of his or
5 her age.

6 Also, every child shall have right to maintain
7 contact with his or her family through correspondence
8 and visits, save in exceptional circumstances.

9 These are among the key rights and principles that
10 require to be followed. To some extent the report,
11 I suppose, builds on that --

12 A. Yes.

13 Q. -- and assesses the extent to which there has been
14 progress towards achieving that for every child?

15 A. There was concern that some of these principles which
16 you have just described were not being observed in many
17 countries. The finger wasn't pointed at anyone in
18 particular, but basically there was concern that much
19 more attention needed to be placed. As you say, the
20 report of the independent expert expands those
21 principles that you have just enumerated.

22 Q. I think it's correct to say that the European Convention
23 on Human Rights is much less specific. It doesn't have
24 specific rights for children as such. They tend to be
25 general rights that everyone enjoys, but they clearly

1 consider cases involving children?

2 A. Yes.

3 Q. Perhaps more so in recent years, as I think we spoke
4 about earlier?

5 A. Yes.

6 Q. What they're really doing, as I understand it, and when
7 what the CPT does when it visits, is it's not carrying
8 out a prisons inspectorate function and it's really
9 measuring the State's establishments where people are
10 detained against the backdrop of Article 3 of the ECHR?

11 A. Exactly.

12 Q. As to whether there is or is not degrading, inhuman
13 punishment?

14 A. Exactly, yes.

15 Q. The Convention itself doesn't outlaw detention of
16 children under 18, I think it's fair to say. I think
17 there was an attempt recently in a Supreme Court case to
18 argue that, which failed, and I don't think the
19 jurisprudence of the European Court goes that far. It
20 deals with specific situations, which may involve
21 children in detention or in care, and whether the
22 circumstances and the complaints amount to a violation,
23 usually of Article 3 and sometimes of Article 8, because
24 Article 8 can apply to give you rights which are just as
25 relevant in care settings or prison settings as they are

1 in the community?

2 A. Yes. If you dig down of course the next discussion is
3 about what constitutes that detention. That's not
4 maximum security detention in a place like Peterhead.
5 Where on the spectrum does the detention of children
6 lie?

7 Q. There are those certainly in this country, and you are
8 one, that obviously feel that imprisonment of children
9 is not an appropriate form of detention, where detention
10 is required or restriction of liberty is required.
11 I think that is your position?

12 A. I would like to think that's a near unanimous decision.

13 Q. We have heard something from some of the others and
14 I don't want to take too much of the detail, we can find
15 out, but there are also rules ... I think you mention
16 some of them in paragraph 10 of your statement. Two
17 that we have heard of are the Beijing Rules, which
18 I think were 1990?

19 A. Correct.

20 Q. The Mandela Rules, 2015?

21 A. Correct.

22 Q. Am I right in thinking that one of these sets of rules
23 applies specifically to juveniles?

24 A. The Beijing Rules.

25 Q. The Mandela Rules are more broad?

1 A. The Mandela Rules are the updated version of what were
2 the -- their formal title is the UN Minimum Standards
3 for the Treatment of Prisoners, known as the Mandela
4 Rules.

5 Q. All prisoners?

6 A. Yes.

7 Q. Including, obviously, juvenile?

8 A. And the Beijing Rules are for juveniles.

9 Q. I take it that the importance and influence in modern
10 times of these international agreements and rules, they
11 have been influential in this country and elsewhere, is
12 that your view?

13 A. Yes.

14 Q. Obviously they haven't completely achieved the status or
15 the situation that Article 37 aims at?

16 A. Yes. The rules are of a different status to
17 Conventions.

18 Q. They are complementary?

19 A. Indeed they are, yes, and the rules are a way of helping
20 States to reach the standard of the Convention.

21 Q. Have you heard of the Istanbul Statement?

22 A. Yes.

23 Q. That concerns I think specifically the use of
24 segregation or solitary confinement?

25 A. Yes.

1 Q. Before I go to the statement, can I say that -- you may
2 or may not be aware of this -- in the Supreme Court
3 case, I'm thinking of AB in 2021, there was an attempt
4 to suggest that solitary confinement for any person
5 under 18 was contrary to ECHR, Article 3. I think that
6 argument failed before the Supreme Court, who looked at
7 the relevant jurisprudence and so forth.

8 The Istanbul Statement, am I correct in thinking, is
9 to the effect that solitary confinement harms prisoners
10 who have not previously been mentally ill and tends to
11 worsen the mental health of those who are? I think that
12 was the conclusion that was reached? It was a sort of
13 symposium which involved, I think, experts to look at
14 the impact and effects of solitary confinement?

15 A. Correct, that's right.

16 Q. In broad terms I suppose that would suggest that if at
17 all possible you avoid solitary confinement for anyone,
18 but maybe more so for specially vulnerable groups such
19 as young persons?

20 A. Yes.

21 Q. Is that something you advocate?

22 A. I find it hard to conceive of any situation in which you
23 would put a juvenile into solitary confinement.

24 Q. At all?

25 A. Yes.

1 Q. The other aspect that is quite a topical debate at the
2 moment is restraint, control and restraint.

3 I think it's perhaps accepted by all, whichever
4 point in the spectrum they are, that perhaps on some
5 occasions some degree of restraint may be necessary as
6 a last resort. Do you accept that sometimes that is
7 necessary for the safety of the individual or the safety
8 of others, that there may have to be situations where
9 a young person for example under 18, there has to be
10 some method of restraint adopted?

11 A. Yes, I mean I would like to hear what that method of
12 restraint was.

13 Q. Starting off with that proposition, you are not saying,
14 like solitary confinement, that you can get rid of
15 restraint entirely? That is not really achievable.

16 A. If a young person has completely thrown caution to the
17 winds sometimes for their own safety as much as for
18 anything else they will need to be restrained. What
19 that restraint constitutes is a different matter.

20 Q. I appreciate and what we will no doubt learn and have to
21 some extent learned is that in the past there have been
22 various techniques used by various bodies, including the
23 Prison Service. I think it remains strictly to say that
24 pain-inducing restraint is permissible under the prison
25 rules as we speak, but we were told on Friday last that

1 there are pilot projects presently which are being
2 carried out in Stirling and Polmont to adopt what is
3 described as non-pain-inducing techniques.

4 It's not quite what it seems, because I think at the
5 end of the day it's possible that some restraint may
6 involve pain, but generally speaking they are trying to
7 avoid routine use of techniques that use pain to control
8 or restrain. I suspect you would be in favour of that?

9 A. Yes. I'm not sure that use of the generic term "control
10 and restraint" is entirely helpful in this situation.

11 Q. How would you want to describe it?

12 A. Control and restraint was introduced in the early 1990s
13 perhaps.

14 Before there were recognised control and restraint
15 techniques, if something went wrong then, to put it in
16 layman's terms, staff might just pile in to calm the
17 person down and that clearly was not acceptable. So
18 someone, I'm not sure who, developed various techniques
19 so that with the minimum of force the person would stop.
20 One way of doing that was to identify points which would
21 be so painful that the person would stop and also there
22 had to be I think five members of staff involved, one
23 for each limb and one to control the head.

24 Those were introduced, I stand open to correction,
25 but a good 20 years ago, and some staff were given

1 training in these techniques, not all, but some.

2 The staff who were given training tended to be,
3 certainly in England, those staff who were trained to
4 deal with serious incidents rather than staff who were
5 dealing with people in the normal course of their
6 duties, so they're very much related to force.

7 It seems to me that things have moved on, should
8 have moved on considerably, since then and I have to say
9 I'm really not up to date with what techniques are used
10 now, but the ones that were introduced 20 years ago were
11 useful at the time that they stopped generic bruising
12 and bashing and battering, to put it frankly, but they
13 also could be subject to misuse and therefore the
14 techniques should have moved on and I have no up-to-date
15 knowledge --

16 Q. The situation you are describing, which might have been
17 seen as an enlightened development 20 years ago, to have
18 five people holding different parts of a young person's
19 body, to today's eyes that might seem quite threatening
20 to the individual concerned, particularly if they're
21 distressed in the first place, that to have five large
22 adults perhaps trying to restrain them in that way and
23 also inflicting albeit perhaps a temporary pain, doesn't
24 sound a particularly attractive way of dealing with the
25 situation, does it?

1 A. Control and restraint, as I suggested, was originally
2 introduced to deal with violent adult prisoners. Many
3 of them almost inherently violent and dangerous, who
4 needed to be subdued otherwise they would do serious
5 harm to themselves and others. This system was
6 developed to deal with them did.

7 I'm surprised to hear that it's being used for
8 children now. It was never meant for that and I think
9 if that is being used then advice might be sought from
10 other sources, rather than prison officers.

11 Q. At the moment we know that there are very few children,
12 ie young people under 18, in SPS establishments.
13 I think five is the number we were given.

14 What we do know is that there are quite a lot of
15 young people, between the ages of 18 and 21, still in
16 the prison establishments. Some will be in Polmont for
17 example, so presumably even if they're piloting new
18 techniques that may have less use of pain, it appears
19 they're still prepared to use them.

20 Are you saying that that is something that causes
21 you concern?

22 A. I'm really not qualified to comment on the detail,
23 Mr Peoples, but it does seem to me that there must be
24 all sorts of prior techniques to lower the temperature,
25 before the young person gets to that stage.

1 Q. Forgive me, I didn't say -- I think the modern approach
2 is to try and deescalate before you even get -- in hope
3 that there is not going to be a situation where
4 restraint has to be used at all. I think that is the
5 evolution.

6 But obviously if the stage is reached where some
7 form of restraint or intervention is called for, there
8 does appear to be at the moment a use of restraint in
9 places that do house young people under 21.

10 A. One has to question whether these young people who get
11 into this state: what is their mental condition? What
12 is their physical condition? I would really be
13 reluctant to endorse that practice.

14 LADY SMITH: Following on from that, you may be interested
15 to know, Andrew, that I have heard that a current
16 serious problem is the number of mentally unwell, very
17 unwell, people being held in prisons because there is no
18 place for them in an appropriate hospital or other
19 health facility. And it's not the right place for them.

20 Some of them, particularly young people, we have
21 heard, may in those circumstances want to be isolated
22 and segregated, which again is not good for them. They
23 don't see that.

24 A. That is an issue, my Lady, when I went to be governor of
25 Brixton there were 250 men who were floridly psychotic

1 or mentally ill, because there was no place for them in
2 a health centre.

3 One has to ask the question: why would anyone think
4 that prison/borstal was an appropriate person ... who is
5 dealing with these people, these youngsters, in the
6 first case, either in the health or the social section,
7 what would they do if Polmont wasn't available?

8 There comes the point at which you say, "Sorry, you
9 can't send them to Polmont. You must find somewhere
10 else".

11 LADY SMITH: It's difficult to escape the conclusion that
12 society is presenting itself as comfortable about
13 treating such people -- I'm obviously interested
14 particularly in the young people -- as being of lesser
15 worth than other members of society because they have,
16 or may have if it's a remand case, committed an offence?

17 A. Yes.

18 LADY SMITH: And that's unacceptable?

19 A. Yes.

20 As I say, the short answer is that prison should not
21 be available and the health or whoever, social care,
22 authorities, would need to find a different way.

23 LADY SMITH: Mr Peoples.

24 MR PEOPLES: These actually are all the questions I propose
25 to ask today. I appreciate it's been a long day.

1 I don't know if there is anything you wish to say,
2 if not then that's all that I have for you today and
3 would wish to thank you very much.

4 A. No, thank you for a very full investigation. I hope
5 I've answered your questions.

6 MR PEOPLES: You have indeed.

7 LADY SMITH: Andrew, it's very kind of you to thank you us,
8 because I'm very well aware of the extent to which we
9 must have drained your energies today in our keenness to
10 mine every shred of useful information and reflection we
11 can get from you and your long, extremely valuable
12 history of engagement in this area.

13 Thank you so much for everything you have given this
14 Inquiry. I'm so grateful to you.

15 I'm delighted now to be able to let you go and
16 hopefully have a relaxing weekend. You have certainly
17 earned it!

18 A. Thank you, my Lady.

19 (The witness withdrew)

20 MR PEOPLES: That concludes the evidence for this week and
21 indeed for the first three weeks. We're obviously now
22 going to have a break and there will be a resumption on
23 Tuesday, 31 October.

24 We'll have more evidence on this particular case
25 study.

1 LADY SMITH: Details of exactly who and when will be giving

2 evidence and how will be on the website --

3 MR PEOPLES: Yes, in the usual way.

4 LADY SMITH: -- in the usual way.

5 Thank you very much, everybody.

6 I hope you have a good weekend.

7 (3.34 pm)

8 (The Inquiry adjourned until 10.00 am on

9 Tuesday, 31 October 2023)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

I N D E X

1		
2		PAGE
3	Professor Andrew Coyle (affirmed)	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		

