

Thursday, 19 November 2020

1
2 (10.00 am)

3 LADY SMITH: Good morning.

4 Now, those of you who have been watching the witness
5 schedule may have noticed that we had planned to have
6 a read-in yesterday but of course we ran out of time
7 when Mr Peacock's evidence took a little longer than we
8 had expected. I think, and Ms Bennie will put me right
9 if I am wrong about this, we have decided we will have
10 not just the read-in that would have been yesterday but
11 another one that fits neatly into the scheduling of this
12 evidence. Am I right about that?

13 MS BENNIE: Yes, my Lady, that is correct.

14 LADY SMITH: So we're going to start with Mr Byrne?

15 MS BENNIE: Yes, and then after that we'll have oral
16 evidence.

17 LADY SMITH: And I think the witness is here?

18 MS BENNIE: Yes, he is, my Lady.

19 LADY SMITH: So I will rise briefly once we finish the
20 read-ins to check we are all ready for that, so around
21 10.30 or thereabouts we will be getting to the oral
22 evidence, I would think.

23 When you are ready, Ms Bennie.

24 Witness statement of MR GERALD CHARLES BYRNE (read)

25 MS BENNIE: My Lady, this is the witness statement of Gerald

1 Charles Donachy Byrne:

2 "My name is Gerald Charles Donachy Byrne. My year
3 of birth is 1966. My contact details are known to the
4 Inquiry. This witness statement is to give information
5 to the Inquiry regarding some of my responsibilities as
6 an official working for the Scottish Executive which was
7 later called the Scottish Government. This statement is
8 based on my recollection aided by documents. I have
9 seen documents provided to me by the Inquiry and the
10 current Scottish Government.

11 "I obtained a degree in English law at University
12 College, Oxford. Between 1989 and 1999 I worked at the
13 Ministry of Defence in Whitehall. I have worked in the
14 Scottish Executive/Scottish Government since devolution
15 in 1999. From January 1999 to February 2002 I was head
16 of the Police Powers and Duties branch within the Police
17 Division. From February 2002 until August 2005 I was
18 head of the Adoption and Looked After Children branch
19 within the Education Department. Since August 2005
20 I have been in the Constitutional Policy team. I am
21 currently leader of the Constitutional Policy team
22 within Scottish Government.

23 "When I was head of the Adoption and Looked After
24 Children branch the structure in the Scottish Government
25 was that departments were divided into groups, which are

1 now called directorates. Within each group there are
2 a number of divisions, and within each division there
3 are a number of branches.

4 "In 2002, the Adoption and Looked After Children
5 branch was part of the Children and Young People Group,
6 CYPG. Colin MacLean was head of CYPG. There were three
7 different divisional heads during my time, Rachel Gwyon,
8 Maureen Verrall and then Rachel Edgar.

9 "In July 2004, my post as head of Adoption and
10 Looked After Children branch was divided into two
11 because of the workload. I retained responsibility for
12 adoption policy as we were in the middle of the Adoption
13 Policy Review Group. Looked After Children became the
14 responsibility of a separate branch. From 2004,
15 Shirley Laing took up post as head of branch for Looked
16 After Children and my major involvement in matters being
17 considered by the Inquiry ceased at that time.

18 "The Civil Service hierarchy was such that
19 divisional heads reported to the head of their group, in
20 my case Colin MacLean, although we all had lines to
21 portfolio ministers. Colin MacLean reported to
22 Mike Ewart who was the head of the Education Department
23 and above Mike Ewart was the Permanent Secretary. I did
24 some work in conjunction with the Minister for Education
25 and Young People, Cathy Jamieson, then Peter Peacock.

1 "My branch essentially had policy responsibilities,
2 it was not operational. When I started in the role and
3 before it was divided into two, my responsibilities
4 included developing policy, consultation, and
5 legislative proposals both for Adoption and for Looked
6 After Children. For Looked After Children, my
7 responsibilities included throughcare and aftercare of
8 young people who are leaving a care setting. In some
9 areas my responsibilities were closer to the front line
10 as we also did a degree of delivery, for example,
11 guidance, training and budgets. My role as head of
12 branch for Adoption and Looked After Children included
13 the preparation of materials and some of the submissions
14 made to ministers between 2002 and 2004 on the matters
15 being considered by the Inquiry.

16 "I have looked at the relevant files before giving
17 this statement. Based on recollection alone, I do not
18 remember very much of these events in any detail.

19 "A submission is a paper to ministers asking for
20 a decision whereas a briefing is a document that
21 provides information. Submissions are authoritative
22 advice from officials to ministers.

23 "In August 2002, Chris Daly launched a petition, the
24 Daly petition, with the Scottish Parliament's Public
25 Petitions Committee, PPC, which asked for various things

1 including an Inquiry into past institutional abuse and
2 an apology made through the Scottish Parliament. The
3 petition also urged other bodies to apologise
4 unconditionally and set out proposed terms of reference
5 for a Public Inquiry.

6 "The PPC sent a letter dated 9 October 2002 to
7 Trevor Lodge, an official in the Scottish Executive
8 Health Department, seeking comments on matters raised by
9 the Daly petition. There was a discussion about who was
10 best placed to lead given the number of issues there
11 were. My branch accepted the lead because of the
12 responsibility of the State for children in care which
13 looks more our policy area.

14 "On 13 November 2002, I provided an initial
15 submission to minister Cathy Jamieson. Our branch drew
16 on other divisions and departments for information,
17 advice and opinions before providing that initial
18 submission. From all that material, a draft submission
19 was sent round to the various departments and
20 a homogeneous piece of advice produced. Submissions
21 normally present a range of options whereas this was
22 addressing a sort of yes/no question.

23 "The Daly petition was also asking for
24 a Public Inquiry and an apology, and asking us to change
25 our then current policy which was that we would not have

1 an Inquiry. The initial submission focused on the call
2 for a Public Inquiry and whether the
3 Scottish Executive's position on that should change.
4 I was looking for agreement to send a response to the
5 PPC that the Scottish Executive had no plans to hold
6 a Public Inquiry at that time. I sought agreement to
7 send out a memorandum in these terms to the Clerk to the
8 PPC by 15 November 2002 which had been the PPC's
9 deadline that we were all working towards.

10 "I made the point in the submission that I had
11 consulted colleagues and we advanced two main reasons
12 why there should be no Inquiry at that time. One was
13 that the nature and the scale of the problem appeared to
14 be different in Scotland than elsewhere, and that there
15 was not currently evidence of systematic widespread
16 abuse throughout residential establishments in Scotland
17 as appears to have existed elsewhere. The other was
18 that events were some time ago and there had been
19 a number of reviews and initiatives to improve child
20 protection since.

21 "In saying that there was not currently evidence of
22 systematic widespread abuse, that was based on
23 information about criminal cases, civil claims,
24 inspections and reviews. I do not now remember there
25 being a precise meaning for the phrase "systematic

1 widespread abuse", nor a distinction between systematic
2 abuse and systemic abuse.

3 "Cathy Jamieson was not happy with the initial
4 advice as regards an Inquiry. She felt there needed to
5 be further consideration of what we could do and that
6 the door should be left open. She was not convinced by
7 the section of officials' advice on the scale and nature
8 of the problem. She did not think it stacked up that
9 Scotland's practice was better than elsewhere. She was
10 someone who had considerably personal experience in this
11 area.

12 "In the initial submission we also addressed the
13 issue of an apology which was another aspect of the
14 Daly petition. We stated that we did not think it would
15 be appropriate for the Scottish Parliament or
16 the Scottish Executive to issue an apology at that time
17 when the extent of the State's responsibility for
18 institutional abuse was unclear. Cathy Jamieson was not
19 content with this part of the advice. She considered
20 that notwithstanding whose responsibility it was,
21 the Scottish Executive should make it very clear that
22 such abuse was wrong. She thought that we should
23 acknowledge the fact that an apology had been sought,
24 the initial draft she felt offered no comfort in that it
25 advised there should be no Inquiry and no apology and

1 she did not want that.

2 "Our response was very quick with further advice
3 sent to ministers on 14 November. The proposed
4 memorandum to the PPC was revised to keep open the
5 possibility of an Inquiry. Rather than offering
6 an apology, the revised memorandum offered expressions
7 of regret. The advice in the revised submission was
8 that we did not think the Scottish Executive could agree
9 to the requests for an Inquiry without all the
10 pros and cons of that particular form of investigation
11 or some other forum being discussed. It would be fair
12 to say that the advice was to maintain a holding
13 position pending further discussion of the issues.

14 "On 18 November 2002, Cathy Jamieson said that she
15 was content with the revised response. The memorandum
16 as revised was sent to the PPC but was then pulled back
17 because the First Minister's office (inaudible due to
18 noise interruption on audio feed) of 19 November 2002.

19 "The First Minister's office requested comments from
20 the Special Adviser on what was being recommended. The
21 formal response was officially given to the PPC on
22 17 February 2003. The final version of the response
23 that went to the PPC in February 2003 was different to
24 the one that Cathy Jamieson approved in November 2002,
25 in particular the expression of regret was removed.

1 "A meeting was planned for 6 January 2003 at the
2 request of Cathy Jamieson to discuss what she termed as
3 "institutional child abuse". In preparation for that
4 meeting, more information was gathered from a variety of
5 departments. I was that the meeting but I have no
6 recollection of it at all, nor of the events that led to
7 the revised response to the PPC in February. I have not
8 seen documents relating to the draft of that response.

9 "Our initial response had been very focused but it
10 would be fair to say that Cathy Jamieson was driving
11 a more general discussion of the wider issues, such as
12 what alternatives and what ways ahead there were. We
13 considered the issue from a number of perspectives,
14 including child protection and the regulatory regime.

15 "The next period of activity in which I was closely
16 involved seems, on the documents, to have started
17 in September 2003. On 23 September 2003, Colin MacLean
18 made a comprehensive submission with contributions from
19 my division and others to the Minister for Education and
20 Young People, now Peter Peacock. This submission was
21 prepared for a meeting of ministers on
22 25 September 2003. Its general purpose was to advise
23 that the Scottish Executive should not set up an Inquiry
24 into historical claims of abuse in residential
25 institutions but should instead improve services for all

1 adult survivors and offer help to alleged victims with
2 access to files held by the Scottish Executive.

3 "There was a big distribution list for this
4 submission, some for general awareness and some for
5 portfolio interest. General awareness was for the
6 First Minister and the Deputy First Minister within the
7 coalition that was in Government at the time. There was
8 obviously a high public or political dimension to the
9 policy so it was appropriate the First Minister and
10 Deputy First Minister were made aware of what was being
11 considered.

12 "In the submission a range of options were
13 identified that the Scottish Executive could take in
14 response to the allegations. Those options were, one,
15 a full Inquiry; two, a Truth and Reconciliation
16 Commission; three, no Inquiry but a package of other
17 measures; and four, to do nothing.

18 "The advice from officials was that the
19 Scottish Executive should not set up either an Inquiry
20 or a Commission. The submissions stated that neither
21 the weight of cases nor the nature of the allegations
22 indicated that there was either a systemic failure or
23 evidence of organised abuse which might justify a full
24 Inquiry.

25 "Researching what happened in Ireland was one of

1 the first things officials did. That set of
2 circumstances was probably the benchmark against which
3 we were comparing ourselves. The Irish situation was
4 one that everybody was very conscious of. An official,
5 Peter Beaton, had prepared a minute dated
6 23 October 2002 for the Minister for Justice,
7 Jim Wallace, as the legal advisers had highlighted that
8 there were court cases ongoing against
9 the Scottish Executive arising out of alleged abuse of
10 children in institutional settings.

11 "In his minute, Peter Beaton had considered the
12 Irish position and it formed a constant backdrop. As
13 I recall, the Irish Inquiry was set up not long before
14 these events and I'm not sure how far along they had got
15 at this time. The challenges that the Irish Inquiry
16 were facing were being manifest at that point and it was
17 therefore very important for us to keep up-to-date with
18 what was happening. Ms Jamieson asked specifically
19 about Ireland in November 2002 and my further submission
20 to her of 14 November had an annex on the subject.
21 The Scottish Executive's research team provided some
22 information regarding other international perspectives.

23 "There were quite a lot of arguments in the
24 submission to support the advice not to have
25 a Public Inquiry. Inquiries are very commonly asked for

1 but not commonly held. Furthermore, there are different
2 modes of Inquiry. A full Public Inquiry is a very large
3 undertaking, particularly those that are judge-led, and
4 such Inquiries are reserved for very serious and
5 compelling circumstances. The level of evidence of
6 a failure of the State apparatus must be such that such
7 a level of response can be justified as much as what the
8 purpose of the exercise would be.

9 "One of the major arguments that can be seen in most
10 of the submissions is what would be the point of having
11 a Public Inquiry. We asked what could be learned that
12 would be of prospective use. That, in our view, was one
13 of the purposes of an Inquiry rather than necessarily
14 establishing the truth about past events. The
15 submissions show we considered lessons had already been
16 learned and there was not therefore a compelling
17 argument for having an Inquiry.

18 "The ongoing civil legal proceedings against
19 the Scottish Executive were seen as a complicating
20 factor rather than something that would rule out
21 an Inquiry. Officials considered what could be gained
22 from holding a Public Inquiry, including various things
23 such as giving people a platform and giving people
24 a sense of being listened to. We did, however, query
25 what the objective was. Would it be recommendations or

1 a compensation scheme or would it be people having the
2 opportunity to talk? Would people be satisfied and
3 would that be sufficient? The answer to those questions
4 was considered to be no, all the way through.

5 "The submission of 23 September 2003 set out the
6 options and the reasons for the advice that was being
7 given. To do nothing was not recommended as an option.
8 A Truth and Reconciliation Commission was ruled out for
9 different reasons. It was not thought a Truth and
10 Reconciliation Commission would serve any significant
11 purpose, and indeed, even if it was considered a form of
12 closure, it might be more harmful than beneficial.

13 "It was thought that it might be better to
14 concentrate on improving services. What was put forward
15 as being the most attractive option was to introduce
16 a package of measures to that end, as well as giving
17 access to relevant records held by the
18 Scottish Executive.

19 "The submission of 23 September 2003 set out both
20 the moral and the legal arguments for a compensation
21 scheme. The advice was to put this issue on hold
22 pending how the courts resolved the issue of time bar.
23 We were relying on the normal processes in the civil
24 justice system in the first instance. We considered
25 a legal remedy should still be pursued, but if that

1 turned out to be blocked because of time bar or other
2 issues, we might have to look at compensation schemes.

3 "At the meeting of ministers on 25 September 2003,
4 the ministers present accepted the advice given in the
5 submission of 23 September 2003. I now have no
6 recollection of this meeting although I took the
7 minutes. The meeting was chaired by the Minister for
8 Education and Young People, Peter Peacock.

9 "There would not commonly be many speaking parts for
10 officials present at such high level meetings. The only
11 circumstance would be if officials were asked questions
12 and any points officials might make would not be
13 recorded in the same way. Officials' comments would not
14 be given the same prominence.

15 "It is noted in the minute that one of the ministers
16 said that a Public Inquiry was unlikely to help
17 individuals or improve things for the future and that
18 any lessons had already been learned. The cost
19 implication was also raised by some of those present and
20 there was a lot of discussion about accessing of files.

21 "There was also a discussion at that meeting about
22 legal liability for compensation and that legal
23 liability, rather than moral liability, might be limited
24 because of the nature of the involvement of
25 the Scottish Executive in the List D schools which were

1 the subject of claims. The point was made that
2 compensating where there was no strict legal liability
3 would raise difficult issues.

4 "It was discussed that consideration needed to be
5 given to how other organisations were handling claims
6 against them, and how they were supporting people who
7 had come forward as victims. There seemed to have been
8 some feeling that Barnardo's had a particularly
9 enlightened approach.

10 "Consideration was given to what experiences of
11 other countries had been, although doubts were expressed
12 by one of the ministers about the effectiveness and cost
13 of the Irish approach. There was a reference to the
14 Canadian model, a no fault scheme, and to the Australian
15 approach.

16 "The Chair, Peter Peacock, is recorded as concluding
17 that the package of measures had been agreed as the
18 preferred options of ministers accepting the officials'
19 recommendations.

20 "I was involved in preparing a submission of the
21 8 October 2003 to follow up the submission of
22 23 September 2003. This was a more specific submission
23 about responses to outstanding correspondence from the
24 PPC and from MSPs. This is what is known as a handling
25 strategy, or how we presented and handled correspondence

1 in public-facing matters.

2 "Response to the correspondence from MSPs was late
3 and the PPC was by then looking for something by
4 24 October 2003. It was agreed that the
5 Scottish Executive should not plan to have an Inquiry or
6 a Commission but should look at a package of measures as
7 recommended in the previous submission.

8 "There had been some pronouncements on various
9 matters by ministers and there is also a note of caution
10 in his submission to check what might have been said
11 publicly. There is a specific reference to
12 Cathy Jamieson being quoted in the Sunday Mail on
13 29 June 2003 in which she said there were a number of
14 areas that needed to be changed after the conviction of
15 staff of St Ninian's. There was also some suggestion in
16 that article that the Justice Minister was considering
17 some form of Commission or Tribunal system.

18 "On 20 October 2003, I made a submission to
19 Peter Peacock to inform ministers of planned next steps
20 on historical claims of abuse at residential and List D
21 schools following the meeting of 25 September. Just
22 before Christmas 2003, Peter Peacock sent a minute to
23 the First Minister, Jack McConnell, headed up
24 'Allegations of Historic Abuse at List D Schools'.
25 Somebody would have drafted that minute for him, it may

1 have been me but I cannot remember. I cannot remember
2 events during the period between September and Christmas
3 2003 when the minute was sent by Peter Peacock, and
4 I have not seen documents for the period between
5 20 October and December.

6 "I think the First Minister was sent this minute
7 because he had expressed a personal interest in the
8 subject. My handling strategy of 8 October 2003 refers
9 to comments made by the First Minister and he had been
10 copied into all of the submissions so far which
11 indicates his interest. Ordinarily, we tried not to
12 bombard the First Minister with anything unless he had
13 an interest in the subject.

14 "It was a big decision and this was a big political
15 issue. To have the First Minister's blessing was
16 critical. The First Minister's interest and commitment
17 is clear from the comments made by him which were passed
18 from his Assistant Private Secretary to David Dewar in
19 Mr Peacock's private office.

20 "The First Minister responded on 22 December 2003
21 with a fifth option which was the appointment of
22 an independent expert. I read the First Minister's
23 comments as indicating that a rather more limited option
24 than a full Inquiry would be his wishes. He was
25 suggesting what became known as a rapporteur later on

1 which was something different from the other options
2 that had been discussed. He was not ruling out some
3 form of Inquiry or investigation into the past, although
4 it was quite difficult to know what his proposal
5 actually was.

6 " In my submission of 20 May 2004 to Peter Peacock
7 I addressed the further option put forward by the
8 First Minister. I do not have a particular recollection
9 of what happened between Christmas 2003 and May 2004 but
10 I have found notes that I have put up to my team and to
11 Colin MacLean at the time that set out how we got to
12 where we were. These notes were essentially a mea culpa
13 from me acknowledging that we had become bogged down.
14 We had been trying to trace various outstanding bits of
15 correspondence and had not focused on the further option
16 put forward by the First Minister. The notes
17 acknowledged that we had not directly taken on the
18 First Minister's suggestion because other things were
19 happening elsewhere and there had been a focus on
20 another piece of work. Ideally at that stage we would
21 have wanted to have been in a position to give a clear
22 decision on the First Minister's suggestion.

23 " This was what led to the reorganisation of my
24 branch. It had become too much to try and run both
25 Adoption and Looked After Children. The submission of

1 20 May 2004 actually went into circulation in draft
2 in April before letters were sent by the PPC to
3 Peter Peacock and the First Minister on 17 and
4 19 May 2004. The submission of 20 May 2004 was a long
5 submission and would have taken time to compile.

6 "Between December 2003 and May 2004 there had been
7 meetings and a degree of engagement with some
8 organisations. However, I accept that for PPC to have
9 written formally to the First Minister and the Education
10 Minister would indicate a degree of impatience on their
11 part by then.

12 "I had been talking to the Clerk to the PPC all the
13 way through. However, I think it is fairly clear at
14 that point that the Convener, Michael McMahon, was not
15 satisfied with that channel of communication. He was
16 not satisfied with an assurance that something was
17 coming and so he escalated it.

18 "As regards the First Minister's proposal on which
19 advice was given in the submission of 20 May 2004 it was
20 not thought that proposal would have any clearer purpose
21 than any other proposal that officials were advising
22 against.

23 "On 8 June 2004 Colin MacLean made a submission to
24 Peter Peacock and the First Minister which restates the
25 whole arguments from the start and goes into a bit more

1 detail as to why officials were advising against
2 an Inquiry. This submission is what is called
3 a 'one-two' minute which is addressed to ministers and
4 is asking them to agree something. In this case
5 a submission was addressed to both the Minister for
6 Education and Young people, Peter Peacock, and to the
7 First Minister, Jack McConnell. As this was a one-two
8 minute it was specifically asking for the
9 First Minister's agreement.

10 "I am a bit unsure about the genesis of this
11 submission but it may be that ministers had looked at
12 the submission of 20 May 2004 and said they wanted to
13 think about it again.

14 "In some ways this submission is expanding on some
15 of the arguments surrounding the fundamental issue of
16 an Inquiry and is trying to get an agreed response to
17 the two letters from the PPC. It comes to the
18 conclusion that it would not be helpful to have
19 an Inquiry, although it recognises that there are strong
20 arguments in favour.

21 "There were responses from Cathy Jamieson and
22 Peter Peacock to this submission, following which there
23 was a fairly extensive discussion about media and the
24 handling of the Scottish Executive's position on the
25 issue. We were trying to prepare the ground for the

1 announcement of the decision. It would be wrong to make
2 an announcement without preparing interested persons
3 first and giving them as much forewarning as possible.
4 At this point there had not been a substantive public
5 response.

6 "On 24 June 2004 Colin MacLean sent an email headed
7 'List D Schools' to Angus Skinner and copied in myself
8 and Shirley Laing. There had been some discussion
9 involving Angus Skinner about issues surrounding Kerelaw
10 and I posed the question to Angus Skinner about whether
11 there were any 'hostages to fortune' or 'smug
12 complacency' with regards to the current problem at
13 the time at Kerelaw. In response Angus Skinner said
14 that the important point was the one made by
15 Cathy Jamieson, namely, that we accepted that abuse in
16 this case happened and that there was absolutely no
17 cover up. He said that it was a matter for police
18 investigation and action and that there was no need for
19 any further Inquiry and that the Kerelaw situation did
20 not alter that.

21 "There were emails of 25 June 2005 I have recently
22 seen which basically say that the letters to the PPC and
23 MSPs did not go out on 24 June 2004 as had been planned
24 because the First Minister had not cleared them.
25 I talked to INCAS on the phone and I told them where we

1 were."

2 LADY SMITH: That was emails not going out on 25 June. The
3 emails were the 25th, not the 24th.

4 MS BENNIE: I think that is correct. I think the statement,
5 my Lady, says 25 June. I think that is a typographical
6 error:

7 "Signed letters were cleared for release on
8 30 June 2004 right before the recess of
9 the Scottish Parliament, which was not necessarily
10 ideal. The release of the letters enabled Peter Peacock
11 to write to Michael McMahon on 30 June 2004. This
12 letter was effectively the substantive response that had
13 been promised and was also a response to the two letters
14 in May 2004 sent by the PPC to Peter Peacock and the
15 First Minister.

16 "The letter of 30 June to the PPC set out the
17 position the Scottish Executive had developed over the
18 course of the 18 months. This was that an Inquiry would
19 not prevent further abuse nor help the needs of
20 survivors nor be in the wider public interest.

21 "Peter Peacock was very open about all the factors
22 and this was all about as close to the advice as had
23 been given by the officials and the positions that had
24 emerged as would normally be seen in public. In his
25 letter he says that, after consideration, an Inquiry had

1 been ruled out and that 'we had concluded on balance
2 that an Inquiry would not achieve the purposes that were
3 desired'. It is not clear in the letter whether the
4 rapporteur investigation suggested by the First Minister
5 would be taken further. There is certainly no evidence
6 to suggest a rapporteur investigation was being
7 considered in the background. I think there was much
8 more active consideration of that later. By the time
9 the PPC received that letter they had already decided to
10 call Peter Peacock to give evidence to the PPC on
11 29 September 2004.

12 "By early September 2004 my involvement was coming
13 to an end following the restructuring of my branch, and
14 Shirley Laing had taken up post.

15 "In what is known as the 'Lines to Take' document
16 prepared for Peter Peacock's appearance before PPC on
17 29 September 2004 there was mention of the civil cases
18 that were ongoing at the time. I assisted in collecting
19 the briefing material to go into the overall pack that
20 Shirley was preparing. The document addresses how the
21 minister should respond to a direct question regarding
22 what was being alleged against the Scottish Executive
23 and why we were defending those cases and on what basis.

24 "I do not recall much discussion about an apology
25 before 29 September 2004 when Peter Peacock appeared

1 before the PPC. There was no mention of it in the
2 submissions of 20 May or 8 June 2004.

3 "In my time we were really making up our own mind
4 about whether there should be an Inquiry and, once a
5 decision had been made, we would have been in a better
6 position to start engaging with the organisations
7 involved. What can be seen in the almost two years of
8 my involvement is the Scottish Executive developing its
9 own position in regard to the central question of
10 whether there should be an Inquiry. If the answer was
11 to be 'no', we were looking at the alternatives. That
12 is not to say that the process was taking place entirely
13 within the Scottish Executive. Discussions had been
14 started with other groups, particularly INCAS. We were
15 aware that we needed to be clear that those groups who
16 had an interest were aware what the Scottish Executive's
17 decision was.

18 "I have no objection to my witness statement being
19 published as part of the evidence to the Inquiry.
20 I believe the facts stated in this witness statement are
21 true."

22 My Lady, this statement is signed and is dated
23 10 July 2020.

24 LADY SMITH: Thank you.

25 MS BENNIE: My Lady, the next statement to be read in is the

1 statement of Jeane Freeman.

2 Witness statement of MS JEANE FREEMAN (read)

3 MS BENNIE: "My name is Jeane Freeman. My year of birth is
4 1953. My contact details are known to the Inquiry.
5 This witness statement is to give information to the
6 Inquiry regarding some of my responsibilities as Senior
7 Special Adviser to the First Minister of Scotland
8 between 2001 to 2005. This statement is based on my
9 recollection aided by documents. I have seen documents
10 provided to me by the Inquiry and the current
11 Scottish Government.

12 "I have a BA Honours in politics and sociology.
13 From May 1986 until May 2000 I was director of
14 Apex Scotland. Apex' role was to work with employers
15 and offenders to help secure appropriate employment for
16 people with criminal records. The belief was that, if
17 people could secure that kind of stability in their
18 life, their chances of re-offending were much reduced.
19 A significant proportion of the people that we worked
20 with had been in care and a significant proportion had
21 serious literacy and numeracy problems.

22 "The work that we developed was what was called
23 'risk reduction recruitment strategy'. Basically what
24 we were saying to employers was that, if you do not ask
25 the question, then you do not know the level of risk you

1 are taking. However, if you ask the question and as
2 soon as someone discloses a criminal record you refuse
3 to see them, even if that has no bearing on the job in
4 question, they are going to lie to you. Doing things
5 the Apex way meant that employers not only got the
6 skills they needed but also got employees who felt
7 a degree of loyalty to them because of how their
8 employers treated them in the first place.

9 "Between 2001 and 2005 I was Special Adviser to the
10 First Minister of Scotland. I am a member of the
11 Scottish National Party. I have been a Member of the
12 Scottish Parliament for Carrick, Cumnock and
13 Doon since May 2016. I served as Minister for Social
14 Security from May 2016 to June 2018. I have been
15 Cabinet Secretary for Health and Sport since June 2018.
16 My predecessor was Shona Robison.

17 "I was a Special Adviser to the First Minister of
18 Scotland, Jack McConnell. A Special Adviser is
19 essentially a political adviser. Whilst you are subject
20 to certain Civil Service rules and privileges, it is
21 a political appointment made by the First Minister.
22 There was a team of Special Advisers. I was a Senior
23 Political Adviser. I worked primarily in two specific
24 portfolio areas of finance and health. Another
25 responsibility was to maintain political relations with

1 the Prime Minister's office in 10 Downing Street.
2 When I was involved in other portfolio areas it was
3 usually only for short periods of time when there was
4 a problem or dispute to resolve that the First Minister
5 wanted resolved or where the First Minister wanted
6 something moved on that he felt was getting stuck.

7 "There was a Strategic Policy Unit staffed and led
8 by civil servants. My job was to liaise with them. The
9 Special Adviser team had some people whose primary focus
10 was on media relations while for others, including me,
11 the focus was on policy work. I would get copied into
12 a lot of things even although I had no direct
13 involvement with them because I was a Senior Special
14 Adviser to the First Minister. The Strategic
15 Policy Unit developed policy and took it forward. The
16 role of the Unit at that time was forward-thinking. The
17 thinking behind having such a unit was that civil
18 servants are working on the day job in their various
19 departments. They are working on delivering what
20 ministers want at that time, such as manifesto
21 commitments. Those employed in the policy unit were
22 freed from the day-to-day work and often engaged with
23 academic institutions and think tanks. They were as
24 much directed by the Permanent Secretary as they were by
25 the First Minister.

1 "Any engagement that I had with them was where the
2 First Minister wanted something but did not think he was
3 getting it quickly enough or he thought that
4 the direction they were going in was missing something
5 that was important to him.

6 "The Strategic Policy Unit was not attached to
7 a particular department like Education or Health or
8 Justice. It was more global. But it would have
9 dealings with all of these departments from time to
10 time.

11 "Within departments of the
12 Scottish Executive/Scottish Government there are
13 divisions and branches such as child protection or
14 children and families. Within those divisions they deal
15 with the day-to-day matters in these areas but to some
16 extent with issues of policy as well. It was primarily
17 from those divisions that ministers would receive
18 officials' advice on any issue. It was from those
19 divisions that the draft answers to Parliamentary
20 questions came for ministers to agree or not.

21 "Briefings to ministers or lines to take tended to
22 be done as part of the day-to-day work of the particular
23 department or division within the department which had
24 the responsibility for the particular subject matter.
25 I might be copied in or I might be asked by

1 the First Minister to become involved and offer comments
2 and advice if he thought it was appropriate to do so.

3 "In August 2002 there was a petition PE535 by
4 Chris Daly to the Public Petitions Committee, the PPC,
5 of the Scottish Parliament calling for a Public Inquiry
6 and for an apology from the State and various
7 institutions in relation to historical abuse of children
8 in care, the Daly petition. In November 2002 the PPC
9 called on the Scottish Executive to respond to the
10 Daly petition. I expect I would have had an awareness
11 of the Daly petition, but I would not have had any
12 involvement with it. I have no memory of being involved
13 with the response of the Scottish Executive to the PPC.
14 I recall involvement around 1 December 2004 at the point
15 where an apology by the First Minister to victims of
16 childhood abuse whilst in care was being discussed.

17 "I am told that there was a briefing by officials on
18 13 November 2002 to the Minister for Education and Young
19 People, then Cathy Jamieson. That initial briefing
20 apparently did not go down well with the minister and so
21 a second briefing was prepared the following day.
22 I have no recollection of having discussions with
23 Cathy Jamieson between November 2002 and February 2003
24 about the terms of the initial response of
25 the Scottish Executive to the Daly petition.

1 "In May 2003 the Sunday Mail ran a story about
2 alleged abuse at List D schools and suggested that
3 certain files held by the Scottish Executive had been
4 closed and that there had been a cover-up. The press
5 were also suggesting that the Scottish Executive would
6 be resisting an Inquiry without offering an alternative.

7 "This was most certainly something that would have
8 been brought to the First Minister's attention and, as
9 such, would have also come to my attention. I expect
10 that I would have been involved in discussions about
11 this matter. A media Special Adviser would have been
12 involved to advise on the handling of the press.

13 "I am told that various options were discussed at
14 ministerial level in September 2003 as to how to reply
15 to the issues raised by the Daly petition. Those
16 options were an Inquiry, a Truth and Reconciliation
17 Committee, a package of measures approach or
18 a do nothing approach, which was to maintain existing
19 policy. There was also the issue of whether or not
20 an apology should be made to the survivors of childhood
21 abuse whilst in care.

22 "Records show that in December 2003 the
23 First Minister wanted consideration given to a further
24 option, which was the appointment of an expert to
25 conduct a review. I have no recollection of being

1 involved in these discussions or the response from the
2 First Minister's office. I do know, however, that
3 the First Minister was not happy with the options put
4 forward by officials and wanted something more to be
5 done.

6 "The option of appointing an independent expert was
7 subsequently rejected by the officials looking into the
8 matter. From my memory of relevant records, there is
9 not a piece of paper that indicates the First Minister
10 ever accepted the official rejection of the idea.
11 Having worked with Jack McConnell and known him for many
12 years, if he does not explicitly say 'I agree with
13 that', the fact that he does not then necessarily pursue
14 an idea he has raised does not mean he accepts your
15 argument. It means that he has not let go of the idea.

16 "In May 2004 both Minister for Education and Young
17 People, then Peter Peacock, and the First Minister were
18 contacted by the PPC to express disappointment at the
19 lack of a full response by the Scottish Executive to the
20 Daly petition.

21 "I think that is something I would have been aware
22 of as a Senior Special Adviser to the First Minister.
23 I do recall there was some discussion over a period of
24 time around whether or not an apology should be made to
25 the survivors of child abuse whilst in care. My

1 recollection is that the only option the First Minister
2 ever held on that particular issue was that an apology
3 should be made from the outset. I have absolutely no
4 recollection of Jack McConnell wanting to do less than
5 make an apology. I have limited, if any, recollection
6 of the details of discussions and who talked to whom but
7 I do recollect that there were considerable concerns
8 expressed by some about the implications of an apology.

9 "Alternatives were offered that in the
10 First Minister's view fell short of an apology. My job
11 was to convey the First Minister's view to whomever
12 needed to have it conveyed to them, and my job was, as
13 far as I could ever possibly achieve it, to secure the
14 First Minister's wishes.

15 "When you are the First Minister you have to take
16 account of what your legal advisers tell you. You
17 cannot just act as an individual. You are Government
18 and you are the mouthpiece of Government. That said, my
19 recollection is that whatever legal advice he was
20 getting at the time did not move the First Minister away
21 from what had been his instinct, which was that we
22 should apologise for the historical abuse of children in
23 care.

24 "There was a perceived difficulty in making an
25 apology on behalf of the State or the

1 Scottish Executive. It was being said that it could
2 have had consequences and implications for the State if
3 the Scottish Executive was to come up by itself with
4 an apology when it was involved in legal proceedings
5 along with others arising out of the alleged abuse of
6 children whilst in care. It was a concern that
7 an apology could be taken as an admission of liability.

8 "At the time institutions that had been providing
9 residential childcare were not coming forward with their
10 own apologies. For example, the Catholic Church were
11 not offering their own apologies. There was a concern
12 that the Scottish Executive should not be doing
13 something that might have unintended consequences of
14 letting others who might be more directly liable off the
15 hook.

16 "The care providers had been directly responsible
17 for the children that were abused. That was a concern
18 of the First Minister. After the First Minister made
19 the Apology on 1 December 2004 he said that he hoped it
20 would be a starting point for others to follow suit.
21 That did not happen. I think that was a source of
22 frustration and disappointment, as he had hoped that his
23 apology would not just be the end of a process but the
24 start of a process that others would follow and take up.

25 "I do not recall being asked for a view on whether

1 there should be a Public Inquiry or to comment on that
2 issue at all. While it might have been the kind of
3 thing I would have been asked about, I do think I would
4 recall it if I had been asked for a view. I do not
5 recall any minister arguing strongly for an Inquiry.
6 I have no recollection of any major discussion or
7 argument around having or not having an Inquiry.

8 "The only recollection I have of a reference to
9 compensation is around the time when concerns were
10 expressed about making an apology and what an apology
11 might lead to.

12 "I have no objection to my witness statement being
13 published as part of the evidence to the Inquiry.
14 I believe the facts stated in this witness statement are
15 true."

16 My Lady, this statement is signed and it is dated
17 5 November 2020.

18 LADY SMITH: Thank you very much, Ms Bennie. As I said
19 earlier, I will rise now briefly and when I return we
20 will move to the oral evidence of Colin MacLean. Very
21 well.

22 (10.46 am)

23 (A short break)

24 (10.53 am)

25 LADY SMITH: Yes, Mr Peoples.

1 MR PEOPLES: Good morning, my Lady. The next oral witness
2 is Colin MacLean. (Pause).

3 LADY SMITH: Good morning, Mr MacLean. Would you raise your
4 right hand, please, and repeat after me ...

5 MR COLIN MACLEAN (affirmed)

6 LADY SMITH: Please sit down and make yourself comfortable.
7 Can you first help me with this: would you like me to
8 call you Mr MacLean or would you like me to call you
9 Colin?

10 A. Colin is fine for me.

11 LADY SMITH: Colin, I see you have some papers with you,
12 I don't know if they are notes to help you, but do feel
13 free to use them if that does help. You do have a copy
14 of your statement in the red folder and it will come up
15 on screen, as will documents that are being referred to.

16 If you are ready, I will hand over to Mr Peoples and
17 he will take it from there.

18 Mr Peoples.

19 Questions from MR PEOPLES

20 MR PEOPLES: Good morning, Colin.

21 A. Good morning.

22 Q. As her Ladyship has said, there is a red folder there,
23 and all that contains is the copy of the statement you
24 have already provided to the Inquiry. The same
25 statement appears on a screen in front of you if you

1 wish to use that. And if I ask you to look at
2 a document that we have for the purposes of these
3 hearings, it should appear on the screen in front of you
4 to assist you.

5 A. Okay.

6 Q. So with that introduction, can I just ask you to go to
7 your witness statement at this stage. And for the
8 benefit of our transcript, I will say it's
9 WIT-1-000000349. You don't need to worry about that,
10 but that is the reference which we have given to it.

11 Can I ask you at this stage to turn to the final
12 page of the statement that you have provided? Could you
13 confirm that you have signed the statement on 11 March
14 of this year?

15 A. Yes.

16 Q. And that you also have no objection to your statement
17 being published as part of the evidence to the Inquiry
18 and that you believe the facts stated in your statement
19 are true?

20 A. Correct, yes.

21 Q. Can I begin by -- your full name is Colin MacLean?

22 A. Yes.

23 Q. You were born in 1951?

24 A. Yes.

25 Q. You are now retired?

1 A. Yes.

2 Q. But you were what I would call a senior civil servant
3 working for the Scottish Executive/Scottish Government?

4 A. Yes.

5 Q. Can you just tell us over what period you were employed
6 by Scottish Government as a senior civil servant?

7 A. From 2000 until I retired in early 2013.

8 Q. I think before I go to that, you do tell us in your
9 statement, starting at paragraph 4, something about your
10 employment history and I think your background started
11 in teaching, is that correct?

12 A. Yes.

13 Q. You were a teacher of mathematics --

14 A. Yes.

15 Q. -- in an earlier life, and you did have a spell I think
16 as an education adviser for Lothian region, is that
17 correct?

18 A. Yes.

19 Q. And that you did have various posts within the
20 HM Inspectorate of Schools, is that also correct?

21 A. Yes.

22 Q. At one point you were chief statistician for the
23 Scottish Office?

24 A. Yes.

25 Q. I think you will be aware that perhaps our particular

1 interest is in the period when you were head of the
2 Children and Young People Group, CYPG, I think we are
3 using the acronym, and I think that was a period from
4 July 2002 until December 2006 and then again for
5 a period from May 2007 until July 2008, is that correct?

6 A. Yes.

7 Q. In your statement at paragraphs 7 to 9, you give us
8 an idea of your general responsibilities as head of the
9 group. And I don't want to take this at too much
10 length, we have read it and we will read it again, but
11 just in broad terms can you tell us what those
12 responsibilities involved?

13 A. The main responsibilities for the group were in relation
14 to policy development and implementation for anything to
15 do with children or families except child health and
16 school education. And there were other things which
17 were added and subtracted to the broad responsibilities
18 at various times, including responsibility for social
19 work and social care staffing policy from 2004.

20 Q. I think you tell us that as head of the group you would
21 have regular meetings with the relevant minister, who
22 was the Minister for Education and Young People, is that
23 correct?

24 A. Yes, and the Minister for Justice when they were
25 responsible for youth justice.

1 Q. Our main interest obviously is in a particular petition,
2 Petition 535. We are calling it the Daly petition
3 rather than use that description, so if I call it the
4 Daly petition you will understand what I am asking
5 about. I think it was an official within your group,
6 who was then head of the Looked After Children branch,
7 Gerald Byrne, who was given responsibility for leading
8 the response in relation to the petition in late 2002,
9 is that correct?

10 A. Yes.

11 Q. So far as that is concerned, can I ask you this: we have
12 already heard evidence that the Minister for Education,
13 Cathy Jamieson, was provided with an initial briefing in
14 relation to issues raised by the petition on
15 13 November 2002. Were you then directly involved in
16 the preparation of that briefing or not?

17 A. I can't remember exactly when I got involved in that
18 process, but I know that she didn't like the first
19 version and it was then revised, and it was the second
20 version that ministers then considered.

21 Q. But I take it that, whether you were directly involved
22 or not, you would have been copied into this --

23 A. Yes.

24 Q. -- as a matter routine practice --

25 A. Yes.

1 Q. -- because you were the head of the group?

2 A. Yes.

3 Q. Can I maybe just take you to that briefing for the
4 moment, if I may, which is at SGV-000017844. It should
5 come up.

6 We have already had a look at this document. We see
7 it is addressed to the Minister for Education and Young
8 People although there were quite a large number of other
9 recipients who received copies of the submission. And
10 I think we do see your name appears on that distribution
11 list, is that right?

12 A. Yes.

13 Q. You don't have a recollection specifically of
14 involvement at that stage, obviously you were copied
15 into it, and I presume you would have perhaps read it or
16 cast your eye over it at that time, would that be --

17 A. I would certainly have read it when it was submitted.
18 I can't remember if I was involved before it was
19 submitted, not that version.

20 LADY SMITH: Do you have any recollection of the timescale
21 that was involved? The draft memorandum had to be
22 returned to the Committee Clerk by 15 November and this
23 was the 13th.

24 A. That is a short timescale. I can't remember when the
25 branch was made aware of the need to respond, so I don't

1 know how much time they had to prepare the response.

2 LADY SMITH: If I remember rightly, it was asked for in
3 9 October letter by the Clerk to the Committee, so the
4 Clerk to the Committee had asked for it by 15 November?

5 MR PEOPLES: There is a letter I think. Unfortunately the
6 letter went the Health Department at that time, it's
7 a letter of 9 October asking for a response as soon as
8 possible. I don't think that particular letter put
9 a particular date on it but it was obviously wanting to
10 have a response as quickly as possible.

11 A. That minute would have been cleared by officials round
12 the Executive and so it would have taken two or three
13 weeks to go through the process of pulling views
14 together, so it's perhaps not surprising, if there was
15 an initial delay, that it was quite close to the
16 deadline before it was submitted.

17 Q. I am not here to suggest that at that period there was
18 perhaps any delay that wasn't necessary, if I can put it
19 that way. I think from records we have seen, and
20 I don't think everything is here, there would have been
21 a process of information-gathering and contributions to
22 a submission. This wasn't prepared simply by the
23 official whose name it bore, this was a collective
24 effort representing the collective position of officials
25 to ministers, is that a correct understanding of the

1 process?

2 A. Yes, it is, yes.

3 Q. Therefore, the official with lead responsibility would
4 have taken feedback and soundings and advice from
5 various parties who had --

6 A. Yes.

7 Q. -- relevant information or contributions to make?

8 A. Yes.

9 Q. I think in this case, because of the issues involved, it
10 might have involved contributions from a number of
11 departments?

12 A. Certainly, yes.

13 Q. While we have that document in front of us, we see that
14 basically the recommendation, with which the Minister
15 wasn't happy, was "We have no plans to hold an Inquiry",
16 which was one of the things that the Daly petition had
17 called for, as well as apologies through the Parliament
18 on behalf of various State bodies and other parties.

19 If we turn to the second page of that document, what
20 is provided there is some information, is it, about the
21 evidence of prevalence of institutional abuse in
22 Scotland, paragraph 5, is that correct?

23 A. Yes.

24 Q. That would have been derived from some sourcing of
25 information from potentially relevant sources within the

1 department or elsewhere?

2 A. Yes.

3 Q. What was being told to ministers at that time was there
4 had been a number of complaints of child abuse in
5 residential care in the 1950s, 1960s and 1970s, so we
6 are dealing with a substantial period of time covered by
7 these complaints. The Minister is being told that that
8 had resulted in some cases in criminal convictions,
9 there had also been complaints made directly to the
10 Executive, there had been requests for action to amend
11 the law and provide compensation to victims. Without
12 take this at too much length, I think that is
13 a reference to changes to the law to allow people whose
14 claims had prescribed to be able to bring their claims
15 to court?

16 A. Yes.

17 Q. And indeed I think some MSPs by then had written on
18 behalf of constituents to Government to see if the law
19 could be changed, and I think that an official,
20 Mr Beaton, who was mentioned in Gerald Byrne's witness
21 statement that was read out this morning, had provided
22 a minute --

23 A. Yes.

24 Q. -- explaining the issue and the problem of prescribed
25 claims. We have heard already there was a case called

1 Kelly in May 2002 and that had, at first instance, said
2 these claims cannot be brought because they have been
3 extinguished by lapse of time?

4 A. Yes.

5 Q. I think at that stage the minute had at least floated
6 the possibility, subject to a steer from ministers about
7 referring the matter to the Scottish Law Commission, to
8 see if they could look at it, at least?

9 A. Yes.

10 Q. And report?

11 A. Yes.

12 Q. So that is really what that is saying in shorthand form.
13 Indeed there is a reference to the Beaton submission
14 there, if we read on in paragraph 5. And of course the
15 Minister is also told that a particular firm of
16 solicitors, Ross Harper, was pursuing a number of cases
17 against the Catholic Church seeking damages for alleged
18 victims of abuse, and these relate in many instances to
19 events that occurred several decades ago. There is the
20 reference to the difficulties due to the law of
21 prescription and limitation, which was also for some
22 a problem, and it is said to ministers that there have
23 been requests to change the law. Indeed it says that
24 there is the suggestion of a referral to the Scottish
25 Law Commission that could be considered.

1 A. Yes.

2 Q. Indeed, the ministers are also told at that time that
3 the Executive had been asked, at least by some, to
4 establish a compensation fund for victims. And that in
5 part, I take it, would have been driven by, for example,
6 the Kelly type situation?

7 A. Yes.

8 Q. Where people just couldn't bring the case at all?

9 A. Yes.

10 Q. Then what they are also told is that such schemes have
11 been established in other jurisdictions, although not
12 necessarily funded wholly by the state. So that is
13 paragraph 6 of the initial briefing. And specific
14 reference is made to the situation in the
15 Republic of Ireland and the amounts contributed by
16 religious orders in that country towards a fund or
17 a redress scheme.

18 Then it goes on:

19 "At present, our line is that we have no plans to
20 establish a compensation package at this stage but
21 ministers' views on this issue have been sought."

22 Did you, when you read this, have any disagreement
23 with the thrust of the advice in this briefing?

24 A. I would ask myself two questions. One, was there
25 anything obviously concerning about the advice that was

1 being given? But the other was had due process been
2 followed? Was this based on drawing together views from
3 across Government from people who were much more expert
4 in any of the areas than I was? And I was satisfied
5 with the process at that point and there wasn't anything
6 in the advice that seemed very strange although clearly
7 there were issues to be debated.

8 Q. So you were more at that stage concerned with the
9 process rather than the substance of the information or
10 the particular recommendations being made to ministers?

11 A. Not more concerned but always concerned.

12 Q. Okay.

13 A. That was part of my role, to make sure the process has
14 been properly followed.

15 Q. If we go on in the initial briefing, paragraph 7 does
16 alert ministers to the fact that they were themselves
17 involved in a number of actions, civil actions, relating
18 to alleged abuse at former List D schools, including
19 St Ninian's, Gartmore, over three decades. So they were
20 well aware of the background that there was this
21 litigation. And I don't know how much you know about
22 this, but we did see, and I think I made reference to
23 another witness, to there was some advice around this
24 time from the Office of the Solicitor to the
25 Scottish Executive, OSSE, which related to the existence

1 of those actions and the need to take care not to say
2 anything at that stage that might prejudice the stance
3 being taken in the litigation?

4 A. Yes.

5 Q. I don't think we need to look the detail, but they were
6 cautioning against saying anything that might be
7 construed as perhaps undermining the position of the
8 Executive in those actions and being seen as an
9 admission of liability, things of that sort, by the use
10 of language like expressions of regret or apologies?

11 A. Yes, we would expect lawyers to give that kind of advice
12 and then ministers to decide how to respond to it.

13 Q. But that was what they were telling us at that stage,
14 and indeed they continued to say that, I think, over
15 time, as we will no doubt see, but it was already
16 raised.

17 Indeed, if we go on to the "Discussion" section of
18 this initial briefing, as it says:

19 "Having consulted colleagues in Justice, Social Work
20 and Inspectorate, our advice is that the Executive
21 should not institute an Inquiry into institutional child
22 abuse at this time. We see two main reasons ..."

23 The first given is:

24 "The nature and scale of the problem appears to have
25 been different in Scotland. There is not currently

1 evidence of systematic widespread abuse throughout the
2 residential establishments in Scotland such as appears
3 to have existed elsewhere."

4 And the second main reason that is advanced is:

5 "The need for improved child protection is already
6 being addressed by the Executive."

7 And that the cases related to events more than
8 20 years before, there had been investigations into
9 these matters in the intervening years, and indeed there
10 is reference to the Edinburgh Inquiry, and indeed there
11 had been a safeguards review also, which is also made
12 reference to, and the fact the Executive was taking
13 initiatives.

14 I think that is a point you make in your statement,
15 that the Executive was already embarked, before this
16 petition, on an extensive programme of child protection
17 as part of a three-year rolling programme which resulted
18 in various actions. I'm not going to ask you to go
19 through the detail, we are familiar with the existence
20 of that programme, and it's not a response to the
21 petition.

22 A. No.

23 Q. It was in being when the petition was presented to the
24 Petitions Committee.

25 But one of the reasons being advanced is that

1 officials were telling ministers there was no evidence
2 of systematic widespread abuse based on whatever sources
3 they had sought to tap into before making that
4 statement. So are they saying, well, there is not
5 a widespread problem? Or what are they saying? It's
6 a slightly curious expression "evidence of systematic
7 widespread abuse". Is it that the abuse is not
8 widespread? Or the abuse is not widespread in the
9 systematic sense of being organised? What did you
10 take ...?

11 A. If I was looking at that and editing it today, I would
12 change that paragraph. I would make it clearer. And it
13 was certainly discussed with ministers, and I have said
14 that in the statement, that there was far too much
15 abuse, and we were clear about that from the number of
16 cases, and we had been clear about that from the number
17 of inquiries which had been carried out into abuse in
18 care settings in the last 20 years.

19 What we were trying to say there was that it wasn't
20 systematically organised, it was individual cases. The
21 systematic issue was the failure to detect and prevent
22 and deal with the abuse. So I would today write that
23 paragraph more fully and still conclude, I think, based
24 on the other reasons, that we might not go for
25 an Inquiry at that point, but I would tease that

1 paragraph out more.

2 Q. Because I think one can be misled by language.

3 "Systematic" and "systemic", for example, are not
4 necessarily the same thing?

5 A. No, indeed.

6 Q. There may be failures in the system, but it may not be
7 due to systematic abuse or organised abuse.

8 A. And that is what we meant to say, but we didn't say it
9 clearly enough in that paragraph.

10 Q. I think you do say in your own statement, you seek to
11 clarify that that was the thinking. It may not have
12 been expressed in the correct terms. And can I just ask
13 you maybe to confirm me, I think you do deal with that
14 at paragraph -- perhaps I can take paragraph -- it
15 starts around paragraph 33, 34, 35 of your statement?

16 A. Yes.

17 Q. You are saying that in reference to it:

18 "We didn't see any evidence of co-ordinated abuse."

19 That is the first thing, we are not seeing evidence
20 that would say there is a network of people operating,
21 either historically or currently, that would be perhaps
22 a factor in making a decision on whether there should be
23 an Inquiry, so that was what ministers were being told?

24 A. Yes.

25 Q. You are also saying I think at paragraph 35, if I am

1 correct, that officials were not intending to say to
2 ministers that there was no evidence of systemic
3 failures based on what was known --

4 A. That is correct.

5 Q. -- historical abuse?

6 A. Yes.

7 Q. And where it was happening and how much of it was
8 happening?

9 A. Yes. And the actions already underway in the child
10 protection and other developments were designed to deal
11 with that systemic failure which we knew about.

12 Q. Yes, to prevent a repetition of that.

13 A. Yes.

14 LADY SMITH: Maybe you are going to come to this later, but
15 I would be interested to know which actions in that
16 three-year rolling programme you regarded as having been
17 devised to address that systemic problem. It may be
18 convenient to look at that later, Mr Peoples, but
19 can I just flag that up?

20 MR PEOPLES: Yes. I suspect -- are we talking here about,
21 for example, initiatives such as a more rigorous
22 inspection system through the Care Commission that was
23 established in 2001? That is one example. The
24 legislation on unsuitable persons working with children
25 in 2003. And perhaps -- and also a recognition of the

1 need to be vigilant and to improve child protection
2 monitoring and inspection, is that --

3 A. Yes, but --

4 Q. Were there other factors that --

5 A. I would add -- definitely these, but I would add to that
6 a much greater emphasis on listening to children,
7 talking to children, giving children and young people
8 a voice in care settings as well as more generally in
9 the community. So we were more confident, you could
10 never be certain, but more confident that if there was
11 a failure, a potential failure to prevent abuse, it
12 would be detected because of the combination of all of
13 these things and very clear standards, and public
14 reporting on the standards of child protection in
15 institutions.

16 Q. Yes, because I think before --

17 LADY SMITH: So just to check what comes to your mind now
18 that stands out as what you were regarding as covered by
19 the ongoing programme, can you tell me? It may be just
20 repeating what Mr Peoples was summarising, but from your
21 recollection?

22 A. A very clear statement of what was expected based on
23 what children said to us they wanted and needed. Much
24 clearer processes of public reporting on the extent to
25 which authorities and institutions were meeting these

1 standards. And the establishment of the list of those
2 unsuitable to work with children, very controversial,
3 continues to be, but the existence of that list and the
4 expectation that somebody might be on the list was seen
5 as powerful.

6 MR PEOPLES: I think it's correct to say that, although it
7 hadn't happened at this stage, one thing that did happen
8 was what was called the Children's Charter in 2004 which
9 set out what children can expect from Government and
10 others who have responsibilities for their care and
11 protection, and that was seen as a measure to try and
12 get across what they can take and the recognition that
13 they have rights and that they have certain things that
14 they should have and receive as children?

15 A. Yes.

16 Q. Whether in care or in the community?

17 A. Yes.

18 LADY SMITH: When you said, Colin, that these matters were
19 being devised to address the systemic problems that you
20 knew about, what systemic problems did you have in mind
21 as having discovered?

22 A. They had accumulated over a decade from the various
23 reports which in my statement I listed --

24 LADY SMITH: You refer to the Edinburgh and Fife --

25 A. There were reports from across the UK, a number in

1 Scotland but some elsewhere, England and Wales, as well.
2 So they had identified failures in care settings, and
3 there were also reports, particularly the
4 Kennedy McFarlane one and the report into Caleb Ness.
5 So individual recent Scottish cases where there was
6 a concern about children who were not necessarily in
7 an institution but had been known to the state who had
8 been failed in relation to child protection. And all of
9 these together led to the child protection review and
10 report, and then that series of actions that flowed from
11 it.

12 MR PEOPLES: And maybe I can just flag up since I don't --
13 I think we can make -- the section that you are,
14 I think, referring to is headed something along the
15 lines of "Key developments in child protection since
16 1992".

17 A. Yes.

18 Q. Forward to the date of the petition. That is I think
19 dealt with comprehensively at paragraphs 16 to 23 of
20 your witness statement. I am not planning to go through
21 it all because we read it. And indeed some of these
22 measures were indeed drawn to the attention of the
23 Public Petitions Committee in the responses that were
24 made to that Committee --

25 A. Yes.

1 Q. -- in relation to the Daly petition. But that is
2 the sort of thing you have in mind?

3 A. Yes, it is.

4 Q. There were major Inquiries, there were reviews, there
5 was Angus Skinner's "Another Kind of Home", and two
6 Inquiries, Edinburgh and Fife. There were lots of
7 things going on. And that was the point you were trying
8 to make, was it?

9 A. Yes.

10 Q. That all culminated I think in a review of child
11 protection arrangements in 2001?

12 A. 2002 it was published.

13 Q. It was published in 2002 and that produced the reform
14 programme?

15 A. Yes.

16 Q. And there was also a big push to get everyone involved
17 in child protection and there were child protection
18 summits to which all -- I hesitate to use this word, but
19 stakeholders were invited to participate from local
20 authorities, police, care providers in the --

21 A. Yes. It was an invitation from the First Minister that
22 they couldn't refuse.

23 Q. So there was a range of things happening?

24 A. Yes. Can I make a point about standards, because
25 I think it is quite important --

1 Q. I was -- yes, I was going to say there was also
2 a publication of standards in 2004 along with the
3 Charter, to some extent to complement the Charter, and
4 there was also a Children's Commissioner appointed
5 around that time?

6 A. Yes. In relation to standards, for the first time there
7 was a clear statement on what any child could expect in
8 whichever setting they were, including care settings,
9 and the standards that would be used by anybody who was
10 inspecting that provision, and the publication would be
11 against these standards. Whereas previously, and
12 Tom Shaw goes into this in quite a lot of detail in his
13 report, the standards were not necessarily well known or
14 understood and different inspectors might take different
15 approaches, would have different views, and so what you
16 could expect in any given setting before these standards
17 were published was quite unpredictable.

18 Q. So there was no routine publication of reports for
19 a start, and there was no --

20 A. It had started by then but --

21 Q. Yes, but historically, historically, there hadn't been
22 a set of national published criteria against which
23 establishments would be inspected --

24 A. Correct.

25 Q. -- and monitored?

1 A. Yes.

2 Q. And this was all new. There was an independent
3 inspector, if you like, in the form of the
4 Care Commission that became the Care Inspectorate, as
5 opposed to the previous inspectorates which were more
6 centrally based within Government, is that right?

7 A. Yes. And also at that time the different inspectorates,
8 there was legislation passed to enable them to work
9 together. And so you didn't have different
10 inspectorates applying different tests, they were all
11 working to the same agenda.

12 Q. And I think as someone who had some experience in the
13 HMIE, you would probably be able to confirm what you
14 just said, that there wasn't specific criteria that all
15 inspectorates would apply in the same way and produce
16 a standard type of inspection report on various matters
17 that were relevant to the responsibilities?

18 A. Not before 1990, and it gradually developed over the
19 years after that.

20 Q. Of course the point you are making the point or that the
21 briefing was making is that, well, the periods with
22 which the petition is concerned pre-dated these
23 developments?

24 A. Yes.

25 Q. And that was a significant change?

1 A. Yes.

2 Q. In the childcare system?

3 A. Yes.

4 Q. So the general point you are making in that section of
5 your statement is that much had been done and was being
6 done to improve the protection of children, whether in
7 care or in the community, since the periods with which
8 the Daly petition was concerned, and there had been
9 a number of inquiries, reviews, reports, and so forth,
10 which you have listed in your statement?

11 A. Yes.

12 Q. Is that what it comes to?

13 A. Yes.

14 Q. I think going back to your statement as to what you were
15 saying to ministers, or what you were intending, or what
16 your officials were intending to say, you made it clear
17 you were recognising that the problem wasn't an isolated
18 problem in one sense, it was widespread, or could be
19 considered widespread?

20 A. Yes.

21 Q. But not necessarily systematic, there was no evidence it
22 was systematic?

23 A. Yes.

24 Q. But it was evidence of systemic failings historically?

25 A. Yes.

1 Q. And I think you do say at paragraph 36 that officials
2 then recognised that the childcare system historically
3 had failed to prevent, detect and deal with abuse which,
4 on the face of it, seemed to have been a widespread
5 problem?

6 A. Yes.

7 Q. And at 36 you say the officials recognised at that time,
8 in 2002, that there had been a "major failure of
9 supervision, monitoring and control", I think those are
10 your words?

11 A. Yes.

12 Q. And indeed that there were a considerable number of
13 cases of abuse?

14 A. Yes.

15 Q. It's just they didn't fall into a particular
16 classification of organised abuse?

17 A. One of the triggers for having a major investigation or
18 Inquiry would be if something dramatically new emerged
19 that we hadn't known about, and if we had discovered
20 some kind of organised abuse that would fall into that
21 category. What I am saying here is that we were aware
22 there was far too much abuse, and we had had Inquiries
23 that had investigated that, and we were now taking
24 action to deal with it.

25 Q. I wonder then, with that being -- it seemed that was

1 quite a key reason for the recommendation at that time.
2 I do wonder if, on reflection, you might agree that the
3 officials were looking too narrowly at whether
4 an Inquiry or a further Inquiry would improve child
5 protection or add to the measures that had been taken or
6 were being taken, that they were focusing too narrowly
7 on that issue and rather less on the issue of whether
8 the action of establishing a general Inquiry might
9 benefit survivors as a general class.

10 Do you think that there was less attention paid to
11 that specific question, whether it would bring them
12 specific benefits like closure, opportunity to publicly
13 recount their experiences, to remove long-standing
14 feelings of guilt and shame by being allowed to say what
15 happened, to have the prospect of things like
16 compensation or redress through recommendations, or
17 perhaps even bring some new insights from the
18 perspective of a victim. Did you think your officials
19 really addressed that clearly enough?

20 A. I think we did. The question of whether there was
21 a public policy advantage in having an Inquiry was
22 relatively easy. As we have just been discussing, there
23 was a strong case that you didn't need an Inquiry to
24 decide what you needed to do to improve child protection
25 in care settings. Now, that is challengeable, you might

1 take a different view today, but at that point it felt
2 like there was a strong argument against an Inquiry or
3 against the need for an Inquiry.

4 In relation to the needs of survivors, we recognised
5 that issue and we found that much more complicated and
6 difficult to deal with because the survivor community
7 was very diverse. We didn't know who the survivors
8 were. We were aware of some, obviously, who had raised
9 the petition, and two years later at the debate a number
10 of MSPs spoke about people they had spoken to with very
11 different views on whether or not that was necessary.
12 We were aware of the fact that that was a harder
13 question to judge.

14 Q. I take the point that -- I think we have heard evidence
15 that there was a degree of engagement particularly
16 between Mr Peacock's appearance before the Public
17 Petitions Committee and the debate on 1 December 2004,
18 and there was an attempt to gauge what survivors wanted
19 and why, and what type of Inquiry they would want and so
20 forth, and indeed you are correct that I think there was
21 a range of views expressed by MSPs at the debate.

22 But if we go back to this initial briefing, which
23 could have been accepted without question if
24 Cathy Jamieson hadn't been a minister, there doesn't
25 appear in this briefing to be anything to say, well, we

1 have considered this question, and we have talked to
2 people, we have consulted with them, we have engaged
3 with them as a class. We have tried to understand what
4 their thinking is, why they think an Inquiry is the
5 right way forward. We accept it's a widespread problem,
6 we accept there were systemic failures. We don't really
7 know their thinking.

8 Surely that would have been an appropriate thing to
9 do before giving what, on the face of it, was definitive
10 advice, that on one view the Minister could have just
11 said, well, all right, I accept what my officials say so
12 end of story. It wasn't the end of the story as we
13 know, but that could have been the outcome with
14 a different minister as Cathy Jamieson, I think, told
15 us.

16 A. I have the next version of that, 14 November, but
17 I think this bit is similar. It is touched on in
18 paragraph 8 around the pluses and minuses from the
19 perspective of the victims. I think you are right, that
20 that that issue could have been brought out in more
21 detail, but this was very much an initial run over the
22 issues, expecting a conversation with ministers about
23 how this would be developed, and indeed that was what
24 then happened with Cathy Jamieson.

25 LADY SMITH: Mr Peoples, let's just pause at that stage.

1 We normally have a break in the middle of the
2 morning of the Inquiry hearings, so I will do that now
3 and I will sit again in about 15 minutes, Colin.

4 (11.32 am)

5 (A short break)

6 (11.50 am)

7 LADY SMITH: Colin, are you ready to carry on?

8 A. Yes, thank you.

9 LADY SMITH: Mr Peoples.

10 MR PEOPLES: My Lady.

11 I may come back to a point you said about
12 the revised briefing. I will take you to that. But
13 before I do that, can I go back to the original briefing
14 which we were looking at, which is -- it has come up
15 again.

16 We were looking at the section that gave the
17 background and what I might call the known extent of the
18 problem historically and indeed currently. And then the
19 main reasons why the recommendation was being put
20 forward, and we have spoken about that, and how things
21 have changed quite significantly since the period with
22 which the petition was concerned.

23 The issue of an apology is touched on in the initial
24 briefing also because that was one of the aims. I think
25 there were perhaps three aims to the petition. One was

1 an Inquiry into the allegations and another was
2 an apology from a number of bodies, and there was also
3 a third, I think, a call for something in the form of
4 some sort of forum that was sympathetic and would listen
5 to experiences, so they weren't necessarily all one
6 thing. And it may be that that had echoes of the Irish
7 model, because I think it had all these components by
8 that stage: a redress board, an investigation committee,
9 a confidential committee and so forth, as well as
10 an apology from the Taoiseach as well. So it may be
11 that the demands or the calls were modelled to some
12 extent on that. I think maybe the officials thought
13 that at the time. I don't know if that was something
14 that occurred to you?

15 A. These were clearly dimension of what you might consider,
16 yes.

17 Q. But on the question of the Apology, the advice was:

18 "Nonetheless, we do not think it would be
19 appropriate for the Parliament or the Executive to issue
20 an apology at present when the extent of the State's
21 responsibility for institutional abuse is unclear."

22 I will come to later advice on this matter, but at
23 the very beginning, and this was advice that could have
24 simply been accepted and acted on by ministers to say,
25 "Yes, that is fine", the position was that we shouldn't

1 be making any apologies. Would it be fair to say that
2 in part that might have been based on legal advice, that
3 there was the ongoing litigation, it was being defended,
4 the legal liability or strict legal liability of the
5 Executive was not yet determined, and that in that state
6 of matters the officials' view was that making
7 an apology wasn't appropriate at that time?

8 A. My assumption, when reading that sentence, is that was
9 where it came from, yes.

10 Q. If we look at the memorandum, the draft memorandum.
11 This was the document that was supposed to go to the
12 Committee if it was approved by the Minister. We see
13 that the draft response, if we turn over the page, about
14 two-thirds of the way down, if I could ask to ...

15 Paragraph 1 reads:

16 "In that initial briefing:

17 "The Scottish Executive has no plans to hold
18 an Inquiry into allegations of institutional child abuse
19 at present. The Scottish Executive is aware of recent
20 course cases and of a number of representations from
21 victims of child abuse which have been made to the
22 Executive."

23 So that is point 1.

24 Point 2:

25 "The Scottish Executive have given careful

1 consideration to the request but are not convinced that
2 sufficient evidence of past widespread systematic child
3 abuse in residential institutions exists at present to
4 warrant an Inquiry. The Scottish Executive also
5 considers that a general apology on behalf of public
6 institutions to victims of child abuse would not be
7 justified at this time."

8 And then we come on to the question of the
9 commitment to improve matters on what has happened and
10 is happening.

11 So it's closing the door to an Inquiry at least, no
12 plans to have one. An apology is not justified as
13 matters stand. And it has also got this position about
14 whether there was sufficient evidence of widespread
15 systematic abuse. But do we take it that you, in your
16 evidence today, are to some extent saying that that
17 might have been better expressed?

18 A. As we went through the process these issues were better
19 expressed and it --

20 Q. Well, they were, but at the time even?

21 A. Yes, it would have been better if that had been teased
22 out more and explored. In fact, ministers then
23 responded to that by discussing these issues. So in one
24 sense it didn't matter because the discussions were had
25 among ministers. I would have preferred that to have

1 been laid out more clearly in that submission.

2 Q. It didn't matter fortuitously because you had a minister
3 who said "I don't like this and I have a background that
4 tells me why I don't like it". But if that hadn't been
5 the minister, who knows?

6 Well, it's a fair point, isn't it?

7 A. Yes. But we did have -- in these times we knew that
8 Mr McConnell and Ms Jamieson were both very switched on
9 to that kind of issue, so even -- whether or not that
10 was developed in that document, they would have had the
11 discussion. You are right, it was fortuitous that we
12 had these ministers, yes.

13 Q. Were you at that stage, or your officials in your group,
14 were they in any way privy to the thinking of the
15 First Minister about the question of an apology,
16 for example?

17 A. Not at that stage, no.

18 Q. Would I be right in thinking -- and I don't -- we will
19 come back to when the Apology seems to have loomed in
20 a more large way in 2004. But it would be in 2004,
21 particularly after the letter had gone to the Committee,
22 the substantive response, would it be then, at least
23 from your point of view, that the question of an apology
24 became a much more prominent issue?

25 A. For officials, yes.

1 Q. For officials, yes. I just wanted to be clear that was
2 for officials. So you can't claim to say that as at
3 November 2002, or indeed early 2003, you had access to
4 the First Minister's thinking on that issue and whether
5 he was in favour of an apology and was wanting to work
6 towards it and indeed had views about the timing of it?
7 You didn't have any knowledge of that?

8 A. I can't remember when I first became aware, no doubt
9 through conversations with ministers or the
10 First Minister, that this was on the agenda. I am
11 confident I wasn't aware of it at that point, but it
12 would have been some point before the end of 2004 --

13 Q. Oh, yes --

14 A. -- but I'm not sure when.

15 Q. -- I am not trying to suggest any different. But the
16 records certainly don't suggest that officials between
17 2002 through to at least the first half of 2004 have any
18 belief that the First Minister has a particular position
19 on apology.

20 A. Correct.

21 Q. If I could go to the revised briefing, because I think
22 you were making a point, and I would just like to take
23 you to that one as well. Because there was the issue
24 I raised with you about the needs of survivors, if you
25 like, and I think you were wanting to direct me to

1 something in the revised submission that at least to
2 an extent addressed that matter.

3 The revised submission, and I have to say that it
4 has been somewhat difficult sometimes to work out what
5 the final version of the revised version was, but
6 I think we have got it now, I hope, at SGV-000063478.
7 That should come up shortly.

8 Just on that point, I think the way these things
9 work is that lots of documents get circulated in draft
10 but sometimes it is not clear it's a draft or it's
11 a final version and sometimes there seems to be
12 a signature on a draft.

13 A. Yes.

14 Q. So that doesn't help identify --

15 A. Yes.

16 Q. -- the final version.

17 A. Agreed. Record-keeping wasn't perfect.

18 Q. I am glad you are prepared to accept that at the time.

19 So we appear to have a submission or revised
20 submission of 14 November of 2002 and this is obviously
21 in response to the Minister's unhappiness with the
22 original version, and indeed the background explains why
23 it is being presented again a day later.

24 Basically the Minister's position I think was,
25 having seen the response or the proposed response, "We

1 can't just do nothing, we need to look at this matter in
2 more depth and look at the various issues arising", is
3 that --

4 A. Yes.

5 Q. -- what her position was?

6 A. Yes.

7 Q. Indeed she did do that I think as we can find out.

8 Indeed it appears that the Minister, according to this
9 briefing or submission, had indicated that there should
10 be a clear statement that abuse was and is wrong. So
11 her position on that was quite clear?

12 A. Yes.

13 Q. Then we see, if we go to the memorandum to see the
14 proposed revised response is on page 3, if we just go
15 two-thirds of the way down, do we see that now
16 paragraph 1 reads:

17 "Any case of child abuse is unacceptable."

18 So I think that reflects the Minister's --

19 A. Yes.

20 Q. -- feeling that that had to be said at the outset to the
21 Committee. It says:

22 "Abuse of vulnerable children in institutions which
23 should provide them with safety is particularly
24 deplorable."

25 Again it's making a statement acknowledging that,

1 that it's deplorable, it's unacceptable. It is not
2 apologising and it is not expressing regret, would you
3 agree?

4 A. Yes.

5 Q. The reason for that I think, and we touched on it
6 earlier, is that -- because I want to make this point
7 just now, because I think in the statement of
8 Gerald Byrne perhaps at one point maybe the Minister
9 thought that the expression of regret, a statement to
10 that effect, had found its way into these final
11 briefings or submissions. But I think in fact when they
12 were circulated, including to OSSE, a solicitor within
13 OSSE around 14 November said "Don't go any further than
14 the two sentences in paragraph 1". I think a draft had
15 had reference to an expression of regret, but the legal
16 advice was to take that out because of the ongoing
17 litigation.

18 I don't want -- I can tell you there is an email to
19 that effect on 14 November before this was issued. So
20 does that make sense, does it appear to fit in with your
21 understanding?

22 A. It does, yes.

23 Q. Then of course paragraph 2 now reads:

24 "The Executive will consider whether a forum of
25 Inquiry of the sort requested [by Mr Daly] should be

1 established ..."

2 This doesn't in fact I think have the final version.
3 Maybe I should go to what the final version is, which
4 is -- this was the version that went on the 14th, so it
5 was certainly revising to say they will consider the
6 issue of an Inquiry, so that was the revision the
7 Minister had.

8 I think, reading this short, the response didn't go
9 until 17 February of 2003, I think. Are you aware of
10 that?

11 A. I'm not sure of the date but ...

12 Q. Take from me. And it didn't go because the
13 First Minister stepped in and said "I would like Jeane's
14 comments". There was a bit of discussion. I think now
15 Cathy Jamieson, having seen records, accepts there was
16 discussion with Jeane Freeman and a revised response was
17 prepared and she was content with it, and that was the
18 response that was issued on 17 February --

19 A. Yes.

20 Q. -- to the Petitions Committee. And I will maybe take
21 you to that briefly, if I can, so that we see what went
22 to the Committee. It's SGV-000046947. That should come
23 on screen shortly.

24 We see there -- we have seen this document, and it's
25 probably familiar to you, but it went out on 17 February

1 after this period when it had undergone reconsideration,
2 if you like, just to couch it in terms that reflected
3 the discussions and so forth. What we now see is in
4 paragraph 1 in the response on page 2 we see that
5 two-thirds of the way down, if we can scroll down, we
6 see that paragraph 1 is no different to the one I just
7 showed you which is that child abuse is unacceptable,
8 abuse of vulnerable children in institutions is
9 particularly deplorable, and then secondly:

10 "The Scottish Executive is considering whether
11 an Inquiry of the sort requested or some other forum
12 should be established to look into cases ..."

13 I think those words "or some other forum" were added
14 between 14 November and 17 February 2003 as a result of
15 the internal discussions that took place.

16 A. Yes.

17 Q. I don't want to go through the process, but I think that
18 was the outcome, that was the change --

19 A. Yes.

20 Q. -- perhaps from the formulation that was approved on
21 14 November by the Minister. It just added those words.

22 A. Yes, and I think they were added because the word
23 "Inquiry" conjured up very specific ideas in people's
24 heads and we knew that this would have to be designed
25 very carefully, as this Inquiry was. So we wanted to

1 give ourselves space to define something that might not
2 be something people would recognise as an Inquiry, given
3 we were going through things like the Fraser Inquiry
4 around about that time.

5 Q. Yes, I will come back to the Fraser Inquiry. I think it
6 loomed later on as well.

7 A. Yes.

8 Q. And maybe we'd like to discuss that when we get to that
9 point.

10 So it left open -- can I just raise with you a point
11 which -- the way that it has been put there in
12 paragraph 2, I think when I took evidence from
13 Michael McMahon, the Convener, I think he read that as
14 perhaps giving the green light to some form of looking
15 to the past, if I can put it very broadly, that
16 the Executive was considering either an Inquiry of the
17 sort requested "or some other forum" to look into the
18 historical position. And that that was the way
19 the Convener and his members read it, and therefore
20 there was an expectation perhaps that in due course what
21 the Executive would do would be simply to say "Well,
22 this is what we are going to do as far as the past is
23 concerned", rather than "We are still wanting to decide
24 whether we are going to do anything at all".

25 Do you see why that might be thought?

1 A. Absolutely, yes. Yes.

2 Q. So that was what they thought?

3 A. If you say anything else other than "We are definitely
4 not going to do something", people assume, if it is
5 a Government minister saying it, that we are actively
6 considering it, whether or not we are.

7 Q. I am just saying that seems to be --

8 A. Yes.

9 Q. Well, not "seems", he said that is the way they
10 interpreted it. It was encouraging, but the problem was
11 that it didn't have enough detail for them or any
12 indication of timescales for consideration of what
13 the decision would be. So I think that prompted the
14 further letter in March to the Executive asking,
15 basically, to provide an indication of timescales and
16 further response, and we know that that took until
17 30 June 2004 to finally appear?

18 A. Yes.

19 Q. Is that --

20 A. Yes.

21 Q. I don't want to take this out of turn but I think that
22 is where it got to eventually.

23 A. Yes.

24 Q. So they got the response. The Committee think, well, we
25 want a bit more information on this. We will bat it

1 back to the Executive.

2 I don't want to dwell on too much of the detail
3 between March 2003 and September 2003 when certain
4 important things were happening, but can I say this for
5 a start, and you deal with this in your statement so
6 I don't want to pass it over. There was an election
7 in May 2003, and you tell us that, in effect, for about
8 a couple of months before, that tends to change the way
9 Government works. And really it's not a period when
10 perhaps anything gets done that may require action by
11 an administration, anything of this sort, it tends to be
12 dealing with the run-up to the election and the
13 possibilities of change of administration or matters of
14 that kind.

15 I don't want to summarise it too much, but it is not
16 a period when -- well, you can understand it's a period
17 when lots of other things are happening and getting
18 done. It is very different from the normal ...

19 A. It is very different. There are two issues there. One
20 is that the Civil Service is thinking about what it
21 might have to do very quickly after the election
22 depending on who is elected, including continuation of
23 the existing Government, but the other thing is that
24 ministers are increasingly not announcing new policies
25 as ministers but through their manifestos, and so there

1 is less work developing policy and more work thinking
2 about what kind of policies we might need to be able to
3 bring in very quickly after an election.

4 Q. If we just say -- well, we can explain how or why things
5 may not have moved on very much between March and May,
6 and then there is an election, and in this case the
7 Labour Party were returned in a coalition administration
8 with the Liberal Democrats in May 2003. And for our
9 purposes there was a change in one important respect,
10 that Cathy Jamieson moved on to Justice and
11 Peter Peacock came in as the new Minister for Education
12 and Young People.

13 A. Yes.

14 Q. The records show I think that really this matter
15 probably didn't receive much attention between May and
16 late August of 2003, in part perhaps because
17 communications from the PPC chasing up responses were
18 going to the Health Department rather than Education
19 which had responsibility. But nonetheless, it doesn't
20 sound too satisfactory that if it went to the wrong
21 department it didn't end up in the right department
22 until late August. Would you accept that?

23 A. I would accept that, yes.

24 Q. But am I right in thinking, broadly speaking, there is
25 not much evidence that anything in relation to this

1 matter happened between roughly May and late August when
2 it then began to ...

3 A. I have said in my statement that I thought that six
4 months, from February through until September, far too
5 little was done. There are excuses -- the election and
6 a big new manifesto to think about, and so on -- but we
7 should have responded faster.

8 Q. Just on another point, because it was touched on with
9 Peter Peacock yesterday. He is a new minister, he has
10 not been in Education before. He doesn't know what was
11 going on before. Can you help us, because civil
12 servants continue even though administrations change.
13 What would you expect to happen when a new minister
14 walks in, so far as letting him know what is going on
15 and what should be actioned?

16 A. A number of things, but I suppose the two key ones are,
17 firstly, they will have an agenda on which they were
18 elected and so we need to say to them "What does this
19 mean? What do you want us to do? What is the most
20 important one to do first?" But we also need to say to
21 them "And here are the things which are not political in
22 that sense, things which are going on which need to
23 continue to go on", and this would be one of them. "So
24 here's a list of things that are already in your in-tray
25 and here's the set of things you are going to add to the

1 in-tray. Go and make sense of all of that then work out
2 priorities".

3 Q. I think his position was he has no recollection, at the
4 initial stage of being a new minister in this
5 department, of being alerted to this matter. He thinks
6 his first knowledge came around about the end of August
7 of 2003. Do you have a recollection --

8 A. I am not surprised. He was very much the Schools
9 Minister. Usually in that portfolio the ministers will
10 split it between them. So he was the Schools Minister,
11 the deputy minister was the Children Minister.

12 Q. Was that Euan Robson?

13 A. That was Euan Robson at that time, so that would have
14 been an issue on Euan's list. Now, we should have told
15 Peter, I have said we should have done this faster, but
16 Peter was very focused on the schools issues that he was
17 elected to implement.

18 Q. So can we take it, and I don't want to spend too much
19 time, we can take it that it looks as if it didn't come
20 to his attention until late August to allow him to then
21 seek advice, receive advice, and have a meeting with
22 relevant ministers to take decisions, is that -- would
23 that be fair comment?

24 A. I am not surprised if that was --

25 Q. You are not surprised. That is probably what happened,

1 it just didn't get to his ear and it didn't --

2 A. I am sure it would have been on a long list of things
3 that we would have shown him but that is not the same as
4 saying to him "This is really important. You have to
5 deal with it now".

6 Q. Against that he did say, and I think you make the same
7 point, and I don't want to labour it, but you make the
8 point that this was a big department, a busy department,
9 it had a lot on its plate, and indeed perhaps the
10 resources were stretched to deal with all the issues
11 confronting the department?

12 A. Yes, and specifically within the division that Gerald's
13 team was in. They were faced with a radical change to
14 the youth justice policy, and a request to completely
15 review and overhaul the children's hearings system, and
16 a request to bring in substantial new legislation in
17 relation to adoption, and a growing, much more general
18 looked after children agenda in terms of fostering,
19 adoption and so on.

20 Q. So that is the plea in mitigation, albeit you are not
21 trying to defend the time taken, but there were
22 mitigating circumstances, if I put it that way?

23 A. Yes, yes.

24 Q. Okay. But the matter did come to the attention of both
25 the Education Department and the Minister in September

1 of 2003?

2 A. Yes.

3 Q. And maybe we can just move to that period, if I may.

4 The first document I would like to show you in relation
5 to that period is SGV-000046949. I hope that is the
6 right one. That I think is an email from you to some
7 other members of the department?

8 A. Yes.

9 Q. Or your group, sorry.

10 A. "Mike" is Mike Ewart, the head of department.

11 Q. Yes.

12 A. "Maureen" is Maureen Verrall who was, at that point,
13 head of the division.

14 Q. Yes. So Mike Ewart is above you?

15 A. Yes.

16 Q. Maureen Verrall is below you?

17 A. And on leave at that point.

18 Q. Rachel Gwyon?

19 A. I'm not sure --

20 Q. Don't --

21 A. Rachel Gwyon, yes, she was the head of division.

22 Q. She was divisional head --

23 A. I think, from the timing, that Maureen was about to take
24 over as the division head when we split the division but
25 Rachel was still the division head.

1 Q. Then Gerald Byrne was the head of a branch, he looked
2 after a branch --

3 A. And Susan was in his team.

4 Q. Okay, we have the personalities. And this appears to
5 be -- once the petition had received the attention of
6 the officials, this is a meeting of officials to try and
7 discuss the way forward and to identify the key issues
8 that ministers will have to get advice on. Is that
9 the purpose of that meeting?

10 A. Yes.

11 Q. Do we see you were writing to the officials that took
12 part in that meeting to confirm what the key issues were
13 thought to be at that time?

14 A. Yes.

15 Q. I think the first one is whether or not to hold
16 an Inquiry.

17 A. Yes.

18 Q. It's clearly one of the aims of the petition. You
19 obviously discussed what views officials had and what
20 advice might be tendered in due course and, as we will
21 see, advice was tendered.

22 A. Yes.

23 Q. You say under that:

24 "On balance, we felt that the potential benefits (to
25 meet the needs of victims or to ensure that lessons are

1 learned) were limited and were outweighed by the
2 disadvantages (to victims as well as the wider system)."

3 So there is a reference to consideration of the
4 needs of victims as well as the needs of the childcare
5 system today, if you like, or as it then was. I go back
6 to my point, though, it's not evident that in addressing
7 those needs there was much done to ascertain what
8 survivors thought were their needs in relation to
9 the Inquiry and its purpose and whether it would do
10 something significant for them. Would you accept that
11 at that stage? You will say that you did engage later,
12 and I accept we will hear about that, but at that point
13 is it fair to say that whatever view an official had
14 based on whatever experience they brought to the table,
15 it is not saying, well, we have had a meaningful
16 engagement with survivors on this issue and this is what
17 is coming out of that engagement?

18 A. I have said in my statement I am not sure I could find
19 any evidence of when we first had discussions with
20 survivors, whether it was before or after that paper was
21 produced. This paper is silent on that. It doesn't say
22 we haven't discussed with them. That whether or not to
23 hold an Inquiry conclusion might well have been based on
24 discussions that had been held with survivors, I don't
25 know.

1 Q. But I think you make the point that if you were briefing
2 ministers and you were following good practice, and if
3 there had been engagement, you would have expected the
4 briefing to ministers to reflect that?

5 A. Yes, this email was not intended to be something that
6 said all of what would be in the advice, it was merely
7 something we talked about.

8 Q. No, I follow that.

9 A. I agree, yes, I did say I would expect there to be
10 reference to the discussions with survivors.

11 Q. In a briefing?

12 A. In a briefing.

13 Q. I don't think there was.

14 A. No. And I am surprised that we didn't include it, and
15 I am equally surprised that ministers didn't challenge
16 us on that.

17 Q. Just before you go on, were you at that meeting on the
18 25th?

19 A. No, I don't think I was.

20 Q. But you are not aware there was any challenge? It is
21 not apparent from the meeting or the note or anything
22 that anyone raised that issue with you, is that correct?

23 A. Not in that sense, no.

24 LADY SMITH: Colin, this note that you felt the potential
25 benefits were limited, and those include to meet the

1 needs of victims, doesn't tell me of itself what you had
2 in mind as the needs of victims at that stage.

3 A. No, and that wasn't meant to be, that was simply -- it's
4 really the underlined things which are: you need to
5 cover that --

6 LADY SMITH: I can see you might not write it down there.
7 Can you tell me now what you had in mind as being the
8 needs of victims, or survivors as we call them, that
9 required to be met?

10 A. I suppose two things: that their request to have
11 an Inquiry was taken seriously, and that of itself was
12 important, that it was seen to have been given proper
13 consideration, that for some survivors they may need to
14 be able to tell their own stories, for some survivors
15 they might need to see the stories being told and then
16 conclusions being taken public, Government agencies
17 responding to that in a way that they felt they hadn't
18 responded before. And for other survivors, a fear
19 perhaps of things being said publicly that would stir
20 memories, and we were conscious that different survivors
21 had different needs.

22 I agree that we didn't develop that, certainly not
23 in that note and not in the subsequent advice, but it
24 was considered as we went through.

25 LADY SMITH: How did you know that those were the needs of

1 victims and that those were the totality of the needs of
2 victims?

3 A. If we had been doing that even five years later we would
4 have had better ways, better understandings, of how to
5 engage with victims groups. I think it was early days
6 then, and we listened to some people, we spoke to some
7 others. I agree we didn't have a systematic way
8 or understanding of how best to assess that.

9 LADY SMITH: That wasn't actually what I was asking. I am
10 thinking back to what was in your mind at the time and
11 how it had got there and you have given me a list. How
12 had you come to learn that? How had you got to know
13 that that was what victims were looking for, as you saw
14 it?

15 A. I can't remember what was in my mind at the time, but it
16 would have been a combination of me seeing what had been
17 said by victims, talking to the experts we would have at
18 the time, social work inspectors and so on, who would
19 have worked as inspectors and as professional social
20 workers with people who had been victims, who would have
21 understood what -- or would have a view on what they
22 might need, and collective knowledge in Government about
23 other Inquiries which had taken place in the past, how
24 people had responded to that.

25 LADY SMITH: By that stage Ryan hadn't reported, I don't

1 think, had it, by 2003? That's the Irish Commission.

2 A. I don't think so.

3 LADY SMITH: The Australian Royal Commission obviously
4 hadn't reported by then. The Canadian one, the first
5 Canadian one? Possibly.

6 A. They had several --

7 LADY SMITH: The first one was the Christian Brothers
8 Newfoundland one.

9 A. That was an area of weakness and I think if you had
10 asked us at the time we would have said we are not sure
11 how best to do this.

12 LADY SMITH: Finally before I let Mr Peoples return, I think
13 by then the North Wales Inquiry had reported. Do you
14 remember whether you looked at that?

15 A. When I say "we", I mean collectively. Lots of reports
16 had been produced over the last ten years and they would
17 all have been well-known to certainly social work
18 inspectors who were giving advice to us on this.

19 LADY SMITH: Mr Peoples.

20 MR PEOPLES: I think the Waterhouse Inquiry was -- it
21 started in 1996 and it went forward to 1999, so far as
22 I recall, it was a major Inquiry into homes in
23 North Wales. The difficulty I think you are having in
24 answering that question is there is nothing written that
25 might confirm the extent of the exercise to establish

1 what were thought to be the needs and the advantages and
2 disadvantages from the perspective of survivors because
3 I haven't -- it's not apparent to me there is a lot that
4 we can see, even if there was a degree of consultation
5 with "the professionals". And of course the danger with
6 that is that if you tell people later on, "Well, we
7 considered your needs and we didn't think this would
8 meet your needs", but you don't ask them directly,
9 "Well, what do you think?" you can see where the
10 criticism --

11 A. I understand that. There are two distinct issues,
12 I think. One is: did we engage with survivors? And
13 I haven't found evidence that we did prior to that
14 submission going up. But I'm not sure when we did
15 start. The other issue is: did we have a mechanism for
16 establishing what survivors' needs were? And I think,
17 particularly given the work the Health Department was
18 doing on adult survivors more generally, that we had
19 a growing understanding of what survivors' needs might
20 be, albeit not explicitly in relation to this particular
21 type of abuse.

22 Q. Can I just ask a separate question? Had there been
23 a strategy to engage and some decision on how that would
24 be done, to engage with survivors directly to get some
25 either consultation or engagement process of a more

1 structured nature than just simply maybe someone saying
2 "So and so says this or so and so says that", if you
3 were doing that, you were doing nothing then, am I right
4 in thinking, to have prevented that being done? If you
5 look back, there was no impediment to proceeding in that
6 way, was there?

7 A. There was no impediment. One of the risks with that is
8 that the people who are willing to engage, if you are
9 not sophisticated in how you engage, the people who are
10 willing to engage may have particular views which are
11 entirely valid but not necessarily representative. So
12 one of the difficulties we would have had -- I'm not
13 saying we shouldn't have done it -- would have been how
14 would we know, even if we had spoken to 20, 30,
15 survivors, that they were representative of the needs of
16 survivors collectively? That was an issue which
17 certainly we faced very often in relation to school
18 education where particular groups of families with very,
19 very valid and legitimate concerns about particular
20 additional needs might not necessarily be representative
21 of all of the children in that group.

22 Q. I take your point. But the difficulty with that
23 response is that it rather -- it suggests that
24 consultation, and the risk that you only get a certain
25 viewpoint from that exercise, leaves you in the dark as

1 to what some might say the silent majority think.
2 Because consultations by their nature don't always
3 attract large responses. They may attract responses
4 from people who are particularly interested in making
5 views known, the views they share, but that is
6 the nature of the consultation process, is it not? You
7 have just got to accept that that is --

8 A. I am accepting that, at face value, it looks as if we
9 should have engaged more with survivor groups at that
10 time.

11 Q. Yes --

12 A. And we didn't, and we didn't say to ministers explicitly
13 either that we had or that we hadn't because ...

14 Q. You wouldn't have been treading on the Petitions
15 Committee's toes if you did that?

16 A. No.

17 Q. No, because I think the Minister may have tried to
18 explain why you might not have done it yesterday, the
19 former minister. But you could have done it. There was
20 not going to be any issue if you had sought views --

21 A. We could have done it and so could the Petitions
22 Committee.

23 Q. Yes.

24 A. And so could other groups.

25 Q. But they had the benefit at least of getting the

1 petitioners' views who were survivors, and they also
2 perhaps took views of -- well, they wanted your views or
3 the Executive views, and perhaps other views we can
4 maybe come to. So, yes, it was free for them to do that
5 but equally it was free for the Executive to do so?

6 A. Yes.

7 Q. If we go back to the meeting you had with officials. If
8 we move to the other issue identified, and I think this
9 explains why the second option in the briefing was truth
10 and reconciliation, whether or not to establish such
11 a Commission, and the view of officials, that summarises
12 that their arguments for this were weak.

13 I don't want to dwell on this one, but why does this
14 particular type of forum feature at this stage? Was it
15 because Cathy Jamieson had been reported as interested
16 in that particular model? Because there were press
17 reports going around in the summer of 2003 that she was
18 considering some form of Commission or Tribunal. Now,
19 whether these were accurate or not, I'm not here to
20 decide, but I am just wondering if there is any
21 connection between the two. Were you getting some
22 private indications that that was something that
23 ministers were ...?

24 A. I can't remember. Generally, we as officials, and in
25 discussion with ministers, were conscious that the word

1 "Inquiry" covers potentially a wide range of approaches.
2 At one end is a very formal, legally organised Inquiry,
3 at the other end is some kind of truth and
4 reconciliation approach, and there are all sorts of
5 variants in between. So in a sense one and two there
6 are saying there is a range of ways you could approach
7 some kind of public mechanism. And when it says there
8 "we felt the arguments for this were weak", I am reading
9 that today as: if you are not going to have an Inquiry,
10 then a Truth and Reconciliation Commission doesn't
11 appear to offer you anything better than the Inquiry
12 that in the previous section you suggested you might not
13 have. But that may not be the meaning at the time.
14 That is just reading it today.

15 Q. I suppose, if we go back to the original response to the
16 Committee, at least we can maybe see why something other
17 than an Inquiry was being considered because it did talk
18 about "some other forum"?

19 A. Yes.

20 Q. So that might be an explanation why at least one type of
21 other forum --

22 A. That is the "some other forum" idea.

23 Q. Discussion to see whether we ought to at least explore
24 other possibilities?

25 A. Yes.

1 Q. Just again for my benefit, we had a little discussion
2 yesterday about what a general Inquiry, full Inquiry
3 means or meant at that time. I think in the minds of
4 many at the time we are looking at here, 2003, a full
5 Inquiry or a full Public Inquiry, a general Inquiry, a
6 National Inquiry, was seen very much as a particular
7 type of Inquiry. You mentioned the Fraser-type Inquiry,
8 for example. It was seen as quite a -- that would be
9 a conventional-type Public Inquiry with lots of lawyers,
10 lots of questions, lots of cross-examination, where
11 people come with experiences. They will be tested, and
12 those that have are being accused of certain things will
13 have representation and may challenge them, and
14 ultimately it is for the Inquiry to make findings, and
15 they may be findings that some people don't like.

16 Is that the sort of Inquiry that was in the minds of
17 officials and others?

18 A. I think so. I think so. And later on in 2004, I am
19 sure you will come to this, but the discussions we had
20 with INCAS, they appeared not to be looking for that
21 kind of Inquiry but for something else.

22 Q. I suppose officials and ministers, had they read the
23 petition carefully, would have seen that, as I said
24 earlier, there were three things. It wasn't just
25 an Inquiry to investigate allegations and treatment, or

1 an apology from a number of people, but it was, thirdly,
2 looking for some form of sympathetic listening forum.
3 So there was a clue there, that they weren't just saying
4 one-size-fits-all or one-approach-fits-all, and that
5 what they were asking for essentially was choice, and
6 that the Irish model they saw perhaps gave choice, and
7 ultimately what was done here didn't give that choice
8 until much later down the line?

9 A. I understood specific action to support victims to
10 include the kind of listening forum that you are talking
11 about. So that was quite a broad, at this stage,
12 unspecified set of actions to support victims.

13 Q. But listening through perhaps the initiatives from the
14 Health Department, because it may have been seen perhaps
15 at that time as primarily a health issue for adults that
16 needed to be addressed by that department to come up
17 with ideas, as they did ultimately. You will know this,
18 they came up with Time To Be Heard and the National
19 Confidential Forum, a different administration, but you
20 know that, don't you?

21 A. Yes. But that, whether to take specific action to
22 support victims, for me at the time was felt to be
23 something that could be very broad, short of the kind of
24 formal process implied by the Inquiry and the
25 Commission.

1 Q. But just to be clear, ultimately, until May 2007 at
2 least, no forum of that type was established?

3 A. Yes.

4 Q. And indeed a truth and reconciliation forum, if it was
5 thought to be an alternative, was rejected and was not
6 revisited between 2003 and 2007, is that correct?
7 Or May 2007?

8 A. It's a different issue, but some of the decisions were
9 deferred until the legal dimensions were settled.

10 Q. Compensation we will come to --

11 A. Compensation, and the referral to the Law Commission and
12 so on.

13 Q. We will come to that. But you make that point in your
14 statement, that that wasn't a decision, that was
15 deferment of a decision for certain things to happen?

16 A. Yes.

17 Q. The third key issue, which we have just touched on, was
18 whether or not to introduce a compensation scheme.
19 And indeed the view at that stage was that:

20 "The decision will be affected by the current test
21 case to establish whether these cases are time-barred so
22 it's wise this decision is delayed."

23 You are not a lawyer, Peter Peacock is not a lawyer,
24 Cathy Jamieson is not a lawyer. And we did have
25 a little bit of discussion with your former ministers

1 that you were supporting what was meant by time bar and
2 the current cases. Can you just help me with that? You
3 may not be able to. But what was -- it says "the
4 current test case". Was that a reference to M v Hendron
5 which was to do with time bar limitation?

6 A. There were two cases, one was around time bar
7 limitation, prescription, that collection of issues, and
8 the other was around the Executive being cited in the
9 test case as potentially liable. The view that was
10 taken in relation to compensation was that for that
11 second one, whether the Executive had a liability, it
12 would make a compensation scheme easier to think about,
13 understand, implement, and something that potential
14 victims could make an easier decision about whether they
15 wanted to access it once the outcome of that test case
16 was known.

17 Q. I think that test case was M v Hendron?

18 A. Yes.

19 Q. There were a number of defenders. There was an issue of
20 limitation taken on whether it was out of time and
21 a second issue about whether the Executive had any legal
22 liability for abuse that had happened in institutional
23 care, and so these were issues in that case?

24 A. Yes.

25 Q. The other matter you have referred to in the other case,

1 it was a test case, if I may say, was Kelly.

2 A. Yes.

3 Q. Which had already been decided in the Outer House in
4 2002 and had led to the recent submission which you are
5 familiar with and was mentioned, and indeed went on to
6 an appeal. But that was concerned I think with a claim
7 by someone who had a conviction to rely on, had suffered
8 abuse before 1964, and was confronted by the law
9 relating to prescription, and was told "You don't have
10 a case because your claim was extinguished many years
11 ago". That was a decision which was upheld in 2005,
12 July, and not further appealed, I think. And I don't
13 think the Executive was directly involved in Kelly --

14 A. No, it wasn't --

15 Q. It was against a local authority.

16 A. We were conscious that the outcome of that might also
17 impact on what kind of compensation scheme you might
18 design.

19 Q. Yes, obviously there may not have been a defender, but
20 the result -- it didn't matter who the defender was; if
21 you were in a Kelly situation you could just simply say
22 it is prescribed, and the law will not allow you to
23 argue, or argue for an extension of time?

24 A. Yes.

25 Q. Yes. So that was a category that --

1 A. So the issue --

2 Q. A category that officials were clear was distinct in
3 some ways from the people in the Hendron case who did
4 have a right to come to court and say "Let me have my
5 day in court, waive the limitation --"

6 A. My recollection of the argument was that both these
7 categories, once that was resolved legally, would
8 potentially have an impact on what kind of compensation
9 scheme you might design and how it might work, and
10 therefore the issue of compensation was deferred
11 deliberately. In every other case decisions were made
12 and sometimes changed subsequently. In this case we
13 decided just to wait. You could argue we shouldn't have
14 but that is what happened.

15 Q. I might suggest to you that there is a very respectable
16 argument saying you shouldn't have been, because Kelly,
17 as we just said, was decided in July 2005, it didn't go
18 any further legally, so I think we can read into that
19 what the people pursuing that claim thought, that they
20 were not going to get a different result --

21 A. But in relation to decisions taken in 2003, which is
22 where we are in this process, at that point it was
23 decided to wait.

24 Q. Yes, I know. But I think you said that you would wait
25 until various things happened, and I am just saying we

1 know that in relation to that category of case, perhaps
2 the time to reflect on a scheme for people in that class
3 of survivor pre-1964 had come once Kelly was out of the
4 way?

5 A. That may have been.

6 Q. You can see what the argument is, can't you?

7 A. Yes.

8 LADY SMITH: The issue that the Government would have to
9 address would be a different one if Kelly was upheld,
10 which is whether they should step in and seek to assist,
11 through, for example, a compensation scheme, people who
12 had no access to the court --

13 A. Yes.

14 LADY SMITH: -- because their right had gone, dissolved.

15 A. Yes.

16 LADY SMITH: Whereas if it had gone to the other way, one of
17 the considerations the Government would have had to have
18 regard to was, well, there is a way of them having
19 access to the court. Do we nonetheless think that we
20 should make a compensation scheme available? It's a
21 different issue.

22 A. Yes.

23 MR PEOPLES: We will maybe come back to that.

24 The fourth key issue, the fifth, sorry. I'm not
25 counting very well this morning. How to give access to

1 relevant files was another issue that was identified and
2 this was said to be complex. I think this did lead to
3 quite a lot of discussion on how one might progress this
4 if it was adopted as a policy.

5 The background to this, if I can suggest, was that
6 there had been notable convictions of individuals who
7 had worked at St Ninian's, Gartmore in 2003, an
8 institution run by the De La Salle order, including one
9 of the brothers of that order. That seems to have
10 sparked quite a lot of media attention, particularly in
11 the Sunday Mail in the summer of 2003. It seems to have
12 caused journalists to ask for Government records and
13 files that might relate to such establishments, List D
14 schools, and it seems to have resulted -- and I don't
15 want to go into too much of this -- but resulted in
16 files being pulled or withdrawn or they weren't allowed
17 access to, and I think there was an accusation, and I am
18 just putting it this way, of cover-up --

19 A. There was.

20 Q. -- in the press. And also, by way of follow-up,
21 the press was saying, or the Sunday Mail was saying,
22 "Write to the Government under data protection
23 legislation and ask for files that contain information
24 on you". And that was a background to why this issue
25 became prominent, is that fair comment?

1 A. Exactly. Files had been released, and then when it was
2 realised they contained information about individuals
3 other than the one who had asked for them they were then
4 withdrawn. That was what prompted the accusation of
5 cover-up. We spent a lot of effort from then on working
6 out how to make it possible to release files to people
7 under Freedom of Information while meeting people's data
8 protection needs.

9 Q. I think once this issue became live you had to take the
10 position: do we just do it on an ad hoc basis every time
11 someone makes a request, or are we better, if this is
12 going to happen on a regular basis, to have a policy
13 that we will just open things up, but we will have to do
14 it in compliance with data protection and other relevant
15 legislation. And I think the latter course was the
16 one --

17 A. It was.

18 Q. -- adopted by ministers on advice?

19 A. Yes.

20 Q. And that led to quite a lengthy process of trying to
21 find what were the relevant files --

22 A. Yes.

23 Q. -- for a start, and then to do what was called
24 redaction, to block out things that legally should not
25 remain in the file if published. Is that in broad

1 terms --

2 A. Yes, yes.

3 Q. That is what led to that. And that was one of
4 the policies or measures that the Petitions Committee
5 were told about in June 2004?

6 A. Yes.

7 Q. And was, to some extent, announced by Peter Peacock
8 in December 2004 as part of the steps being taken, is
9 that reasonable?

10 A. Yes, it is. We had suspected, and it turned out to be
11 the case, that Government held virtually nothing about
12 individuals. Most of that was held by establishments or
13 had been held by establishments. But the Government
14 tried to provide a lead by saying "We are making
15 everything we hold available and here's a way of
16 redacting it". It worked with Barnardo's and others,
17 they should had done the same kind of exercise
18 themselves.

19 Q. Yes, you had issues like: do you support people if you
20 open them up? You had to consider things like that that
21 other organisations had experience of.

22 A. Yes.

23 Q. The view was reached, perhaps in a slightly broadbrush
24 way, if I might put it this way, that it didn't look as
25 if there was a lot of detailed information about

1 individual children or their treatment in the Government
2 files. But am I right in thinking that in fact what was
3 being done was more a search and compiling a list of
4 relevant files, rather than a very structured analysis
5 of what was in the files, because that was going to be
6 left to others to decide if it had validity or
7 relevance?

8 A. It was a two-stage process, yes. The first stage was to
9 identify the files that might have information, and the
10 second was for officials then to go through individual
11 files and redact them.

12 Q. But they weren't really there trying to compile
13 something about what story is it telling us about the
14 treatment of children in care, they were just trying to
15 say: we want to see if they are relevant, we want to see
16 what information has to be taken out by way of
17 legislation. They weren't taken to the third step
18 saying: now we have them all of them in front of us,
19 someone is going to sit down and work out what our state
20 of knowledge in the record is?

21 A. No, indeed, yes.

22 Q. The last matter identified is not really a category, as
23 such, it's just whether any of the above sets a
24 precedent. That is clearly a consideration that might
25 well be raised when there is an issue of this type that

1 has to be discussed. In setting that out, did you have
2 any particular concerns that you might be setting
3 a precedent?

4 A. I think in relation to this kind of issue I would always
5 have asked that question: are we causing problems for
6 a different interest group, a different set of
7 individuals, a different policy area, by anything we
8 might decide in relation to this one? So check with
9 other interests across Government in case we are saying
10 something that makes sense for that particular set of
11 individuals and circumstances but it actually
12 potentially causes a problem for somebody else. Not
13 then to say we wouldn't do it, but at least you have to
14 develop an understanding of that interaction.

15 Q. I think Peter Peacock did recognise that while he had
16 a personal position on time bar and the unfairness of
17 time bar in the case of childhood abuse claims, he did
18 recognise that there might be other arguments because it
19 has an effect across the board in many contexts.

20 A. Yes.

21 Q. I don't know when he first disclosed this to his
22 officials, but he was uncomfortable with a time-bar
23 defence.

24 A. He was, yes.

25 Q. You knew that?

1 A. I knew that, yes.

2 Q. He had exchanges indeed with the Lord Advocate about
3 whether the defence should be maintained.

4 A. Yes, he did.

5 Q. Although ultimately the decision was taken that it would
6 be maintained because it was seen as important for
7 a variety of reasons by the Government.

8 A. Yes.

9 Q. So that is the background. Then a paper has to be put
10 together, and a paper is put together dated
11 23 September 2003.

12 If we could go to SGV-000046937, which is a paper
13 that runs in your name, which is the submission or
14 briefing for ministers for the meeting on 25 September
15 2003. Can we just look that that.

16 Can I ask first of all, clearly it runs in your
17 name, and we know that obviously there was an official
18 in your department that was the official before then.
19 Was there a reason why this ran in your name? Was this
20 significant or not?

21 A. Again, it is a long time ago to remember what was in my
22 head, but I am fairly sure by that stage I had decided
23 this had to be pushed along, and if my name was at the
24 top of it that would appear to give it more authority.

25 Q. Things did move quite quickly because you had your

1 meeting on the 10th, you had a briefing on the 23rd and
2 a meeting with ministers on the 25th, so things can move
3 quickly if the conditions are right?

4 A. They can, and other things get delayed elsewhere in the
5 system but that is life.

6 Q. So the purpose of this was to advise on four options
7 which had been really arising out of the Daly petition
8 and issues of non-recent abuse.

9 A. Yes.

10 Q. Basically the primary recommendation was: don't have
11 an Inquiry into historic abuse. Paragraph 1 I think is
12 to that effect, that simply sets it out. And that the
13 policy approach:

14 "... should be to improve service responses for
15 adult survivors and offer to help victims with access to
16 files held by the Executive."

17 So it was to help them in relation to any legal
18 claims or legal route they wanted to pursue but also to
19 improve service responses. That is a broad description.
20 I think that is support services, whether it's
21 counselling, improved services that are specifically
22 tailored to in care abuse victims and other initiatives
23 as well as assistance if they want to pursue legal
24 remedies.

25 A. Yes.

1 Q. That was the access to files --

2 A. Yes.

3 Q. -- issue. That was one of the responses that the
4 Government was prepared to pursue?

5 A. Yes.

6 Q. Again it's made clear, and I know it runs in your name,
7 but it says:

8 "This advice has been agreed by colleagues across
9 the Executive."

10 So this is the collective advice?

11 A. Yes.

12 Q. If we then look at -- I don't really want to go into too
13 much of the background information. We had a little bit
14 of a discussion yesterday about how widespread the
15 problem was, but I think in light of your evidence
16 we don't need to go into that in too much detail.

17 You have told us very frankly that as far as the
18 officials are concerned, maybe they didn't say it as
19 clearly as they should have done, it was considered to
20 be a widespread problem that there had been historical
21 abuse?

22 A. Yes.

23 Q. And it wasn't something to be categorised as rare --

24 A. No.

25 Q. -- in practice. So what you do in this briefing, or

1 what officials do in this briefing, is to present the
2 ministers with four options at paragraph 4:

3 "A full Inquiry in public or private chaired by
4 a senior figure involving a wide-ranging remit, evidence
5 from witnesses, counsel for parties affected."

6 That probably means the Fraser-type Inquiry that you
7 had in mind at the time?

8 A. Yes.

9 Q. Secondly:

10 "A Truth and Reconciliation Commission allowing
11 survivors of abuse to tell their stories in private, not
12 as evidence and probably without counsel."

13 So it was a different model and it might not have
14 the same legalistic features that a conventional or full
15 Inquiry would have, so that was something that was under
16 discussion?

17 A. Yes.

18 Q. Thirdly:

19 "No Inquiry but a package of other measures
20 including access to files for legal advisers, improved
21 health and social care services for survivors ..."

22 And it says:

23 "... of sexual abuse and in some cases
24 compensation."

25 I think later in that briefing, as we will see, the

1 type of abuse that was to be supported, survivors of the
2 type of abuse to be supported, involved physical,
3 emotion as well as sexual abuse.

4 A. Yes.

5 Q. Why was sexual abuse singled out in option three at the
6 beginning? Was there a particular reason for that?

7 A. I honestly don't know.

8 Q. What we do know, and maybe this was something that
9 officials had in mind, is that the Health Minister,
10 Malcolm Chisholm at one stage, had set up a short life
11 working group specifically to look at the services and
12 support for adult survivors of childhood sexual abuse,
13 wherever that abuse had occurred. You are familiar with
14 that, are you not?

15 A. Yes.

16 Q. And indeed they were in the process of preparing
17 a report, which I think eventually appeared in 2004, and
18 they basically said the services were not sufficient and
19 should be improved for that category of abuse victim.

20 Do you think that had some bearing on this terminology?

21 A. I think that is careless wording. Because jumping ahead
22 to annex B, the paragraph that elaborates on that refers
23 to:

24 "... sexual abuse, programmes for improving mental
25 health and well-being and commitments in the Justice

1 Department to improve responses to victims of crime."

2 So it was meant to be a much broader issue than just
3 sexual abuse and that wording is careless in that first
4 paragraph.

5 Q. But in some ways what started off as a particular issue,
6 childhood sexual abuse in the community or elsewhere,
7 which had resulted in a cross-party group being formed
8 before the Daly petition, and resulted in a short life
9 working group which was looking at the matter at that
10 time, to some extent that was the sort of precursor to
11 what became a sub-group of the National Reference Group
12 and the In Care Survivors Support Service. To some
13 extent it developed as like an add-on to Survivor
14 Scotland, didn't it, in due course?

15 A. Yes, and we were always clear that the abuse was not
16 restricted to sexual abuse. It was the full range of
17 abuse.

18 Q. So that is the third option. And the fourth is the do
19 nothing option and just let the justice system take its
20 course, but assisting by access to files, insofar as
21 that was going to assist, and retaining the health
22 dimension. Retaining the health dimension is -- what do
23 you think was meant by that?

24 A. I think that simply means don't stop doing the things we
25 are already doing. It really means do nothing new.

1 Q. Is that Civil Service speak for do nothing?

2 A. No, no, because we knew the cases were going through the
3 courts, we were providing health support to adults. It
4 was: do these things but don't add in new dimensions.

5 Q. I should perhaps say, in praise of succinct summaries,
6 that Peter Peacock did say he liked to have an A4 type
7 submission followed by annexes which might have more
8 information, and I think this might be an example that
9 was -- it reached two pages in this case, but was that
10 what he liked? He liked to have it fairly --

11 A. He much preferred one page, and that was to include all
12 the recipients' names as well. That wasn't realistic.

13 Q. Fair comment. But he would have the other information
14 to hand --

15 A. Yes.

16 Q. -- that he could delve into?

17 A. Yes.

18 Q. The recommendations on paragraph 8 of the submission,
19 and it's twofold:

20 "The Executive concentrates on the service responses
21 for adult survivors of childhood abuse as our main
22 response to the needs of victims."

23 And secondly:

24 The Executive looks to help those alleging abuse to
25 access information from Executive files."

1 And then we see there are two annexes I think.
2 Annex A gives to some extent background information
3 about the known cases and what was known about
4 allegations and convictions and claims and so forth. We
5 read this yesterday, and I am not going to read it all
6 unless -- are you familiar with all of this?

7 A. Yes.

8 Q. And indeed the background of requests to the Executive,
9 and the publicity given to the List D situation. It
10 seems quite a large catalogue of things that are going
11 on which would -- it would be good evidence of
12 a widespread problem?

13 A. Yes.

14 Q. Without any more research being done?

15 A. Yes.

16 Q. It seems there were potentially 300 cases in the system
17 and probably 300 cases the Executive might end up
18 defenders in. That is a lot of cases?

19 A. Yes.

20 Q. You do I think have, under paragraph 5 in the body of
21 the submission, under "Files", I think you are giving
22 a health warning there, if I may say so, in the first
23 sentence:

24 "We are not confident we have a complete list of
25 files that would be relevant to List D schools and other

1 institutions."

2 Is that really just flagging up that, well,
3 ultimately, we may not have everything that we once had,
4 or we may not have all the information --

5 A. I think --

6 Q. -- pertaining to that?

7 A. No, I think it is saying there may be some files which
8 in fact contain some information, but because of what
9 the file is called, it would be difficult for somebody
10 to guess that there would be information in that file.
11 That is just a general health warning, it's not specific
12 to this.

13 Q. That was a general problem with filing, was it?

14 A. In any filing system.

15 Q. Historically?

16 A. In any filing system, not just Scottish Government.

17 Once you have decided where to put something then it's
18 not somewhere else if it is a paper file. So you might
19 put something in one thing for perfectly good reasons
20 but it contains information that is also relevant to
21 something else. That is all that is saying.

22 Q. And you might give it a title that wouldn't give a clue
23 to the fact that it is something of relevance to a
24 particular issue?

25 A. Yes, because the thing you are interested in might be in

1 an annex to something completely different.

2 Q. If I could take this point from you. I think you
3 recognised that perhaps then, and indeed historically,
4 there wasn't a go-to centralised structured system to
5 say this is what we have on treatment of children in
6 residential institutions, or allegations of abuse, or
7 complaints against management or so forth. The
8 information might be there but it wasn't in any kind of
9 collated form. If the Minister had said "Colin, I want
10 a one-page summary of what we have", you couldn't just
11 press a button or look at a file or some catalogue and
12 say "This is what we have. This is the picture of what
13 is in our files". That just didn't exist?

14 A. That didn't exist, and that came through very clearly
15 from Tom Shaw's report. What you would do would be to
16 contact the individuals who had been in the system for
17 a long time within Government, particularly
18 inspectorates, and they would probably be able to answer
19 that question, but you couldn't be confident you would
20 catch everything.

21 Q. That is a slightly rough and ready way of doing things?

22 A. Yes.

23 LADY SMITH: Mr Peoples, it's 1 o'clock now. I think we
24 will pause at that stage for the lunch break and, Colin,
25 I will sit again at 2 o'clock.

1 (1.00 pm)

2 (The short adjournment)

3 (2.00 pm)

4 LADY SMITH: Good afternoon. Colin, are you ready to carry
5 on now?

6 A. Yes.

7 LADY SMITH: Mr Peoples.

8 MR PEOPLES: Good afternoon, my Lady.

9 Colin, before lunch we were looking at the
10 submission on 23 September 2003, which is still on the
11 screen, which I would just like -- we had looked at the
12 options that had been put forward at that time, and the
13 recommendations at that time. As I say, I am not
14 planning to go through all of the content of annex A
15 about the background information, I think we have
16 discussed that and I think you have explained what the
17 intention was about the issue of how widespread the
18 problem was however that was expressed. And we had
19 obviously a discussion about the state of files if you
20 like and finding information, and so forth.

21 There is reference obviously in there to the earlier
22 memorandum at paragraph 8 that was sent, the initial
23 response to the Committee, and it sets out what that
24 initial response was at paragraph 8, if we can -- this
25 may be the next page. If we go into annex A, it may be

1 the second page of annex A. If you move it on a couple
2 of pages. The next page after that, perhaps? (Pause).
3 Paragraph 8, yes.

4 So it's setting out what had been done. And then it
5 is recorded:

6 "No interest in the subject has so far been shown by
7 the cross-party group on survivors of childhood sexual
8 abuse."

9 That is paragraph 9.

10 That is mentioned again in the discussion section in
11 annex B, and if we could move to that for the moment.
12 The options are set out and then the discussion begins,
13 and we have had the whole of this discussion before us
14 yesterday and it was read out, but it does begin:

15 "The pressure to act on this issue has not been
16 intense ..."

17 And there is reference to the petition, stories in
18 the Sunday Mail, but no widespread Parliamentary or
19 press interest. It is noticeable a cross-party group
20 has not taken up the case. And the Sunday Mail story,
21 which I think was inviting people to ask for records,
22 had so far attracted less than 20 requests under
23 the Data Protection Act.

24 "Criminal convictions have so far been isolated and
25 no evidence of wide-spread or organised abuse at

1 Scottish institutions."

2 Am I right in thinking that that last sentence, we
3 should at least have regard to what you have told us
4 today day in your evidence, that if it was suggesting
5 that there was no evidence of widespread abuse, that
6 would not have been the intention or the language that
7 should have been used to express the position? It reads
8 as if it is saying there is no evidence of widespread or
9 organised abuse as if they are looking at both
10 alternatives?

11 A. Yes, it would depend how you understand the word
12 "widespread". There was too much, and I have made it
13 clear at various places.

14 Q. Your position is that whatever was recorded there, so
15 far as officials were concerned, they were not disputing
16 the fact that the problem was widespread?

17 A. There was too much abuse, yes.

18 Q. And systemic failings of the types you have set out in
19 the statement and the nature of the failings?

20 A. Yes.

21 Q. It was just whether, against that background of
22 widespread abuse and systemic failures, a full Public
23 Inquiry was justified, and in the view of the officials
24 it wasn't for the reasons they were setting out?

25 A. What that paragraph is saying is there is not a great

1 deal of external interest in this and therefore, over
2 the page, you could do nothing. That is all that
3 paragraph was saying, and that is what was at that point
4 being done in England and Wales. But then that is not
5 the option we choose.

6 Q. Indeed, if we go on to the next paragraph, just before I
7 ask you about one matter, you do say:

8 "On the other hand, there have been a criminal
9 convictions. It is hard to believe there were no other
10 instances of abuse at these institutions in Scotland."

11 So even if there was some dubiety about what was
12 meant by "widespread abuse", you were at least flagging
13 up that whatever the known situation is, there might be
14 more than that.

15 A. Yes.

16 Q. And it seems Cathy Jamieson didn't need convincing about
17 that given the evidence she has given to this Inquiry.
18 And I think we will hear the former First Minister
19 believed this might well be the tip of the iceberg.

20 So whatever the officials were thinking, it may not
21 have been the same thoughts as the Ministers or
22 First Minister at that time?

23 A. And paragraph 3 is reflecting the fact that we did
24 understand that there was a great deal of abuse.
25 Exactly what word you would use to describe it is

1 debatable.

2 Q. I think you said quite frankly this morning that if one
3 had one's time again, you would have perhaps drafted it
4 in a slightly different way to make clear the position
5 that you outlined today.

6 A. Yes.

7 Q. There is one matter I want to take up with you. It was
8 in fact incorrect to say the cross-party group had taken
9 no interest in the petition, and I don't know if that
10 was something -- obviously you proceeded or the
11 submission proceeded on the footing that they hadn't
12 taken up the case as it was put. But can I ask you to
13 look briefly at another document, which is a report of
14 the Public Petitions Committee, which is SGV-000046927.
15 This should come up on screen if I can have that in
16 front of you.

17 You will recall the memorandum went in February, the
18 Committee met on 25 March 2003, and at the first page if
19 we scroll down, there is a paragraph there in the record
20 of what the Convener said, Michael McMahon, halfway
21 down:

22 "The cross-party group in the Scottish Parliament on
23 survivors of childhood sexual abuse is of the view that
24 it is right to expect such an Inquiry and that an
25 unreserved apology from the religious orders concerned

1 to survivors would be appropriate."

2 So that is a clear expression of view to the
3 Committee at that stage that they were taking
4 an interest and they did have a position that supported
5 the petitioner. So do you accept that what was said to
6 ministers at that point was in fact incorrect?

7 A. That sentence is incorrect, yes.

8 Q. It's hard to say now what the effect of a correct piece
9 of information would have been. But the point I would
10 put to you is at least you had flagged up something that
11 you considered in the discussion to be noticeable and
12 significant, as if it had some materiality to the
13 decision that ministers had to take about the degree of
14 interest and who was pressing for an Inquiry. So can
15 we take it that -- well, how do you respond to that?

16 A. It was a mistake, for which I can only apologise, but it
17 was used in the discussion as a basis for saying you
18 could do nothing, and we weren't recommending that
19 option and the Minister didn't take that option. So it
20 was an error that there shouldn't have been, but I do
21 not think it would have affected the outcome of the
22 discussion.

23 LADY SMITH: Even though the cross-party group had expressed
24 quite clear views to the effect that they thought there
25 should be an Inquiry and an unreserved apology from the

1 religious orders?

2 A. I can see that from this paper which is on the screen,
3 yes.

4 LADY SMITH: So that was a formulated body of opinion from
5 an important group that was looking into this.

6 A. Ministers would have been aware of what that cross-party
7 group were doing. We got it wrong in that submission --

8 LADY SMITH: Do you know whether they were aware?

9 A. I don't know that, but I would have expected them to
10 have been. They had enough conversations among
11 themselves, they would be --

12 MR PEOPLES: But ultimately you are telling us officials
13 were thinking there is a widespread problem, it was
14 indicative of systemic failures of quite a serious type
15 historically, and indeed now we see that there was
16 a group particular group that was supporting an Inquiry
17 and had told the Committee that. So, surely, putting
18 all these together might well have convinced some
19 ministers that maybe we shouldn't just be so quick to
20 reject a full Inquiry given all of these factors. Do
21 you accept that?

22 A. I accept the theoretical possibility. But even later in
23 the process, at a point when it was clear there was
24 widespread interest among MSPs, ministers still decided
25 not to go ahead with an Inquiry.

1 Q. Yes, well, ultimately, and maybe we can just hit this on
2 the head just now, this was the occasion, on
3 25 September 2003, when the Ministers took the
4 substantive decision, internally or privately or without
5 making it public, about whether there should or should
6 not be an Inquiry. This was the detailed consideration.
7 And that was only time that they really had that form of
8 consideration between then and making public the
9 decision that they had reached. Is that correct? That
10 is what it comes to?

11 A. That is correct. But they reviewed that decision in
12 2004, new ministers and the new administration reviewed
13 it again, and they came to the same conclusion. So
14 I accept that there was an error in that advice.

15 Q. Okay. Yes, and you are very frank about that. I think
16 it is difficult not to accept it because we have seen
17 the record. But you say they reviewed the decision in
18 2004, I am wondering what you mean by that?

19 A. Peter Peacock met with INCAS in 2004. He had
20 a discussion with them about -- they said they wanted
21 an Inquiry. That was discussed with him, with
22 officials. At the point when Jack McConnell made the
23 Apology in Parliament, ministers had at that point again
24 reviewed this whole issue. And so they could at that
25 point have decided to go ahead and say "We have changed

1 our mind, the circumstances are different, we will have
2 an Inquiry".

3 Q. So what you are really saying is, okay, they have taken
4 this decision, they announced it to the Public Petitions
5 Committee in June, that had all been done. They then
6 had engagement with INCAS. It was clear INCAS wanted
7 an Inquiry of some description, not perhaps what they
8 were given in the end in terms of an independent person
9 review. And despite Peter Peacock hearing that in
10 person when he met them in person, you are saying he
11 wasn't persuaded. Despite the impact that may have had
12 on him and how sincere they were in whatever they said,
13 he didn't shift in his position on that, and indeed
14 the Executive didn't in the run-up to the debate. Is
15 that what you are saying?

16 A. Yes.

17 Q. In a sense, you see that as perhaps a form of
18 consideration of the issue again not maybe in the formal
19 sense of having a meeting with a lot of ministers
20 present and a briefing, but it is -- you would see that
21 as a form of further consideration of the issue which
22 could have led to a different outcome?

23 A. It could have. And Parliament was discussing in the
24 debate around the Apology the possibility of an Inquiry.
25 That was raised as an issue then. There were lots of

1 opportunities ministers could have said "We have changed
2 our minds". Ministers change their minds about a whole
3 range of things --

4 Q. But they didn't on this occasion?

5 A. They didn't on this occasion.

6 Q. But never say never I think -- I may be putting those
7 words in his mouth, but I think that was the gist of
8 what he said yesterday, that no decision is necessarily
9 permanent or irrevocable. On this occasion it turned
10 out it was final, at least until 2014. I think that
11 is --

12 A. Yes.

13 Q. -- what we see --

14 A. Yes.

15 Q. -- from the events in the record.

16 The other thing, and just while I'm on it, and
17 I don't want to spend too much time on it, but you have
18 said that was in the context of a discussion about doing
19 nothing that you had made that comment. You said
20 ultimately the Ministers decided not to do nothing, and
21 indeed the officials weren't saying don't do anything.
22 In fact you were, in paragraph 3, saying that perhaps
23 there is a case for doing something now.

24 A. Yes.

25 Q. When you said there is a strong case for the Executive

1 acting now on this issue, am I taking it you weren't
2 retreating from the position on an Inquiry, it was just
3 there was a strong case for some form of action and
4 response and the one you were urging on ministers was
5 option 3. Is that how we interpret that, the strong
6 case? You are not saying there was a strong case for
7 an Inquiry?

8 A. No, at that point in the argument what I am suggesting
9 is we rule out the do nothing option --

10 Q. But there is a strong case for doing something?

11 A. Yes, whatever that something might be.

12 Q. But not an Inquiry?

13 A. The not an Inquiry argument comes later. That paragraph
14 is just saying let's not do nothing.

15 Q. But we don't read it as "We think there is a strong case
16 for a Public Inquiry or a full Inquiry of the type that
17 the petition asked". You didn't say that in this
18 briefing?

19 A. No.

20 Q. You weren't intending to say that?

21 A. All I was intending at that point to say was we
22 recommend, ministers, you don't do nothing.

23 Q. Can I pick up one other point which has been the subject
24 of some discussion about when you do look at the full
25 Inquiry option and the pros and cons at paragraph 4 and

1 5 and various issues connected with that option, one of
2 things you said in the briefing at 5(ii) is:

3 "The level and nature of the allegations do not seem
4 adequate to justify a full Inquiry. The allegations are
5 against isolated individuals rather than widespread
6 evidence of systemic failure or conspiracy by management
7 across a number of schools."

8 That slightly jars with what you were telling us
9 this morning that officials thought it was a widespread
10 problem but, for a variety of reasons, they didn't
11 support a full Inquiry. So do you accept on a fair
12 reading of that it looks as if the officials are saying
13 to ministers "We don't think that the level and indeed
14 the nature of the allegations are adequate", I think is
15 the expression, "to justify a full Inquiry".

16 So what are they supposed to take from that other
17 than saying that you are telling us there is not enough
18 of them and they are not of a nature that would warrant
19 a full Inquiry of the type that we described, that
20 people understood at that time? What are we supposed to
21 read into that? It doesn't seem to be consistent with
22 the thinking.

23 A. What I would read into that now, and I can't remember at
24 the time, but for now I would say, yes, there was
25 widespread -- evidence of widespread abuse and there had

1 been for some time, and action was being taken through
2 various reports and policy initiatives and so on. This
3 is not identifying something which is widespread -- and
4 I should say "systematic" rather than "systemic" there,
5 we have discussed that this morning, and there was no
6 evidence of conspiracy. So there is something in this
7 about it's not identifying something sufficiently new
8 and different and serious that we need an Inquiry to
9 understand.

10 Q. I think, given the answer you have given to me and the
11 explanation of what the thinking was, that really --
12 that paragraph shouldn't have appeared as worded, it
13 should have been in a rather different formulation, do
14 you not accept that, surely?

15 A. It would have been clearer if that had been expanded
16 a bit, yes.

17 Q. I think it is bit further than that. It might have been
18 better to have been completely rewritten, with all due
19 respect. Do you not agree? Given what you have told us
20 both about what you meant by systematic, what was meant
21 by systemic, the recognition there were systemic
22 failures, the recognition there was widespread abuse.
23 And I don't think there is any -- well, the nature of
24 the allegations on any view are serious: physical,
25 sexual abuse of children in care.

1 A. I agree that their argument against an Inquiry in that
2 paragraph could have been written differently. I don't
3 agree that if we had written it in the way that we were
4 discussing just now, that that would have changed the
5 underlying premise that the nature of what had been
6 discovered was happening was not sufficiently new and of
7 a scale, taking both of these together, that an Inquiry
8 was the way to go forward to address it.

9 Q. That is fine if it is you saying, well, having read what
10 I said to myself, it doesn't persuade me, if I write it
11 differently, that I would have changed my mind. But you
12 are writing this to ministers who may have less of
13 an understanding, may not have addressed the matter, and
14 may be placing reliance on that statement as well as
15 other information. As I think Cathy Jamieson says, that
16 is the nature of being in politics as a minister. You
17 have to rely on advice, you have to take at face value
18 what you have been told. You might ask questions, you
19 might ask for more research, but that is what you have
20 to do. That is just the way the system works.

21 So whatever you thought and whatever you say, well,
22 that wouldn't have persuaded if I had put the argument
23 differently. I think the outcome would be the same both
24 for us on recommendation and for the Ministers on
25 decision. Surely it should have been set out in the way

1 you have described that, well, we are not hearing
2 anything new or anything different. We know it was
3 widespread, but we know the reasons why and the causes
4 and how we have managed to address those, through
5 Inquiries and so forth, and for that reason and that
6 reason alone, not because we have minimised the extent
7 of it, we don't think there should be a full Inquiry.

8 A. What you just said is what I understood at the time
9 ministers would understand by that paragraph. And they
10 were involved in discussions with us at the time about
11 the meaning of that through their following meeting.

12 Q. We will maybe look at the note of the meeting in moment.
13 But the last point I would like to ask about this
14 particular -- one of the issues with this option that is
15 raised by the officials is in (iv):

16 "The time and costs for the Inquiry are likely to be
17 substantial."

18 I think you have said in your statement that
19 ultimately you didn't consider that the potential costs
20 were perhaps a highly material factor in the decision.
21 They were a relevant factor in a decision-making process
22 of this kind but not a factor that seemed to weigh
23 heavily with either -- what, with officials or with
24 ministers, or both?

25 A. At that time public expenditure was rising very rapidly.

1 I don't think the cost of something like this would have
2 been a factor in deciding whether or not to go ahead,
3 but it was an issue which we were required to --

4 Q. Address.

5 A. -- keep ministers alert to.

6 Q. In drawing attention to the issue of costs you pick out
7 perhaps the Inquiry that has received notoriety, whether
8 rightly or wrongly, the Saville Inquiry. And can I say
9 there is another mistake there, I think it should be two
10 Ls rather than the Jimmy Savile type.

11 The Saville Inquiry was a costly exercise as we all
12 know but it's the first example you use. One might say
13 if you are trying to make the argument and saying that
14 cost is a big -- or a consideration, just be reminded
15 how much Saville cost.

16 A. We also raise another one which will cost over
17 1 million, so we are kind of indicating that the costs
18 can be a very wide range.

19 LADY SMITH: Well, no, I'm sorry, Colin. Your first point
20 there is that time and costs are likely to be
21 substantial.

22 A. Yes, they are.

23 LADY SMITH: That is the point that you start with, not --

24 A. 155 is not the only figure we quote, that is all.

25 LADY SMITH: Well, you weren't saying "could fall within

1 a range", and at the risk of trivialising an enormous
2 amount of money, in terms of Government expenditure
3 £1 million is not much. 155 million, yes. And your
4 preface there is "costs are likely to be substantial".
5 Surely the ordinary reading of that is you are warning
6 the Government that they could be walking into a very
7 costly exercise? If I was the Minister, that is how
8 I would have read it. Would that be reasonable?

9 A. Yes.

10 MR PEOPLES: If we pass on just to the actual meeting
11 itself, if I may, just following up on this, there is
12 a note of the meeting that I think we learned from the
13 witness statement of Mr Byrne this morning that he may
14 have prepared. Can we look at that. I don't think you
15 attended this meeting?

16 A. No, I didn't, no.

17 Q. If I could refer you to the meeting itself, the note,
18 SGV-000046887. If we can put that up. First of all,
19 I have made the point previously, it looks to me this is
20 a significant meeting, there's quite a lot of ministers
21 and other important people present, is there not?

22 A. Yes.

23 Q. Because it was a big decision on a big issue.
24 Gerald Byrne put it that way in his written evidence and
25 I think that is a correct characterisation of the

1 situation. And it had received a briefing?

2 A. Yes.

3 Q. A substantial briefing with arguments. And we have the
4 Ministers present, including your Minister,
5 Peter Peacock, who chaired the meeting, his deputy, the
6 Minister for Justice, the Minister for Finance and
7 Public Services. His interest would be cost?

8 A. I suspect so. Yes. Yes.

9 Q. Then we have the Solicitor General --

10 A. I am trying to remember at that time what the public
11 services bit of that portfolio included so he might have
12 been there for another reason but probably for cost.

13 Q. Am I missing something here? We don't see anyone from
14 Health, yet it seemed to be a department that might have
15 had a portfolio interest. Do you know why that was?

16 A. No.

17 Q. But we do see the Solicitor General and the Deputy Crown
18 Agent and the legal secretary to the Law Officers are
19 also there in attendance. I don't know whether you can
20 help me with this: why would they be interested in
21 attending this meeting and this decision?

22 A. Because this is a discussion about an issue where there
23 are legal issues to be taken into account.

24 Q. So they were keeping a close eye on it, would that be
25 fair?

1 A. Yes.

2 Q. I think later on we will see legal advisers did put in
3 quite few comments on a number of issues that arose in
4 2004 particularly, is that correct?

5 A. Yes.

6 Q. As they had done in the past. We saw -- you accepted
7 that OSSE was in at the beginning and they were flagging
8 up some of the concerns because of the ongoing
9 litigation?

10 A. Yes.

11 Q. In looking -- I note that it doesn't disclose who made
12 certain points in discussion but there are a number of
13 points made that are recorded. We understand that
14 Gerald Byrne made this note or he thinks he did. He
15 took minutes he said so we will assume that is correct.
16 He said that generally speaking, in a note of this kind,
17 you would be trying to record the points that were
18 raised by ministers rather than any kind of
19 clarification or information provided by officials.
20 That was his take on matters. Would that be a fair
21 comment?

22 A. Yes.

23 Q. So can we assume that most of these points were points
24 raised by one or more ministers or others who were in
25 attendance other than officials --

1 A. That is likely, yes.

2 Q. The first point made by someone:

3 "A Public Inquiry is unlikely to help the individual
4 concerned or help inform on how to improve thing for the
5 future."

6 Depending who that minister was, what basis would
7 they have for making that statement? Would it be based
8 on the briefing they had received from their officials,
9 probably, in many cases?

10 A. It would be a combination of the briefing, the
11 discussions that there had been, their own views, views
12 that they had canvassed from colleagues.

13 Q. And then another point made:

14 "The purpose of the Commission was unclear.
15 Operational questions such as how a Commission [this is
16 a Truth and Reconciliation Commission] would fit with a
17 legal redress system were problematic."

18 That strikes me as the sort of comment that could
19 come from a lawyer, without trying to speculate too
20 much. Is that something that might well have been the
21 case? You weren't there, I appreciate?

22 A. I wasn't there. It could have been the
23 Justice Minister.

24 Q. Then someone there says:

25 "Both a Public Inquiry and a Commission would

1 involve heavy costs, most of which would be likely to
2 accrue to legal and other advisers rather than to the
3 victims themselves."

4 So clearly for one or more ministers or others who
5 were in attendance, cost was a consideration, and one
6 which they felt sufficiently important to make the
7 point, and the point was it ...

8 A. There is another way of reading that comment which is
9 that that minister may have wanted to invest in the
10 victims directly rather than in legal processes.

11 Q. Have you any idea who that might be?

12 A. No, I don't. Anybody could have said that. More likely
13 a minister than a legal representative given the cast
14 list for that meeting.

15 Q. More ...

16 A. More likely one of the ministers than one of the legal
17 people given the perspective on supporting the victims
18 at the end of that sentence.

19 Q. I am just trying to ... yes, because I think the point
20 made in the briefing, in fairness to the point you are
21 making, may be something to consider. Because I think
22 in the cost point in the briefing that is not what
23 I think is being said. In the briefing all that is
24 being said is that the costs can be substantial, not
25 that they can be better deployed by doing other things

1 for victims.

2 A. Yes.

3 Q. That wasn't a point made in the briefing?

4 A. It wasn't and it should have been.

5 Q. It should have been?

6 A. Yes.

7 Q. But someone made it there if your interpretation is
8 right?

9 A. Yes.

10 LADY SMITH: Colin, do you know whether as a matter of fact
11 funds to fund a Public Inquiry would have come out of
12 the same budgetary allocation as funds to fund,
13 for example, a compensation scheme or support and
14 improvement in the services available to survivors?

15 A. The view I always took of money was that ministers would
16 find money from somewhere if they really wanted to do
17 something if the total amount of money was sufficient.
18 So it probably wouldn't have come out of a budget as it
19 had been specified on that date, but they could adjust
20 that budget. So wherever the money came from was less
21 important than if we have a choice between finding money
22 from somewhere to pay for an Inquiry or finding money
23 from somewhere to add to the budgets to support victims,
24 that is a choice we can make, and then we will go and
25 find the money.

1 LADY SMITH: Why does it have to be either/or rather than
2 both?

3 A. Potentially do both, but I am just anticipating your
4 question. It wouldn't necessarily have been a question
5 about how much money is in a specific budget today, it
6 is how much money have we got in total and how do we
7 decide what to do about it. The issue, and I have it in
8 my statement, I wished I had included here more was this
9 is not about money as much as about capacity.

10 LADY SMITH: What do you mean by that? Sorry.

11 A. Investing -- the amount of time that I know officials
12 have spent supporting this Inquiry would have had to
13 have been found to support that Inquiry, and that would
14 be time officials then couldn't spend supporting support
15 for victims, so -- and specialists in the field of child
16 protection and child abuse would have had to support an
17 Inquiry and that would have taken them away from
18 protecting, preventing, supporting victims of abuse,
19 so --

20 MR PEOPLES: It's a diversion of resources point.

21 A. A trade-off about expertise and specialism which I think
22 at that point in time was more of an issue than money.

23 MR PEOPLES: This is diverting resources that can be used in
24 other ways, for example to advance child protection --

25 A. Yes, not just diverting the money, the people who had

1 the expertise this area.

2 Q. Sorry, I was using Civil Service speak. The resources
3 covers people as well as money. Forgive me, I didn't
4 make that clear.

5 So that was the point you are making. But of course
6 an Inquiry might have lots of benefits in the sense
7 those who make policies and want to make the right
8 policies and the right judgments might gain something,
9 and indeed an Inquiry might cause them to think more
10 closely about what they should be doing before the
11 Inquiry reports. You must know that happens?

12 A. Yes, and we have -- you have got later in my statement
13 I am actually saying to ministers at a later stage that
14 this is a very finely balanced decision, come back if
15 you want to discuss it, and they didn't.

16 Q. You say that, and I know you said that in your
17 statement. I suppose the worry for some of us is that
18 if it was that finely balanced, why, at the very
19 beginning, in the initial briefing, which might have
20 ended everything, it wasn't said in those terms? No
21 official at that stage seemed to see the situation as
22 finely balanced, although you say it was a widespread
23 problem, systemic failures, background of lots of
24 allegations.

25 That is my difficulty with that point. I don't know

1 whether you have a response?

2 A. I suppose my response to that is that as we went through
3 the process the arguments began to shift.

4 Q. You mean the arguments for an Inquiry as you went
5 through the process and thought about it more got
6 stronger, to the point you were at least prepared to say
7 at some stage they were finely balanced so the decision
8 could have gone either way?

9 A. Circumstances changed as well. The legal situation
10 became clearer, the child protection process was further
11 down the road, we knew more about how we might possibly
12 engage with individuals. So our understanding not just
13 of the arguments for and against an Inquiry in this
14 whole area was developing rapidly and on any issue, if
15 you had asked us a question in 2004, you would have got
16 a very different answer from the one you would have got
17 in 2002.

18 Q. You say for example the legal position had become
19 clearer. I am not sure that that necessarily is right
20 when you went back --

21 A. Not by then --

22 Q. -- had --

23 A. -- was becoming clearer as we went through.

24 LADY SMITH: Colin, the first point that is noted as having
25 been made by somebody, and I think we are feeling it is

1 more likely to be a minister than anybody else, goes on:

2 "It would be likely to reveal lessons already
3 learned about residential childcare in the period."

4 I know I am asking you about exchanges that took
5 place a long time ago, but have you any recollection for
6 what lessons it was thought had already been learned at
7 that stage?

8 A. The lessons which were contained in the various reports
9 which I have listed in paragraph 19 going back over
10 about 20 years across the UK. Investigations into
11 abuse, why it had happened in individual institutions
12 collectively to individual children, and these lessons
13 being converted into practice policy.

14 LADY SMITH: That doesn't actually tell me what the lessons
15 were. It may tell me what the outline description of
16 the nature of the lesson was but it doesn't tell me what
17 people had in mind as already having been learned and
18 therefore didn't need to be learned again.

19 A. That the child needed to be believed, the child needed
20 to be engaged with, that people in authority shouldn't
21 necessarily be assumed to be delivering the quality of
22 service that they should be, that clear standards were
23 required so everybody understood what was expected, that
24 staff training was a very significant requirement, that
25 it wasn't sufficient to have a large number of

1 relatively poorly qualified staff and poorly paid staff
2 with responsibility for children in care, and so on and
3 so on. So there was a whole range of issues like that
4 which had been being learned and many of them were
5 directly applicable to the kind of institutions that
6 these children, now adults, had been in.

7 LADY SMITH: And those of course were matters that had been
8 looked into in relation to children, now adults, outwith
9 Scotland?

10 A. And in Scotland, yes.

11 LADY SMITH: Well, not in the form of a Public Inquiry.

12 A. In terms of the --

13 LADY SMITH: And not specifically related to in care abuse.

14 A. In terms of the investigations into reviews in care in
15 Fife and Edinburgh (overspeaking) --

16 MR PEOPLES: There was the Edinburgh Inquiry which was to do
17 with I think care homes in Edinburgh --

18 A. Yes.

19 Q. -- that Cathy Jamieson was a panel member. There was
20 a Fife Inquiry which I think was to do with residential
21 homes in Fife after the conviction of a long-standing --

22 A. Some of these issues were much more general, not just
23 relating to children in care homes, and some of them
24 were very specific to that.

25 LADY SMITH: Thank you.

1 MR PEOPLES: Quite a bit of the note of the meeting is taken
2 up perhaps with the issue of access to files which was
3 obviously something that you were supporting as
4 officials. We see that there's some -- just to identify
5 some of the issues that arise. I think Peter Peacock
6 told us yesterday, if I am not mistaken, that there
7 didn't seem to be much opposition to going down the line
8 that the officials were recommending, and to some extent
9 therefore that is why we don't see challenging questions
10 or things being raised that question some of the things
11 that I have asked you about today.

12 A. Yes.

13 Q. So it looks as if you basically were pushing at an open
14 door in terms of what you were recommending?

15 A. Yes.

16 Q. Indeed that is the way the note seems to set things out.
17 There is no dissent, it's a unanimous decision,
18 everybody seems to be happy with the direction of
19 travel, yes?

20 A. Yes, the only issue around that was was it going to be
21 feasible to do something which didn't mislead the
22 victims and survivors into thinking that we were able to
23 do more for them than we could. As long as we were
24 honest about what we were doing about files, you are
25 right, there was no resistance to doing what is

1 described here.

2 Q. One thing that isn't there, and I suppose silence is
3 telling, is no one seems to have it asked about
4 the Apology. There is no discussion of an apology?

5 A. There doesn't appear to be, not at that stage, no.

6 Q. So whatever the First Minister might have thought at
7 that time or earlier about the wisdom of an apology or
8 whether they should move toward it, it is not
9 percolating through to his key ministers or to officials
10 at that stage, is that fair comment?

11 A. It doesn't appear to have been raised by ministers at
12 that meeting, no.

13 LADY SMITH: Do I infer from that that the people at that
14 meeting didn't know how important it was to the
15 First Minister to address the issue of an apology?

16 A. I don't know what the First Minister had said at that
17 point about the possibility of an apology.

18 LADY SMITH: Let me put it a different way. If people at
19 that meeting or anyone at that meeting had known that he
20 had noticed this, fastened on it and regarded it as
21 important, wouldn't they have talked about it as well,
22 because it was raised in the petition?

23 A. What I am saying is I have not seen a record from before
24 that date of the First Minister expressing a view on an
25 apology. Maybe he did but I wasn't aware of it. The

1 issue of an apology and the First Minister's involvement
2 to me came through much more strongly the following
3 year.

4 MR PEOPLES: I think his position, I might as well tell you,
5 is that from the outset he was -- he had discussions
6 with Cathy Jamieson when she was the Minister for
7 Education. He was working or determined to work towards
8 an apology by him as First Minister "at the appropriate
9 time", that was the expression that is used in his
10 statement, and that therefore that was his position from
11 the very outset.

12 Just to complete it, Cathy Jamieson doesn't recall
13 specifically. That being said, she didn't suggest it
14 wasn't said, but she didn't have a memory of it.
15 Neither did Peter Peacock have a memory of it being
16 conveyed to him either around that time or when he
17 became Minister for Education. And I don't think anyone
18 has pointed to any record that records what on one view
19 is quite an important position that you would like to
20 think would have been in some way recorded, would you
21 not? If I am telling you all that, would you not be
22 thinking why, minister, did you not -- minister or First
23 Minister, why did you not tell me this? It might have
24 made my life easier or maybe more difficult, I don't
25 know.

1 A. I was not aware that the First Minister was thinking in
2 these terms at that point.

3 Q. Is that news -- leave aside later on, is that news to
4 you?

5 A. Yes.

6 LADY SMITH: And I think I am right in saying whilst she
7 doesn't remember detail, Cathy Jamieson does remember at
8 some point, and it sounded like probably the back end of
9 2002/early 2003, recall agreeing she would work with him
10 towards him making a public apology.

11 MR PEOPLES: Yes. I'm not sure how well she remembers it
12 but I think --

13 LADY SMITH: The idea --

14 MR PEOPLES: She certainly wasn't dissenting from the idea
15 that might well be the thinking and she wouldn't have
16 difficulty with it. I do not think she remembers the
17 occasion. It may have happened then. But she certainly
18 doesn't rule it out because she explains how many things
19 are done informally, perhaps minister to minister, and
20 I am sure you can support or confirm that, but that is
21 the position. There is one thing. Obviously if you are
22 at a key meeting with a big issue and a big decision and
23 you are trying to work out what all the options are and
24 one of the aims of the petition is an apology, it might
25 have been a good idea, if he didn't make it more known,

1 that the First Minister had confided in those who
2 attended that meeting and indeed his -- in the senior
3 officials, that that was the way his mind was working,
4 that was where he was working towards, because surely
5 that would have had a bearing on both the briefing and
6 the discussion because that would have been good news,
7 would it not, on one view, because that is what the
8 petitioner was wanting, an apology. Does that not make
9 complete sense to you?

10 A. If we had been asked to address the issue of an apology
11 we would certainly have done that.

12 Q. Does it not make sense if you are working towards that
13 and that is something that someone wants, at least
14 internally you should be letting people know that that
15 is your thoughts and big idea?

16 A. Sometimes as an official you have to wait until that
17 idea emerges from a minister's private conversations.

18 Q. It didn't emerge by 25 September 2003. And just because
19 I am about to move on to when the First Minister did
20 intervene after this meeting, and he weighed in with
21 a fifth option as I call to the independent expert. He
22 didn't on that occasion say I have seen the meeting,
23 I have seen what has been decided, I have read the
24 submissions, I have another option to consider of
25 an independent expert, and by the way, as well, I think

1 if we are trying to do something for survivors, I want
2 to pursue an apology and I want you to start thinking
3 about how we are going to deliver that and when. But he
4 didn't do that, did he, to your knowledge?

5 A. Not to my knowledge, no.

6 Q. He did make comments but not those -- he worked out that
7 to not look to the past in some way was perhaps not
8 going to be sufficient to meet needs or to at least
9 pacify or satisfy, whatever word you want to choose, the
10 survivors who want an Inquiry. So you have to give them
11 something. And his big idea then was let's have
12 a review by an independent person which on the face of
13 it, although it is not maybe entirely clear from his
14 initial comments, was some form of systemic review
15 rather than an investigation into allegations or
16 a listening forum. It doesn't read as if it is saying,
17 no, we will have an Inquiry into allegations, findings,
18 whatever, but we will have a listening forum where
19 people can recount their experiences. That is not the
20 flavour of what he said, is it? You have seen that,
21 have you not?

22 A. I took it out of what you are suggesting.

23 Q. I will show you the email. I think it is probably
24 useful to have it at this point. SGV-000046922. If we
25 look at the bottom, I think you are going to help us

1 with the top bit after. It's an email from the private
2 secretary or the assistant private secretary to the
3 First Minister, Martin Ritchie, on 22 December of 2003
4 conveying the comments of the First Minister in response
5 to a minute from the Minister for Education:

6 "Are the 4 options in the minute of 23 September the
7 only options? Have ministers considered appointing
8 an expert (without a working group or Committee) to
9 review the position, recent developments and recommend
10 any procedural changes which might be advisable to
11 reassure people now? Grateful for Mr Peacock's views on
12 this."

13 He puts forward a fifth option which is looking
14 backwards, which is not something that the decision had
15 decided, but he doesn't mention the sixth option, why
16 don't we give them an apology or can we explore that,
17 does he?

18 A. Not in that note, no.

19 Q. But there was an opportunity to do it then if that was
20 in his thoughts. So was that a missed opportunity if
21 that was what he wanted to --

22 A. Yes, yes, it was.

23 Q. We are now at December 2003. The call for an apology
24 was in August 2002. It's not exactly moving at
25 a particularly quick pace even if there are difficult

1 issues here. Would you not agree with that? Difficult
2 to justify the time taken?

3 A. Yes. You are asking two questions there --

4 Q. You answer both.

5 A. Yes, it's a missed opportunity if that is an issue which
6 he wanted considered. And yes, it took too long to get
7 to that point from when the petition was first lodged.

8 Q. Then unfortunately, and this is -- his fifth option was
9 picked up obviously by officials in your department. We
10 see it if we look above that. On the same day
11 Maureen Verrall is saying to Gerald Byrne and
12 Susan Neilands that we need to give supplementary advice
13 to the Minister on his return in January of 2004, but
14 she does add:

15 "My initial reaction is that the appointment of an
16 independent expert falls on the same basis as an Inquiry
17 or Commission ie that ministers know what the problems
18 are. There would be little, if anything, more to be
19 learned. Current procedures have changed so much since
20 the alleged abuses that the circumstances could not be
21 repeated now and all effort should therefore be focused
22 on providing what help we can to the victims of
23 historical abuse."

24 Then it says that was pretty much the view of all
25 the ministers at the meeting they had in September.

1 A. And she was at that meeting and Maureen was at that
2 meeting.

3 Q. So she has a good grasp of what the thinking is, and she
4 doesn't -- her initial reaction seems to be this is not
5 really one that is taking us any further or is any
6 different to what we looked at before, is that fair?

7 A. That is what she is saying, yes.

8 Q. But in the event, and I don't want to take up too much
9 time, but if we look at another document which is on
10 11 March 2004, we have moved on about three months or
11 thereabouts to SGV-000046942. The same individual who
12 wrote the email on 22 December, Maureen Verrall, is
13 writing to Gerald Byrne:

14 "As discussed. Can you check whether anything went
15 back to the Minister. Asap, please, to discuss on
16 Tuesday. Thanks, Maureen."

17 I think we know and I think you knew once you did
18 some enquiries that whatever else was going on at that
19 time, this matter had not been actioned as it should
20 have been. That is the sum total?

21 A. Yes.

22 Q. We don't need to spend too much time on this. It should
23 have been, the advice should have been given probably in
24 quite early course, early January?

25 A. Yes.

1 Q. And if it was the same advice it should still have --

2 A. Should have, yes.

3 Q. That would have allowed the process to move on. So
4 there is no real excuse. I don't think there is any
5 indication it was a deliberate oversight as far as the
6 records disclose but it didn't happen and it should have
7 done?

8 A. Correct.

9 Q. I think you have given some factors which may have
10 contributed to that but you are not making any excuses?

11 A. No.

12 Q. That is just not right, you accept that?

13 A. Yes.

14 Q. Just before I move on, while we are at this timeframe,
15 can I ask you to look at another document which is
16 slightly before that, which was also in December 2003.
17 SGV-000063480. This is an email from Gerald Byrne, who
18 is the leading official, the lead responsible for
19 responding to these issues, to Maureen Verrall and
20 Susan Neilands, and it says he met a member of the
21 In Care Survivors Group, INCAS, in the margins of
22 a conference for an informal chat. This is on
23 4 December. He is recording that this happened on
24 3 December. It doesn't look as if it was a planned
25 meeting but he has met and they seem to have

1 a conversation. Part of the record of the discussion is
2 that Gerald Byrne and this individual discussed a number
3 of possibilities about the -- one can see in the fifth
4 paragraph down:

5 "They might want justice, someone to listen to them,
6 (a lot feel they are ignored by the State, which is
7 a form of further abuse); they might need specific
8 medical services; a very few are interested in
9 compensation."

10 Then there seems to be some explanation that the
11 Executive:

12 "... were considering the response to the petition
13 asking for an Inquiry (which INCAS inspired)."

14 And it seems to have been conveyed that
15 the Executive was:

16 "... not attracted by a full public inquiry on the
17 Irish model because of the cost ..."

18 This is how it was put:

19 "... and the lack of lessons to learn ..."

20 And indeed it seems that the individual he spoke to:

21 "... agreed that the money which could be spent on
22 services would go to lawyers); we were also unsure of
23 the Truth and Reconciliation Commission [this is what
24 Gerald Byrne is saying] although we could see that some
25 survivors might benefit from that; we were very unsure

1 about ex gratia compensation as a matter of principle
2 (I mentioned the Hepatitis B cases) although I
3 acknowledged that the State had a general oversight of
4 the system under which these people had suffered. We
5 were most attracted by regarding this as primarily
6 a health service provision issue, although we were also
7 examining what help we might give in the civil legal
8 cases.

9 "We agreed that he would come back to us in the
10 New Year when he had had responses to his survey of
11 members, and look to arrange a meeting in January, just
12 with officials at this stage. We would also be
13 interested in the response they had had from Barnardo's
14 et al and the Catholic Church which [the individual
15 he spoke to] has worked with on this subject in the
16 past.

17 "Overall, a very constructive chat. He recognises
18 that there is little point in some huge and expensive
19 Inquiry, and that there was little to be gained from
20 some sort of media driven campaign on this issue. He
21 and [another individual mentioned] seem experienced in
22 this sort of campaigning work and I think we should be
23 able to work with them."

24 I suppose if you were not wanting a full Inquiry
25 this was good news to the officials this conversation,

1 that is how it reads, is it not?

2 A. I wouldn't put it that way. I'd say that's someone else
3 who has some of the same views. It's not that we are
4 looking for somebody to justify, we are testing what we
5 think. This is somebody close to INCAS who is saying
6 similar things. Interesting that he points out that he
7 is very concerned about the cross-party group and says
8 it has been inactive, up near the top of that ...

9 Q. Yes, he says this individual started (inaudible) MSPs.
10 He is particularly concerned that they seem -- he says
11 they seem to be inactive, and indeed it is said they
12 were mentioned in one of our submissions. Whether they
13 were inactive or not, they had expressed a view on
14 an Inquiry?

15 A. Yes, and I am accepting that we got that bit wrong, but
16 also pointing out that that cross-party group hadn't
17 impressed people with their interest in this.

18 Q. But you didn't know that and neither did ministers and
19 they weren't told that?

20 A. Okay.

21 Q. Do you see the point I am making?

22 A. Yes. I understand.

23 Q. I see the point you are trying to convey to me. The
24 other thing -- the problem with this is that it reads as
25 if consideration of the requests for an Inquiry is

1 ongoing in December 2003, but we have just seen that on
2 25 September 2003 a decision had been taken, and that
3 decision wasn't departed from but it hadn't been made
4 public in December 2003 and was only made public on
5 30 June 2004. Is that -- that is the reality?

6 A. Around about the end of 2003 we were still engaged in
7 discussions with the ministers about exactly how to take
8 this forward so. Yes, there had been a decision in
9 the September not to have an Inquiry. This wasn't
10 an issue which had been put to bed, this was an issue
11 which was still being developed and thought about, and
12 this was somebody who had thought about the whole range
13 of support that might be given, and it was appropriate
14 for Gerald to feed that back into the system.

15 Q. A decision on a full Public Inquiry as understood then
16 had been taken. It wasn't reconsidered before the end
17 of June so far as I can see, and indeed I think
18 Peter Peacock told you as much in June of 2014 when he
19 commented on one of your own submissions saying, "Hang
20 on, this isn't a decision we have got to take in June.
21 We took this last September. We considered the merits
22 of this matter. Could you please reflect that in the
23 advice that ministers are getting".

24 A. I think it was entirely appropriate for Gerald to have
25 had that conversation and to have fed back to officials

1 what was said in that conversation. I would have
2 expected him to do that.

3 Q. Yes, it's just what he is saying, because it might --

4 LADY SMITH: Colin, it's not being suggested to you that it
5 wasn't. That there was anything wrong with Gerald
6 having the conversation.

7 MR PEOPLES: I am not saying there was anything improper,
8 but I think the point I was making was that (a) it was
9 after the event, the decision had been taken and, to
10 some extent, whether intentionally or not, it might have
11 conveyed the impression the full Inquiry option, like
12 other options, was still on the table. I am saying to
13 you it wasn't because we just looked at the decision
14 in September and that decision was never departed from.
15 The First Minister didn't demur from it or dissent, he
16 just put another option on the table. Whether he
17 intended or not, I'm not suggesting it was intentional,
18 it might have given --

19 A. I think we were --

20 Q. -- wrong impression?

21 A. -- collectively uneasy about where this was going. And
22 yes, a decision had been taken. Decisions get changed.
23 And here was somebody who was close to the organisation.
24 It was appropriate to have a conversation with them
25 about the issues and to feed that back. That is not

1 suggesting -- if he took something out of that that
2 wasn't meant, that would have been unfortunate, but you
3 take that risk when you have these conversations.

4 Q. This wasn't consultation in any meaningful sense.

5 A. It wasn't intended to be consultation but it was
6 a casual conversation that Gerald thought was important.

7 Q. He thought it was constructive because presumably
8 the individual was connected with INCAS who were to some
9 extent supporting the petition?

10 A. It was helpful that the person was close to INCAS, yes.

11 Q. The flavour of it is he seems to be thinking along the
12 same lines as we are.

13 A. Yes.

14 Q. Yes. So he took some comfort from it, whatever else,
15 yes?

16 A. Comfort and discomfort. Comfort that there is a range
17 of views out there which isn't uniform, discomfort in
18 that there is a range of views out there that isn't
19 uniform, so it's hard to get hold of what the external
20 view is.

21 Q. That sounds almost like "Yes Minister".

22 A. That is the world you live in with this kind of issue,
23 that you have to try and get a sense of what a range of
24 people are thinking.

25 Q. Can I move forward, because we know there was delay, we

1 have talked about there was the email asking what has
2 happened, and a submission was put together and it takes
3 time, and I think we know without going through the
4 detail that a draft submission was being prepared and
5 was submitted on 20 May by Gerald Byrne to the Minister
6 which included consideration of the First Minister's
7 option. We are familiar with that.

8 A. Yes.

9 Q. Unfortunately, and you know this -- what I am about to
10 say is unfortunately (a) the press were sniffing around
11 on this matter and wanted to know what the Executive was
12 doing, because the Committee was meeting in May, and
13 this was -- unfortunately the meeting of 12 May was
14 missed by the Executive in producing a response. And
15 that unfortunately around the time of Mr Byrne's
16 submission of 20 May coincided with a letter both to the
17 Minister for Education and a letter to the
18 First Minister expressing extreme disappointment borne
19 out of anger, frustration, annoyance, you name it, they
20 had it at the time, you can tell that from the report?

21 A. Yes.

22 Q. And you can see why, can you not? They have been
23 waiting since March 2003, sending reminders. Okay, some
24 went the wrong direction, but that is not acceptable and
25 I think I probably don't have any quarrel with that?

1 A. I have accepted today, I accepted at the time we should
2 have done it faster, yes.

3 Q. Am I right in thinking that to take the step of sending
4 a letter not just to the responsible minister but to the
5 First Minister is pretty serious stuff?

6 A. Yes.

7 Q. Yes. I think that is what Michael McMahon's
8 recollection was at the time, this was a fairly extreme
9 step, but one he felt was necessary to try and push
10 matters along?

11 A. Yes.

12 Q. The submission was sent to the Minister for Education
13 but he was pretty annoyed probably about getting the
14 letter at the same time and he probably wanted you to
15 come and see him and tell what went wrong, is that
16 a fair description?

17 A. Yes.

18 Q. And you put together some sort of chronology of the
19 sequence of events and discovered how things had gone
20 wrong, and indeed I think that prompted, as you tell us
21 in your statement, and I don't want to go into the
22 detail, some structural changes within the department?

23 A. The structural changes had been triggered before that
24 exchange of letters.

25 Q. But it was hoped this change would at least address the

1 problem that had arisen?

2 A. Yes, but we didn't make the changes because we got that
3 letter from the Committee. We were making them before
4 that.

5 Q. You had already recognised the need to make changes
6 because the department was under pressure so there was
7 need for maybe more people --

8 A. More people.

9 Q. -- in different positions, yes. So that was happening
10 but unfortunately didn't happen soon enough to deal with
11 this situation, so that -- you had to address that. And
12 it does look then that you -- his submission is there
13 and we have got it to read. But then you prepare
14 a further submission on 8 June. Can you just help me
15 with this. What was the reason why there had to be
16 a further submission? I know it was addressed to the
17 First Minister. Was that because the First Minister had
18 become more directly involved because the letter --

19 A. Could you show me that one?

20 Q. I will do that. Do you want to see the earlier one as
21 well?

22 A. It would be helpful to see them both, yes.

23 LADY SMITH: Mr Peoples. While you are finding those,

24 I think we will take the mid-afternoon break.

25 Colin, I always take a break in the middle of the

1 afternoon, a shorter one than in the morning, but if
2 that is all right with you I will just do that now.

3 (3.04 pm)

4 (A short break)

5 (3.15 pm)

6 LADY SMITH: Are you ready to carry on, Colin? Thank you,
7 Mr Peoples.

8 MR PEOPLES: I think we decided it would be a good idea to
9 look at the first submission on 20 May 2004.

10 SGV-000046956, which I think is on the screen. That
11 bears to be from Gerald Byrne to Peter Peacock, Minister
12 for Education and Young People, and it is really not
13 I think saying anything significantly different to the
14 advice that had previously been given. It's to continue
15 with the policy and to continue with the decision that
16 had been taken with the addition that
17 the First Minister's fifth option is being considered,
18 but ultimately the advice is don't follow that option,
19 is that --

20 A. Yes.

21 Q. And it does give something of the background to the
22 whole matter. The discussion obviously to some extent
23 focuses on the First Minister's proposal because that is
24 something new from the meeting in September of 2003, but
25 the conclusion is that it's similar disadvantages to

1 those that apply to an Inquiry or Commission, and any
2 advantages don't outweigh these. There is some
3 description of recent developments as well and I think
4 that might at least, if I could call it in mitigation,
5 explain at least -- it wasn't a case of nothing was
6 happening, but you have explained again very fairly that
7 that doesn't excuse the time it took to get to this
8 point.

9 A. Yes.

10 Q. But the strategy is very much or the recommendations is
11 simply do as was decided before by the ministers and not
12 to pursue the option of investigation by an independent
13 expert, and focus on support and services. And I think
14 the position on compensation was essentially the same,
15 hold that over, defer it, until the test cases had been
16 decided and --

17 A. Yes.

18 Q. And I think at that stage there hadn't been a referral.
19 We will come to that. So there is an analysis or
20 discussion at annex A of pros and cons of the
21 investigation by an outside or independent expert, and
22 I don't really want to go through that in detail, I just
23 want to get the picture. We can read that for
24 ourselves. But it's not really seeing any distinct
25 advantage from that that the other options had not

1 revealed to officials.

2 A. No.

3 Q. So we have that, and there is a progress on redacting
4 files, because I think that was a significant exercise
5 and quite time-consuming even to do the exercise, and
6 there is some information on that and some information
7 about how Barnardo's and other organisations handle
8 access to their files, and I think that is also -- some
9 information for the Minister at that point.

10 In paragraph 6, annex B, I should at least just
11 refer to that, which is -- by this stage it is recorded
12 that we have met INCAS, the only organised group of
13 in care abuse survivors, I think FBGA was in its infancy
14 and maybe not at that stage formed in any real sense.
15 I'm not sure exactly the timing, but I think that INCAS
16 was seen as the only organised group at least in the
17 eyes of officials at that time:

18 "It is clear that this organisation is small and at
19 a very early stage of its development."

20 This is written in May of 2004.

21 "It is also clear that they do not speak for all, or
22 possibly many, survivors. However, the others are
23 difficult to access. It is dominated by one or two
24 personalities and needs to formalise its structure and
25 broaden its membership before it can be a useful body

1 for us to work with. There are a number of different
2 agendas within its current leadership. Some want
3 prosecutions and compensation, and are prepared to
4 pursue this through the media. Others prefer to work
5 more quietly and are looking at services to allow
6 survivors to recover. Our first meeting with them was
7 useful to establish contact and allow them to know the
8 Executive is taking this matter seriously, but we will
9 want to see how the organisation evolves before building
10 stronger links."

11 It doesn't suggest from that that at that stage
12 there was a huge amount of engagement on the issues.
13 Would that be reasonable to suppose? There has been a
14 preliminary engagement?

15 A. It looks like it, yes.

16 Q. There is some discussion about the short life working
17 group we mentioned earlier, set up to look at survivors
18 of childhood sexual abuse and there's some discussion of
19 where that is going. There is some update on the civil
20 cases. The Hendron case is apparently due for initial
21 argument in June 2004, at first instance. And then
22 there is reference -- I think the ministerial
23 correspondence, there is reference to that at
24 paragraph 11. And I think the point is that there was
25 a number of letters, not just the reply, but a number of

1 letters outstanding on these general issues and they had
2 been outstanding for quite a while. Peter Peacock said
3 quite frankly this shouldn't have happened, it should
4 have been quicker, but they were there and had raised
5 similar issues to those of interest to the petition, is
6 that correct?

7 A. Yes.

8 Q. Then there are draft replies. I'm not going to go
9 through these with you, but there are draft replies to
10 the outstanding -- we know now what a GF is, and also to
11 a draft response to the Petitions Committee.

12 Then if we can move on to the submission that bears
13 your name which is the 8 June. We see SGV-000046929,
14 hopefully that will come up. It's bearing to be in your
15 name now. I don't wish to be in any way disrespectful
16 to your more junior colleague, Mr Byrne, but I think
17 I described this as an attempt to perhaps express not
18 any different sentiments to the previous submission but
19 to put it in a -- I think I used the words "more
20 polished form" that might serve as a basis as a reply to
21 the Petitions Committee. I think some of what you put
22 in here bears a distinct similarity to the presentation
23 of reasons for rejecting an Inquiry in the letter to the
24 Petitions Committee, is that fair?

25 A. Yes.

1 Q. That would be the normal process. A minister would rely
2 on his officials to put together replies but they have
3 to be happy with them and could tinker with them if they
4 like and do so?

5 A. They do.

6 Q. I think Peter Peacock was one in fact?

7 A. Yes.

8 Q. I am only asking as a preliminary to something I am
9 going to come to later on. We see you are setting out
10 the situation and you are really trying to formulate the
11 questions that were addressed in reaching the conclusion
12 there was no Inquiry, and you present the matters,
13 a consideration of four related issues. I will just
14 read them out:

15 "Whether we have taken sufficient steps to prevent
16 future abuse in residential care settings."

17 That is the things have changed point we discussed
18 earlier, about how it's a very different landscape since
19 the abuse that the petition was concerned with:

20 "Whether we are providing sufficient high
21 quality services for individual survivors."

22 That is an attempt to say there is work going on in
23 health and other respects to address that matter, that
24 particular need of survivors. And you say in this
25 submission:

1 "We don't believe an Inquiry would usefully add to
2 that exercise in that respect ... whether we are
3 providing sufficient support to meet the legal interests
4 of individual survivors ..."

5 This is a reference to those that either are
6 pursuing or would be minded to pursue the legal route.
7 And you there make clear that the issue of compensation
8 has been postponed or deferred pending the outcome of
9 the test case but that there is this policy of opening
10 up files I think to at least provide support or
11 assistance to those who may wish to pursue claims or
12 know something more about their background in care. So
13 that was another issue considered in the round.

14 And fourthly:

15 "Whether an Inquiry would lead to enhanced public
16 confidence in the system."

17 You are looking at the public interest, and whether
18 there is any concern, public concern about the current
19 system, whether there is -- indeed whether an Inquiry
20 might damage confidence in the existing system that you
21 have already said was very different to the one in the
22 past historically. So that was another consideration
23 that you put in the balance.

24 You then at paragraph 4 look at the form an Inquiry
25 might take and ask whether it might lead to positive

1 outcomes that outweighed some of the considerations you
2 had dealt with under the four heads or the four issues,
3 and you look at the different ways in which an Inquiry
4 can operate, and some of the features that might have to
5 be built in depending on how you proceed.

6 One point you do make, I think, first bullet point
7 of 4, if you could confirm, is the difficult question of
8 an Inquiry, if held in public, about how one would seek
9 to safeguard rights of those who might be named or
10 otherwise identified in Inquiry proceedings, where there
11 are perhaps court cases either in being or active or
12 potentially about to happen, and whether this might, as
13 it is put, contaminate the legal process or prejudice
14 the legal process. And you tell ministers that
15 the belief of officials is it would be better to support
16 due legal process and address the needs of survivors
17 than to hold a Public Inquiry.

18 I think when you supported legal process, I think it
19 is perhaps a shorthand expression of what will help them
20 in terms of evidence perhaps. If the files are relevant
21 then they can see them and have access to them and we
22 will do that, and that is our way of helping them in
23 that sense, is that --

24 A. Yes.

25 Q. That is what it comes to. An Inquiry held in private

1 I think you recognise might be more informal and perhaps
2 less expensive but you do raise issues about rights of
3 others than survivors, and again I don't want to spend
4 too much time on the detail, we can read that, but you
5 are giving various considerations that should weigh in
6 any decision. You also address the situation where some
7 form of Inquiry is conducted by a single individual, and
8 I think that is the First Minister's option effectively.
9 And on balance at paragraph 5, you say the officials
10 concluded it would not be helpful to hold an Inquiry
11 into this matter:

12 "... but we recognise there are strong arguments in
13 favour."

14 You are now saying I think at that point that there
15 is a recognition there are strong arguments in favour of
16 holding an Inquiry, is that --

17 A. Yes.

18 Q. That is what is being now said.

19 A. Yes.

20 Q. But you also make the point it's important to provide
21 high quality support to survivors, and I think that is
22 really a lead in to the idea that that is the direction
23 that the Executive should focus on, providing high
24 quality support that will best meet their needs and
25 perhaps be the best --

1 A. What I meant by that sentence, and I think it is how it
2 read, was whether or not we have an Inquiry, we must
3 provide high quality support.

4 Q. So whatever is done that is a given?

5 A. Yes.

6 Q. That that would be done?

7 A. Yes.

8 Q. And there are draft replies. And I think it is clear at
9 the conclusion, you are saying:

10 "We remain of the view that given the other work
11 that has been done an Inquiry would not reduce the risk
12 of future abuse or help to meet needs of survivors of
13 past abuse."

14 And at this point in time, perhaps in contrast to
15 the initial briefing, it is said in terms that it is
16 recognised this is a finally balanced judgment, and:

17 "... correspondents may wish to have further
18 exchanges with the minister or with officials."

19 What did you mean by the last part of that sentence?
20 I wasn't sure quite what was being conveyed.

21 A. The correspondents is everybody when has received this
22 note, on the list.

23 Q. Oh, I see. So they are the correspondents. I see.

24 A. Yes.

25 Q. There is a recommendation basically to adhere to --

1 A. It's a clear indication that we are inviting ministers
2 to reconsider the decision they had taken in September.
3 On balance, we are saying we still think that was the
4 right decision, but we think it is finely balanced.
5 That would be read as we are not 100% certain, we are
6 just 51% certain. It's for you, ministers, to decide if
7 you want to investigate --

8 Q. There is less certainty than your officials had in
9 November 2002. Now there is much greater uncertainty --

10 A. Yes.

11 Q. -- there is now a recognition it would appear it's
12 finely balanced, therefore that is something they should
13 weigh, and whether that is saying, perhaps not in terms,
14 but it's an opportunity should they wish to take it to
15 look at the matter again. That is how would you say
16 that is intended?

17 A. That is how they would have read that.

18 Q. That is what I am going to come to. I'm not so sure
19 that is right. Can we look at something else that flows
20 from that, because you did put in another submission on
21 the 16th. I appreciate that is how you wanted it to be
22 interpreted, that ministers should think long and hard,
23 again, was our original position based on the original
24 advice the right decision to take, before we finally get
25 round to telling the Public Petitions Committee what our

1 position is. That is how you say you wanted it to be
2 read?

3 A. Yes.

4 Q. If we go now to another -- this submission produced
5 comment from Cathy Jamieson and Peter Peacock. And if I
6 could just look at the comments made by Cathy Jamieson
7 who was then Minister for Justice. It is SGV-000047655.
8 She comes back on 14 June to you and she says this:

9 "We spoke on this. Ms Jamieson has seen your minute
10 of 8 June. The minister has commented that we may need
11 to consider further the handling/presentation on this
12 issue. This further consideration should include
13 discussing the issue with relevant voluntary
14 organisations prior to issuing the letters. The
15 minister commented that it is vital to get the message
16 across there is no 'covering up' and that we do accept
17 that abuse in care happened. Reference should also be
18 made to previous inquiries."

19 That doesn't smack to me as a response that says,
20 well, actually, you have made a good case for
21 reconsidering it let's all get around the table and we
22 will have another big discussion. That looks like it's
23 a done deal, but there are some thing we need to get
24 clear before we make public the decision. That is --

25 A. That is her response, yes.

1 Q. If we can take the response of Peter Peacock, if I can
2 put this to you as well which is SGV-000046919. If we
3 can put that up as well. You will see on the same day,
4 slightly after the previous email, you get another
5 email, this time from David Stewart who I think was
6 private secretary to Peter Peacock:

7 "As discussed, Mr Peacock has seen the latest minute
8 [that is your one] and draft correspondence in relation
9 to List D schools. He has commented as follows:

10 "'Sorry to come back on this again, however the
11 minute does not acknowledge that Minister's - me, Cathy
12 [that is Cathy Jamieson], Euan [Euan Robson, the Deputy
13 Minister for Education], the Solicitor General [Elish
14 Angiolini] unanimously concluded consideration of the
15 merits of an inquiry last year. It was only when our
16 recommendation went to [First Minister] that he was not
17 content with suggested a single person considered. The
18 minute needs to set out the sequence of events - this is
19 not the first time the [First Minister] has considered
20 the issues here.

21 "I would be grateful if a revised response could be
22 prepared - taking on board these - and Ms Jamieson's
23 recent comments."

24 To me that is telling you that the briefing you
25 prepared reads as though it's a new issue that has to be

1 considered by those who received the submission,
2 including Peter Peacock and the First Minister. Whereas
3 the point he seems to be making, and I don't know if you
4 agree, is simply, well, we have decided this matter --

5 A. Yes.

6 Q. -- and the First Minister's only position of difference
7 was he wasn't content with the third option alone and he
8 put something else on the table, and that was the one
9 difference or development from the previous decision.
10 So it's not -- we are not re-opening things. We have
11 already had a full discussion. It may not have been
12 made public but we have done it. Is that what he is
13 saying really to you?

14 A. Yes.

15 Q. So whatever you thought you might be doing he didn't see
16 it that way?

17 A. I think he did, because he is responding to my
18 invitation to think about it again. He is about to go
19 to the Petitions Committee and send the submission to
20 them and then go and see them in September, and I am
21 saying to him you made a decision in September last
22 year, are you sure? Because it's a difficult decision,
23 it's finely balanced. And he comes back and says, yes,
24 I am sure.

25 Q. We can decide for ourselves what he is saying. But he

1 is certainly not giving an indication he wants to
2 re-open or reconsider --

3 A. I agree.

4 Q. You may say you gave him the opportunity?

5 A. Yes.

6 Q. And the one thing you did do, you will say, is that at
7 that stage you were making it clear that the arguments
8 for an Inquiry were stronger than perhaps you had
9 previously been indicating, and that indeed it was
10 finely balanced, so if they wanted to reconsider, then
11 at least you were perhaps saying, okay, we might
12 understand why you might be doing that because of what
13 we are now saying. But they didn't do it?

14 A. That is fine, yes.

15 Q. This is politics.

16 A. I am not disagreeing with you. I am just saying we had
17 given them the option and he came back and said, no,
18 thank you, we are just sticking with where we were
19 before.

20 Q. I think the point he was making to you was that, well,
21 you have given me this very neat submission as if it is
22 something fresh, and indeed it's fresh to me and
23 everybody else, but in fact this has all been done
24 before, I have been through this, I spent lots of time
25 thinking about this, we reached a decision, and it looks

1 as if in some way we are just erasing history because it
2 looks as if we are still on the point of consideration
3 and then we will give the Petitions Committee an early
4 response. I think he was wanting to make sure history
5 wouldn't see it that way because he would get awkward
6 questions, no doubt, from people like me to say why have
7 we got this decision in September 2003 and a public
8 announcement of it in June 2004?

9 You can see why he would be saying, well, I just
10 want to be straight about this. This is what we did?

11 A. I understand that, yes.

12 Q. You can see his point of view?

13 A. Yes.

14 LADY SMITH: Colin, can I just be clear about this sequence
15 of events? You say that your document gave a clear
16 indication that you were inviting those advising the
17 relevant ministers to prompt a reconsideration of the
18 decision not to have an Inquiry.

19 A. Yes.

20 LADY SMITH: You didn't actually say: could you let me know
21 whether your minister wants to reconsider this decision
22 or, given the strength of our feels now and our
23 reconsideration, please advise whether you are
24 reconsidering or something to that event. It doesn't
25 say that.

1 A. It doesn't say that. And that would have been a more
2 formal way that would have forced the issue. This was
3 just repeating the conclusion and just raising the
4 question, leaving it in the margin. They could have
5 ignored it and just said, yes, we will go with your
6 recommendation.

7 LADY SMITH: It might have been clearer because what we get
8 back from David Stewart, who was Peter Peacock's private
9 secretary at that time, seems to me as though what
10 Mr Peacock has said to him is something along the lines
11 of: we have been there, we have been up hill and down
12 dale, this was carefully considered, we discussed it, so
13 that is fine, nothing more to be said, apart from noting
14 that the First Minister came up with a fifth option. It
15 doesn't sound as though --

16 A. I agree what you are describing.

17 LADY SMITH: But it doesn't sound as though Mr Peacock is
18 seeing this as a case being put before him that
19 officials have looked at this again, following on their
20 advice last year, they are actually thinking there is
21 a closer, more finely balanced decision to be made here.
22 They can see the arguments in favour of an Inquiry are
23 stronger than they might have seemed then. Please can
24 you confirm.

25 There is no hint of that here. So it just doesn't

1 seem that was how either Mr Peacock or David Stewart
2 took it.

3 A. I think it was. He was being very clear, exactly as you
4 have said: we have made the decision, that is it.
5 I wanted to be sure because I was uneasy about this
6 right from the beginning --

7 MR PEOPLES: About what?

8 A. About the decision not to have an Inquiry. I always
9 thought it was a judgment --

10 Q. From when were you uneasy?

11 A. From the start.

12 Q. When you say the start --

13 A. From 2002 at a personal level, not in terms of my job,
14 in pulling this together and collating advice and
15 reaching an agreement, and the collective view was X so
16 that is what gets put forward. I didn't think it was
17 a very clean-cut, simple decision, no, we don't.

18 Q. Why didn't you say that?

19 A. Because my role was not to say that. My role was to
20 make sure ministers got the collective advice --

21 Q. You were part of that advice. You could be a collective
22 advice contributor by saying colleagues generally think
23 this, but Colin MacLean has a different view, and we
24 will put both these views forward for you, because
25 Mr Peacock was very complimentary of you and thought he

1 would pay attention to things you said in your views.

2 Surely, given that, it would have been right if you
3 had these doubts or you felt there was a case, a case
4 for whatever reason, that it would have been the
5 appropriate thing to do to voice your views on the
6 matter, but it would appear now you, like the
7 First Minister of the time, kept these matters to
8 yourselves or kept it very close --

9 A. No. Well, that wasn't what I meant.

10 Q. You didn't tell anyone, did you? Because I can't see
11 any record of you saying Colin MacLean has --

12 A. I'm not saying I thought we should have an Inquiry.
13 I am saying I thought it was a balanced decision. It
14 wasn't a simple, clear-cut one, and from when I started
15 being involved in putting submissions forward, that
16 balance was brought out more strongly than it had been
17 in the first one.

18 LADY SMITH: What was it you were uneasy about right from
19 the beginning? You said that a few minutes ago.

20 A. There are some things which happen that you just get
21 a sense they are not going to go away. They are going
22 to keep on and get more difficult rather than less
23 difficult, and sooner or later either eventually they
24 subside or you end up doing something you could have
25 done much more easily a few years earlier, and that

1 happens frequently, right across politics. I just had
2 a sense this was maybe one of these. I wanted to be
3 sure that ministers were absolutely clear. So I put
4 in -- I made sure we got both sides of the argument put
5 in back in 2003, and in this submission I was just
6 pushing the boat slightly further and saying this is
7 finely balanced, are you sure? And they came back and
8 said, yes, we have made that decision.

9 That was fine. I backed off at that point because
10 it was their decision, not mine.

11 LADY SMITH: But if you are putting both sides of the
12 argument, you put all the points in favour of having
13 a Public Inquiry. And maybe it's because it's 3.50 pm
14 in the afternoon and it has been a long week, but
15 I don't recall seeing a document in which we are reading
16 the points, all the points in favour of having
17 a Public Inquiry. But I have got plenty of recollection
18 of reading documents in which are marshalled the
19 arguments against having a Public Inquiry.

20 MR PEOPLES: I think there are advantages and disadvantages
21 in some of the documents, in fairness, but I think the
22 point is if you had a particular position given where
23 you stood in the structure, then surely the point
24 I think is that you should have maybe been more vocal
25 about your concerns if you sensed this was an issue that

1 wasn't going to go away and there is no point trying to
2 say we will give them A, B and C and hope they don't ask
3 for D, E and F or the big issue of Inquiry. You were
4 probably sensing maybe this was a situation that wasn't
5 going to work, yet that is what seems to have been done
6 over time, little things were done, and ultimately the
7 big thing was done: we will give them a lot of things --

8 A. Can I be clear, I wasn't saying that at that point, any
9 time during that process, we should have an Inquiry.
10 I thought this was a genuinely difficult issue. And as
11 our understanding developed and as public interest
12 developed, this was something that I suspected ministers
13 would come back to. And they did, at various points,
14 not prompted by me. So this was just one of the times
15 when I thought I just want to test that they are
16 comfortable with the decision they have made, and that
17 is why I did that.

18 Q. I have to say perhaps then the fault is mine. But if
19 I had received that, I wouldn't have necessarily been
20 able to divine from it what you have told me this
21 afternoon. I would have rather it was said in much
22 plainer terms to me that this is what I think, it's
23 my -- I am making the submission it's -- we're getting
24 to the point where we have to say something publicly,
25 and I want you to be absolutely clear what I think. And

1 I would have thought in that situation your best option
2 was to say "Well, ministers, I think this is an issue
3 that ought to be explored again in full discussion
4 before we jump into a particular position". Not just,
5 well, give them a chance to invite them to reconsider,
6 you actually say to them "I think we should set up
7 a further meeting, and we should discuss the issues
8 again". Because surely that was something you could
9 recommend: let's have another meeting on it?

10 A. I could have recommended that.

11 Q. You didn't?

12 A. I didn't, no.

13 Q. It's there and we can no doubt -- but that is what you
14 thought you were doing?

15 A. Yes.

16 Q. Whether you achieved that result is maybe a matter for
17 interpretation of how it was perceived by those who
18 received the submission?

19 A. Peter Peacock and Cathy Jamieson's responses were very
20 clear as to where they believed we were in the process
21 so that was fine.

22 Q. Can I move matters on a little bit then. We have got
23 this situation and they have made their comments and you
24 have been asked to produce something else. And you do
25 so on 16 June which is a revised submission,

1 SGV-000047652. I might just put that up for you. I am
2 not going to spend a huge amount of time, it's very
3 similar to your previous submission, but we can look at
4 it just to see the change.

5 You have taken on board the comments. You produce
6 this document which is pretty much identical to the
7 previous one, save that I think there are -- if we go to
8 paragraph 6 towards the end, do we see that after the
9 sentence that reads:

10 "On balance, it would not be helpful to hold
11 an Inquiry into this matter although there are strong
12 arguments in favour. [Then in bold] This is the
13 conclusion that the Ministers for Education, Finance,
14 Justice, the Deputy Minister for Education and the
15 Solicitor General reached unanimously when they
16 considered this matter last year."

17 So this is reflecting what Peter Peacock wanted:
18 let's not go back. We have done this, considered it in
19 depth, and I want this recorded so we have the sequence
20 of events clear in our mind. There doesn't seem to be
21 any hesitation that he wants that to be the way it is
22 set out, yes?

23 A. Yes.

24 Q. That is the way things are done. I don't want to spend
25 a lot of time explaining why it didn't get to the

1 Committee, I did that yesterday I think sufficiently,
2 but what happened is it went to the First Minister, and
3 the one thing maybe we can look at is if I could look at
4 one document, 47, an email from the First Minister's
5 office to an official and others, SGV-000061806. It's
6 one I think you will be familiar with where the
7 submission, as revised, has gone with the approval of
8 Peter Peacock to the First Minister's office. He has
9 read both of your minutes, he has read Marion MacKay's
10 media handling plan which was something Peter Peacock
11 wanted to be put in place, and his comments are:

12 "... to go public on the rejection of a Inquiry
13 without proactive media work - especially with the
14 Sunday Mail - is unwise. He has also said that we must
15 be able to say something about support for survivors and
16 that a delay in that will not be helpful.

17 "I note that the short life working group is looking
18 to report to Ministers shortly. Perhaps its conclusions
19 can be brought forward quickly or are there conclusions
20 which can be divulged before the report is finalised?"

21 So these are his comments: proactive media work
22 because the Sunday Mail has taken an interest. You and
23 the officials get your heads together after that and
24 have a discussion. Gerald Byrne is absent on sick leave
25 around that time unfortunately. There is some

1 indication that he is not available. Maybe you don't
2 remember that, but there is something to that effect.
3 And you discuss the various options of how you play
4 this, whether you brief the Sunday Mail, whether you
5 issue a letter, what you do in terms of proactive media
6 work, and you try to address the points that
7 the First Minister wanted to be addressed.

8 You and others I think had been told that
9 the Petitions Committee were meeting on 29 June, there
10 are emails to that effect, and that they were wanting
11 a response by 22 June. The work that the First Minister
12 wanted done seems to have taken several days. It went
13 back to his office. And I think from the records, and
14 again I don't want to go over them for this chapter, but
15 I think they show that the plan was that Peter Peacock
16 would sign a letter, and did sign a letter, on 25 June
17 that was to go out that day to the Committee, and that
18 the Sunday Mail was to be briefed for the 27 June
19 edition on the matter. And that was the plan. And
20 unfortunately, because the First Minister was
21 unavailable to give clearance to the final response,
22 which had changed a little in those days, the letter
23 didn't issue on the 25th, because I think the other part
24 of the plan was that the First Minister would issue
25 a mea culpa letter to apologise for the delay.

1 In fact in the event what happened was that the
2 letter of the 25th which had been drafted and approved
3 went out as a reply to the letters to the First Minister
4 and Peter Peacock in May, but it went out around
5 30 June, the day after the Public Petitions Committee
6 had met and were unhappy and said that the Minister is
7 going to have to give evidence to the Committee, or is
8 going to give evidence, we still haven't got a reply.
9 That is what happened isn't it?

10 A. Yes.

11 Q. And I think Gerald Byrne to some extent said he thought
12 he had assurances from the Committee that this wouldn't
13 happen, and he blames himself because he was sick for
14 part of the time or whatever. But that is what
15 happened, it was missed.

16 Do you think that officials took their eye off the
17 ball there? Someone did. You had a First Minister
18 letter. Surely at that point everyone should have been
19 absolutely alive to the need to get a reply in before
20 29 June? It looks that way to me?

21 A. Looking at the copy list for that email, Shirley Laing
22 is on it, so that suggests that was about the time
23 responsibility was transferring from Gerald to Shirley,
24 I don't know if that was relevant. If he was on sick
25 leave and then First Minister wasn't available,

1 I suspect it wasn't so much the eye being taken off the
2 ball, it was a number of things happened just at the
3 wrong time.

4 Q. Well, it might have done. But I suppose, given the
5 history, and given the fact that a First Minister letter
6 went out, and presumably he wasn't a happy person when
7 he got that letter on his desk, and had wanted to
8 action, and we were now getting towards the end of June
9 and that letter went out on 17 May, surely that was the
10 occasion to make sure nothing went wrong and if someone
11 wasn't available or there was a change of personnel it
12 wasn't going to affect the outcome.

13 A. Yes, that's another example when we should have done it
14 faster.

15 LADY SMITH: I have also heard, Colin, about there being
16 informal contact between the Clerk to the PPC and
17 officials. Should somebody have picked up the phone to
18 tell the clerk "This letter is coming, you will get it
19 this week, but unfortunately we couldn't get it to you
20 on Friday as we had hoped to".

21 A. I don't know if that was done. But even if it had been
22 done, I suspect the Committee wouldn't have been
23 satisfied. They would still have asked Peter to go and
24 speak to them in September.

25 LADY SMITH: It might have helped. It might have made

1 things look a bit better.

2 A. It might have, but I don't know if that in fact was
3 done. It may have been done.

4 LADY SMITH: I haven't seen anything that tells us one way
5 or the other.

6 MR PEOPLES: As I say, the first that went is that there is
7 an email to the effect and the position was discovered
8 and it hit the press, there was an email that
9 Gerald Byrne said something along the lines that he
10 thought he had an assurance this wouldn't happen and
11 someone was to try and check. We have not seen anything
12 that shows quite how that unfolded. But clearly he knew
13 there was a deadline, indeed he had written an email to
14 the various offices to say that a deadline was required
15 by 22 June for the meeting on the 29th. So he had put
16 in place the building blocks to say we should get
17 something. And as I have said, there was a plan, it
18 would appear, to get everything out on the 25th,
19 including a letter from the First Minister, but because
20 of his unavailability for one reason or another, the
21 25th, the letter didn't issue, and I think there is
22 a letter from you -- an email to you to that effect from
23 Gerald Byrne that didn't issue.

24 So that is unfortunately what happened. But, as you
25 say, it may not have been any difference if someone had

1 picked up the phone by that stage because I think that
2 had happened too many times by then.

3 A. Yes.

4 Q. There is only so many times you can say that, isn't
5 there? Would your guess be that they might well have
6 done what they did anyway if someone picked up the
7 phone --

8 A. Yes.

9 Q. -- said "This is ridiculous".

10 A. Whether or not they had reacted as angrily, I am sure
11 they would have asked Peter to see them in September, as
12 he did.

13 Q. They did ask, as it turns out, without the letter.

14 A. Yes.

15 Q. Then they got the letter. Just one point before I leave
16 the letter and the events in June. Are you aware --
17 obviously the First Minister's option was not
18 recommended by officials, and a letter went out, and
19 I don't want to go back to the letter, but it doesn't
20 mention anything about an independent expert being
21 something that is still under consideration. There is
22 nothing to that effect. I can show you if you would
23 like to see it.

24 A. The letter that went to the Committee?

25 Q. Yes. It wasn't indicating there was any hint there

1 would be something for them to -- to hear good news
2 about in due course. There was nothing like that. It
3 was just saying we are not having an Inquiry and here
4 are the reasons.

5 A. Yes.

6 Q. At that stage, because you were more involved I think
7 then than you had been previously, did the
8 First Minister to your knowledge say at that point that
9 he insisted that the expert -- independent expert option
10 remain on the table? Do you remember hearing anything
11 to that effect?

12 A. I don't know.

13 Q. You don't remember him saying it?

14 A. I don't know if he said it.

15 Q. You are not aware he did say or he could have done
16 but --

17 A. I don't know either way.

18 Q. But if he wanted to make sure that the letter was in
19 terms that would keep that option open, and I think he
20 thinks it did, should he not have told you? Would that
21 not have been a smart thing to do?

22 A. The letter didn't raise the issue and therefore didn't
23 rule it out. So it was still on the table in that
24 sense.

25 Q. Wouldn't it have been nicer for you to be told that is

1 what his position was, even by way of comments on
2 21 June, to say I want to keep this alive. We have
3 heard evidence to the effect that Jack McConnell, if he
4 doesn't say, okay, I will move on from that, I am
5 content with that position, we have heard he keeps the
6 idea and he might resurrect it, and indeed we see signs
7 of that later on, but you didn't get any inkling of
8 that, did you, at that time?

9 A. No, I didn't see that as having been a problem. It
10 might have been harder if we had suddenly been asked to
11 add something else into the letter right at the last
12 minute. We missed the deadline anyway. It would have
13 made it even more likely to be missed if we were trying
14 to change policy at that late stage.

15 Q. If you have a senior adviser who is also heavily
16 involved in producing the briefings and draft responses,
17 then you might have thought at that stage, whatever
18 might have been the position at the early stages, he
19 might have confided in you that, well, okay, I see the
20 officials are not keen on it, but I am going to pursue
21 this, and okay, don't tell the Committee anything yet
22 because it is premature, but be in no doubt I am going
23 to pursue this. Why didn't he say that?

24 A. I don't know.

25 Q. Do First Ministers not disclose things to senior

1 officials?

2 A. Ministers do, First Ministers do, yes.

3 Q. I'm not sure Peter Peacock had any clear understanding
4 to that effect either. So if he was keen to keep --

5 A. He wouldn't have told me without having told Peter as
6 well.

7 Q. Yes, he wouldn't go directly to you.

8 A. No.

9 Q. But it seems odd, if he has a position on an apology,
10 and he has a position on an expert, that he doesn't at
11 least feel confident enough to tell people who maybe
12 should know what he is thinking at key moments. You
13 don't think that is -- it's not ideal, is it, in a big
14 issue --

15 A. It depends what he thinks might emerge out of the
16 discussions in September. I don't know.

17 Q. Going on to September, and I don't -- we have been over
18 this with the Minister. I think the only thing I would
19 want to raise with you, we have the report of the
20 proceedings, is there was clearly concerns internally,
21 particularly from OSSE, about what the Minister might
22 say in his statement. And the one thing they seem to be
23 keen that he didn't say was anything that might seem or
24 be interpreted as an apology for past abuse. So that
25 whatever he said in words, they didn't want anything of

1 that nature being said. In fact they revised his
2 speech, didn't they, behind the scenes, to try to ensure
3 that that didn't happen.

4 I don't want to take you through everything, but
5 there was an attempt to make sure that he said nothing
6 that would perhaps be construed in that way?

7 A. They gave legal advice and they suggested revisions to
8 the speech, but he made the decision about what he was
9 going to say based on that advice.

10 Q. Yes, he took the decision, but ultimately he expressed
11 "profound sorrow", I think was the expression, for the
12 damage caused, not profound sorrow even for the abuse
13 that occurred that caused the damage. So these were
14 words carefully chosen, were they not?

15 A. I thought the language he used when he spoke to the
16 Committee was very strong and he was careful to use
17 language which was not going to cause the lawyers
18 problems, but actually I thought the language he used
19 was almost stronger in terms of the strong words he used
20 to describe what had happened.

21 Q. I will take you to one document so we are clear what
22 appears to be the position, at least internally. Can
23 we look at SGV-000046974. That is a note from
24 a solicitor in OSSE to the Deputy Solicitor,
25 Patrick Layden, copied to various other

1 I think solicitors in OSSE, to do with the appearance
2 before the Committee, which is basically updating. And
3 can I just read what paragraph 2 says:

4 "We understand from clients ..."

5 That is the Education Department, the client for
6 these purposes:

7 "... that Mr Peacock has been extremely keen when
8 making his appearance before the Committee to express
9 'regret' for the fact that children cared for in these
10 Homes were, on occasions, subjected to abuse in various
11 forms. We have in this Division and in Division B2
12 spent some considerable time over the last day or so
13 trying to tone down what Mr Peacock will say to the
14 Committee given the risk that what he says might be
15 construed as an admission of liability. Hopefully the
16 briefing material that he has been given is now in a
17 form that will enable him to make the right noises to
18 the Committee while not offering anything that could be
19 construed as an admission of liability on the part of
20 Ministers. I understand that at a meeting with
21 Mr Peacock yesterday it was agreed that he could use the
22 phrase 'profound sorrow'."

23 And that was the phrase he used:

24 "I do not think we will be able to tone it down
25 further."

1 I think it is pretty clear what is happening there?

2 A. Yes.

3 Q. We don't need to labour that point, do we? He was not
4 to use the word "apology" in the context of past abuse
5 or anything --

6 A. You say that as if it was an instruction; it was advice.

7 Q. Yes, it was advice, and it was advice he followed.

8 A. Yes.

9 Q. But at the Committee, and you do say he used quite
10 strong acknowledgement of abuse and he expressed
11 profound sorrow, but he was pressed by Karen Gillon,
12 and Peter Peacock remembers this well and he told us
13 about it, that acknowledging is not apologising. And
14 then he said he was constrained -- I'm not going to go
15 back to the passage, we read it out yesterday, where he
16 said he was going as far as he felt he was able to go --

17 A. At that point, and the "at that point" was significant.

18 Q. And it's significant, you say, because by that stage the
19 issue of an apology was on the table behind the scenes.

20 A. I suspect it was.

21 Q. Did you not know?

22 A. I wasn't involved in discussions about it. I strongly
23 suspected by that point Peter Peacock and the
24 First Minister had --

25 Q. -- got together to have some discussion about

1 the matter. Okay.

2 A. Yes.

3 Q. Right. So things move on from there. And just before
4 I move on, I think the other thing he said, and maybe
5 it's a good enough time to deal with, he mentioned
6 Cathy Jamieson that month or around that time had made
7 a review to the Law Commission on the issue of
8 limitation. Did you know much about this? Was this
9 something you were privy to or had much knowledge about,
10 this whole issue of review?

11 A. I'm not quite sure what you are asking.

12 Q. What did you know? She made a review. Did you know
13 what she was reviewing -- asked the Law Commission to
14 review, for example?

15 A. Yes, I knew about the reference of the Law Commission.

16 Q. It was a reference on what?

17 A. On prescription and --

18 Q. Limitation?

19 A. Limitation, yes.

20 Q. So you thought it was on both?

21 A. Well, I think it was a phrase which had been used
22 together in discussing the kinds of issues which they
23 were. I wasn't involved in the detail of what the
24 review was into.

25 Q. But you thought it was on both? Looking back, trying to

1 recall?

2 A. I am not sure which one it was specifically on. But it
3 was -- these are two legal phrases. They went together
4 in the discussions in terms of what we had to understand
5 and we knew the Law Commission had been asked to review
6 that area of law. I wasn't involved in knowing the
7 detail of exactly what they were reviewing.

8 Q. If I tell you now the first reference -- there were two
9 references, did you know that, two references to the
10 Law Commission?

11 A. I think I did, yes.

12 Q. The first reference in September 2004, before the
13 Petitions Committee appearance by Peter Peacock and
14 before the debate, was on limitation only, it wasn't on
15 prescription. So it was asked to just review certain
16 provisions in the 1973 Act --

17 A. Yes.

18 Q. -- limitation of actions, and nothing to do with
19 prescription as such. That was the review that
20 Peter Peacock referred or mentioned when he appeared
21 before the Committee. And I think Michael McMahon said
22 in evidence to us that it was the impression of the
23 Committee, based on what was being said, that the review
24 would look at matters in the round, if you like, look at
25 the issue of prescribed claims, and indeed they were

1 quite anxious to have an indication of timescale of when
2 the review would be completed because they thought that
3 there was an injustice that was in the case of pre-1964
4 abuse claims which had no recourse to law based on the
5 Kelly type decision. And that he said -- I think
6 Michael McMahon did say that was his impression and that
7 of his Committee.

8 So they were left with the impression the
9 Law Commissions was going to look at the matter of
10 prescribed claims and report and perhaps there might be
11 a solution to that problem through their
12 recommendations.

13 Moving forward, and I will come to things that
14 happened on other matters, when we go to the debate the
15 matter is referred to again, and I think it is fair to
16 say again, although the word "limitation" may have been
17 used by the Minister when he was describing the review,
18 those present, at least some of them, were left with the
19 impression from what was said that the review would look
20 at the prescribed claims issue, and the people that were
21 left with that impression included Nicola Sturgeon.
22 I read out a passage yesterday. She thought that she
23 welcomed the review in the belief this was going to look
24 at the prescribed claims, but of course it wasn't, and
25 what happened was that the following April, at the

1 behest of Cathy Jamieson, an official made informal
2 discussion to the Law Commission, to be told that they
3 wouldn't be recommending a change in the law of
4 prescription for claims that had been extinguished
5 18 years before, and that they could give early advice
6 to that effect if asked.

7 In the event, after discussions and comments from
8 Peter Peacock and the comment by the Lord Advocate that,
9 well, you can do that if you want, I am not saying you
10 shouldn't, without perhaps expressing any confidence
11 that any better outcome would come of it, Cathy Jamieson
12 decided to have the prescribed claims issue dealt with
13 as part of the other review and the two would be
14 reported together, and that was in line I think with
15 Peter Peacock's comments at the time. Were you aware of
16 all that?

17 A. Vaguely. I was not involved in it.

18 Q. I don't think you were copied into some of that stuff.
19 I had a look at it last night. But that was the
20 sequence. So what we have, it would appear, on the face
21 of it, you have the Committee, Public Petitions
22 Committee, and some MSPs thinking at the time of debate,
23 well, that is good anyway, that is good news that one of
24 the big issues for survivors, one of the problems is
25 going to be looked at by the Law Commission, perhaps

1 with an expectation that something will be done to
2 improve the situation for them, when in fact it is not
3 going to happen at all at that point. And indeed when
4 the matter is then explored in 2005, the Law Commission
5 is giving a very strong indication, no, this isn't
6 something we could recommend, with good reasons,
7 no doubt, as subsequently explained when they did
8 report. But the Executive just decided, well, we will
9 put the two together and wait for the report and then we
10 can look at other issues like compensation. Was that
11 something you are aware of, that that is how it was
12 played out?

13 A. I was aware that process was not yet complete at that
14 point.

15 Q. But it could have been completed in 2005 had the
16 invitation for an early response been taken up, which it
17 wasn't, and you could have got on to compensation at
18 that point, for a group that had no legal avenue, do you
19 not think that would have been an appropriate time?

20 A. I --

21 Q. -- waited a long time before then.

22 A. Yes, it could have been done earlier, of course it
23 could. Yes.

24 Q. If you have no indications that the Law Commission is
25 likely to come back with something positive, and you are

1 not in some way almost raising false expectations if you
2 say there is a review going on, when you know what the
3 likely answer or outcome is going to be, it's not going
4 to be good news.

5 A. I didn't know that so I couldn't have done anything
6 about it at the time.

7 Q. But if you had known, you would realise that --

8 A. I would have changed that issue, yes.

9 Q. You would have been smart enough to say that this isn't
10 going to end well?

11 A. Yes.

12 Q. And it's going to cause perhaps some criticism when it
13 is found out, because we could have looked at
14 compensation at that point, particularly for that group?

15 A. Yes.

16 Q. You could see all those arguments coming up.

17 A. Yes.

18 Q. Would you have supported the decision for early advice
19 which was I think what the officials were recommending
20 initially?

21 A. Rachel Edgar gave advice to ministers in late
22 November 2004 about compensation, and the view at that
23 point was it was going to be complicated so let's not
24 try and do it before the debate, but the implication was
25 from our point of view we would do it as soon as

1 possible after the debate.

2 Q. I think also the view was that we will wait until the
3 Law Commission, but by the time we got to November there
4 had been a referral to the Law Commission. I think the
5 decision was that not only the test cases, we will wait
6 to see what --

7 A. If you are saying if we had known, say, in
8 October/November 2004 that there was a possibility of
9 accelerating that --

10 Q. Forgive me, I am saying if we go forward to 2005, when
11 these informal discussions with the Scottish
12 Law Commission are telling them that we can give you
13 early definitive advice on prescription, quite distinct
14 from the limitation review, and it's -- we are telling
15 you what that advice is going to be or likely to be.
16 And you have officials saying to ministers that we think
17 this is perhaps the way forward, I think there was
18 advice to that effect, all I am saying to you is would
19 you have supported that advice if the matter --

20 A. I don't know what I would have done, but I can say
21 today, yes, we could then have explored the compensation
22 issue at that point.

23 Q. As far as the period from the Public Petitions Committee
24 through to the debate is concerned, there are two big
25 issues here that we haven't discussed. We have talked

1 about compensation and we know that was shelved or
2 parked both for the test cases and the Law Commission
3 reviews that were going on.

4 So far as the Apology is concerned, and I don't want
5 to take up too much time today, but I think we have
6 a situation where it was under active consideration in
7 that period, and indeed advice from OSSE was sought in
8 relation to that matter during that period.

9 A. Yes.

10 Q. Indeed I think the first draft they saw of a statement
11 containing an apology was one that you and perhaps
12 Shirley Laing and Rachel Edgar had prepared for their
13 consideration at the request of the Minister, does that
14 sound familiar?

15 A. I'm not sure if I was involved in writing it, but, yes.

16 Q. And that that statement was on behalf of -- apology on
17 behalf of the people of Scotland?

18 A. Yes.

19 Q. And you were asked -- they were asked to consider the
20 risks and implications of a statement of that kind. Is
21 that how matters started off once the Apology began to
22 gather momentum?

23 A. Yes, there would have been discussions with the Minister
24 as well about the kind of things he would want to say as
25 well, but yes.

1 Q. If you want to -- perhaps we can just say officials had
2 met with INCAS in October, it was quite a key meeting on
3 18 October.

4 A. Yes, yes.

5 Q. And one of the things that was clear from that meeting
6 was that one of the things that they wanted was
7 an apology from the First Minister?

8 A. Yes.

9 Q. On behalf of the State?

10 A. Yes.

11 Q. It wasn't on behalf of the people of Scotland, is that
12 correct? Do you want me to take you to that?

13 A. Yes.

14 Q. Maybe we should look at that quickly. SGV-000046930.

15 That is a note of a meeting with Chris Daly and
16 Helen Holland on 18 October, and I think that simply
17 indicates -- it was Rachel Edgar, Stella Perrott and
18 Shirley Laing, I think, who attended that meeting, and
19 it's providing a note of the meeting. I don't want to
20 go through all of it, but I think the question of an
21 Inquiry was raised at that time, was it not?

22 A. It was, bottom of page 2.

23 Q. It appears that they were looking for an Inquiry, but
24 what the officials were picking up from the discussions
25 was that they weren't really keen on a Fraser-type

1 Inquiry. I think this is where this Fraser Inquiry
2 comes in, foot of page 2, do you see that?

3 A. Yes.

4 Q. And they were also talking about a listing process,
5 sympathetic ear as well, as part of that. And this
6 wasn't seen as really equating to a Public Inquiry and
7 so forth. And I think at that stage, were they looking
8 for -- perhaps we can see it more clearly in a later
9 email, but I think it is clear they were wanting
10 an apology.

11 A. Yes.

12 Q. They were still wanting an Inquiry but they were wanting
13 an apology.

14 If we go on, it is maybe better seen in another
15 document, 61, SGV-000017893, which is an email to the
16 Minister from Rachel Edgar on 29 October 2004. We have
17 moved to the end of October, and this is an update to
18 the Ministers, both Peter Peacock and his deputy, and
19 it's trying to update on meetings with INCAS, and
20 I think we see there it's now clearer, say officials
21 what is important to INCAS, although it recognises a
22 range of individual views and needs within the
23 organisation, firstly an apology from the State and from
24 the institutions. Yes?

25 A. Yes.

1 Q. I think it is clear that INCAS didn't see anything that
2 was said at the Petitions Committee meeting as amounting
3 to an apology as such. It may have acknowledged abuse
4 but it wasn't an apology.

5 And then access to appropriate counselling and
6 services was another thing that was important to INCAS.
7 An explanation of why abuse was able to happen, that is
8 really an Inquiry issue, isn't it, to some extent? Some
9 sort of Inquiry?

10 A. Yes.

11 Q. And compensation. But it was said by the officials to
12 the Minister, there was a range of views on this, but
13 they do say:

14 "Those who were abused pre-1964 and are unable to
15 bring civil cases at present are keen to have
16 an compensation scheme. Others are either not
17 interested in compensation or many would not want to
18 waive their right to sue in the civil courts or may be
19 happy to waive the right to sue the State if they could
20 still sue the institution."

21 So they were getting feedback based on these
22 meetings as to what might or might not be things that
23 INCAS were seeking.

24 It says:

25 "There is an increasing recognition of the limits of

1 an enquiry ..."

2 And that might be some reference to the Fraser-type
3 Inquiry and some of the reservations about it:

4 "... but I think that they still pin their hopes on
5 the debate leading to a full public inquiry. If that
6 does not happen however [according to the officials]
7 they will be to continue to explore other options."

8 And it says:

9 "We will explore further with OSSE what exactly the
10 risks of a full apology are."

11 And then of course it says that compensation issue
12 really effectively should be shelved meantime. That is
13 just reiterating the previous position?

14 A. Yes.

15 LADY SMITH: Mr Peoples, do we need to go through all the
16 details here? I am just very conscious of the time.

17 MR PEOPLES: No, I think --

18 LADY SMITH: I think we were focusing on the Apology.

19 MR PEOPLES: That is fine. I am perfectly happy to do it
20 that way.

21 So we have that, and then we have a situation where
22 OSSE are asked to give their views. They are given
23 a draft by -- that is prepared by your officials at
24 least. They come back with some comments. You say it's
25 actually good news because they seem to have come back

1 with a better version than you gave them, and indeed you
2 then say perhaps that might cause the Minister to change
3 his position.

4 And that was one thing I wanted to know, because
5 there is an email after this response --

6 A. Would you let me see that?

7 Q. I can. (Pause). SGV-000063525. I think that is the
8 version of the Apology that is revised, but I had the
9 feeling there was something else there that ... Is there
10 not an email that you sent to Shirley Laing on
11 18 November? Version 33.

12 LADY SMITH: That would be 4698.

13 MR PEOPLES: Can you scroll down on that document. If you
14 stall there, go a little further up. You have said on
15 18 November at 1.33 to Shirley Laing:

16 "If this is what the final version looks like ..."

17 And this is the one that OSSE had looked at
18 and revised, its apology on behalf of the people of
19 Scotland:

20 "... it might be worth letting PP [Peter Peacock]
21 see it. My first impression is that it reads stronger
22 than the version you and I prepared ..."

23 So you were involved in the preparation:

24 "... and might lead PP/FM to reconsider their
25 position?"

1 And that is what I was interested in. What was
2 their position, as you understood it, before then? Did
3 they have reservations about making an apology?

4 A. I honestly can't remember. My guess is that the version
5 we had offered was one that we thought might be a
6 compromise between what Peter would have liked to say
7 and what lawyers would have been comfortable with,
8 somewhere in the middle, and what they came back with
9 I must have thought was actually closer to what he would
10 have wanted, so his position being he could say more of
11 what he wanted.

12 LADY SMITH: Is this what Peter would have said or what the
13 First Minister was going to say?

14 A. At that point it wasn't clear which of them was going to
15 say which bits, because some of the drafts of the speech
16 end up being said by the other person.

17 MR PEOPLES: If we just look at another document briefly.
18 SGV-000063530, which is another email that you on this
19 occasion sent to the Minister on the same date. Do we
20 see that you say to the Minister:

21 "You will have seen from Shirley's email that the
22 final draft, as cleared by OSSE, provides a stronger
23 statement about the scope of the Apology than we thought
24 they might be willing to agree. Not sure if that
25 changes your view on whether or not it would be helpful

1 for you or the [First Minister] to use it in advance of,
2 or during, the debate.

3 "I appreciate a key judgment is whether or not it
4 might be seen as grudging. Compared with what is
5 expected, I suspect it will come as a welcome surprise.
6 No doubt there will still be calls for a more direct and
7 explicit apology for what the state did, but the draft
8 goes much further than I expected. And probably much
9 further than INCAS expects. We will let you have a
10 draft speech ..."

11 So it does appear that there at least was an issue
12 about whether an apology in the sort of terms that had
13 been cleared "on behalf of the people of Scotland" (a)
14 would perhaps be considered grudging but (b) might not
15 perhaps meet the expectations of those that were seeking
16 an apology on behalf of the State?

17 A. Yes.

18 Q. Is that --

19 A. Yes, what I am saying to the Minister is what OSSE have
20 at that point agreed is much closer to what he wanted to
21 say and the First Minister wanted to say than I thought
22 they would agree. Later it is clear the First Minister
23 is saying that "I'm going to make the Apology whatever
24 advice I get", but that is a different issue further
25 down the line.

1 Q. We will follow that through. So that was where OSSE had
2 cleared something that seemed to read better in fact
3 than perhaps you had hoped for.

4 A. Yes.

5 Q. Matters move on. Then I think the Minister has his
6 meeting with INCAS on 23 November and there are two
7 things I want to ask you about that. The first is he
8 doesn't rule out or rule in an apology, so he is just
9 testing what -- but he is told in fairly clear terms:
10 apology from the First Minister on behalf of the State.
11 I think that is really what it comes to. We saw that in
12 the update. They weren't wanting an apology on behalf
13 of the people of Scotland. That is clear from the
14 records at least. I don't know if you agree with that?

15 A. I am just trying to find the record of that discussion
16 he had with them as distinct -- maybe it doesn't say.

17 Q. I know that the formulation started off as an apology
18 "on behalf of the people of Scotland" and that was
19 cleared but --

20 A. Yes, you are right. It says "on behalf of the State" in
21 that meeting he had with them as well as the ones we had
22 with them. Yes.

23 Q. So they are wanting that and that is still their
24 position and he listening to them.

25 A. Yes.

1 Q. And because he is listening to them he makes changes to
2 the speech?

3 A. Yes.

4 Q. Just after that meeting. What he does is he changes the
5 text of the Apology to read as an apology "on behalf of
6 the Government in Scotland and the people of Scotland".
7 I can take you to a document. I will just take you to
8 it briefly. SGV-000063531. We see if we just scroll
9 down -- further down. I am trying to find something
10 that reads in that document:

11 "The Minister for Education and Young People made
12 changes to the text of the Apology ..."

13 Yes:

14 "Have they got any comments on the Minister's
15 proposed changes to the Apology, as you are aware?
16 Grateful for urgent comments."

17 That is from David Stewart. Then if you keep
18 scrolling down, we see a draft speech. Keep scrolling
19 down, further to the next page. Keep going. It's now
20 changed to:

21 "That is why I want to take the opportunity today
22 I offer a sincere and full apology on behalf of the
23 Government in Scotland and the people of Scotland to
24 those people who were subject to such abuse ..."

25 So that is where that addition of "Government

1 in Scotland" comes in after the meeting with INCAS, and
2 it is done by the Minister, because he has just met
3 INCAS?

4 A. Yes.

5 Q. And just to complete this story, that change, for
6 whatever reason, remains in the draft until 30 November,
7 the day before the debate, and as we saw yesterday, and
8 I'm not going to go to the emails, the Lord Advocate
9 sees the draft for the first time of the Apology and
10 says he has concerns that, if that formula remains,
11 there are risks that it might be seen as some sort of
12 admission of liability?

13 A. Yes.

14 Q. So because of that, that results in the removal of the
15 reference to the "Government in Scotland" and the
16 retention of "people of Scotland" and that is
17 the Apology that the First Minister delivered. And that
18 is how it unfolded?

19 A. Yes.

20 Q. That is the sequence, in broad terms?

21 A. Yes.

22 Q. So the Lord Advocate stepped in the day before. Maybe
23 OSSE just missed that particular change but they --
24 because they didn't seem to pick it up. But, at any
25 rate, what happened was it was the Lord Advocate's

1 intervention that caused the change and that was how the
2 Apology was delivered without those words. And that
3 wasn't what INCAS wanted. They wanted an apology on
4 behalf of the State, not the people of Scotland.

5 So far as the rapporteur proposal, and that is
6 the only other thing I perhaps want to just clarify with
7 you, Peter Peacock mentioned it at the meeting with
8 INCAS. It was perceived or considered by those that
9 were with him as a new suggestion.

10 A. I know it was, yes.

11 Q. It was?

12 A. I know it was, yes.

13 Q. You know it was. How do you know that?

14 A. Because you told me when he met before and they told me
15 as well. I wasn't surprised. It didn't feel to me to
16 be as different from some of the other suggestions there
17 had been. But I accept that officials were surprised.

18 Q. Yes, because they said it was a new suggestion and they
19 went to OSSE to get advice on it?

20 A. Yes.

21 Q. So it sort of took them by surprise at least. Although
22 he says in essence it was the First Minister's fifth
23 option that had --

24 A. Yes, that is what I thought.

25 Q. -- revived, if you like, and that is what you thought --

1 A. Yes.

2 Q. -- when you looked any records on that?

3 A. Yes.

4 Q. So they take advice on that, and again I don't want to
5 go through all the detail, but the proposal itself
6 caused considerable consternation in various quarters,
7 particularly OSSE who eventually -- or didn't
8 eventually, on 25 November Richard Henderson sent a note
9 to the Minister, a long note, about his thoughts and the
10 risks of that proposal, and the various possibilities of
11 how it might trespass on Convention rights and things of
12 that nature, having spoken to the Lord Advocate on the
13 matter, but not necessarily had his direct endorsement.

14 A. No, and then Peter spoke to the Lord Advocate, as
15 a result of which he went ahead with the proposal.

16 Q. Yes, he had reassurance, it would appear from the
17 discussion, and he also wrote a long reply saying why he
18 intended to go ahead with the appointment for reasons
19 that he set out and, despite the advice he was getting,
20 he was not going to follow that advice but appoint. He
21 did that, but at the last minute there were further
22 interventions. The Crown Agent came in with concerns
23 about the proposal. OSSE came up with more risks and at
24 one point on the 30th, as I think Mr Peacock didn't
25 remember, it changed back to being a possibility rather

1 than an intended announcement of a rapporteur. But on
2 the day of the debate, and you may not know this, the
3 First Minister said "No, I want you to say you can
4 appoint, I don't want you to say you are exploring it",
5 and that is the way it finished up?

6 A. Yes, and Crown Agent's concerns were very specific about
7 individual cases and were dealt with in the development
8 of the remit for Tom Shaw.

9 Q. Yes. It became quite a restrictive remit to take
10 account of those concerns, and that is how -- we can
11 perhaps explain the terms of the remit in due course.

12 A. Yes.

13 Q. So that is how it all unfolded, and that is how the
14 rapporteur proposal developed to that point and that is
15 how it changed --

16 A. Yes.

17 Q. At the start it was a certainty, then it was
18 a possibility because of OSSE's intervention, then it
19 was reverted, on the day of the debate, to a certainty:
20 I'm going to announce it because the First Minister says
21 I should do.

22 A. Yes.

23 Q. So is that how it all came --

24 A. That is how it happened, and that is not that unusual,
25 that you get that amount of toing and froing on

1 a significant issue.

2 MR PEOPLES: I think that covers matters for me, and I hope
3 there are no questions that are required at this stage.

4 LADY SMITH: Let me check. Are there any outstanding
5 applications for questions?

6 That does complete all the questions we have for you
7 today, Colin. Thank you very much for your engagement
8 with the Inquiry, both for the work that has gone into
9 providing your statement and coming here today and
10 bearing with us. I know I am asking you to cast your
11 mind back many years, and no doubt many things have
12 happened in your life since then that means it is not at
13 all easy. I know that we have tested you today and
14 challenged you, and I hope you appreciate we have to do
15 that.

16 A. I do, and I am actually glad you have because it's
17 important this is done properly.

18 LADY SMITH: Thank you for that, and I am now able to let
19 you go with my grateful thanks.

20 A. Thank you very much.

21 MR PEOPLES: Thank you very much.

22 (The witness withdrew)

23 LADY SMITH: So that completes today's proceedings,
24 Mr Peoples, and we start at 10 o'clock tomorrow.

25 MR PEOPLES: We have one witness tomorrow.

1 LADY SMITH: One witness tomorrow. Thank you very much.

2 (4.32 pm)

3 (The Inquiry adjourned until 10.00 am on Friday,

4 20 November 2020)

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