

Tuesday, 24 November 2020

(10.02 am)

LADY SMITH: Good morning and welcome back to everybody for the continuation of evidence in our hearings in relation to the Scottish Government investigation phase of the Inquiry.

I understand we have an oral witness ready to give evidence, is that right, Mr Peoples?

MR PEOPLES: Yes, my Lady. The hope is we will have two witnesses giving evidence today here. The first this morning is Adam Ingram.

LADY SMITH: Thank you.

Good morning. Could we begin, please, by you raising your right hand and repeating after me ...

MR ADAM INGRAM (affirmed)

LADY SMITH: Please sit down and make yourself comfortable.

I see you have some papers with you which I imagine have some of your own notes and your statement amongst them. Feel free to use those if it helps you. Your statement is also in that red folder and you will see it coming up on screen in front of you, so you have choices there.

Before I hand over to Mr Peoples, help me with this: what would you like me to call you? Mr Ingram or Adam? Your choice.

A. Adam would be fine.

1 LADY SMITH: Very well, Adam. I will hand over to  
2 Mr Peoples and he will take it from there.

3 Mr Peoples.

4 Questions from MR PEOPLES

5 MR PEOPLES: Good morning, Adam.

6 A. Good morning.

7 Q. You have, as her Ladyship said, a folder containing  
8 a statement, and we have given it the identification  
9 WIT-1-000000400. You don't need to concern yourself  
10 with that, it's just for our transcript.

11 Can I say at the beginning that the statement that  
12 appears on the screen in front of you at the moment is  
13 in the form of a draft statement based on previous  
14 meetings with you to try and capture your evidence about  
15 matters that are relevant to the Inquiry and I propose  
16 today to use that statement as the basis of questions  
17 that I will ask this morning.

18 I understand that you have looked at the draft  
19 statement and that, in broad terms, you are quite happy  
20 with its content, that it captures accurately what you  
21 previously said to the Inquiry. But if there are parts  
22 that you wish to either amend or change or add to, or if  
23 you think there is something else significant that you  
24 feel should be said to the Inquiry in your evidence,  
25 please feel free to do so.

1           I also understand that you will, perhaps after we  
2           have finished today, be able to prepare a finalised  
3           statement which you are happy with and you will be  
4           signing in due course, but does that really capture  
5           where we are at the moment?

6       A.   Yes. I have been through the statement and it's  
7           virtually unchanged. I just made some minor tweaks,  
8           that was all.

9       LADY SMITH: Adam, thank you for agreeing to do that. It  
10           would be helpful if I could also have what is your final  
11           signed statement whenever you are able to do that,  
12           thank you.

13       MR PEOPLES: You are Adam Ingram and you were a Member of  
14           the Scottish Parliament between 1999 and 2016, is that  
15           correct?

16       A.   That is correct.

17       Q.   You tell us in the draft statement that your background,  
18           and indeed I think you tell us that before you became  
19           an MSP you were an economist?

20       A.   I was, yes.

21       Q.   Today my interest is really in the period between  
22           May 2007, when there was an election and the Scottish  
23           National Party became the new administration in  
24           Scotland, from then until May 2011, and I think during  
25           that period you were the Minister for Children and Early

1           Years, is that correct?

2           A. That is correct.

3           Q. And that the Cabinet Secretary for Education during that  
4           period was firstly, at least for part of that period  
5           that I am interested in, would have been Fiona Hyslop  
6           from May 2007 to December 2009, is that roughly correct?

7           A. I think so, yes.

8           Q. And then her successor was Mike Russell who was the  
9           Education Secretary from December 2009 until  
10          November 2014, is that correct?

11          So far as your responsibilities were concerned as  
12          Minister for Children and Early Years, I think one of  
13          the areas of responsibility was for looked after  
14          children, is that correct?

15          A. Indeed, yes.

16          Q. And that in the period that we are concerned with, when  
17          you were Minister, there was a particular focus I think  
18          on improving the child protection system for all  
19          children and young people, not simply children who were  
20          looked after.

21          A. Yes, indeed. Yes, the whole range of the child  
22          protection system was something that I dealt with on an  
23          ongoing basis, yes.

24          Q. I think, and I can put up perhaps for you, I think  
25          towards the end of your statement, we can maybe deal



1 with it at this stage, I think starting around about  
2 paragraph 34 of the draft statement, if we could just  
3 scroll forward to that. I think you tell us in this  
4 statement a bit about the current childcare system that  
5 you had to deal with as Minister, and that you say, and  
6 indeed I can just read for you, that:

7 "What was happening and what needed to happen [in  
8 your time] was culture change ... and putting children's  
9 rights at the centre of the system [and that] the whole  
10 process of listening to children and being open to  
11 believing children had to be reformed and [that] there  
12 was a need to increase the status and skills of  
13 the residential care workforce and to improve the  
14 management of that workforce."

15 So were these the sort of things that were perhaps  
16 needing to be addressed within the current system in  
17 your time?

18 A. Yes, they were indeed. Clearly if we are talking about  
19 looked after children in particular, the outcomes from  
20 looked after -- the care system for looked after  
21 children were appalling down the years both in terms of  
22 learning outcomes, health outcomes, the whole gamut, as  
23 it were. So we had a mentality, if you like, that  
24 looked after children in particular had to be kept under  
25 control, kept in order, but that was as far as it went.

1           There was no, if you like, empathy with the child in  
2           that position.

3       Q. I think you tell us, and I am not going to go through it  
4       all, but you tell us in the draft statement that some of  
5       the things that were being done during your period as  
6       Minister, I think, for example, embedding what was known  
7       as the concept of corporate parenting which, and you  
8       will correct me if I am wrong, is essentially that those  
9       who are responsible for the provision of childcare, such  
10      as local authorities and others, should look at and look  
11      after children in their care in the same way as they  
12      would their own children. Is that in essence the  
13      concept?

14     A. That is exactly the concept, yes.

15     Q. Indeed another matter that I think you were seeking to  
16     address was the need to place much greater emphasis on  
17     maintaining contact with young children after they left  
18     care, is that also --

19     A. It's very important. I am a parent, I don't know if you  
20     are, Jim, but parenting never ends.

21     Q. Yes, I think we can all ...

22     LADY SMITH: It's not difficult to agree with that, Adam.

23     MR PEOPLES: But you were trying to, I think, formalise the  
24     structure at least to ensure that that continuing  
25     contact took place so far as the corporate parents were

1           concerned?

2           A.   Yes.  To my mind, too often in the past, once the local  
3           authority or whoever was charged with the care of  
4           a child, once that child had reached the age where it  
5           no longer required to be cared for, they were more or  
6           less put into society, into the community, without  
7           a support system in place which was quite clearly -- you  
8           are really throwing a child into the deep end, to the  
9           wolves almost, and you're really depending on how good  
10          a particular social work department or local authority  
11          was in terms of looking after that child for -- or  
12          trying to assist that child in future.

13          Q.  I think today, and you may or may not know this, we have  
14          a system where the intention is that, if necessary,  
15          young people who leave care may be supported until their  
16          mid-20s or thereabouts, and that is a move that has  
17          happened I think in more recent times, is that correct?

18          A.  That is correct, yes.

19          Q.  Another thing that you point out, I think, particularly  
20          at paragraphs 42 to 43 of the draft statement, another  
21          matter that you were seeking to address was to change  
22          traditional societal attitudes towards children in care  
23          and indeed those who had been in care as children.  Was  
24          that something you felt needed to be also addressed as  
25          part of improving the situation of people who had

1 experienced care?

2 A. It was certainly troubling to me. We were trying to  
3 increase, if you like, the quality of the residential  
4 care centre, and a number of local authorities -- we  
5 worked with local authorities on this to try and improve  
6 the state, as it were, of residential care and, rather  
7 than having big institutions, setting up homes which  
8 would have perhaps a dozen children in them to make it  
9 much more like a normal household, if you like, and  
10 local authorities who were investing in this way quite  
11 often ran up against opposition from the local  
12 communities. The local communities had this notion that  
13 any child in care was somehow a delinquent child and it  
14 is their fault they were in care. There was still that  
15 mentality out there, and probably still is, and we have  
16 a lot of work to do to try and change the perceptions  
17 that are still out there just now.

18 Q. Is that in large measure a question of education rather  
19 than perhaps specific regulations, rules and  
20 legislation?

21 A. Yes, absolutely, you can only do so much legislatively,  
22 but you have to -- education is very important, and  
23 anti-stigma campaigns and the like, trying to bring it  
24 to people's attention, how these children -- what kind  
25 of experience they have had of life and being much more

1           empathetic with their needs.

2           Q. I think a point you do make, and I think it is made  
3           further on at paragraph 49, is that making the sort of  
4           changes you have discussed takes time. It's not  
5           something that happens overnight, particularly cultural  
6           change and the benefits or the effects of education on  
7           society. Is that something that you have learned from  
8           a long experience in political life?

9           A. Well, indeed. It's easy enough making policy but  
10          implementing it is a much harder job, particularly when  
11          you have to try and bring people with you in terms of  
12          the need for it and the outcomes that you are looking  
13          for.

14          Q. Can I move the focus now to perhaps something that is  
15          more directly concerned with the Inquiry today, the  
16          focus on issues relating to adult survivors of  
17          non-recent abuse in institutional care which is  
18          something you deal with in the statement that we have  
19          before us.

20                 So far as your period is concerned, there was a new  
21          administration in May 2007 and you became Minister for  
22          Children and Early Years at that time. I think the  
23          issue or issues arising from historical abuse of  
24          children and responsibility for those issues was not  
25          directly part of your remit, is that correct?

1 A. That is correct, yes.

2 Q. And that other ministers who were involved with what  
3 I would call adult survivor issues were, firstly,  
4 Shona Robison, who was the Minister for Public Health  
5 within the Health Department, is that right?

6 A. That's right.

7 Q. And another minister who had some direct involvement was  
8 Fergus Ewing who was the Minister for Community Safety  
9 within the Justice Department?

10 A. That's correct.

11 Q. So between you, you at least to some extent had  
12 involvement, but they had specific areas that were part  
13 of their portfolios?

14 A. Yes. My primary concern was obviously to try and learn  
15 the lessons from the past. There was the Shaw Report  
16 that had just been published, we had the Kerelaw Report,  
17 the investigations were going on. So I was keen to try  
18 and take the lessons or the recommendations from these  
19 various reports and try to implement them.

20 Q. If we just perhaps get a background to it, you made a  
21 statement in Parliament on February 2008, but before  
22 I get to that can I just ask you this: I think, as you  
23 told us previously, there were two important  
24 developments towards the end of 2007, the first being  
25 the publication of the Shaw Review Report

1 in November 2007?

2 A. Yes.

3 Q. And the second was the publication of the report of the  
4 Scottish Law Commission on prescription and limitation  
5 in December 2007, so these were significant  
6 developments?

7 A. Yes.

8 LADY SMITH: They were quite early in your tenure,  
9 of course.

10 A. Yes.

11 LADY SMITH: Only a matter of months into getting your feet  
12 under the table by then.

13 A. Yes. It was quite an exciting time and a lot to absorb  
14 and pick up on.

15 MR PEOPLES: Although I am running a little bit ahead,  
16 I should perhaps also say that there was an important  
17 decision of the House of Lords sitting as a judicial  
18 committee in the case of Bowden in May 2008 which upheld  
19 decisions not to allow claims concerning non-recent  
20 abuse of children in care which had been brought out of  
21 time. They didn't allow those to proceed. So that was  
22 also, I think, in the background in terms of effectively  
23 a test case that was exploring the issue?

24 A. Yes. It seemed to be limiting the opportunity that  
25 people might have to have recourse to the courts so we

1           had to perhaps look at other means to address the issues  
2           that people had with that.

3       Q.   Yes, and I think the decision in Bowden really signalled  
4           that claims which had not prescribed, which were a  
5           slightly different problem, but were brought out of  
6           time, would not perhaps generally be allowed to proceed  
7           to a hearing on their merits?

8       A.   That's right.

9       Q.   And I think that did lead to a number of claims at that  
10          time that had been brought being either dismissed or not  
11          proceeded with, and that may be something you became  
12          aware of?

13      A.   Indeed.

14      Q.   So far as the Scottish Law Commission was concerned, in  
15          its report it recommended no change to the law of  
16          prescription, which meant that pre-1964 claims for  
17          compensation for past abuse could not be brought to  
18          court. I think that was their recommendation, that  
19          there should be no change --

20      A.   Yes.

21      Q.   -- to allow these claims to be brought.

22            I think you told us previously that Fergus Ewing,  
23          who was responsible for the response from Justice to  
24          these legal developments, came to the conclusion around  
25          that time that it was impossible, or almost impossible,



1           for people who had been abused many years previously to  
2           have effective access to the civil justice system. That  
3           was really the message that was coming out and the  
4           conclusion being reached?

5           A. That was.

6           Q. You then -- there was some discussion about what I might  
7           call alternatives to the civil justice route, but before  
8           I ask you about that, can I ask you this: between  
9           December 2007, which was when the Shaw Report had been  
10          published and the Law Commission had reported, and your  
11          statement in Parliament on behalf of Scottish Government  
12          on 7 February 2008, can you recall any ministerial  
13          discussion at that time about whether there should be  
14          a public inquiry into historical abuse of children in  
15          institutional care as had been called for in the  
16          Daly Petition in August 2002? Can you recall discussion  
17          about that?

18          A. It is quite conceivable there was such a discussion but  
19          I don't remember -- I can't recall having that  
20          discussion at that particular time. But we did have  
21          a discussion later on, which I think you have outlined  
22          in -- or you talked to me about, I think it is further  
23          on, where we discussed implementation of the Shaw Report  
24          in particular.

25          Q. If I can just put maybe paragraph 21 before you in the

1 draft statement. I think if we can scroll down to  
2 paragraph 21. I think we see there that you previously  
3 told the Inquiry that, at that time, the  
4 Scottish Government were not looking at having  
5 a public inquiry:

6 "We did not really want to go down that route, we  
7 wanted to move forward."

8 And you had the two reports that you had to respond  
9 to as well as the Kerelaw Report. So was it really that  
10 the focus was on something other than a public inquiry  
11 at that time, particularly the response to Shaw and to  
12 the Law Commission?

13 A. Yes, I thought we had plenty of evidence of what had  
14 gone wrong in the past and what we needed to do -- well,  
15 my particular remit was to get things sorted for  
16 children who were going through the system right now and  
17 for the future. So that was my focus, and I just wanted  
18 to get on with doing that.

19 LADY SMITH: Adam, when you say you had plenty of evidence  
20 of what had gone wrong in the past, are you telling me  
21 that you felt there was plenty of evidence that children  
22 had been abused as opposed to how it came to be that  
23 that abuse was able to happen? Do you see what I mean?

24 A. Yes. Yes, I think what I was looking at was what can we  
25 do to ensure that the system that we currently have

1           doesn't allow those types of things to happen. How can  
2           we make the relevant improvements? What are the means  
3           to achieve that?

4       LADY SMITH: Yes, I see that. But what about whether you  
5           were at the stage that there was plenty of learning  
6           about how the abuse came to happen in the past, taking  
7           it as read that children were abused, how was it that  
8           that was able to happen? Was there learning about that  
9           then?

10      A. I think so. If we looked at the Kerelaw Report  
11           for example, which went through in quite considerable  
12           detail what had gone wrong: why children were being  
13           abused, they weren't being listened to, if they had  
14           complaints there would be repercussions for the  
15           children, that type of thing, that type of mentality was  
16           quite clearly part of the system.

17      LADY SMITH: Thank you.

18      MR PEOPLES: But I suppose your focus, as you have just  
19           said, was looking at it from the perspective of whether  
20           a further inquiry could provide lessons that would apply  
21           to children in care in the system at your time or in the  
22           future. But there is a separate question of whether  
23           an inquiry might serve the needs of adult survivors.  
24           There may be other reasons why an inquiry was needed  
25           than simply to learn lessons, do you accept that?

1       A. Of course I accept that, and that is where we started.  
2       We were discussing what I described as a truth and  
3       reconciliation model in the statements I made to  
4       Parliament which I thought -- which appealed to me at  
5       the time. And we had seen the outcomes in South Africa,  
6       for example, from that type of model that was used, and  
7       I thought that had a lot of merit to apply to this  
8       particular situation.

9       Q. So obviously you did make a statement on 7 February in  
10       Parliament, and your statement I think said that in  
11       large measure the recommendations of the Law Commission  
12       were being accepted, is that right, particularly in  
13       prescription, and they had made some recommendations  
14       about changes to the law of limitation. But you weren't  
15       quarrelling in broad terms with their conclusions?

16      A. No, I think -- I have to admit my legal knowledge is  
17      somewhat limited, so I relied on my colleague, Mr Ewing,  
18      for his advice in that particular regard.

19      Q. One thing you did mention, you have just told us, is  
20      that your statement included a proposal to look at some  
21      form of truth and reconciliation model and to explore  
22      that as perhaps an alternative to a court process?

23      A. Yes.

24      Q. I think you deal with this at paragraph 15. But was the  
25      intention to look at a model other than a court process

1           that would to some extent address issues of importance  
2           to survivors, such as acknowledgement of past abuse, but  
3           also accountability for that abuse having occurred? So  
4           it would address both elements?

5       A.   Indeed.

6       Q.   I think, and we see this in perhaps 19 and 22 of the  
7           draft statement, but I think you previously told the  
8           Inquiry that a truth and reconciliation type forum made  
9           sense to you because it was a forum where survivors  
10          could speak about their experiences and perhaps have  
11          their abusers and organisations which had employed them  
12          also involved in the process in the hope that, by  
13          bringing people together, the forum would act as  
14          a healing process and bring some closure at least to  
15          some survivors. Was that what was in your mind at the  
16          time?

17      A.   Yes, I think what had been in my mind was where  
18          survivors could -- there would be some sort of  
19          therapeutic value in coming forward and being able to  
20          unburden, but in addition to that there was the need for  
21          the perpetrators to be faced with the reality of what  
22          they had done, and hopefully there would be some sort of  
23          recourse and some sort of admission that this is what  
24          had happened and they need to make some sort of, not  
25          recompense ...

1 Q. Some sort of reparation?

2 A. Some sort of reparation for the harm they had done.

3 LADY SMITH: Adam, I see from the draft statement what you  
4 had in mind was that perpetrators would be invited to  
5 attend. What you were envisaging didn't include any  
6 system whereby they could be compelled to attend. What  
7 was going to make them attend somewhere they didn't have  
8 to attend at which they obviously felt they were going  
9 to be accused of having committed crimes?

10 A. At this stage it was exploring what was possible in  
11 terms of a potential model, and it had worked in  
12 South Africa in really extreme circumstances, so that is  
13 why it appealed to me. It could perhaps be applied to  
14 this situation. I didn't go in any great depth into,  
15 well, the practicalities of it all, but this was the  
16 notion, that we would look at a model akin to that and  
17 hopefully something like that would be brought forward  
18 in the usual way.

19 LADY SMITH: Had you had direct experience of truth and  
20 reconciliation commissions operating in South Africa?

21 A. No, I didn't have any -- we just followed what was  
22 happening and the publicity around it.

23 LADY SMITH: I see. What were you doing when you were in  
24 South Africa? Was that in your earlier life as  
25 an economist or after you became a politician?

1       A. I did visit Namibia but I didn't do anything in  
2       particular in South Africa. This was just through the  
3       general news media and the like, absorbing that at the  
4       time.

5       LADY SMITH: Thank you.

6       MR PEOPLES: Can you recall who was perhaps putting forward  
7       a truth and reconciliation model at that time? Because  
8       there were three ministers clearly that had a direct  
9       interest I think in -- at least three departments,  
10      Justice, Health and Education. I get the impression  
11      that, while you made the statement in Parliament, it may  
12      not have been your idea to push in this direction. Was  
13      that coming from a particular source like Health or  
14      Justice or both? Do you recall?

15     A. I am sorry, I don't recall.

16     Q. But am I right in thinking it wasn't your idea, big  
17      idea, at that point, when you were discussing the  
18      response to Shaw and the Law Commission?

19     A. No, I am trying to recollect ... I think it came out of  
20      the general discussions about how we could -- given the  
21      legal route being closed off, apparently, from the  
22      Scottish Law Commission and the House of Lords, on how  
23      could we tackle this issue? And it came out of  
24      discussions about that.

25     Q. The Inquiry has seen I think certainly some papers that

1           were produced by officials in the Health Department on  
2           truth and reconciliation, and indeed I think some of  
3           them may have featured, or some of the content may have  
4           featured in a consultation exercise about what was  
5           called an acknowledgement and accountability forum later  
6           on. I don't know whether that assists your recollection  
7           that --

8           A. I think very much it was that the Health Department were  
9           the main players, I would suggest, in terms of how to  
10          address the issues that survivors of abuse had.

11          Q. If I can move forward a bit from February 2008, there  
12          was an important ministerial meeting on  
13          30 September 2009, the following year, and ministers  
14          including yourself at that time decided to follow the  
15          recommendations of officials and go down the  
16          confidential forum route. I think you previously told  
17          the Inquiry this was rather a different model to the one  
18          you had announced in Parliament on 7 February in 2008,  
19          is that the position?

20          A. Yes. I have to say I was disappointed with the proposal  
21          when it was brought forward. It was felt there had to  
22          be the involvement of the organisations which had, if  
23          you like, the perpetrators of the abuse, that they had  
24          to be, if you like involved, and I didn't think this  
25          was -- it's one thing to acknowledge the abuse, it's



1 another to hold the abusers or the perpetrators  
2 accountable, and I felt that was lacking on the  
3 accountability side.

4 Q. I think you in fact at the meeting questioned, at least,  
5 the choice of the confidential committee type model?

6 A. Yes.

7 Q. Because you didn't think, as I think you previously  
8 said, it wasn't strong enough to meet the situation?

9 A. Yes, that is -- yes.

10 Q. I'll maybe just take you to the note of meeting, it's  
11 quite a short note but it's -- we have it here.

12 SGV.001.001.8059.

13 That was a note that has been prepared of the  
14 meeting that you attended along with Shona Robison, the  
15 Minister for Public Health and Sport, who is described  
16 as the lead minister, and Fergus Ewing, the Minister for  
17 Community Safety. And I think there are three officials  
18 who are also in attendance, one from the Looked After  
19 Children branch, I think that would be part of  
20 Education, Janine Kellett. There is someone from the  
21 Justice Department, and also -- sorry, not three, I said  
22 three officials, five officials. There are three from  
23 what is called the Adult Care and Support division --  
24 that is a division within Health, is that correct?

25 A. Yes.

1 Q. Including Jean MacLellan, Jeannie Hunter and Sue Moody.  
2 To an extent, were any of these individuals more leading  
3 than others in terms of this issue?

4 A. I think Jean MacLellan was. But it's a long time ago  
5 and I can't quite remember all the participants in the  
6 meeting.

7 Q. So far as the note goes, and we can maybe just have  
8 a look at that, there had been a briefing and I don't  
9 propose to go through that. Quite a lengthy briefing  
10 for that meeting that had been prepared by I think  
11 officials in the Adult Care and Support division  
12 largely. But if I look at the meeting itself and the  
13 note of it which we have in front of us, we see I think  
14 at the very beginning it just records that:

15 "Agreement was reached at the meeting to conduct  
16 a pilot of a forum to give adult survivors of in care  
17 abuse the opportunity to describe their experiences.  
18 The proposals contained in the submission to ministers  
19 of 24 September were accepted."

20 That is simply a reference, and I will just give it  
21 at this stage, to a briefing dated 24 September 2009  
22 which is SGV.001.001.8028. I will not go to that just  
23 now, if I may, but it appears that the officials had  
24 prepared a fairly substantial briefing and ministers  
25 accepted the recommendation to go for a confidential

1 committee type forum, which eventually became Time To Be  
2 Heard, was the name given to it, but not at that stage.

3 In relation to a confidential committee model, the  
4 note records that there was:

5 "... discussion instigated by Mr Ingram about  
6 the strength of the model being proposed and whether  
7 a confidential committee would be ambitious enough,  
8 particularly since it was proposed that the institution  
9 from which survivors would be drawn should not be given  
10 any formal status at the pilot forum."

11 I think that's a reference -- they had already  
12 identified by the time of that meeting a particular  
13 institution that might participate in this pilot. That  
14 was Quarriers?

15 A. Quarriers, yes.

16 Q. And then it goes on:

17 "Officials noted the difficulties (revealed in the  
18 work of the Irish Commission on the investigation of  
19 child abuse) associated with institutions' direct  
20 involvement in the process, as the pilot forum would  
21 then have to consider evidence from both parties. All  
22 parties would have to be given legal representation.  
23 This could radically alter the nature of the process,  
24 making it more difficult to create a therapeutic  
25 environment adding hugely to cost, creating possible

1 delays, and taking the focus away from survivors.  
2 Institutions might refuse to take part in such  
3 a 'fact-finding' process. Ms Robison stressed the  
4 therapeutic nature of the pilot forum. The extensive  
5 consultation that had taken place with survivors and the  
6 significant contribution made by the National Reference  
7 Group taking forward the SurvivorScotland Strategy were  
8 noted."

9 And then under "Action" it says:

10 "It was agreed that consideration should be given to  
11 finding ways of involving the pilot institution which  
12 would not adversely affect the process, through  
13 for example restorative justice approaches."

14 And in relation to the name, the pilot forum name:

15 "It was agreed that the current name  
16 'acknowledgement and accountability' was not an accurate  
17 representation of what was proposed and was not favoured  
18 by those who responded to the consultation exercise."

19 And the action point is:

20 "The Pilot Forum Advisory Group ..."

21 Which was a group to be set up, I think, to take  
22 matters forward:

23 "... should be asked to consider a more appropriate  
24 title drawing on the views of the consultees."

25 If we go over the page, there is a section headed

1 "Quarriers" and it says:

2 "The choice of Quarriers as the site for a pilot was  
3 considered. Mr Ingram expressed the need to move on  
4 from the impact that institutional abuse has had on  
5 Quarriers' reputation. It was agreed that a forum could  
6 provide institutions with a chance to come to terms with  
7 what had happened and move on and Quarriers would be  
8 a prime example of this. The advantages of siting the  
9 pilot with Quarriers' survivors is that Quarriers is  
10 a national organisation that took placements from right  
11 across Scotland, there have already been successful  
12 prosecutions, and therefore proof of harm exists. The  
13 organisation keeps good records so that it should be  
14 easier to contact survivors and the Chief Executive  
15 Phil Robinson has offered to work with us. He is  
16 approaching this with the best of motives and is very  
17 keen to assist."

18 And the action point is:

19 "Ways of giving Quarriers more active involvement in  
20 the forum will be discussed with the organisation,  
21 particularly the use of restorative justice approaches."

22 Pausing there, it does appear that by this stage of  
23 the meeting there had be quite a lot of advance planning  
24 on this proposal?

25 A. Indeed.

1 Q. One might feel in reality the outcome of your meeting  
2 was treated as really a foregone conclusion? It seems  
3 it read that, in a way, the note?

4 A. This meeting was obviously called by the Minister and  
5 the Department who was essentially in charge of this  
6 area of policy. I think I was happy enough for the  
7 pilot to go forward. I still had my doubts with regards  
8 to the lack of accountability. Quarriers had clearly  
9 acknowledged their accountability for what had happened  
10 in the past, so I was ...

11 LADY SMITH: There had been at least one conviction by then  
12 I think, hadn't there?

13 A. Yes, there had. The other thing that appealed to me  
14 about the particular pilot was that there were -- there  
15 was a restorative justice element to it as well, or  
16 apparently there was a restorative justice element to  
17 it. So people who had suffered, it was my hope that  
18 they would feel they had justice at the end of it and  
19 perhaps even some sort of assistance to move forward  
20 with their lives, so there was no reason for me to not  
21 approve of a pilot. It's a pilot, after all, so  
22 hopefully the deficiencies, if there were any, would  
23 appear further down the line and we would be able to  
24 address them at that particular time.

25 LADY SMITH: Adam, when you talk about acknowledging

1           accountability, do you mean admitting fault?

2           A.   Yes.

3           LADY SMITH:   And so making amends.

4           A.   Yes.

5           LADY SMITH:   Thank you.

6           MR PEOPLES:   I think you felt that, if there was a pilot  
7           using this particular model, restricting the pilot to  
8           Quarriers made sense, to use an expression that  
9           perhaps --

10          A.   Yes, because Quarriers were going to approach it in the  
11          appropriate fashion.   There remained a question whether  
12          other organisations would do the same thing, which time  
13          would tell.

14          Q.   Yes, because I think the note, the part I have already  
15          read out, seems to have at least -- officials seem to  
16          have expressed some doubt whether there would be  
17          a willingness to participate in this sort of exercise,  
18          on the part of some organisations at least.   So that was  
19          in the minds of officials, and that thought was spread  
20          to ministers at the meeting and indeed is recorded in  
21          the note?

22          A.   Yes.

23          Q.   Just to correct something her Ladyship said, I think by  
24          that stage, 2009, there had been probably seven  
25          convictions of Quarriers' former staff.

1 LADY SMITH: That's right.

2 MR PEOPLES: Well past the stage of 2004. There had been  
3 a major operation and indeed there had been many  
4 convictions by that stage?

5 A. Yes.

6 Q. So it wasn't just the isolated conviction in the case of  
7 Quarriers that we were dealing with?

8 A. No.

9 Q. So Quarriers has been identified by officials, and  
10 indeed it does appear that they have already made  
11 informal approaches to sound out if Quarriers would be  
12 willing to participate in some way in the pilot forum,  
13 and there is discussion, it would appear, which is  
14 recorded, about the difficulties of the type of model  
15 you perhaps favoured more. This talks about legal  
16 representation radically altering the nature of the  
17 process, huge addition to costs, possible delays, and so  
18 forth. So these seem to have all been put forward by  
19 the officials at the meeting to perhaps persuade  
20 ministers to accept their recommendations?

21 A. I think that would be fair comment.

22 Q. Because it's not apparent to me, either from the  
23 briefing that preceded it or the meeting itself, that  
24 there was really any alternative put on the table for  
25 ministers to choose instead of the confidential



1           committee type forum. They were really presenting  
2           a proposal for that type of forum and asking ministers  
3           to approve it?

4           A. Yes, well, as I indicated, adult survivors of historic  
5           abuse weren't within my portfolio, as it were, so  
6           I would anticipate that perhaps the relevant ministers  
7           had discussed this in depth with officials and were --  
8           had approved this particular approach, so it's not  
9           something that I would necessarily be intimately  
10          involved in prior to this particular meeting.

11          Q. I am not suggesting that, I am just perhaps thinking  
12          back to another submission at an important stage in time  
13          about whether there should be a public inquiry or other  
14          options, in an earlier period, in a different  
15          administration, in a briefing which contained four  
16          options. The pros and cons of each was set out in  
17          a briefing. There was a preferred option, and ministers  
18          ultimately accepted the recommendation to adopt the  
19          preferred option, but there were four options on the  
20          table, whereas here it very much looks like there was  
21          one option: take it or not. But you say maybe that is  
22          because it had already been thrashed out by those with  
23          perhaps more responsibility for these matters?

24          A. Yes. I was being kept in the loop but I wasn't  
25          primarily responsible for the policy, if you like.

1 Q. Yes. I will just follow on with the rest of the note.  
2 There is a section headed "Time Bar", I don't want to  
3 take up too much time with that, but there was some  
4 discussion about difficulties with time bar and that it  
5 was agreed, it would appear, that:

6 "Ministers needed to take care in framing a response  
7 to the SLC Report and to consider the options open to  
8 Scottish Government in this respect."

9 So I think at that stage, am I right, that although  
10 in broad terms certain recommendations of the Commission  
11 had been accepted, such as prescription, perhaps the  
12 particular response to the limitation problem was still  
13 being developed in terms of what the Government could do  
14 to make it easier for those who brought actions out of  
15 time to have their day in court?

16 A. I certainly recall Mr Ewing wrestling with all of this.  
17 Primarily he was responsible for this area of the  
18 policy.

19 Q. We see here in the note of meeting there is at least  
20 a passing reference to the Scottish Human Rights  
21 Commission. Did you know much about what they were  
22 doing at that stage in terms of work for the  
23 Scottish Government? We know they were actually  
24 commissioned to produce a framework for the design and  
25 development of an acknowledgement and accountability

1           forum, perhaps the type of forum you had more in mind,  
2           but did you know that was happening in the background?

3           A. I can't say for definite. I don't really recall.

4           Obviously the Human Rights Commission had engagements  
5           with them, more to do with children's rights and the  
6           like. I am sorry, I can't really --

7           Q. That is okay.

8           A. -- recall.

9           Q. I think we can ask other ministers who may have had  
10          perhaps more direct involvement with these matters, but  
11          I just wondered if you had any sense of -- the  
12          Commission and its work and anything they were doing at  
13          that time doesn't loom large in the note of the meeting  
14          certainly. Is that fair comment?

15          A. I am sorry, I don't think I am best placed to answer  
16          that.

17          Q. That is fair enough.

18                 I think that you previously told the Inquiry that in  
19          terms of the sort of figures that had been involved with  
20          what I call the Irish model, which had an Investigation  
21          Committee, a Confidential Committee, a Redress Board,  
22          and so forth, you previously said that -- and I think if  
23          we go to paragraph 25 perhaps of your draft statement,  
24          if we could have that. You previously said that model  
25          had, and I think that model had been looked at by

1 officials, but I think you said there was no way that  
2 the Scottish Government in 2008 could do anything like  
3 that. Was that the way things were at that time? It's  
4 a period when there was I think a global financial  
5 problem anyway, but was that the position, that really  
6 that was an unaffordable option, so far as you recall?

7 A. Yes. I think given the limited powers of devolution,  
8 we weren't in the position that Ireland was in.

9 LADY SMITH: I think at that time or just before then  
10 Ireland had been going through an unprecedented period  
11 of growth year-on-year.

12 A. Indeed.

13 LADY SMITH: There was a lot happening in Ireland that was  
14 costing a lot of money and they seemed able to do it.

15 A. Indeed.

16 LADY SMITH: Matters changed thereafter. It was a good  
17 period for them.

18 A. Yes, in terms -- I don't think -- we don't really have  
19 the financial levers, for example even in current  
20 circumstances we don't have borrowing powers and this  
21 type of thing to be able to just open the purse strings  
22 and let things go.

23 MR PEOPLES: Obviously cost is always presumably a relevant  
24 factor in making decisions on any issue, including  
25 whether you should set up a particular model for

1 a particular problem.

2 A. Yes.

3 Q. That is a given, I take it?

4 A. Yes.

5 Q. But you say that at least, as matters stood then, the  
6 Scottish Government was in a position to fund the sort  
7 of exercise that had been carried out in Ireland, at  
8 that time at least?

9 A. Yes, indeed. And I still think that is the case today.  
10 I would imagine.

11 Q. Because it will be said to some extent there is  
12 an inquiry and it has to be funded. But I am really  
13 trying to look at that period, and it does appear at  
14 least that what officials were saying, and indeed what  
15 your recollection was, is that this wasn't something,  
16 the Irish model, if it was something that was being  
17 campaigned for or as an alternative to the model  
18 selected by ministers, was not something that was seen  
19 as affordable at that time?

20 A. Yes, I think it was -- as I indicated to you in my draft  
21 statement, I think, the civil servants were clearly  
22 being conservative in their approach to all of this, but  
23 obviously the politicians acceded to that particular  
24 approach.

25 Q. Clearly what was decided, whatever reservations you had,

1           and I think this is something that -- another minister  
2           at the meetings made the point that it was a collective  
3           decision as part of collective responsibility. Whatever  
4           private views or particular views you have, ultimately  
5           if you go along with the decision, or that is  
6           the decision, it's a collective decision so far as the  
7           Government is concerned?

8           A. Of course, yes.

9           Q. What was agreed, as we know, was to proceed with a pilot  
10          confidential forum restricted to hearing from former  
11          Quarriers residents?

12         A. Yes.

13         Q. If you go to paragraph 28. As you previously told the  
14          Inquiry, in choosing this type of forum, the emphasis  
15          was very much on the therapeutic benefits or effects  
16          that participation would have on survivors in the sense  
17          that it was thought they would get a great deal of  
18          benefit from talking about their experiences and being  
19          listened to. Was that very much the thinking --

20         A. Yes.

21         Q. -- of those who were --

22         A. That was the general thrust of the recommendations.

23         Q. You have said there was a separate restorative justice  
24          pilot, I think paragraph 30 maybe deals with this, which  
25          sat alongside Time To Be Heard, and I think you thought

1           that was a good idea to try something like that?

2           A. Yes.

3           Q. And I think you maybe tried to capture what was in the  
4           mind of ministers at that time about what they were  
5           trying to achieve, and you say what the Government was  
6           trying to do at the time was to find ways of getting  
7           closure for survivors and ways for them to move on with  
8           their lives, if that was possible. So was that  
9           something that at least was driving these actions and  
10          decisions?

11          A. Yes, we needed to address the issues that people had,  
12          and if we could find a way to do that to their  
13          satisfaction was really where we were coming from.

14          Q. If I could move on now in the draft to the section which  
15          is headed "Closing Thoughts". It starts at  
16          paragraph 51, if we can move to there.

17                 It's probably always interesting to think about  
18          these things, "what if", but I think you do say there  
19          that had the Scottish Government gone down the route of  
20          an accountability type forum, as it originally envisaged  
21          in your statement to Parliament in February 2008,  
22          perhaps we would not be engaged in the public inquiry as  
23          we are now, and that you and I wouldn't be here  
24          together?

25          A. Indeed.

1 Q. I think the reason you are saying that is that had that  
2 type of forum been put in place as some sort of  
3 alternative to the court processes which seem to have  
4 been out of reach, that that might have been something  
5 that would have at least caused greater satisfaction for  
6 survivors and might have brought something to them that  
7 would have been sufficient at least for some?

8 A. Yes, I think there would be -- we were never actually  
9 presented with an accountability model, as it were, it  
10 might have been something that was unattainable. But  
11 I still think we could have gone down that road if we  
12 could have established a workable model. I don't know  
13 if it's possible.

14 Q. I will just read what I think you told us previously, at  
15 paragraph 52, and this is in relation to the work of  
16 this Inquiry:

17 "Hopefully the work of the Inquiry and what comes  
18 out of it will lead to acknowledgement of past abuse  
19 from organisations and care givers. Hopefully  
20 organisations who were culpable in terms of the issues  
21 arising from, and the factors contributing to, the  
22 historical abuse of children in care will not only  
23 acknowledge past failings but will also provide some  
24 sort of appropriate redress."

25 Is that something you think you would like to see



1            come out of this inquiry?

2 A. Yes, absolutely.

3 MR PEOPLES: I think those are really all the questions  
4 I have for you, Adam, and I thank you very much for  
5 attending in difficult circumstances. I know it's not  
6 always easy and thank you very much.

7 I don't think anyone has any questions ...

8 LADY SMITH: Are there any outstanding applications for  
9 questions?

10 Adam, that completes the questions we have for you.  
11 Thank you very much for coming here to give your  
12 evidence in person, it helps me enormously that you have  
13 done that. And, as I have already said, thank you for  
14 agreeing to go over your statement and check whether  
15 there is anything you want to add to it, and sign it in  
16 due course. In the meantime, what we already have has  
17 been very helpful to me.

18                    Thank you. I am able to let you go.

19           A.   Thank you.

20 (The witness withdrew)

21           LADY SMITH:   Mr Peoples.

22 MR PEOPLES: I think the next witness is probably going to  
23 be arriving for 11.30 am.

24 LADY SMITH: We can take the break now.

25 MR PEOPLES: We perhaps could take the break and, once we

1           have a witness ready to go, we can resume.

2       LADY SMITH: Thank you.

3       (11.05 am)

4                               (A short break)

5       (11.30 am)

6       LADY SMITH: Mr Peoples.

7       MR PEOPLES: My Lady, the next witness is Shona Robison.

8       LADY SMITH: Thank you.

9           Good morning. Could we begin, please, by you  
10       raising your right hand and repeating after me ...

11                           MS SHONA ROBISON (affirmed)

12       LADY SMITH: Please sit down and make yourself comfortable.

13       I see you have brought papers with you, no doubt they're  
14       some of your own notes. If that is helpful to you,  
15       please feel free to refer to them. Your statement is in  
16       the red folder and it will be coming up on screen, but  
17       whatever works for you, do use it.

18       Help me with this: would you like to be called  
19       Ms Robison or would you like to be called Shona?

20       A. I am happy to be called Shona.

21       LADY SMITH: Thank you, Shona. I will hand over to  
22       Mr Peoples and he will take it from there.

23                           Questions from MR PEOPLES

24       MR PEOPLES: Good morning.

25       A. Good morning.

1 Q. As her Ladyship has said, there is a red folder in front  
2 of you which contains a copy of the signed statement  
3 that you have provided to the Inquiry which is there for  
4 your use. By all means use any notes that you may have  
5 brought with you.

6 In front of you is a screen and you will see there  
7 that the statement you have provided is on screen. If  
8 I refer you to a document in the course of giving  
9 evidence, the document should appear on the screen in  
10 front of you to assist, so that is the way we work.

11 If I can begin today by simply, for the purposes of  
12 our transcript, saying that your signed statement is  
13 WIT-1-000000379. That is not something you should be  
14 concerned with, it's just for our purposes.

15 If I could ask you to begin with to go to the final  
16 page of your statement, and can you confirm first of all  
17 that you have signed that statement?

18 A. Yes.

19 Q. And can you also confirm that you have no objection to  
20 your witness statement being published as part of the  
21 evidence to the Inquiry and that you believe the facts  
22 set out in your statement are true?

23 A. I can confirm that.

24 Q. I think you have been an MSP since 1999?

25 A. I have, yes.

1 Q. But before becoming an MSP, I think you had worked in  
2 social care with a local authority?

3 A. Yes, I was a latterly a home care organiser, so  
4 I managed home care services within the north-east of  
5 Glasgow.

6 Q. And you were I think, between May 2007 and May 2011,  
7 Minister for Public Health and Sport in the  
8 Scottish Government?

9 A. That is correct.

10 Q. That is the period I think we will focus on today for  
11 obvious reasons.

12 A. Yes.

13 Q. I intend to focus on issues relating to adult survivors  
14 of non-recent abuse in institutional care.

15 To begin with, responsibility for health issues  
16 relating to adult survivors of abuse in institutional  
17 care was part of your remit, is that correct?

18 A. That is correct.

19 Q. We have heard evidence this morning from Adam Ingram,  
20 who was Minister for Education and Young People during  
21 the same period, and he had a different responsibility  
22 for looked after children currently in care at that time  
23 and children who might be taken into care in the future.  
24 That was his brief?

25 A. Yes, that is right.

1 Q. There was another minister who was involved with adult  
2 survivor issues, and I think in particular the law of  
3 prescription and limitation as applied to claims for  
4 compensation which survivors wished to pursue, and that  
5 was Fergus Ewing who was Minister for Community Safety  
6 within Justice during that period, is that right?

7 A. Yes, that's right.

8 Q. I am not going to rehearse developments that took place  
9 towards the end of 2007, save to say that there were two  
10 reports, the Shaw Review Report and the Scottish Law  
11 Commission Report, that were published at that time, and  
12 these were reports that your Government had to  
13 effectively respond to at that time.

14 Before I ask you a little bit about that, can I just  
15 ask you about the question of a public inquiry to begin  
16 with. Between December 2007 and Adam Ingram's statement  
17 to Parliament on behalf of Scottish Government on  
18 7 February 2008, can you recall any ministerial  
19 discussion about whether there should be  
20 a public inquiry into non-recent abuse of children in  
21 institutional care as had been called for in August 2002  
22 in Petition PE535 which we are calling the  
23 Daly Petition, by the way? Can you recall any  
24 discussion about a public inquiry?

25 A. I can't recall any sort of formal discussion about

1 a public inquiry per se, where there was a decision  
2 taken to not pursue a public inquiry. My recollection  
3 is more that the public inquiry issue was in the  
4 background, but that most of the substance of the  
5 meetings were around some of the actions that were under  
6 active discussion and consideration.

7 So I do not recall, to the best of my knowledge, any  
8 ministerial meeting where we sat down and formally  
9 discussed whether or not to have a public inquiry, but  
10 it was in the background because obviously there were  
11 calls for a public inquiry. And I think I said in my  
12 statement from my recollection it was never ruled in or  
13 ruled out, it was kind of there constantly in the  
14 background, but there was never a discussion where there  
15 was a decision taken one way or the other.

16 Q. I think Adam Ingram put it this way, that at that time  
17 certainly the Scottish Government was not look at having  
18 a public inquiry. Would that be fair comment?

19 A. I think it is fair to say the focus was on other  
20 matters, so some of the things that could be done more  
21 quickly, which I am sure we will come on to. But  
22 I think it is important to say from my recollection that  
23 there was never a situation where there was a collective  
24 decision and view that there should not be a public  
25 inquiry, it was just not being actively pursued as the

1 kind of main way forward at that time, but it remained  
2 I guess under kind of consideration, maybe not active  
3 consideration, but it was never ruled out, if that makes  
4 sense.

5 Q. Can I perhaps just read out something you tell us at  
6 paragraph 16 of your witness statement. In the period  
7 2007 to 2011 you say that:

8 "The focus was on the question what can we do in the  
9 here and now and what would a public inquiry add to what  
10 is already planned?"

11 You also say:

12 "The focus was very much on trying to get a position  
13 where there could be a response to the concerns of  
14 survivors in a reasonably short time frame."

15 A. Yes.

16 Q. You also say, if I could read on to paragraph 17:

17 "There were concerns at ministerial level around  
18 a public inquiry taking a long time and perhaps not  
19 necessarily providing the desired outcome for everyone  
20 in whose interests it was established. I do not think  
21 collectively we were against a public inquiry. On the  
22 back of the Shaw Review Report and the Scottish Law  
23 Commission Report we were focused on how we could now  
24 address the concerns being raised. That is why, in 2008  
25 and 2009, we looked at establishing some kind of forum.

1           The ministers' attitude at that time was that a forum  
2           seemed to be something that could be done immediately  
3           and would give an opportunity for people's voices to be  
4           heard."

5           So does that sort of capture --

6       A. Yes, yes.

7       Q. -- the thinking at the time?

8       A. Yes, I think it does. And I think there is still  
9           a concern around the length of time public inquiries can  
10          take. They are often put forward as the solution to  
11          a number of issues, and have been over the years, and  
12          I think what was being reflected at that point was  
13          a concern that that would take years to come to fruition  
14          and there were matters that required immediate  
15          attention, not least some ability for victims'  
16          testimonies to be heard. And I guess that is where the  
17          focus was, rightly or wrongly, on what could be done  
18          quickly, more quickly.

19      Q. Can you recall whether there were particular ministers  
20          who had concerns about a public inquiry for the reasons  
21          that you set out in your statement? Were there  
22          particular ministers that perhaps weren't supporters of  
23          a public inquiry, if I could put it that way?

24      A. I don't recollect anybody being against a public  
25          inquiry. I think we were probably all in the same



1 place, that there were general concerns about time,  
2 a general willingness and desire collectively to want to  
3 do something and to see some movement and kind of  
4 practical progress made, and I guess just a bit of  
5 a concern that if the entire focus became  
6 a public inquiry, that really that was going to take  
7 a long time for anything to come to fruition. Not that  
8 it -- you know, not to say that that should never  
9 happen, but I think the focus and attention of ministers  
10 was on these other matters, to be honest.

11 LADY SMITH: Shona, was there any consideration of the  
12 obvious fact that if a public inquiry isn't being ruled  
13 out, so a public inquiry might happen, the longer it  
14 takes us to get to the stage of deciding to establish  
15 a public inquiry, given that we look on a public inquiry  
16 as a lengthy process, the longer it is going to be to  
17 get the outcome, so maybe it should be sooner rather  
18 than later?

19 A. I can see that now, in hindsight, looking at the chain  
20 of events to where we are now. But at the time it felt  
21 that we were making progress on some of these other  
22 issues, and whether or not we thought that there would  
23 be a public inquiry, when that would be I guess just  
24 wasn't to the front of our minds. We were all within  
25 our own spheres trying to look at what could be done.

1           Looking back now, and I think I say that at the end  
2           of my testimony, I can see why people feel a bit  
3           frustrated that these decisions maybe could have been  
4           made earlier, I get that, but it's kind of applying a  
5           bit of hindsight, I guess, to ... And we were all new  
6           ministers, trying to get to grips with our portfolios  
7           and where this hugely important issue sat and how we  
8           could actually make an impact and do some good.

9           A public inquiry -- I think from looking at public  
10          inquiries over the years, I think the big impression,  
11          and I still hold this view, is that they are not always  
12          the best answer to everything. They can be a part and  
13          they can have an important role, but they don't always  
14          provide the answers that people are looking for and, as  
15          I say, can take a long time. But I do recognise that,  
16          looking back over the years, had decisions been made  
17          earlier to start the public inquiry that we actually got  
18          to in the end then, yes, that could have happened  
19          sooner.

20       LADY SMITH: Can you give me an example of a public inquiry  
21                you have in mind as not having provided the answers that  
22                were being looked for?

23       A. I guess I was very much involved with the Inquiry into  
24            Hepatitis C and I guess that even though there was --  
25            the Penrose Inquiry. It took a long time because there

1           were different people involved along the way, and at the  
2           end some of those who were closest to the issue didn't  
3           feel particularly that it had answered their queries.  
4           Rightly or wrongly, that was their feeling. That is not  
5           to say it wasn't -- the Inquiry was very detailed, but  
6           I guess our focus was on trying to provide opportunities  
7           to respond to some of the concerns being raised, and  
8           there was a question mark in my mind, and I think other  
9           ministers' minds, about whether or not a public inquiry  
10          would provide that. They are also very -- it can be  
11          quite a formal process, and I guess we were looking at  
12          opportunities to provide victims with a chance to be  
13          able to give testimony in a more informal setting.

14                 Rightly or wrongly, those were the thoughts.  
15          I think they were well-intentioned and well-motivated.  
16          I don't think there was any institutional reluctance for  
17          a public inquiry.

18       LADY SMITH: Two matters from what you just said. One,  
19                 of course, Penrose hadn't reported by the time these  
20                 considerations were taking place. The other point is  
21                 that, by that time, the 2005 legislation had been  
22                 promulgated, which affords the Chair a wide discretion  
23                 as to procedure and conduct of the inquiry, so any  
24                 concerns about there requiring to be a formality that  
25                 feels like a court process, or whatever, had been dealt

1           with I think.

2       A. I thought you were asking me just about if I could point  
3       to an inquiry where perhaps people felt ... Looking back  
4       on the point there, I guess some of the advice coming to  
5       ministers would have been around public inquiries.

6       I have seen advice for other matters over the years  
7       where there have been calls for public inquiries. The  
8       advice is quite often about length of time, whether  
9       there are other ways of getting the same outcomes other  
10      than a public inquiry. I can't remember the exact  
11      detail of the advice at the time but I suspect some of  
12      those issues were explored, about whether or not there  
13      were other ways of making some progress without ruling  
14      out a public inquiry.

15      LADY SMITH: And cost.

16      A. I've thought about that and I am sure there would have  
17      been some reference to cost, but I don't recollect that  
18      being the key driver of decision-making. I think it was  
19      more around time and whether or not there were other  
20      ways ... I think there was -- I know I refer to some of  
21      the Irish experience, which again is a bit hazy, but  
22      from recollection, cost was an issue that was raised  
23      around the Irish experience, and one thing that struck  
24      me at the time, and again this is from ten years ago,  
25      was a reflection that that process had become quite

1           legalistic, and listening to what survivors were calling  
2           for was an opportunity to give testimony and I guess  
3           redress, including financial redress.

4           I remember there was some concern about whether or  
5           not the Irish -- some of the Irish experience had become  
6           very legalistic and lots of lawyers involved and a lot  
7           of the cost was around legal representation. That is  
8           not to pass judgment on the rights and wrongs of that,  
9           but the question is does to get to the heart of the  
10          matter? Do survivors get the answers they want and do  
11          they get the redress they want? And again, rightly or  
12          wrongly, I think we believed at the time there were  
13          other ways of doing that.

14       LADY SMITH: Mr Peoples.

15       MR PEOPLES: Just on the example you gave, the Hepatitis C,  
16          was that the Inquiry that when it did report had  
17          a single recommendation?

18       A. That is correct.

19       Q. That did cause some consternation among some quarters,  
20          even to the point I think of burning the report on the  
21          day it was published?

22       A. That was probably one of the most difficult things  
23          I have ever had to handle because I had -- it was  
24          an issue that went way back for me to when I was in  
25          opposition and met with some of the victims. And it's

1           very hard when you go through -- that is not to pass  
2           criticism on -- the Inquiry itself was very difficult,  
3           trying to look back on matters that had happened years  
4           and years ago, but again meeting victims after the  
5           Inquiry reported was quite a difficult experience,  
6           I have to say.

7           Q.   Going back to what you say at paragraph 17, did the then  
8           First Minister, Alex Salmond, have the concerns you  
9           highlight in paragraph 17, to your knowledge?

10          A.   I can't recall, to be honest. He presumably would have  
11          been getting briefed regularly on the issue but I don't  
12          recall --

13          Q.   What about the Cabinet Secretary for Justice,  
14          Kenny MacAskill? Did he have the concerns you have  
15          mentioned in paragraph 17, to your collection?

16          A.   I can't recall that either, to be honest.

17          Q.   What about the Lord Advocate, Elish Angiolini, did she  
18          have the concerns you have mentioned in paragraph 17.

19          A.   Again, I don't recall having any specific discussions  
20          with any of the -- most of the discussions I had were  
21          with Fergus Ewing and Adam Ingram as a ministerial team.

22          Q.   In the period between December 2007 and February 2008,  
23          I think as we know from records we have seen, there was  
24          discussion about what I might describe as "some other  
25          forum", in particular a truth and reconciliation type

1 forum. That was the focus of discussion in that period.  
2 Indeed the reason I say "some other forum", I think that  
3 was in fact the formulation that was included in the  
4 initial response to the Daly Petition in February of  
5 2003, that the Government, the Scottish Executive as it  
6 was then called, would consider the request for  
7 "an inquiry or some other forum".

8 So what we see here in this period is consideration  
9 of "some other forum". Is that against a background  
10 where at least the legal avenues appeared not to be  
11 a very productive route for survivors, either because  
12 their claims had prescribed, in other words had been  
13 extinguished, and the Law Commission wasn't suggesting  
14 change in the law, and also because they were  
15 encountering difficulties because they brought their  
16 cases out of time and the courts were saying, no, you  
17 can't have a hearing on the merits?

18 A. Yes, I would say that is a fair summary.

19 Q. I think it was at your request, there was some  
20 cross-ministerial meeting in December 2007. Was that  
21 really to try and start the discussion of how you would  
22 respond to particularly the Shaw and Law Commission  
23 Reports?

24 A. I think so, yes. I would imagine that would have been  
25 the focus.

1 Q. We know Adam Ingram made a statement to the  
2 Scottish Parliament on 7 February 2008 and that  
3 statement included a proposal to look at a truth and  
4 reconciliation type model, you will recall that. I am  
5 not going to take you to the statement. But I am  
6 interested in how did this particular model become the  
7 focus at that time? Whose idea was this to look at that  
8 particular type of model at that time?

9 A. Again from recollection, I think officials had pulled  
10 together some international experience, because  
11 obviously there were -- this wasn't just happening here,  
12 there were various similar issues being explored in  
13 other countries for the same reasons, and I think they  
14 were trying to provide us with some examples of sort of  
15 best practice or emerging models that were maybe based  
16 on what had been looked at elsewhere, and I think part  
17 of the Irish experience was considered to be quite  
18 positive in terms of this confidential forum, all of  
19 which was quite new, I guess, in terms of not something  
20 that had really been tried here particularly before.

21 So again from recollection, I think we were -- the  
22 advice we were given was this looked like it might  
23 provide the best way forward.

24 Q. I will take you to the progression or the development  
25 which ultimately led to a decision in 2009. What I was



1       really interested in at this stage was in late 2007 and  
2       early 2008, the focus was on something a bit wider than  
3       a confidential committee, it was a truth and  
4       reconciliation model. I was just wondered what had  
5       inspired that to be the focus at that time. Are you  
6       saying, at least do you recall that there were some  
7       papers produced and that this idea was seen as worthy of  
8       further exploration? Was that how it came about,  
9       roughly?

10      A. I think so. I think officials probably were tasked to  
11      come back with some potential models and I think that  
12      would have been one of the emerging ideas to test out,  
13      from recollection.

14      Q. But the Minister on 7 February singled it out as the  
15      model that would be tested or developed. He made  
16      a statement --

17      A. Yes.

18      Q. -- to Parliament. So clearly by that stage it had been  
19      decided that that was the route to explore?

20      A. Yes, so I am assuming, and again from recollection, I am  
21      assuming we were provided with some options and that  
22      this was -- this emerged as the favoured option for  
23      a variety of reasons, I think one being the fact it was  
24      regarded to have been quite successful as part of the  
25      Irish experience, I think.

1 Q. I think Adam Ingram also thought it may have had some  
2 success in South Africa --

3 A. Yes.

4 Q. -- but I don't know whether that is something you  
5 recall?

6 A. Very vaguely. But the Irish thing kind of -- is more  
7 clear, I think.

8 Q. Adam Ingram told us, and perhaps you can confirm, that  
9 at that stage, February 2008, the intention was to look  
10 at a model other than a court process which would to  
11 some extent address issues of importance to survivors,  
12 namely acknowledgement of past abuse and also  
13 accountability for that abuse having occurred. There  
14 were two aspects to that.

15 A. Yes.

16 Q. That was seen as -- this model was seen as perhaps  
17 providing a way in which those two elements could be  
18 addressed?

19 A. Yes.

20 Q. Adam Ingram has told the Inquiry that a truth and  
21 reconciliation type forum made sense to him because it  
22 was a forum where survivors could speak about their  
23 experiences and perhaps have their abusers and  
24 organisations that employed them also involved, in the  
25 hope that, by bringing people together, the forum would

1           act as a healing process and bring closure at least for  
2           some survivors. So did it make sense to you for those  
3           reasons?

4           A. Yes. And I think I say that one of the opportunities to  
5           test that theory out was around Quarriers, because there  
6           had already been some acknowledgement --

7           Q. Yes, well, I am just going back to 2008. I will come to  
8           Quarriers. But at that stage, Quarriers wasn't in the  
9           minds of ministers for a truth and reconciliation type  
10          forum?

11          A. No. I think what was envisaged then came to pass with  
12          that, is what I mean. Yes, what Adam Ingram described  
13          was I think exactly what was in our mind, that there  
14          could have been an opportunity to bring together, to  
15          have testimony, to have recognition and, you know --  
16          yes.

17          Q. Would you agree that at a ministerial meeting that was  
18          held on 30 September of 2009, the following year, that  
19          ministers, including you, decided to follow the  
20          recommendation of officials and go down the confidential  
21          forum route which was a rather different model to the  
22          one that Adam Ingram had announced in the  
23          Scottish Parliament on 7 February 2008? Would you agree  
24          that that was what happened?

25          A. Yes, I guess that is what happened, and I think the

1 reasons for that were probably that maybe that was seen  
2 as being the best way of testing the model. I know we  
3 come on to talk about the accountability element, but,  
4 yes, I guess as it evolved into the actual practical  
5 model, that is what emerged in reality.

6 Q. I will take you to the documents, the briefing, and the  
7 note of the meeting itself. But just at this stage,  
8 I think you will be aware that Adam Ingram I think at  
9 the time of the meeting questioned the choice of the  
10 recommended model because he didn't think it was strong  
11 enough. Do you recall that?

12 A. I don't specifically recall that, but if -- I am sure --  
13 yes, I don't question that.

14 Q. Perhaps we can just first of all go to the meeting  
15 itself on that point. It's SGV.001.001.8059. This is  
16 a note of meeting on 30 September. I will come back to  
17 the briefing but I just want you to look at the meeting  
18 itself. You were present, Fergus Ewing was present,  
19 Adam Ingram was present, and there were also five civil  
20 servants, three I think from the Adult Care and Support  
21 division which was within Health, is that right?

22 A. That is right, yes.

23 Q. Anne Hampson would be in Justice, the civil law branch  
24 in Justice?

25 A. Yes.

1 Q. Janine Kellett was in Looked After Children, that's  
2 a branch within Education?

3 A. Yes.

4 Q. And we see it's recorded that:

5 "Agreement was reached to conduct a pilot of a forum  
6 to give adult survivors of in care abuse the opportunity  
7 to describe their experiences."

8 It states:

9 "The proposals contained in the submission to  
10 ministers of 24 September were accepted."

11 It says:

12 "The following issues were raised and discussed ..."

13 I will perhaps focus on the confidential committee  
14 model, which was the preferred option and the one that  
15 ministers agreed to pilot. I will just read it for you:

16 "There was a discussion instigated by Mr Ingram  
17 about the strength of the model being proposed and  
18 whether a confidential committee would be ambitious  
19 enough, particularly since it was proposed that the  
20 institution from which survivors would be drawn should  
21 not be given any formal status at the pilot forum.  
22 Officials noted the difficulties (revealed in the work  
23 of the Irish Commission on the investigation of child  
24 abuse) associated with institutions' direct involvement  
25 in the process as the pilot forum would then have to

1 consider evidence from both parties. All parties would  
2 have to be given legal representation. This could  
3 radically alter the nature of the process, making it  
4 more difficult to create a therapeutic environment,  
5 adding hugely to costs, creating possible delays and  
6 taking the focus away from survivors. Institutions  
7 might refuse to take part in such a 'fact-finding'  
8 process. Ms Robison stressed the therapeutic nature of  
9 the pilot forum. The extensive consultation that had  
10 taken place with survivors and the significant  
11 contribution made by the National Reference Group taking  
12 forward the SurvivorScotland Strategy were noted."

13 Then there is an action point that:

14 "Consideration should be given to finding ways of  
15 involving the pilot institution which would not  
16 adversely affect the process through, for example,  
17 restorative justice approaches."

18 And I think we know there was a restorative justice  
19 pilot.

20 It was also discussed and agreed that:

21 "The current name, 'Acknowledgement and  
22 Accountability', was not an accurate representation of  
23 what was proposed and was not favoured by those who  
24 responded to the consultation exercise."

25 And that a group known as the Pilot Forum Advisory

1           Group should be asked to consider:

2           "... a more appropriate title drawing on the views  
3           of the consultees."

4           Then if we go over the page, it appears that by this  
5           stage Quarriers had been identified as a suitable  
6           organisation to be involved in the pilot exercise.

7           Mr Ingram:

8           "... expressed the need to move on from the impact  
9           that institutional abuse has had on Quarriers'  
10          reputation. It was agreed that a forum could provide  
11          institutions with a chance to come to terms with what  
12          had happened and move on and Quarriers would be a prime  
13          example of this."

14          He then goes on to discuss the advantages of  
15          Quarriers, which was a national organisation that took  
16          placements from across the country. There had been by  
17          then a number of successful prosecutions and so proof of  
18          harm existed, the organisation kept good records so it  
19          would be easier to contact survivors for the pilot  
20          exercise, and that the Chief Executive, Phil Robinson,  
21          had offered to work with the Government. And it was  
22          said he was approaching this with the best of motives  
23          and was very keen to assist.

24          The action point was that:

25          "Ways of giving Quarriers more active involvement in

1 the forum will be discussed with the organisation,  
2 particularly the use of restorative justice approaches."

3 Finally there was a discussion about time bar, and  
4 I don't really want to focus on that because I think  
5 this is the record of the discussion about the model.  
6 We see there I think that by that stage of the meeting,  
7 Quarriers -- there had been some form of informal  
8 approach to them to see if they would be willing to  
9 become involved. Were you aware of that?

10 A. Yes. Yes, I think I would have been aware of that and  
11 I do refer in my statement to this issue of a reluctance  
12 potentially from Quarriers and others to take part in  
13 such a forum unless there was a whole legal framework  
14 around it if it was -- if the accountability element was  
15 the key element within the forum. I think, from  
16 recollection again, that was felt to be an impediment to  
17 getting organisations like Quarriers involved in the  
18 forum.

19 Q. So what you were being told, presumably through  
20 officials largely or exclusively, was that there was  
21 a potential difficulty that organisations, perhaps even  
22 including Quarriers who had the convictions and so  
23 forth, might be reluctant to become involved in  
24 a process that involved accountability and perhaps  
25 acceptance of responsibilities. Was that what was



1 coming across?

2 A. I think we were told, and I think as I have said in my  
3 statement, they would -- in order to take part in  
4 something like that, I think they were saying there  
5 would have to be a kind of legal framework around it to,  
6 as I put, safeguard their interests. I think there was  
7 going to -- it was going to have to be -- it would be  
8 a different type of forum, I think was the advice we  
9 were being given at the time.

10 Q. It would be a different type of forum, and I think we  
11 can see that from the discussion. But there was another  
12 point being made: not only would it be a different type  
13 of forum but it might be a forum that organisations  
14 wouldn't be very keen to take part in --

15 A. Yes.

16 Q. -- because of the implications that they might be asked  
17 to accept responsibility, admit some kind of failings or  
18 responsibility, and make some appropriate redress as  
19 part of the exercise. Was that also a consideration  
20 that was being pointed out --

21 A. Yes.

22 Q. -- to ministers at that time?

23 A. I think it would have been. Again it's a bit hazy, but  
24 I think that is -- I think that would have been, yes.

25 LADY SMITH: Really if you think about what could only have

1           been meant by using the term "accountability" in this  
2           context, it must have come down to envisaging that  
3           organisations would come along and accept they were at  
4           fault, must it not?

5       A.   Yes. I think I go on to say that we had hoped that the  
6           forum that we managed to get up and running, that  
7           Quarriers were then willing to take part in and had  
8           already acknowledged where abuse had taken place, that  
9           that would open the door to potentially other  
10          institutions coming forward in a similar forum to do the  
11          same.

12       LADY SMITH: Of course, Quarriers' acknowledgement was in  
13          relation to convictions having been secured against  
14          people who had worked at Quarriers?

15       A.   Yes.

16       LADY SMITH: It would have been difficult for them not to  
17          accept that people had been convicted in the criminal  
18          courts of having committed crimes against children?

19       A.   Absolutely. But I know there was a hope that ministers  
20          had that the acknowledgement, and I absolutely take  
21          on board the reasons why, but that there would be  
22          a willingness on the part of other institutions to also  
23          take part in a similar type of forum, and that did not  
24          transpire, unfortunately.

25       LADY SMITH: And that hope would be extending to

1           organisations and institutions in relation to whom there  
2           had been no convictions?

3       A.   Yes.  I think I say in my statement we were trying to  
4           create an environment where we hoped that other  
5           institutions where allegations had been raised and  
6           investigations were underway, that perhaps there would  
7           be a willingness to take part in such a forum.

8       LADY SMITH:  Did you give any thought to whether or not  
9           anything of that type had happened after the  
10          First Minister, Mr McConnell, had made the Apology that  
11          he made in Parliament at the end of 2004?  Because he  
12          had been seeking to create an atmosphere that would  
13          encourage others to come forward, and what was being  
14          said would not be restricted to the voice of the  
15          Government or the people of Scotland.

16      A.   I think we all hoped that we would be creating  
17          an environment and a culture where there would be more  
18          openness, which I think has eventually transpired  
19          through obviously some very difficult, turbulent times  
20          and court cases actually going ahead.  But I think we  
21          had hoped that we would create a culture where there  
22          would be more of an acknowledgement of what had happened  
23          in institutions.

24      LADY SMITH:  Thank you.

25      MR PEOPLES:  But that didn't actually happen at the time.

1           It is almost deja vu. The Apology -- there were hopes  
2           this would encourage others to come forward and  
3           apologise and perhaps acknowledge and accept  
4           responsibility or a degree of responsibility. And the  
5           same hopes were maybe held by ministers in your period  
6           as Minister for Public Health, but again they weren't  
7           realised at the time?

8           A. I think that is a fair assessment, unfortunately.

9           Q. I will come to the briefing, but I am not going to do  
10          that just yet because I want to perhaps ask you about it  
11          in the context of the Scottish Human Rights Commission,  
12          so I have not forgotten about it and I will come back to  
13          it.

14                 But just to pick up on one or two matters about  
15          the meeting and the decision itself, what was agreed as  
16          a collective decision of ministers present at the  
17          meeting on 30 September of 2008 was to proceed with  
18          a pilot confidential forum which was to be restricted to  
19          hearing from former Quarriers residents. That was the  
20          decision.

21          A. Uh-huh.

22          Q. I think Mr Ingram has already told us this, and we can  
23          see from the note itself, that in choosing this type of  
24          forum, are we correct in thinking that the emphasis was  
25          on the therapeutic effects that participation would have

1 on survivors in that they would, it was hoped, get  
2 a great deal of benefit from talking of their  
3 experiences and being listened to?

4 A. Yes, I think that is a fair summation, that it would  
5 give an opportunity to give testimony, some perhaps for  
6 the first time, for somebody to actually have their  
7 experience heard and recorded. That I think was very  
8 much what was in the minds of ministers at the time.

9 Q. Were you aware, by the way, that a previous  
10 administration in 2003 had discussed the option of  
11 a truth and reconciliation forum and at that stage had  
12 decided against it? Was that something that was drawn  
13 to your attention?

14 A. I don't recollect. It may have been, but I don't recall  
15 that being drawn to my attention.

16 Q. In the end at the meeting of ministers in September 2009  
17 the advice of officials was accepted. Really what  
18 ministers opted for was a forum that was similar to one  
19 component of the Irish model, the confidential  
20 committee, is that right?

21 A. Yes.

22 Q. In deciding whether, for example, to establish  
23 an inquiry, such as the Investigation Committee that was  
24 set up in Ireland as part of the Irish model, the cost  
25 implications would, I take it, be a legitimate factor

1           amongst other factors to be considered in any decision  
2           of that kind?

3       A. Yes, and cost would have been brought to our attention,  
4       but I don't think it was the driving force of the  
5       decision. I think the decision was very much around  
6       trying to provide an opportunity and draw on the  
7       positives of the Irish experience but perhaps avoid some  
8       of what I think I've described as negatives, pitfalls  
9       and difficulties of a very legalistic mechanism. And  
10      I guess because the emphasis was on a therapeutic forum  
11      to be heard, people to be heard, that that was the  
12      emphasis, rather than getting into perhaps some legal  
13      type structures.

14     LADY SMITH: Shona, you haven't got it on the screen at the  
15     moment, but in the minute to which Mr Peoples referred  
16     a short while ago there is a short passage that really  
17     emphasises the cost element, it uses the words "would  
18     add hugely" to costs.

19     A. Yes.

20     MR PEOPLES: I think officials pointed out both the  
21     legalistic point that you are making but also the  
22     separate point of the huge costs that would be involved  
23     as well as possible delays. So they were really  
24     tackling it on a number of different fronts?

25     A. I am not saying cost wasn't an element, it would have

1           been. All I am trying to say is it wouldn't have been  
2           the overriding issue.

3       Q. Okay, because Adam Ingram has told the Inquiry that in  
4           terms of the figures that were involved in the Irish  
5           model, which had been looked at by officials in  
6           Scottish Government, there was really no way  
7           Scottish Government could, in 2008, do anything like  
8           that. Are you saying that wasn't the case?

9       A. I am not saying that wasn't the case, I am just saying  
10          I think there was -- I don't recollect us agreeing that  
11          we needed to -- I guess if we had agreed a different  
12          forum, there would have been some formal processes to go  
13          and put that to Cabinet to get a financial package in  
14          place for that. I don't recollect any of that  
15          happening.

16                So my assumption is that we believed that it was  
17          a better decision to go down the forum that we went  
18          down. I think the reference to the Irish costs were  
19          that a lot of the resources -- certainly a lot of  
20          resources used in the Irish model had ended up going on  
21          legal costs rather than into the -- to support the  
22          survivors themselves, so that sticks in my mind as one  
23          of the issues that was raised that -- and there was  
24          nothing obviously to stop other avenues being pursued in  
25          terms of financial redress, although we discussed

1 earlier some of the barriers to the court processes at  
2 the time. But a lot of the money in the Irish -- the  
3 concerns about the money in the Irish situation was  
4 because of the legal costs, and that is where most of  
5 the money had gone, rather than the money ending up with  
6 survivors in terms of financial recompense.

7 Q. Would it be fair to say then that at least that was  
8 a consideration that weighed quite strongly with you, at  
9 least in terms of the meeting and the decision that was  
10 eventually agreed? Would that be a factor that you had  
11 -- well, you remember it particularly, and there is  
12 a record of it in the meeting. So was that something  
13 that had convinced you that maybe that wasn't the route  
14 to go down?

15 A. I think I was very keen that if -- I was keen that if we  
16 looked at financial -- the financial investment, if it  
17 was going to end up as a financial redress to survivors  
18 that was one thing, but if the costs were going to end  
19 up basically going to two sets of lawyers involved on  
20 either side, that was a concern to me, to be honest.

21 Q. You said that cost wasn't, however, the "driving force",  
22 I think was the expression you used. If cost wasn't the  
23 driving force and that presumably money could be found  
24 if need be, what was the difficulty in adopting the full  
25 Irish model? Because it was providing acknowledgement,



1           accountability, financial compensation, it had  
2           an Investigation Committee, a Confidential Committee and  
3           a Redress Board.

4           So if cost wasn't the issue, what was the difficulty  
5           at that time in adopting the Irish model? Because that  
6           was the sort of model Chris Daly had in mind I think  
7           when he put his Petition in as far back as 2002.

8       A. I think, again from recollection, that the concerns  
9       about the Irish model were that it wasn't -- it perhaps  
10      hadn't -- it had become far more legalistic than those  
11      involved had expected it to. So as I understand, again  
12      it is from recollection, I think there had been  
13      an expectation that it wouldn't be as legalistic  
14      a process but it had ended up being so, and almost  
15      court-like, and there was a desire on our part to take  
16      the elements that could avoid that becoming the same in  
17      Scotland in order to make some rapid progress of people  
18      being able to give testimony, I think was what was in  
19      the root of our thoughts, rather than something that was  
20      going to become very formal and legalistic.

21     Q. But it could be said against that train of thought that  
22     the Irish model catered for everyone, because those who  
23     didn't want the legalistic route, if that was what the  
24     Investigation Committee involved, had also the choice of  
25     the Confidential Committee. They got the listening

1 forum, but if they wanted something different and they  
2 wanted an investigation of their allegations and their  
3 treatment, they could opt for the Investigation  
4 Committee. So they were getting the best of both  
5 worlds, they could choose.

6 But what you were doing was taking the  
7 acknowledgement route, the listening forum, and denying  
8 them the accountability route that had been pursued in  
9 Ireland. Can you see where survivors might not find  
10 that satisfactory in 2008?

11 A. I can, I can, looking back, and the way you have  
12 presented that, yes. But I don't think we thought this  
13 was going to be the only thing that would be happening.  
14 This was -- I think I described in my statement that  
15 this was one piece of the jigsaw, but a piece that we  
16 could get on with quite rapidly, but I think there was  
17 an expectation that there were going to be a lot of  
18 other elements that would be brought forward in order to  
19 provide essentially what survivors were looking for and  
20 over the years I guess that is what happened, it maybe  
21 just took a bit longer than it maybe should have. But  
22 essentially there were other elements that were brought  
23 in over time to support survivors and eventually,  
24 obviously, the measures for financial redress, maybe  
25 that should have happened earlier --

1 Q. It is only happening now in terms of financial redress.  
2 It is not even legislation yet.

3 A. I know, and hopefully that will be happening soon.

4 But, yes, in our mind this was never going to be the  
5 end of the story. This was a part that we thought we  
6 could get on with more rapidly.

7 Q. If that be the case, though, was it appreciated that  
8 acknowledgement was significant for survivors but  
9 accountability was equally significant and therefore you  
10 should be trying to achieve both, not simply starting  
11 with one and maybe in the future look at other? Because  
12 the court processes were really not a realistic route by  
13 that stage.

14 A. That is true, and I guess -- I guess there was  
15 an expectation that other elements would emerge, the  
16 restorative justice, the opportunity to look at some of  
17 the legal issues. I guess from my point of view, maybe  
18 there was an over-focus on the therapeutic element, but  
19 for me in terms of my brief and what I thought was  
20 really important, and what I felt was important to  
21 a lot of survivors at the time, was this idea of being  
22 heard and having their testimony heard. That maybe was  
23 an overriding factor in my head beyond all other --

24 Q. It was important, and indeed the Daly Petition wanted  
25 a listening forum but it wanted something else as well.

1           It was also important to get some measure of  
2           accountability. And so one can't simply put these in  
3           some sort of order of importance, they were seen by  
4           survivors at least as equally important, those that were  
5           petitioning for an inquiry?

6           A. I guess the question is did they all have to happen at  
7           the same time or could you have elements that you could  
8           get on with --

9           Q. This is 2008. They were asking for this in 2002. One  
10          could perhaps at least plausibly say that in the first  
11          sort of six months or year beyond the Petition, but we  
12          are quite far down the line by now .

13          A. I appreciate that. I guess as new ministers in a new  
14          Government we were kind of looking at this afresh,  
15          rather than necessarily taking it from what had happened  
16          in 2002. But, yes, I take your point.

17          LADY SMITH: Shona, could I just work out one thing in my  
18          mind. When you were envisaging the idea of enabling  
19          survivors to be heard --

20          A. Yes.

21          LADY SMITH: -- am I right in thinking what you had in mind  
22          was that being done in privacy, between them and  
23          a person that would be working within what eventually  
24          became the National Confidential Forum, but that hadn't  
25          emerged at that stage, an organisation. So just the two

1 of them?

2 A. Yes, I think that was what was envisaged, but I think  
3 there was going to be a record of it if the person  
4 wanted it to be recorded. I think that was part of it,  
5 yes.

6 LADY SMITH: I am just trying to capture what you envisaged  
7 would happen so far as them being heard and telling was  
8 concerned. So that would mean nobody from the relevant  
9 institutions or organisations would have the opportunity  
10 to see and hear themselves what was being said?

11 A. Uh-huh.

12 LADY SMITH: Yes?

13 A. I understood, and again I might be remembering this  
14 wrongly, but I understood that the survivors from  
15 Quarriers were going to be in a bit of a different  
16 position because Quarriers had agreed to take part, that  
17 that would have been -- they would have been involved in  
18 that, but I am --

19 LADY SMITH: Well, Quarriers had agreed, but from what  
20 I have heard from Adam Ingram and you so far, you seem  
21 to accept that organisations weren't going to be  
22 compelled to take part.

23 A. No, I don't think there was -- I don't think there was  
24 the power to compel.

25 LADY SMITH: What I am trying to get at I suppose is how it

1           could be envisaged that an organisation would get to the  
2           acknowledgement/engagement stage if they hadn't been  
3           able to hear the person themselves. If they didn't know  
4           exactly what was being said and had had no opportunity  
5           to think about and try to understand it themselves or to  
6           feed into the process: very well, but that is not  
7           a complete picture of everything that was happening at  
8           our institution, our home.

9           If that was the position they were in, how could you  
10          realistically expect them to move to admission of fault  
11          and thinking about making redress? Wouldn't they be  
12          left with feeling, well, this process is all very well  
13          but it hasn't been fair to us and we can't reasonably be  
14          expected to go down that route of acknowledgement and  
15          accountability?

16        A. Yes, I can -- yes, I can understand that. I guess I had  
17          envisaged that there would be a process by which, in the  
18          case of Quarriers, that they would be able to -- perhaps  
19          be able to read testimony if the person agreed to that,  
20          but they would -- obviously some people may and some  
21          people might not. But, yes, I am not -- there are  
22          obviously --

23        LADY SMITH: Did anybody tell you that was what was going to  
24          happen?

25        A. Not in those terms, no.

1 LADY SMITH: You see, I should probably tell you that what  
2 has happened in this Inquiry is there have been some  
3 quite remarkable instances of people who lead  
4 organisations, the religious orders, for example, today,  
5 sitting exactly where you are sitting, after having  
6 listened themselves and in most cases actually seeing  
7 the person, because they are happy to be seen and not  
8 have screens, and taking the opportunity to say they  
9 have accepted every word that person has said and they  
10 want to apologise and acknowledge. That is the process  
11 that is in a public inquiry that was being ruled out at  
12 that time.

13 A. Yes, I know, and I guess I had envisaged that the forum  
14 that we were looking at would have gone some way to  
15 doing that, maybe naively. But I accept that is  
16 the point that we would have wanted to have got to,  
17 absolutely.

18 LADY SMITH: I think we are all agreed about what is a good  
19 outcome in these circumstances, but you need to know,  
20 don't you, exactly how you are going to get there?

21 A. Yes.

22 LADY SMITH: I know everybody uses a sat nav nowadays but  
23 I am old enough to remember the days in which we relied  
24 on maps, and to get to where you know you want to go you  
25 need a route map, don't you?

1       A. Yes, you do. And looking at it like that, I can see  
2       some of the weaknesses and -- but it didn't seem like  
3       that at the time because we were talking theoretically  
4       rather than -- perhaps if I had sat in on some kind of  
5       run-through model of: this is how it will work in  
6       practice, then maybe I would have raised those  
7       questions. I guess what we had in our head, and perhaps  
8       what reality was, were maybe two different things.

9       LADY SMITH: Mr Peoples.

10      MR PEOPLES: I think the idea, the name speaks for itself.  
11      It's a confidential committee forum where people give  
12      their experiences in a confidential setting so that they  
13      are not therefore being heard publicly by organisations  
14      or anyone else. That was a key feature of the model  
15      that was chosen. And that, to some extent, reflected  
16      the way that the Confidential Committee in Ireland  
17      worked, because I don't think the testimony there could  
18      be used in other ways, including in court proceedings or  
19      other ways, although what was coming out of the process  
20      in Ireland I think was to be the subject of a report, in  
21      the broad sense as the National Confidential Forum does  
22      today in Scotland, that you wouldn't get individuals  
23      identified but you would get a flavour for what they  
24      were saying confidentially.

25      A. Yes.



1 Q. But so far as the other point her Ladyship raised with  
2 you about the disadvantages of not being present when  
3 someone is giving experiences, the idea of the  
4 restorative justice pilot, which I don't think  
5 ultimately had a great take-up, was that those who went  
6 to the private forum would be offered the opportunity  
7 when they left the forum to engage in a restorative  
8 justice process with an organisation that was the care  
9 provider at the time. And the idea of a restorative  
10 justice process, and I don't claim to be an expert, is  
11 that in the course of that there will be some dialogue  
12 between the parties, perhaps with a facilitator, perhaps  
13 the experiences will be repeated again, and that there  
14 may be some attempt to see if the organisation can, in  
15 light of that process, acknowledge the experience and  
16 accept some degree of accountability for it and perhaps  
17 offer some form of redress or reparation in relation to  
18 it.

19 That is I think essentially what restorative justice  
20 involves if it is pursued. But that wasn't a component  
21 of the forum, it was just simply an add-on that people  
22 were offered when they left the forum?

23 A. Yes.

24 Q. Does that mean anything to you, can you recall?

25 A. Yes, it rings a bell, yes. That was, and it was

1 an optional next step, if people wanted to take that  
2 step, yes.

3 Q. I think in terms of this idea, it certainly was  
4 mentioned at the meeting, and I think Sacro was asked to  
5 give some advice on this restorative justice pilot, if  
6 you like. And I think, is it correct to say, you may  
7 not know this, that I think Quarriers made some  
8 financial contribution to the set-up cost of that pilot?

9 A. I don't recall that, to be honest.

10 Q. Can I go back to your statement at paragraph 19. You  
11 say there:

12 "A confidential forum was not seen as being the only  
13 answer or the sole response to the issues being raised  
14 by adult survivors."

15 I just want to ask you a few questions about that  
16 statement. It perhaps echoes something you have said  
17 already today, that this wasn't the last word or the  
18 last response to the issues in relation to adult  
19 survivors or historical abuse. Can I ask you, though,  
20 what other possible responses were under active  
21 consideration at that time?

22 A. I think there was -- in my brief there were a number of  
23 things being looked at around health support, emotional  
24 support, whether there were -- you know, basically  
25 trying to kind of see whether there were needs that

1           could be individually met by survivors in terms of their  
2           health needs, education needs, but that there were  
3           also -- I know Fergus Ewing was looking at some of the  
4           legal issues, and I am a bit hazy now, unfortunately.  
5           And Adam Ingram was looking at, well, how do we make  
6           improvements to make sure none of this could ever happen  
7           again in terms of care improvements? So I guess there  
8           was a range of issues across the portfolios that were  
9           all being looked at at the same time as this.

10          Q. I follow that. I suppose, then, would I be right in  
11           thinking that a public inquiry wasn't under active  
12           consideration at that stage as one of the responses?  
13           Not under active consideration?

14          A. It wasn't being scoped out in terms of, you know, when  
15           is it going to happen? Who are the potential people to  
16           lead? So in terms of -- there was no detail being put  
17           on a public inquiry actually happening, but it was  
18           always -- as I said earlier, it was always there in the  
19           background as a potential option.

20          Q. I think anyone could say that. Anything that is  
21           possible is in the background, and indeed some people  
22           might be calling for it. But what I was really  
23           interested in was: were ministers actively considering  
24           it at that time? I don't get the impression from the  
25           records that that is happening.

1       A. No, the three of us, the three ministers that are  
2       involved with this work that we are talking about, were  
3       not -- whether it was discussed at Cabinet -- I didn't  
4       attend Cabinet, so whether there were any Cabinet  
5       discussions about it at the time, whether it was  
6       revisited on a regular basis, I am just not sure.  
7       I can't recollect whether we were asked to input into  
8       anything like that. But the three ministers that we are  
9       talking about here, no.

10      Q. Can I just ask about another issue which featured or was  
11      a continuing feature or an issue for survivors which was  
12      compensation. Was a compensation scheme for those who  
13      had no legal redress under active consideration at that  
14      time?

15      A. Not in my directorates but I'm not sure that is where it  
16      would have sat. I guess, and I have tried to recall  
17      this, there was an expectation that there would be some  
18      financial redress at some point, and you made the point  
19      earlier that it has taken quite some time. But  
20      certainly in my mind I think there was -- I thought  
21      there would be some financial redress at some point, but  
22      I don't think I thought I was the minister leading on  
23      that, to be honest.

24      Q. I am not suggesting you were. I just have in mind,  
25      and I may be wrong, that I may have seen something along

1 the lines that the minister -- Cabinet Secretary for  
2 Justice in 2008 or thereabouts when he was being asked  
3 by some MSP on behalf of a constituent was saying  
4 something along the lines, "We have no plans for such  
5 a scheme at this stage." Is that something you were  
6 aware of or not aware of?

7 A. It is not something I was aware of and I guess in my  
8 mind because of the -- that had essentially happened at  
9 different stages in different countries around the world  
10 that were looking at this issue, there was an assumption  
11 in my mind there would be here in Scotland as well.  
12 Just obviously maybe, as I say, it took longer than  
13 maybe it should have.

14 Q. Are we agreed it took far too long?

15 A. Yes.

16 Q. It is not even in place yet.

17 A. Yes --

18 Q. There are hopes it will be in place by next year.

19 A. I think by March is the expectation.

20 Q. Can I move to something else which you deal with in your  
21 statement, the National Reference Group, and can I ask  
22 you a little bit about that? You have a section  
23 starting at paragraph 27, I think, through to about 33  
24 of your statement, and you might want to have that  
25 at least --

1 A. I have that.

2 Q. -- to hand. I think at paragraphs 27 to 28 you are  
3 saying, if I understand it, that if survivors on the  
4 National Reference Group, and there were some, felt let  
5 down by the choice of a private confidential forum,  
6 having been discussing an acknowledgement and  
7 accountability forum at the group, you don't recall  
8 being made aware of that at or around the time of the  
9 ministerial decision on 30 August 2008, is that really  
10 what you are telling us there? You weren't aware if  
11 that was the reaction to the decision?

12 A. If I had been told that the survivors were as -- up in  
13 arms and were totally against this, I think I would  
14 recall that. I don't recall that at all. I was under  
15 the impression that, although I knew there were  
16 differences of opinion among survivors about what the  
17 emphasis should be on, some were in favour of a public  
18 inquiry but not all, there were different emphases of  
19 what people wanted, but I think if I had been told  
20 survivors are totally against this and to a person -- or  
21 the majority, I think I would have been concerned about  
22 that and would have obviously questioned it. So ...

23 Q. Do you recall getting any feedback from officials --  
24 they were obviously contributing to the discussion at  
25 the meeting of ministers, as we see from the record, but

1           did you recall getting any feedback at that meeting  
2           about the views within the National Reference Group;  
3           whether they were unanimous that they favoured the model  
4           of officials or there was a division of view or there  
5           was a majority view, or anything of that kind? Can you  
6           recall anything of that being drawn to your attention?

7           A. I think as I say in paragraph 27, the NRG were  
8           discussing an accountability type forum, which survivors  
9           thought was a good idea in principle. We were given the  
10          impression that, in the main, survivors thought this was  
11          a good idea. I think if we had been told otherwise, we  
12          would have --

13          Q. But that is not what they got in the end. They ended up  
14          getting an acknowledgement type forum, they got the  
15          thing that they thought was a good idea in principle but  
16          ministers didn't.

17          A. Sorry, we come on later on to --

18          Q. I will come back. I just want you to perhaps address  
19          that point. If that was a point that was being made and  
20          was something that was understood by ministers, that  
21          they thought it was a good idea to have such a forum,  
22          why on earth not give them what they want? You said  
23          that would be important or influential.

24          A. Yes, I think we then though came on to the idea of the  
25          forum as emerged in terms of the pilot, that it had

1           substantial -- or that survivors were keen to see that  
2           go forward I think was the impression we were given. If  
3           I had thought at the time that the eventual forum  
4           that -- the confidential forum that emerged didn't have  
5           any support among survivors and that is what we were  
6           told, I think I would have had a different view on it.  
7           I think --

8       Q.   So were you getting the impression from what officials  
9           were telling you, whether in briefings or otherwise,  
10          that there was broad support among survivors for  
11          a listening and acknowledgement type forum but you  
12          weren't getting the same message through officials that  
13          they were equally interested in accountability and  
14          a model that would have an element of accountability  
15          built in? Was that what you recall being the way things  
16          were being presented to ministers?

17      A.   I have a recollection that we were told that, yes,  
18           I think survivors wanted an accountability element.  
19           Obviously that was clear. But as the confidential forum  
20           model and pilot emerged as an idea to go forward more  
21           quickly to get testimony out and avoid some of the  
22           legalistic issues, that we were given the impression  
23           that that had broad support among the survivors, or  
24           enough support among the survivors.

25      Q.   That may not be wrong, because they probably did broadly



1 support an acknowledgement forum. But that doesn't mean  
2 they are not broadly supporting something else as well.

3 A. Yes, and I go on to acknowledge that. Because I have  
4 thought about that myself and I think I say in  
5 paragraph 30 that I accept that:

6 "To interpret the responses ..."

7 And we are talking about the consultation:

8 "... as saying that the majority wanted the type of  
9 forum that we decided to pilot may be true but that did  
10 not necessarily mean that they did not want anything  
11 else."

12 I get -- and I acknowledge that.

13 Q. That is the benefit of reflection?

14 A. It's the benefit of reflection, yes.

15 Q. You do say you don't have a memory or recollection of  
16 being made aware of perhaps the reaction of this -- at  
17 least the survivors in the NRG to the decision that was  
18 taken, but what you do remember is that a lot of  
19 emphasis was put on the responses to a consultation  
20 exercise between October 2008 and April 2009 on  
21 a proposal for an acknowledgement and accountability  
22 forum, and you say I think at 28, I think it is:

23 "The very clear advice that came to ministers from  
24 those responses [that is the consultation responses] was  
25 to steer away from using the term 'acknowledgement and

1           accountability'. There was a view that survivors may  
2           not relate to such a term."

3           And you also say that, looking at consultation  
4           responses, you can see why officials and ministers moved  
5           in the direction of an acknowledgement type pilot forum.  
6           I think that is what you are saying there.

7           I think we looked at the note of the meeting --

8       LADY SMITH: Is this back to 30 September 2009 meeting?

9       MR PEOPLES: Yes, the meeting in 2009, the ministerial  
10           meeting. I think you will agree that clearly there was  
11           a decision that acknowledgement and accountability was  
12           not an appropriate name for the process that you had  
13           agreed to pilot. So it wasn't just a matter of a label,  
14           it was a different process to an acknowledgement and  
15           accountability type forum. It wasn't just: oh, well,  
16           maybe there's a better name for it.

17       A. No, I accept that.

18       Q. Were you aware at that time that there had in effect  
19           been two consultation processes and that the second  
20           process was to ensure that survivors' voices were heard?  
21           Were you aware of that? There had been a conventional  
22           consultation exercise from October to January and then  
23           between February I think and April there had been  
24           an attempt to canvass more views of survivors to see  
25           what they wanted?

1 A. I have a very hazy recollection, but ...

2 Q. What I think you are saying in your statement is that  
3 you were being told by officials that survivors wanted  
4 an opportunity to tell their stories and have them  
5 recorded. That was coming across strongly from the  
6 official advice?

7 A. Yes.

8 Q. Were you trying at that stage, as ministers, to give  
9 survivors what you understood they wanted?

10 A. Yes. Although we knew they wanted other things as well,  
11 but we believed this was one of things that they wanted.

12 Q. Were you aware that the summary of survivor responses  
13 from this second consultation exercise was saying most  
14 survivors were in favour of the title "Acknowledgement  
15 and Accountability", and most survivors agreed that  
16 abusers and organisations that looked after children  
17 should be held accountable. Was that drawn to your  
18 attention?

19 A. Not that I recollect as clear as that, no.

20 Q. Because if it had been, it seems odd that there was  
21 discussion and agreement that the term "acknowledgment  
22 and accountability" was a sort of term that survivors  
23 could not -- might not relate to. That would not sit  
24 easily with those responses, would it?

25 A. No. In hindsight, I think maybe what would have been

1 a better thing to do would be for ministers to have met  
2 directly with the survivors on the National Reference  
3 Group, and potentially a wider group of survivors, but  
4 I am applying hindsight to ...

5 Q. To assist you, the consultation exercise ran from  
6 October 2008 to April 2009. The conventional  
7 consultation exercise, which I think produced about 51  
8 responses, were principally from bodies other than  
9 survivors. I think there were four survivor responses,  
10 something of that order. It was quite a small number.  
11 They then had a separate exercise to get perhaps a wider  
12 view from survivors. And what I have just read out is  
13 part of the summary of the responses, the feedback on  
14 what survivors in that second exercise were saying --

15 A. Right.

16 Q. -- about an acknowledgement and accountability forum.  
17 So clearly they seemed to have been saying to the  
18 Government "We want both. We want accountability, we  
19 want acknowledgement. We don't have a problem with the  
20 title". So it now sits rather uneasily that ministers  
21 seem to have said, "Oh well, let's just give them  
22 acknowledgement meantime and maybe we will look at the  
23 accountability aspect down the line".

24 A. Yes, I think ministers acted with the best of intentions  
25 in that they felt -- I certainly speak for myself,

1           anyway -- that we felt this was an important element  
2           that survivors wanted, not to the exclusion of other  
3           things, and that that had sufficient support among  
4           survivors that were asked, that this was something we  
5           should get on and do.

6           Now, that may have been the case, but I think the  
7           point that I absolutely take on board is that that left  
8           the question of, well, where is the accountability?  
9           And, you know, they may want this but they also wanted  
10          other things as well, and we were focused on this  
11          element of it.

12         LADY SMITH: You were focusing on the listening element --

13         A. Yes.

14         LADY SMITH: -- if we call it that?

15         A. I think so.

16         LADY SMITH: But the other elements were still live and had  
17          come out of the consultation process as still live?

18         A. Yes, and I don't think that was clear enough in my mind  
19          at the time, that we felt we had the support of  
20          survivors to get on down the route we were going down,  
21          I think. I don't think, as a minister, if I had felt  
22          that what we were pursuing didn't have the support of  
23          survivors that we would have pursued it in the way that  
24          we did. I guess that is why maybe, looking back, had we  
25          met more directly with survivors themselves, we might

1           have heard those messages more directly and clearer.

2       LADY SMITH: Did you revisit the terms of the Daly Petition?

3       A. As a ministerial group, did we revisit the ...?

4       LADY SMITH: Either as ministerial or --

5       A. I was aware of it.

6       LADY SMITH: -- personally.

7       A. We were aware of it and we'd certainly had a briefing on  
8       it and we were aware of the terms of it at the time,  
9       yes.

10      LADY SMITH: Do you remember reading it yourself?

11      A. I think I read -- I think I read it in one of the  
12      briefings, from recollection. I would have, yes. It  
13      would have been part of the background briefing. As  
14      ministers responsible for these areas we would have been  
15      given it.

16      LADY SMITH: Thank you.

17      MR PEOPLES: The views -- there was a consultation, there  
18      was a second element to that to get views of survivors  
19      because perhaps it was felt the first exercise hadn't  
20      maybe elicited enough views to get some sort of  
21      representative sample or position. But you were  
22      consulting on an acknowledgement and accountability  
23      forum, you weren't consulting on a confidential  
24      committee forum. If that was what officials were  
25      steering towards and had had that in mind even when they

1           started the consultation, would it not have been much  
2           better just to have been up front and saying "Look, this  
3           is what we think is the best idea. What do survivors  
4           and others think of this?" You can't say we'll consult  
5           on one thing and then perhaps decide on another.

6           A. It would have been better. It would have been better to  
7           have done that, definitely.

8           Q. Do you accept that abandoning accountability, which  
9           in effect was the effect of the decision, suggests that  
10          even after the second consultation that I referred you  
11          to, that the voices of survivors were not being heard?  
12          Is that not what they are entitled to take from that  
13          reaction or response, whether it's due to officials or  
14          ministers or both?

15         A. I think I would say that they were not being given --  
16         they were being heard to some degree in that they -- the  
17         confidentiality forum, that part of it wasn't something  
18         that survivors rejected but it was only part of the  
19         picture, and perhaps we overly focused on that part of  
20         the picture, rather than the other important parts that  
21         survivors wanted, and I accept that.

22         Q. If you had been told around September 2009 that  
23         survivors wanted a model that offered both  
24         acknowledgement and accountability, such as the Irish  
25         model was doing, you might have had reservations about

1           the particular detail of it, would that have caused  
2           ministers at least to seek a way of delivering such  
3           a model? If that was what you were being told "We have  
4           a strong position that they want both", would you have  
5           said "Oh well, we shouldn't go down this route of  
6           confidential committee at this stage, we should look at  
7           this, further explore it, and see whether we can find  
8           a way of meeting those needs and giving effect to those  
9           views"?

10        A. Yes, and I guess there could have been different ways of  
11        doing that. It could still have been the case, I think,  
12        that you could have perhaps had a gradual process of  
13        starting with the confidential model and then moving on.  
14        But, yes, I think that would have been the case.

15        MR PEOPLES: I wonder if this is a good time to break for  
16        lunch?

17        LADY SMITH: Yes. We will have a break now, the lunchtime  
18        break, and I will sit again at 2 o'clock, Shona, if that  
19        works for you?

20        A. Yes. Thank you.

21        LADY SMITH: Thank you.

22        (1.00 pm)

23                               (The short adjournment)

24        (2.00 pm)

25        LADY SMITH: Shona, are you ready to continue?



1 A. Yes.

2 LADY SMITH: Mr Peoples.

3 MR PEOPLES: Good afternoon. Can I just begin by going back  
4 to one matter you were asked about this morning, which  
5 was whether you had read the Daly Petition. It has been  
6 pointed out to me, and I think I understand the reason,  
7 that there were a couple of petitions that were perhaps  
8 relevant, there was the Daly Petition, PE535, in  
9 August 2002, but we know, and you will probably know,  
10 there was another petition during Time To Be Heard,  
11 PE1351, Time For All To Be Heard. I don't know if  
12 you -- when you were answering the question that my Lady  
13 asked you this morning about had you read the Petition,  
14 I just be wanted to check which petition you maybe had  
15 in mind, because PE1351 was submitted around about  
16 August 2010, during the Time To Be Heard process, the  
17 actual process itself.

18 Just for your benefit can you perhaps just say which  
19 one -- do you think you maybe read the original one as  
20 well?

21 A. Yes, I think I was thinking about the original.

22 Q. That is fine, just in case you were thinking of  
23 a different petition that was related to these issues.

24 LADY SMITH: I think at one point both of them were referred  
25 to in Parliament, weren't they?

1 MR PEOPLES: Yes, I think they were combined at one point  
2 really as -- and I think there was a third petition,  
3 which I hesitate to mention, PE888, which is something  
4 to do with reforms of the Court of Session as well but  
5 I don't want to get too far down that road today.

6 That's fine, it was just so you had the chance in  
7 case we were at cross-purposes.

8 Can I now go back to your witness statement and you  
9 have a section that is headed, from paragraph 34 onwards  
10 through to 37, "Ministerial decision to create a pilot  
11 forum without consulting the Scottish Human Rights  
12 Commission". Prior to the decision in September 2009 of  
13 ministers, the Scottish Human Rights Commission, I will  
14 just call them the Commission, if I may, the Commission  
15 had been commissioned in February or March,  
16 I think March perhaps, 2009, to produce what was  
17 described as a human rights framework to inform the  
18 design and the delivery of an acknowledgment and  
19 accountability forum.

20 I take it perhaps as Health Minister, because  
21 I think it came through Health, was that something you  
22 had become aware of before the ministerial meeting?  
23 It's referred to in some of the briefings, but  
24 I wondered if you had much knowledge of that happening?

25 A. Again from recollection, I recall it happening but

1 I can't recall much of the detail.

2 Q. Okay. You do deal with this at paragraphs 34 to 36 of  
3 your statement, and essentially ministers on  
4 30 September 2009, without waiting for production of the  
5 human rights framework which was published in February  
6 of 2010, decided, as we have heard, to pilot a private  
7 confidential forum which came to be known as Time To Be  
8 Heard. In the paragraphs I have referred to, you accept  
9 I think that criticism of doing so is probably fair  
10 criticism. Ministers were making a key decision and  
11 were doing so without knowing what the Commission's  
12 report was going to say, and you accept I think, with  
13 the benefit of hindsight, that it would probably have  
14 been better to wait until that report was available.  
15 And you do say also that you don't remember being made  
16 aware of that being a potential issue for ministers, and  
17 if it had been put to ministers that the report was  
18 coming, and that ministers had the choice of making  
19 a decision or waiting for that report, you say you  
20 probably would have preferred to wait for the report  
21 thinking back on the matter. So is that what you think  
22 having reflected on this?

23 A. Yes, it does seem odd, to be honest, looking back, not  
24 to have waited for the Commission's deliberations, and  
25 thinking about my latter days as a minister, it is not

1 something -- if you ask an organisation to do something  
2 to inform your thinking, you wait until that has  
3 happened. I just don't quite understand why we didn't,  
4 and I am trying to think back as to what whether or not  
5 it was lost as an issue but it certainly shouldn't have  
6 been, and we certainly probably should have waited to  
7 get that unless there was a burning reason why not.

8 Q. We might hear from officials why they put the matter  
9 forward or why they were recommending a decision  
10 in September. I think we will hear from one of  
11 the officials, Jean MacLellan. Was she the lead  
12 official in Health on this issue?

13 A. Yes.

14 Q. What I think we should do at this stage is perhaps just  
15 have a look at the briefing that was prepared for  
16 ministers for the meeting on 30 September 2009. The  
17 reference is SGV.001.001.8028.

18 This is a long time ago but this is a briefing which  
19 was prepared for the meeting. It is addressed I think  
20 to four parties, you as Minister for Public Health and  
21 Sport, the Minister for Children and Early Years who was  
22 Adam Ingram at the time, the Minister for Community  
23 Safety who was Fergus Ewing, and the Lord Advocate who  
24 I think was Elish Angiolini at that time.

25 Pausing there, what was the Lord Advocate's interest

1           in this matter? I don't think she appeared at the  
2           actual meeting itself, but why was she one of  
3           the addressees of this briefing?

4           A. I honestly can't recall.

5           Q. Was she taking a particular interest in issues of this  
6           kind?

7           A. Not that I can recall particularly. I can't recall her  
8           being at any of the other meetings. No.

9           Q. If we just go on, you see the purpose of the briefing is  
10          to brief ministers for the meeting on 30 September, and  
11          it's said the purpose of the meeting is:

12                 "... to decide whether to pilot an acknowledgement  
13          and accountability forum for adult survivors who  
14          experienced in care abuse as children and, if so, to  
15          agree which model to pursue from a range of options  
16          outlined in annex A."

17                 We will come to annex A in a moment. But in view of  
18          what we have been discussing this morning, it seems  
19          slightly odd, given what was agreed at the meeting and  
20          discussed, that it was quite put in those terms, to  
21          agree "to decide whether to pilot an acknowledgement and  
22          accountability forum". Do you think the choice of  
23          language maybe, on reflection, is not a fair reflection  
24          of what was really happening?

25          A. I think that is fair, yes.

1 Q. There is some background information in the briefing  
2 which tells us a little bit about what was happening to  
3 up to that point and the fact there are different  
4 departments who have a direct interest in these issues,  
5 and presumably that is why the ministers were having  
6 this cross-ministerial meeting.

7 It refers to Adam Ingram's announcement  
8 in February 2008 about scoping a truth and  
9 reconciliation forum and it also says that funding of  
10 375,000 for three years has been set aside for this  
11 purpose. So it does appear that, by this stage, some  
12 funding has been earmarked for the pilot project or the  
13 forum that was being explored and scoped, is that right?  
14 That seems to be what it's saying?

15 A. Yes, it seems to be ...

16 Q. It says the matter seems to have developed to some  
17 extent as a response to recommendations made in the  
18 Shaw Report as well. That seems to be part of the  
19 background to the decision that had to be taken. Then  
20 it refers in paragraph 3 to the SurvivorScotland  
21 National Reference Group helping to prepare  
22 a consultation paper which was issued in October 2008.  
23 I don't know, did you know they were actively involved  
24 or is that just something you have been told about in  
25 the briefing itself?

1 A. I think just in the briefing, yes.

2 Q. And it says:

3 "At its request, the term 'truth and reconciliation'  
4 was replaced by 'acknowledgement and accountability' as  
5 the former was thought to be too closely associated with  
6 South Africa."

7 Then there is reference to various annexes and we  
8 will have a look at those in due course. So annex C  
9 describes the consultation process as well as its  
10 findings and implications. And in paragraph 4,  
11 ministers are told that:

12 "During the consultation process, officials were  
13 approached by the Scottish Human Rights Commission who  
14 offered their expertise and so were commissioned to  
15 provide a human rights framework for the forum which  
16 will ensure that the rights of all parties are  
17 represented."

18 So it appears that the Commission have, according to  
19 this briefing, approached officials within  
20 Scottish Government to offer their expertise, and what  
21 they appear to be having in mind is to provide  
22 a framework, a human rights framework, for  
23 an acknowledgement and accountability forum, not  
24 an acknowledgement forum, yes?

25 A. Yes.

1 Q. Ministers are also told that:

2 "Officials visited Ireland to hear about the Irish  
3 Commission to enquire into child abuse and have  
4 considered other international models. We are aware  
5 that the Irish Commission's work is likely to cost about  
6 €136 million, over 60% of which was spent on legal  
7 costs. We are seeking to ensure that we keep within  
8 a modest budget and the proposals are designed  
9 accordingly."

10 So they are flagging up the cost issue there?

11 A. I think that is where my 60%, the high figure on legal  
12 costs has obviously come from.

13 Q. They are alerting you to that as well?

14 A. Yes.

15 Q. And it's obviously a point you considered was quite  
16 material.

17 I think I said this morning that it perhaps wasn't  
18 like a traditional option paper. It does appear there  
19 are a number of options, and we will look at those, are  
20 set out annex A:

21 "... with the preferred option being a confidential  
22 forum where survivors (but not institutions or alleged  
23 abusers) would have the opportunity to speak about their  
24 experiences in care. They would do so without legal  
25 representation and in an informal setting."



1           If we move over to the next page of the briefing, do  
2           we see -- well, it tells us a bit about informal  
3           discussion had taken place with Quarriers. I'm not  
4           going to read it all out, but it shows that clearly they  
5           had already been approached informally.

6           And paragraph 7 I think goes on to indicate one of  
7           the reasons, perhaps, why they had been identified as  
8           a possible organisation to be involved in the pilot.

9       LADY SMITH: When you say "involved in the pilot" -- sorry,  
10       it wasn't you, it was whoever prepare this briefing --  
11       I don't really see any reference there to much more than  
12       that they may be able to help with information from  
13       their records subject to maintaining appropriate  
14       confidentiality. And there is a reference back to what  
15       they had said in their written evidence to the PPC in  
16       2004 and the apology they had given then. It doesn't  
17       seem to be creating a picture of anybody from Quarriers  
18       going along to meetings, engaging directly with  
19       survivors, who are included in the project or such like,  
20       does it?

21       A. No, it doesn't. No.

22       MR PEOPLES: It is pretty general stuff. But clearly the  
23       officials see Quarriers as being an organisation that  
24       they might want to have some kind of involvement with  
25       the pilot, putting it very broadly at this stage --

1 A. Yes.

2 Q. -- without actually explaining perhaps to ministers  
3 quite what they had in mind?

4 A. It would look like that, yes.

5 Q. If we go to paragraph 8, do we see:

6 "If a confidential forum was pursued ..."

7 And this is in line with the recommendation.

8 "... further thought would also need to be given as  
9 to how to involve institutions and other parties both in  
10 the process and in future funding of the project ..."

11 A. Yes.

12 Q. So --

13 LADY SMITH: Something else we see at the end of 7 there is  
14 that they realised there was a tricky problem that  
15 hasn't yet been addressed regarding liability and the  
16 interest of Quarriers' insurers and that required to be  
17 worked through in advance, as it is said.

18 A. Yes, I see that, and I think those were -- there was  
19 a lot of caution maybe around how -- well, how that  
20 would be worked through. And I think it sounds quite  
21 fluid at this stage as to what that involvement might be  
22 and some of the barriers potentially to that  
23 involvement.

24 LADY SMITH: Am I right in thinking that one of the aspects  
25 of the Human Rights Commission's considerations were,

1           very properly, not simply the rights of the survivors  
2           but the rights of the institutions in relation, for  
3           instance, to Article 1, Protocol 1, if the way this  
4           operated put them in the position of being liable for  
5           payments in circumstances where they hadn't been able  
6           fairly to put their case forward?

7           A. I don't recall that level of detail around the  
8           Commission's work, to be honest. I guess I had  
9           envisaged it being more around the survivors, but --

10          LADY SMITH: Fairness involves looking at everyone's rights.

11          A. Yes. I think I would have to look back in a bit more  
12          detail into the remit to --

13          MR PEOPLES: I think the point being made is that, at this  
14          stage, the report wasn't available to tell you what  
15          rights were in play and whether the human rights  
16          framework, in the context of any forum, had particular  
17          interests and particular safeguards that had to be built  
18          in. So you were in the dark about what they were going  
19          to be telling you on these matters at that stage?

20          A. Yes, it looks rather like --

21          Q. Well, to an extent. There are one or two references to  
22          the Commission, we will maybe look at those, but there  
23          doesn't seem to be a great deal of detail --

24          A. No.

25          Q. -- on the work they are doing. I think there was

1 an annex about it, and we will look at that in a moment.

2 So we have that. There is obviously work to be done  
3 if the confidential forum is pursued, and this section  
4 of the discussion seems to be working on the assumption  
5 that that will be the selected model. So it very much  
6 looks as if the officials are seeing the outcome in  
7 advance of the discussion, they are not really -- it  
8 looks as if they are very much prepared for that being  
9 the decision at the meeting. Did you think that is  
10 the sense in which this -- that is the flavour of it?

11 A. Yes. To be honest, as a minister who became more  
12 experienced over the years, you would look at briefings  
13 and you would see the way a briefing was heading in  
14 terms of its recommendation, but as a more experienced  
15 minister, you get to be more experienced and confident  
16 in questioning some of that, maybe, and --

17 Q. Because we will see on the face of it there are a number  
18 of options that are appraised, if you like, in annex A.  
19 But before we even get to that point, we see at  
20 paragraph 9 of the discussion in the main body of the  
21 briefing:

22 "The chair and forum members would need to be  
23 appointed, supported by an advisory group. Annex E  
24 present proposals and recommends that Tom Shaw be  
25 appointed to chair the pilot forum to provide continuity

1           and credibility."

2           So they already have a person in mind, they are  
3           already presenting detailed proposals for one option, so  
4           it does very much look perhaps to the outsider that they  
5           are going through a process where the formal decision is  
6           pretty much a foregone conclusion so far as they are  
7           concerned, do you see that?

8       A. I do see that. I would say that wouldn't be unusual in  
9       briefing material, to be honest.

10      Q. But this is an example of that.

11      A. That is an example.

12      Q. They are pushing a particular option and they are  
13      putting perhaps the best complexion on that one, maybe  
14      to the exclusion of enough argument about other options.  
15      I don't know if that's --

16      A. It's jumping out at me as being that is what they  
17      preferred --

18      Q. We will look at the annex. On the face of it, it does  
19      present other options. But the difficulty is if you  
20      look at the note of the meeting, there is nothing in the  
21      note of the meeting that suggests there was any detailed  
22      discussion other than about a confidential committee  
23      model and whether it went far enough as Adam Ingram  
24      raised the issue. So it does look as if everybody  
25      focused on that option?

1 A. Yes, I see that, yes.

2 Q. Then we have the recommendations at paragraph 11.

3 Bullet point 1 does say, and I think this is the second  
4 reference to the Scottish Human Rights Commission, that:

5 "A pilot should be run possibly from  
6 February/March 2010 informed by the SHRC's [the  
7 Commission's] human rights framework."

8 So the pilot is to be informed by it but that is  
9 what we are told there. If we go further into the  
10 annexes themselves, there is an options appraisal in  
11 annex A, and we can maybe turn to that which is a couple  
12 of pages on. It starts with an introduction before it  
13 looks at the various options that are included for  
14 appraisal and there is reference to no doubt some work  
15 that had been done in relation to these issues  
16 elsewhere, and indeed in Scotland, in terms of previous  
17 inquiries, so that is set out at the beginning:

18 "Officials, however, are saying they did find the  
19 work of the Ryan Commission [that's the Irish model]  
20 particularly relevant ..."

21 And it sets out the various components of the Irish  
22 model by way of information.

23 In paragraph 3 it discusses the Irish Commission and  
24 the Irish model, and it says:

25 "This model has provided a useful guide to the

1 challenges and opportunities presented by different  
2 models for an in care survivors forum."

3 And then it goes to the subject again of cost:

4 "Key issues for the Commission were the hugely  
5 escalating costs of the inquiries and the delays in  
6 completing the work. The original estimate was  
7 2.5 million euros over two years. The Auditor General  
8 in Ireland now estimates the cost as 136 million euros  
9 over at least 9 years [and then in bold] with the  
10 majority of that expenditure on legal fees for  
11 appearances before the Investigation Committee where  
12 there were also significant delays."

13 A. I can see why that stuck in my mind.

14 Q. It is not difficult to see what was being said to the  
15 ministers, and indeed they have highlighted a particular  
16 part of that so that no-one is in any doubt of its  
17 importance so far as officials are concerned. So it has  
18 already, I think, perhaps made its case or it's trying  
19 to make a very strong case.

20 And then it does say at paragraph 4, and this may be  
21 a point that you had in mind in morning:

22 "A forum on its own, regardless of its scope or  
23 powers, cannot meet all the needs of survivors."

24 And it says:

25 "The other annexes present all the various strands

1 of work that currently or in the future will offer  
2 opportunities for in care survivors to be recognised and  
3 their experiences validated."

4 So this is some attempt to say, well, apart from  
5 this, we are going to tell you a bit about the other  
6 things we are doing or have planned.

7 If we then go to the options, the first option which  
8 occupies one paragraph is no action, and I think that is  
9 quickly rejected because there has already been  
10 a commitment by Adam Ingram to look at a truth and  
11 reconciliation forum.

12 Option 2 is the confidential committee model, which  
13 was I think the preferred model of the officials. I am  
14 not going to go through it in detail because we can read  
15 it for ourselves, but I would point out that at  
16 paragraph 9 we see again in bold, in case it was missed  
17 before:

18 "In Ireland, nearly 60% of the Commission's costs  
19 were to cover legal fees for survivors, institutions,  
20 Government departments and the Commission itself but  
21 this expenditure was not incurred as part of the  
22 Confidential Committee's work."

23 So they are making the same point and indeed they're  
24 putting it in bold in this part of the appraisal  
25 section.



1           I suppose one might also say we see that something  
2           like eight paragraphs are taken up, paragraphs 6 through  
3           to 13 are taken up with a discussion of this option, so  
4           it's quite a lengthy discussion of the preferred option.

5           There is then discussion of the investigation  
6           committee model in Ireland and there is an explanation  
7           of how it operates. And do we see there that that  
8           occupies three paragraphs and it sets out advantages and  
9           disadvantages, although it does say in the final part of  
10          paragraph 16, if we go to page SGV.001.001.8035. The  
11          next page, is it? If we just scroll down a little bit.

12          It says:

13          "The investigation committee model does offer some  
14          opportunity for survivors to publicly name and shame  
15          alleged abusers but this is severely constrained by  
16          human rights concerns. There are also significant  
17          drawbacks in relation to the cost of legal  
18          representation and concomitant delays."

19          So the same theme.

20          Then option 4 is confidential and investigation  
21          committees, that is of course what was offered to  
22          survivors in Ireland, and again advantages and  
23          disadvantages are set out. This occupies two paragraphs  
24          and it is said at paragraph 18, the second paragraph on  
25          page 9, the next page, that it has the same drawbacks as

1 option 3 which is the investigation committee model:

2 "Cost implications would be considerable. It is  
3 likely the process would take years, resulting in  
4 frustration for survivors and adverse media coverage."

5 So it's again focusing on issues like cost, delay  
6 and so forth.

7 Then in the conclusions section, which takes up four  
8 paragraphs, it goes back to why option 2 as suggested is  
9 the preferred model for the pilot. There is reference  
10 to an investigation committee on its own not providing  
11 a therapeutic forum for survivors:

12 "... and creating considerable difficulties in terms  
13 of 'due process' rights for alleged abusers, with the  
14 potential for significant breaches of human rights."

15 It is also said that:

16 "Institutions are likely to be hostile to such  
17 an approach and survivors might find it over-formal and  
18 possibly even unsympathetic. It would take time to  
19 establish such a committee as legal challenges may well  
20 be made to its legitimacy. The cost of an investigation  
21 committee would undoubtedly be high and it is unlikely  
22 there would be funds available to meet the heavy costs  
23 of legal representation."

24 More of the same really on the same flavour.

25 Then it says quite explicitly at paragraph 20:

1           "A combination of the two models undoubtedly has  
2           some appeal but there would continue to be difficulties  
3           in relation to 'due process' and the costs are well  
4           beyond what is affordable even for a pilot."

5           So that is what the officials are telling ministers.

6           It does, however, in paragraph 21, revert back to  
7           human rights issues in the context of the confidential  
8           committee model and says:

9           "Any decision to opt for that model would require to  
10          meet the human rights framework being designed by  
11          the Scottish Human Rights Commission."

12          Then there's the statement:

13          "It appears from preliminary consideration of  
14          international human rights law that this model would fit  
15          within such a framework."

16          It is not clear whether that statement is based on  
17          something the Commission has been saying to officials or  
18          whether it's just the officials' interpretation of  
19          whatever the material they had before them. It's not  
20          very clear.

21          A. No. It might have been early discussions --

22          Q. Yes. I think we know the report wasn't available at  
23          that stage although I think there was a legal paper that  
24          had been produced and maybe someone was looking at that.

25          It says:

1            "It would also need to be presented as just one  
2            avenue for in care survivors to receive acknowledgement  
3            and be supported when making disclosures of abuse. The  
4            possibility of a criminal prosecution, a civil action  
5            and/or compensation from the criminal injuries  
6            compensation scheme should be explored with individual  
7            survivors. Consideration should also be given more  
8            generally as to how improvements can be made to make it  
9            easier for survivors to obtain redress through legal  
10           channels."

11           So these are some of the other issues that are being  
12           flagged up.

13           Then we get to the restorative justice point at  
14           paragraph 22:

15           "... to explore with relevant experts, such as  
16           Sacro, ways in which institutions could offer survivors  
17           forms of apologies and reconciliation that would be  
18           distinct from the forum process and would not constrain  
19           ongoing or possible future criminal investigations."

20           I think that is perhaps sowing the seed that that is  
21           something that could perhaps accompany the pilot.

22           If we go to annex B, we see there that there is  
23           discussion of work in connection with the  
24           SurvivorScotland Strategy. I don't want to go through  
25           all of this but I think the SurvivorScotland Strategy,

1 as we have already learned, was launched in 2005 as  
2 a response to a short life working group on adult  
3 survivors of childhood sexual abuse, wherever that  
4 happened, and the message was there had to be improved  
5 services for that group of abuse victims.

6 Within annex A there is also reference on the second  
7 page at SGV.001.001.8038 to the In Care Survivors  
8 Service Scotland towards the foot of that page. And  
9 I think again we can take this short, but the  
10 SurvivorScotland Strategy was accompanied by  
11 the establishment of what was called the National  
12 Reference Group and a sub-group of that was asked to  
13 look at services for in care survivors, and the upshot  
14 of that was that in 2008, the year before the decision  
15 of ministers on the forum, the In Care Survivors Service  
16 Scotland was established in about September 2008, so  
17 that is why it is included in this section I think.  
18 Again it gives some detail of that.

19 Then within the same annex there is a page, page  
20 SGV.100.100.8040, where there is some reference to past  
21 investigations of historic in care abuse, and there is  
22 reference to survivors from Quarriers campaigning for  
23 a public inquiry, and there is what is said to have been  
24 the response which is that:

25 "The Government has listened to survivors and their

1 explanations of the importance of society acknowledging  
2 the suffering they have experienced."

3 And it is said two major independent inquiries into  
4 abuse in care were commissioned by the Care and Justice  
5 Directorate, the first being Tom Shaw's review and the  
6 second Eddie Frizzell's report into abuse at Kerelaw  
7 Residential School in Ayrshire which was published  
8 in May 2009. It says the Government is currently  
9 implementing the recommendations of the Shaw Review and  
10 had announced plans for an acknowledgement and  
11 accountability model. That is a reference I think to  
12 Adam Ingram's statement. And of course there is to be  
13 a review of the records legislation, which again I think  
14 was a Shaw recommendation, a review of residential care,  
15 which again I think maybe arose out of Shaw. And  
16 of course there was the Kerelaw Inquiry that had  
17 been -- the recommendations of that Inquiry had been  
18 accepted.

19 So that is setting out the investigative work that  
20 had happened prior to this decision.

21 If we go on to annex C, we now get to something  
22 about the consultation process that we discussed this  
23 morning and responses, that is at SGV.001.001.8042.

24 I don't know if you recall, there are three pages of  
25 this to give you -- it is intended to give a summary of

1 responses. Some might think it is not perhaps as clear  
2 and as easy to follow as it could have been, but when we  
3 look at paragraph 3, which is "Summary of Responses", it  
4 says:

5 "Should Scotland trial an acknowledgement and  
6 accountability forum?"

7 First bullet point:

8 "Unanimous agreement ... need for a clear framework  
9 structure and remit, must not take resources away from  
10 existing support."

11 At 2:

12 "If so, do you think 'acknowledgment and  
13 accountability' is an appropriate title or would you  
14 prefer other terms to be used? 'Acknowledgment and  
15 accountability' rejected by vast majority as  
16 professional rather than user-focused. No clear  
17 alternative title offered."

18 Then it says:

19 "If you think it should be adopted [this  
20 accountability and acknowledgement approach], which of  
21 the following elements would need to be included in such  
22 an approach?"

23 I am not going to read all of these, but when we  
24 look at references to accountability, we see on page 15:

25 "Recognition of levels of accountability from the

1 individual abuser through to the Scottish society as  
2 a whole."

3 And the first bullet point under that is:

4 "Clear split in responses."

5 Then if we go over the page to the second heading in  
6 bold:

7 "Acceptance of levels of accountability from the  
8 individual abuser through to Scottish society as  
9 a whole."

10 The first bullet point is:

11 "Mixed response ... competing elements recognised."

12 Would you agree that what is being done there is  
13 simply collating all the responses from both survivors  
14 and others and presenting it in one annex? There is no  
15 attempt to separate out the views of survivors and the  
16 views of others?

17 A. No, that is correct. Yes.

18 Q. In hindsight, would that not have been a sensible thing  
19 to do if the consultation was supposed to be  
20 survivor-led and that survivor views were important so  
21 you knew what they were thinking, and then look at what  
22 others were thinking because -- does that not seem  
23 a good idea?

24 A. Yes. In hindsight, yes, it probably would have been a  
25 better, clearer, picture of what survivors were --



1 Q. Yes, because you might be thinking that on issues of  
2 accountability --

3 A. You don't know (inaudible) numbers are either of -- you  
4 know, how many of those responses are from --

5 Q. Yes. Because I think, as I said this morning, if you  
6 focused on the second consultation exercise, which was  
7 survivors, there was no mixed response on accountability  
8 or the name from them. So if there was a mixed response  
9 we can assume it was probably coming from non-survivors,  
10 including organisations who had an interest in this  
11 matter, care providers and so forth?

12 A. It kind of muddies the waters a bit, doesn't it?

13 Q. Yes, so it is not giving the clarity that perhaps you  
14 should have received --

15 A. Yes.

16 Q. -- do you accept?

17 A. I accept that.

18 Q. If we go to annex D, we see there that there is  
19 a reference to the human rights framework and what it  
20 was commissioned to do, and it is commissioned to  
21 produce a framework for a particular type of forum,  
22 acknowledgement and accountability forum.

23 I don't know if you can recall, but was anyone  
24 saying at the meeting of ministers, "Hang on, we've got  
25 this commission, it is for a particular type of forum,

1           and you are telling us to decide on a different forum,  
2           so what is going on here? Because they haven't been  
3           reported yet."

4       A. I cannot recall whether that point was made or asked.  
5           It seems a logical thing to ask, looking at it now, but  
6           I can't recall whether that was asked.

7       LADY SMITH: If you look at paragraphs 1 and 2, there are  
8           clear pointers to the advice not yet having been, or,  
9           report, rather, not yet having been delivered. Whether  
10          it's talking about what they will be doing or talking  
11          about it being likely to be imminently available, but  
12          plainly not with you at that stage.

13      A. Yes. That seems odd.

14      MR PEOPLES: If you look at paragraph 2, if I just pick out  
15          a couple of sentences. It does say:

16                "The final report of the Commission containing the  
17                framework will probably not be submitted to us until  
18                November."

19                We are in September, so at least you are being told  
20                that maybe in a couple of months you will have that  
21                report. And maybe if someone had picked that up they  
22                might have said "Well, actually, it is not long. Can we  
23                not just hold off?"

24      A. Yes, we should have.

25      Q. The other point I can pick out there, the final sentence

1           there is, and this is officials:

2                 "We hope that our proposals for the pilot ..."

3                 Which is a confidential forum.

4                 "... can be discussed with them over the next few  
5 months and that they can share with us the results of  
6 the human rights law review."

7                 That rather suggests that the proposals hadn't been  
8 the subject of any proper discussion with the Commission  
9 to obtain their views?

10       A. It suggests that, yes.

11       Q. Because I think we will probably find out from others  
12 that eventually the Commission did have recommendations  
13 about the pilot but they were made after the decision on  
14 the pilot?

15       A. Yes, which is the wrong way around, yes.

16       Q. In paragraph 4 it says:

17                 "Preliminary results suggest that  
18 the confidentiality committee model for a pilot forum  
19 would meet human rights requirements but that  
20 the investigation committee model would present greater  
21 difficulties. In either case, other avenues for legal  
22 and financial redress must be available to survivors."

23                 And then there is reference to Article 3 and the:

24                 "... responsibility of the State to investigate  
25 allegations of inhuman or degrading treatment or

1           punishment, and perhaps also the obligation to provide  
2           financial redress in some circumstances."

3           It is not clear who is giving that advice, whether  
4           it's based on something the Commission have said to  
5           officials or it's something that the officials  
6           themselves are saying at this stage before the  
7           Commission's report --

8       A. I suspect, as is normally the case, there would have  
9       been ongoing meetings from -- you know, a mixture of  
10      informal/formal meetings between the officials leading  
11      on this and the Commission.

12     Q. You would like to think that would have happened?

13     A. I would have assumed there would be communication of  
14      some description, the level to which I am not sure, but  
15      I would be surprised if there wasn't. So it may be that  
16      they have got a flavour of that but it is still putting  
17      the cart before the horse.

18     LADY SMITH: We do see in paragraph 2:

19                 "However, we have been liaising with them ..."  
20                 Whatever that means.

21     MR PEOPLES: I can tell you just now we have evidence, and  
22      we will hear more about it tomorrow I hope from someone  
23      who was in the Commission at that stage and quite  
24      actively involved, that the decision to announce a pilot  
25      forum was made independently of and prior to the

1 Commission presenting its recommendations. That rather  
2 suggests that the Commission didn't really have any real  
3 part in the lead-up to this briefing and decision, this  
4 particular decision, in the sense that they were  
5 properly consulted and there was a lot of discussions in  
6 advance of the briefing and the decision itself.

7 So if that is the position, that is certainly what  
8 we have been told so far, and we can no doubt explore  
9 that with the witness tomorrow, but --

10 A. Yes, there should have been no decision until the  
11 framework was received, it is the wrong way around, and  
12 I think they would be right to have raised concerns  
13 about that. The level to which there would have been  
14 ongoing liaison is one thing, and you would expect that  
15 to be happening, but I think the bottom line is that  
16 a decision was taken in the wrong order here.

17 Q. If we go to annex E very briefly, and maybe I am making  
18 the same point again, but it's pretty clear, isn't it,  
19 that by this stage in the day the preferred option is  
20 getting quite careful treatment. Because they have not  
21 only told you who would be chairing the pilot, they have  
22 also indicated other pilot forum members who might be on  
23 the panel, they have got a remit which is set out in  
24 some detail at paragraph 3 in annex E, and there is  
25 quite a lot about how this would operate, at least to

1 set the whole thing up. So it's at an advanced stage in  
2 a lot of respects, is it not?

3 A. It is. It is certainly leading in a particular  
4 direction, yes.

5 Q. Then annex F I'm not going to read in detail but it is  
6 headed "Health and Well-Being Issues", and I think this  
7 is mainly intended to show the initiatives that  
8 SurvivorScotland had been putting in place, and this is  
9 really health initiatives of the type you mentioned this  
10 morning when you I asked you what other actions were  
11 going on, and I think there is an attempt to set out in  
12 some detail over three pages the sort of things that are  
13 happening at that time in terms of health support and  
14 initiatives, is that right?

15 A. Yes, from that -- taking that briefing as a whole, there  
16 is a fair amount of -- quite a body of work ongoing or  
17 to be started at some point, which I think comes  
18 across --

19 Q. I am not suggesting work wasn't going on. Obviously it  
20 was going on within the Health Department --

21 A. Yes.

22 Q. -- as part of SurvivorScotland?

23 A. Yes.

24 Q. But some of the big issues for adult survivors, such as  
25 accountability, we don't maybe see any -- we can look at

1           it, perhaps. Annex G maybe is the nearest it gets to  
2           saying, well, how do people get justice and  
3           accountability and redress? If we go to annex G, which  
4           is at SGV.001.001.8052 of the briefing, it starts by  
5           referring to Article 3. But if you look six lines down  
6           in paragraph 1 in annex G, it says:

7                 "The preferred option for the pilot forum does not  
8           include an investigation or any form of financial  
9           redress. Therefore it is essential to consider the  
10          avenues for investigation and remedy that already exist  
11          for adult survivors of in care abuse as children, to  
12          consider any problems that survivors may have in  
13          accessing such avenues and to seek solutions for such  
14          problems."

15                I think at this stage there was perhaps  
16          a realisation that the legal route had considerable  
17          difficulties for those bringing actions --

18       A. Yes.

19       Q. -- due to the law of limitation. And, worse still, if  
20          you were a pre-1964 survivor you didn't have a claim?

21       A. Yes.

22       Q. It mentions the criminal injuries compensation scheme  
23          and some information is given about that, I am not going  
24          to go through that in detail, but I suppose one  
25          difficulty with that scheme was that it didn't apply to

1 pre-1964 survivors because it wasn't -- I think it was  
2 established around then and wasn't retrospective. So  
3 that was offering no comfort to pre-1964 survivors.

4 Then on the second page of this document, this  
5 annex, there is halfway down I think a discussion of  
6 limitation of actions and some of the difficulties  
7 encountered by those who brought actions within -- well,  
8 before they were prescribed, but outwith the normal  
9 limitation periods, and I think it simply flags up some  
10 of the difficulties that were encountered in that  
11 section of the discussion, although there is  
12 a discretion, but I think it makes clear the discretion  
13 really wasn't being exercised in favour of claimants.  
14 Indeed it mentions the case of Bowden which I think  
15 perhaps was a death knell at that stage for claims, or  
16 most claims, for abuse that occurred many years before.

17 It mentions the Scottish Law Commission's report at  
18 paragraph 7 on page SGV.001.001.8054, just towards the  
19 foot, paragraph 7, and the recommendation that there be  
20 some reform of the limitation provisions to extend the  
21 period to five years and give judges some statutory  
22 guidance in exercising discretion. But also I think it  
23 makes clear that ... actually I'm not sure it does make  
24 clear. I don't think it says specifically about  
25 prescribed claims there, but I think we know by then



1           that they didn't recommend a change in the law and  
2           I think Adam Ingram had accepted that conclusion  
3           in February 2008.

4           It looks at paragraph 8 as if there was some  
5           consideration being given to trying to address the  
6           problems of limitation as part of a wide-ranging damages  
7           bill, that is paragraph 8.

8           A. Yes.

9           Q. That would be something Fergus Ewing would be able to  
10          tell us more about, I think, so I am not going to take  
11          too long on that.

12          It then finishes off with the criminal prosecutions,  
13          and of course it does make the point that there have  
14          been prosecutions, and it gives some examples, prominent  
15          examples in paragraph 13 on the final page, but  
16          nonetheless maybe flagging up that in some cases it is  
17          not easy to bring a prosecution or obtain a conviction  
18          if brought.

19          A. Uh-huh.

20          Q. That is the briefing.

21          On relevant human rights issues to the decision you  
22          were having to take, whether it was a confidential forum  
23          or one of the other options, were ministers reliant on  
24          the briefing for the meeting?

25          A. I would say so. I think we probably were.

1 Q. While, as we have seen, there is the odd reference to  
2 the European Convention on Human Rights, would you agree  
3 there is no discussion in the briefing that would enable  
4 ministers to gain any proper understanding of  
5 a human rights-based approach to issues arising from the  
6 non-recent abuse of children in institutional care?  
7 There is no discussion that would help you formulate  
8 a position on that?

9 A. No, I agree.

10 Q. I think Duncan Wilson has said in his evidence to the  
11 Inquiry, and he was on the Commission at the time,  
12 I will just quote you what he said to us:

13 "The Commission's view was that a human rights-based  
14 approach to responses to historical abuse of children in  
15 institutional care required the State to ensure a range  
16 of remedies."

17 So that was the starting point for the Commission,  
18 and I think that is reflected in the framework document  
19 that was eventually published -- or not "eventually", it  
20 was published in 2010. So they were going to be  
21 pointing the way ahead, and the way ahead was you don't  
22 just have one particular model, you have to have a range  
23 of responses and models.

24 A. Uh-huh, yes.

25 Q. Perhaps including an acknowledgement and

1 an accountability forum. And they don't need to be in  
2 the same forum, they could just be part of a process.  
3 That doesn't seem to have been picked up that, yes, you  
4 don't have to have them combined in a single forum but  
5 you must have both available.

6 A. Yes, I think if we had waited or had more interaction  
7 maybe directly ourselves with the Human Rights  
8 Commission and awaited their framework, it would have  
9 been probably a broader, better informed discussion,  
10 I think, would be the --

11 Q. Because there is no real discussion of the other  
12 options?

13 A. No.

14 Q. It just seems to be, well, yes, we will go with the  
15 recommendation, we will answer a few queries raised by  
16 Adam Ingram about the strength of the preferred model.  
17 But beyond that we don't see in the note that ministers  
18 had a long and lengthy discussion about other options  
19 against a background of informed advice that  
20 the Commission is saying it has a particular view, you  
21 have to have a range of remedies?

22 A. Yes, I think that is fair.

23 Q. Although Adam Ingram may have, in fairness to him, at  
24 least had a sense that perhaps there should have been  
25 something more than what was decided upon at that time

1 even if the options were left open?

2 A. Uh-huh.

3 Q. Do you agree?

4 A. I agree. I certainly think -- it's all hindsight and  
5 experience -- but, you know, by the time I was leaving  
6 Government, if a briefing came up like that, I would be  
7 questioning it more forensically because you gain, with  
8 experience, to be able to see what is not there as well  
9 as what is there. But I think that is fair comment.

10 Q. You have a section in your witness statement that is  
11 headed "Engagement with Survivors" and I would like to  
12 ask a couple of questions about that, if I may. The  
13 first is how did ministers expect officials engaging  
14 with survivors to treat them?

15 A. With the utmost respect and to -- yes, with respect and  
16 listening to their views and to be giving ministers  
17 an accurate reflection of those views.

18 Q. Did that always happen in practice?

19 A. At the time I wasn't aware of any particular concerns.  
20 But having said that, our direct meetings and engagement  
21 with survivors was quite limited, it was nearly all done  
22 through officials. I remember attending  
23 SurvivorScotland conference type events, but those are  
24 quite large, general events and you don't get much of  
25 an opportunity to sit down with people and talk about

1           any detail. So the opportunity to hear any concerns  
2           from survivors would have been quite limited, I think,  
3           unless survivors approached us directly through other  
4           means, and I don't recall that happening, to be honest.

5       Q. You do know whether, at the time you were Minister,  
6           there was any guidance and/or training in place for  
7           officials who might have to engage directly with  
8           survivors as to how they should go about it?

9       A. I'm not aware if there was. The Civil Service is  
10          usually quite good at making sure that people are  
11          prepared for the work that they are taking on, but  
12          I honestly can't say whether that happened or not.

13      Q. So if you don't know, and I think that is your position,  
14          would that have been an appropriate step to have taken  
15          at that time, though, to ensure that there was  
16          engagement in the right way, to take account of the --

17      A. I would have expected civil servants to be engaging with  
18          any group of people in the right way, and that is to be  
19          respectful, to be listening, to be courteous. To, you  
20          know, not always agree with everything that people are  
21          saying, but to present the information that -- any group  
22          of people coming together to be consulted or to work in  
23          a working group, there is always a range of views, but  
24          all should be listened to, all should be heard, and then  
25          the kind of conclusion of those discussions to be

1           accurately reflected. I guess that is what ministers  
2           would expect.

3       Q. If you are dealing with a group of people who feel, with  
4           some justification I think you would accept, that they  
5           had not been listened to both as children and often as  
6           adults, we have a mistrust of authority perhaps,  
7           particularly people who represent the State, it might be  
8           important to ensure that those who engage with them have  
9           an understanding, if that is how they are thinking, and  
10          that they have to take account of that. It is not  
11          perhaps just a general engagement with the public, you  
12          have to have some knowledge and perhaps some  
13          understanding to be able to engage properly and  
14          effectively and not cause offence?

15       A. I would -- I would expect that of any civil servant.  
16          But, yes, of course, and the sensitivities -- but  
17          I guess I would have thought that would have been well  
18          understood, and that those who were working with  
19          survivors would, if they felt they had a skill gap  
20          there, that would have been addressed. I guess we rely  
21          on the -- I just would have assumed that was the case,  
22          maybe wrongly, but I would have assumed that is  
23          the case.

24                I know that -- I don't know if this was a thing that  
25          was routinely done at the time, but I know that more

1 recently quite often a third party might be involved in  
2 assisting some of those discussions, particularly I am  
3 thinking about the area of mental health, for example.  
4 I know that quite often third sector organisations are  
5 there to support dialogue and make sure -- because there  
6 is a bit of a power imbalance -- to make sure people are  
7 supported, so --

8 Q. I am not -- to be very clear what I am saying, I am not  
9 suggesting that the reason you have training is because  
10 the people that officials were engaging with had mental  
11 health issues or should be seen as having such issues.  
12 They may have had issues because of what had happened to  
13 them, but I'm not suggesting that they in some way had  
14 an illness or they were to be treated as people who had  
15 a mental illness. I think that's a point the survivors  
16 themselves made --

17 A. Neither am I. All I am saying is sometimes, where there  
18 is a need to support people in order to articulate their  
19 views, a third body is involved to make sure there is  
20 a power thing there so that, you know, people can be  
21 supported, because sometimes engaging with Government  
22 can be quite a difficult thing for any group of people.  
23 And therefore whether it's survivors or people with  
24 a particular issue, sometimes a confidence can be built  
25 with another organisation.

1           But despite -- leaving aside all of that, there are  
2           basic expectations of courtesy, respect, listening, that  
3           should apply to anybody that the Government is engaging  
4           with and I would be very concerned if that wasn't the  
5           case.

6           Q. Lastly, I am going to ask you about one other matter.  
7           You say at paragraph 31 you saw a confidential forum as  
8           simply one piece of the jigsaw, and I think you  
9           mentioned that this morning. At paragraph 32 you say  
10          that the pilot confidential forum and the restorative  
11          justice pilot:

12                 "... were intended to be part of an evolutionary  
13          process, steps intended to help address many of  
14          the concerns and issues survivors were raising. The  
15          pilot forum was a genuine attempt to provide  
16          an important contribution to what was a complex set of  
17          issues. The forum was never intended to provide for the  
18          full range of things which the survivors had talked  
19          about, such as justice, accountability, redress and  
20          acknowledgement."

21                 I think the Human Rights Commission's position may  
22          be that whatever was going on, and it has been described  
23          as an evolutionary process, was before they became  
24          involved and produced the framework and the interaction  
25          process and an action plan; that the approach would be



1           better described or characterised as piecemeal in the  
2           sense that it wasn't a series of pre-ordained steps as  
3           part of a planned strategy to address the key issues  
4           affecting survivors of historical abuse. Would you  
5           quarrel with that?

6           A. No. Looking back it does feel by the piecemeal, to be  
7           honest. There is a lot happening but it is -- there is  
8           a lot happening in different places, in different  
9           directorates, yes.

10          MR PEOPLES: I think these are all my questions for today.  
11                I hope I have covered any questions that I was asked to  
12                put by ...

13          LADY SMITH: Are there any outstanding applications for  
14                questions? No.

15                Shona, that covers all the questions we have for you  
16                to day. It simply remains for me to thank you very much  
17                for engaging with us both in terms of giving us a  
18                detailed written statement and coming here today to  
19                answer the questions we have for you on this very  
20                important topic that we are looking into here. So with  
21                that, my thanks, and I am able to let you go.

22          A. Thank you for the opportunity.

23          MR PEOPLES: Thank you very much.

24                               (The witness withdrew)

25          LADY SMITH: Mr Peoples.

1 MR PEOPLES: I think we could take a break now. We have  
2 a read-in which we would like to fit in this afternoon,  
3 if possible. Ms Bennie will be doing that, so you will  
4 be spared my voice for the rest of the afternoon,  
5 I hope. That we can deal with after the break.

6 LADY SMITH: Very well. We will take the afternoon break  
7 now, thank you.

8 (3.00 pm)

9 (A short break)

10 (3.15 pm)

11 LADY SMITH: Thank you, Ms Bennie.

12 MS BENNIE: My Lady, we propose to have two read-ins this  
13 afternoon.

14 LADY SMITH: Good.

15 MS BENNIE: The first read-in is the witness statement of  
16 Mr Frank McAveety.

17 Witness statement of MR FRANK MCAVEETY (read)

18 MS BENNIE: "My name is Frank McAveety. My year of birth is  
19 1962. My contact details are known to the Inquiry.  
20 This witness statement is to give information to the  
21 Inquiry on some of my experiences as the Convener of the  
22 Public Petitions Committee (PPC) when I was a Member of  
23 the Scottish Parliament (MSP).

24 "This statement is based on my recollection aided by  
25 documents. I have seen documents provided to me by the

1 Inquiry.

2 "I served as a Member of the Scottish Parliament for  
3 Glasgow Shettleston between 1999 and 2011. I was  
4 a member of the Scottish Labour Party during that time.  
5 I held three different ministerial appointments between  
6 1999 and 2004. I was a Deputy Minister for Local  
7 Government from May 1999 until November 2000. I was  
8 the Deputy Minister for Health and Community Care from  
9 May 2002 until May 2003. I was the Minister for  
10 Tourism, Culture and Sport between May 2003  
11 and October 2004.

12 "I was the Convener of the Public Petitions  
13 Committee from 19 June 2007 until 22 June 2010.

14 "I have been reminded that Petition PE535 by  
15 Chris Daly was lodged on 20 August 2002 (the  
16 Daly Petition). The Petition called for an inquiry into  
17 the abuse of children in care. It also asked for  
18 an apology from both the State and religious orders who  
19 ran the institutions that looked after children. The  
20 issues raised in the Daly Petition were debated in the  
21 Scottish Parliament when the then First Minister  
22 Jack McConnell gave a public Apology on behalf of the  
23 people of Scotland. I remember the actual debate  
24 because it was well covered and also because it was  
25 unusual.

1           "The Public Petitions Committee had been pushing for  
2           the matters raised in the Daly Petition to be brought to  
3           floor of the Chamber of the Scottish Parliament which  
4           was considered unconventional at the time. I was still  
5           an MSP at the time of the debate but was no longer  
6           a minister. I was in the Chamber on the day of the  
7           debate. I do remember there was an atmosphere in the  
8           Chamber because we knew the PPC has been pushing the  
9           boundaries. It was the first time the PPC had put  
10          a matter into debate. I would not say I had strong  
11          views one way or another at the time about whether  
12          a public inquiry should be held. My position would have  
13          been to listen to the evidence and the nature of the  
14          debate.

15          "I have been asked why the PPC decided to close the  
16          Daly Petition on 15 April 2008. I find it difficult to  
17          remember. I have read the documents provided by the  
18          Inquiry which include minutes of the PPC. Whilst I know  
19          this is an important issue, I do not recollect it being  
20          an important issue then in the PPC structure.

21          "I get the impression that because there had been  
22          a public apology by the then First Minister in 2004, the  
23          assumption of the PPC was that the  
24          Scottish Executive/Scottish Government was taking  
25          forward whatever needed to be done, either via the

1 Justice ministerial team or through the portfolio of the  
2 First Minister. Therefore, the PPC was no longer  
3 an appropriate vehicle for the matter. That is  
4 the impression I get from looking back at the minutes.

5 "The minutes show that Rhoda Grant suggested that  
6 the Daly Petition be dealt with by closing it and there  
7 was no dissension amongst PPC members to that course of  
8 action. It strikes me that if it had been a contentious  
9 issue across the Scottish Parliament, that would have  
10 exhibited itself at the PPC. Having looked at the  
11 minutes, I am almost certain it was seen as very much  
12 a procedural matter as it was getting dealt with via  
13 other avenues within the Scottish Government. From  
14 memory, I think Rhoda said it had been well aired,  
15 discussed, and had been taken up elsewhere.

16 "The reality is that there may be about 200  
17 petitions still in the system at the time. When the  
18 Scottish Parliament was first established, there was  
19 a lot of enthusiasm for petitioning Parliament as it was  
20 a different model from what had been the experience to  
21 date. Therefore, you could have a lot of petitions that  
22 had been in the system for a long time.

23 "What tended to happen was that the Clerk to the  
24 PPC, who was Fergus Cochrane during my time, would put  
25 together the itineraries for the PPC. He would identify

1       which petitions had been running through the system for  
2       a considerable period of time and these would be  
3       included on the itinerary for the day. The debate would  
4       then have been about how we could free space to enable  
5       other petitions to come forward. The situation with  
6       Chris Daly's Petition was that there had been a full  
7       debate in the Scottish Parliament and there was  
8       an assumption that the Scottish Government was treating  
9       it with the utmost seriousness.

10       "I have seen a copy of the letter from Chris Daly  
11       dated 4 January 2008 which was addressed to me and  
12       Fergus Cochrane which says:

13       "'My overall view of the response to my Petition is  
14       that Scotland has fallen short of what other countries,  
15       such as Ireland, has given survivors of institutional  
16       child abuse. The Petition received much support from  
17       the current administration when in opposition, however  
18       we have seen little of substance as yet'.

19       "The letter shows Chris Daly's position was that he  
20       did not feel that matters had gone far enough at that  
21       stage. I cannot recollect the letter coming to me,  
22       although it does say that a copy was sent to me and  
23       Fergus. My experience as Convener of the PPC was that  
24       if members of the PPC were lobbied or felt strongly on  
25       an issue, I was always open to having a discussion.

1           That was my style of convenership. I think at the time  
2           the PPC believed that the matters in the Daly Petition  
3           had been addressed by the debate and the  
4           First Minister's Apology in the Scottish Parliament  
5           in December 2004.

6           "I am told that Michael McMahon thinks that if he  
7           had stayed on the PPC he would have pressed to keep the  
8           Petition open because he felt that the steps that had  
9           been taken at that stage by the  
10          Scottish Executive/Scottish Government were not  
11          sufficient and a public inquiry should have been pushed  
12          for.

13          "I can understand Michael saying that. He was  
14          always quite close to the First Minister, as was I when  
15          I served in the ministerial teams. I get the impression  
16          that Michael would have pushed issues for Jack McConnell  
17          in the PPC. Jack McConnell, with his teaching  
18          background, was someone who was keenly aware that we  
19          should always be protective of youngsters in our care.

20          "I can say that Michael never raised any concerns  
21          when the PPC did make its decision to close the  
22          Daly Petition. Life is busy when you are an MSP and  
23          other things are prioritised. I think Michael McMahon  
24          is quite an independent-minded individual. He is  
25          someone with very strong Christian principles and is

1           someone I think is impeccable. So if Michael had ever  
2           come to me to say he really needed my support for this  
3           I would by and large have given him a good listen, but  
4           that did not happen.

5           "The reality of life is that people are passionate  
6           about different issues. I think Michael had been  
7           working closely with Jack McConnell's team to push the  
8           issue. Jack McConnell was very fond of pushing issues  
9           in the Committee which would then allow ministers to  
10          respond. By that I mean if you get a Parliamentary  
11          Committee pushing something, it makes it more difficult  
12          for the Scottish Executive/Scottish Government to ignore  
13          it or not to take action.

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

17          My Lady, the statement is signed by the witness and  
18          it is dated 23 September 2020.

19   LADY SMITH: Thank you.

20   MS BENNIE: My Lady, the next read-in is the witness  
21          statement of Mr Tom Shaw.

22          Witness statement of MR TOM SHAW (read)

23   MS BENNIE: "My name is Tom Shaw, my year of birth is 1940.  
24          I am retired. This statement is based on my  
25          recollection aided by documents. I have seen documents



1 provided to me by the Inquiry. I provided a witness  
2 statement dated 12 January 2019 to the Inquiry. The  
3 purpose of that statement was to provide an overview of  
4 my involvement as chair of a pilot private confidential  
5 forum known as Time To Be Heard (TTBH). My  
6 qualifications and professional experience are set out  
7 in paragraphs 3 to 12 of my previous witness statement.

8 "Before my involvement with TTBH I led  
9 an independent review known as the Historical Abuse  
10 Systemic Review. The review was conducted between  
11 August 2005 and November 2007. A report of the review  
12 was published in November 2007.

13 "The Scottish Executive wanted a mainly desk-based  
14 review of the systems and arrangements in place in  
15 Scotland from 1950 to 1995 that were intended to protect  
16 children who were placed in residential establishments.  
17 The review was not, and was not intended to be, a forum  
18 to hear the experiences of former residents.

19 "In spring 2005 I was contact by Rachel Edgar,  
20 an officer of the Scottish Executive Education  
21 Department (SEED), and asked if I would be willing to  
22 lead the review. I was formally appointed in  
23 August 2005. The remit I was given is set out at pages  
24 10 and 11 of the review report. I had no input into the  
25 remit and did not meet the Education Minister,

1 Peter Peacock, until 2006. I had very limited powers  
2 and depended largely on the co-operation and goodwill of  
3 those who might have information that would assist me to  
4 fulfil my remit.

5 "Under the initial remit I was able to talk to  
6 people in local authorities and other organisations with  
7 responsibility for the management and administration of  
8 residential schools and children's homes. I was also  
9 permitted to obtain information from organisations  
10 representing the interests of survivors of abuse.  
11 Driven by considerations of fairness, I wanted to be  
12 able to talk directly to former residents. In 2006,  
13 I made a request to do so to the Education Minister and  
14 this was granted.

15 "Rachel Edgar indicated that the review might  
16 involve two or three days a week for up to a year with  
17 support from a part-time research assistant.  
18 Assumptions about the files which the review might need  
19 access to suggested no awareness of the fact that there  
20 were many other files, including confidential files,  
21 within the National Archives of Scotland (NAS) that we  
22 would need access to. I do not think it was anticipated  
23 that much time would also be required to contact and  
24 communicate with people. Additionally, there may have  
25 been a state of ignorance about the complexity of the

1        legal and regulatory framework between 1950 and 1995 and  
2        how it operated in practice.

3        "At the outset I had one part-time research  
4        assistant, Nancy Bell. In mid-2006 I was permitted to  
5        employ a legal researcher, Roddy Hart. His research  
6        focused on historical, legal and regulatory framework.

7        "There was no central register of children's  
8        residential establishments operating between 1950 and  
9        1995. I found that astonishing.

10       "We started to build up a register but were not able  
11       to make a comprehensive record by time of completion of  
12       the review. My hope was that the Scottish Government  
13       would take on the responsibility of completing this  
14       exercise, especially for the benefit of former residents  
15       in establishments that had long since closed. Many  
16       small, privately run establishments had closed down  
17       during the period covered by the review.

18       "I had regular contact with officials of SEED and  
19       soon after my appointment was briefed by a former  
20       inspector in Her Majesty's Inspectorate of Schools. He  
21       talked about the system, how Scottish children's  
22       residential establishments were organised and who  
23       provided them over the latter part of the review period.  
24       No one spoke to me about the earlier part.

25       "I had contact with the Education Minister by

1 correspondence when requesting a change in my remit to  
2 permit contact with individual survivors. I met his  
3 successor when I requested an extension of time to  
4 complete the review.

5 "I made requests for additional funds to commission  
6 research papers to support the work of the review.  
7 I sought and obtained funds to employ a Plain English  
8 editor for the final draft of my report. These requests  
9 were dealt with constructively and expeditiously by  
10 Scottish Government officials.

11 "I had engagement with three organisations  
12 representing the interests of survivors, INCAS, FBGA and  
13 White Flowers Alba. I wanted to have contact with such  
14 organisations as well as survivors who were not meeting  
15 me in a representative capacity. In the case of  
16 survivor organisations, the challenge I faced was that  
17 they were very divided about the way they should proceed  
18 and what they should be seeking.

19 "Around September/October 2005 I met Frank Docherty  
20 and Jim Kane who were representing INCAS. Jim Kane was  
21 an immensely sincere man with the best interests of  
22 others who had been in children's residential  
23 establishments at heart. Frank Docherty was the same.  
24 It was clear they understood I was not conducting  
25 an inquiry or investigation or offering a forum at which

1 individual survivors could recount their particular  
2 experiences. My feeling was they hoped that the  
3 Scottish Government might do more than commission  
4 a review.

5 "I also met the chairman of INCAS as part of the  
6 process of information-gathering. He gave me  
7 an overview of what INCAS was doing and how it was  
8 organised. I got a sense from him that, within the  
9 organisation, different positions and directions were  
10 being taken by the members.

11 ""I first met Chris Daly and Helen Holland later in  
12 the process. Helen wanted to ensure the opportunity for  
13 acknowledgement and, if appropriate, recompense for all  
14 those who were elderly or in poor health.

15 "Some survivors had aspirations for a public  
16 inquiry. I think Helen Holland perceived my work as  
17 having leverage for a public inquiry. Chris Daly was  
18 focused on securing an inquiry. Some survivors saw the  
19 review as a delaying tactic. Some were dismissive of  
20 the review because it was not an inquiry. FBGA wanted  
21 an inquiry and saw the review very much as second best.  
22 That said, all survivors I had contact with appeared to  
23 accept that the work I was doing was being done in the  
24 best interests of all survivors. I was grateful for  
25 their willingness to help facilitate what I was doing.

1           "I sought co-operation and information from other  
2 parties. The response was mixed. Generally there was  
3 defensiveness and a concern about what organisations  
4 might inadvertently let themselves in for if there was  
5 too much openness. That was the case even though we  
6 reassured them we were not carrying out an investigation  
7 or inquiry that involved an element of accountability.  
8 Some said they were unable to comment because of ongoing  
9 litigation. Lawyers had advised them what they could  
10 say to us, and that was to say as little as possible.

11           "The inspectorates responded positively and readily  
12 to my request for assistance and information. Their  
13 assistance in putting me in contact with retired  
14 inspectors was invaluable.

15           "Some local authorities, because of the effects of  
16 two periods of local authority reorganisation, said they  
17 were willing to help but were unable to do so because  
18 they did not have the information that I was seeking.

19           "I got a lukewarm or cool reception from others.  
20 They questioned 'Why are we having a review at all?' In  
21 their opinion, the review would not be telling them  
22 anything new. From previous inquiries and reviews, they  
23 felt they had learned all the lessons and questioned  
24 what more the review could find out or learn.

25           "The Association of Directors of Social Work (ADSW)

1 wrote to the Education Minister complaining about  
2 the fact that the review had been commissioned and  
3 questioning the necessity for such a review. We  
4 arranged a meeting to explain to ADSW the nature of what  
5 we were doing, why we were doing it, and how their  
6 co-operation might enable us to fulfil the remit, but it  
7 became a very different kind of meeting.

8 "At the meeting a representative from the City of  
9 Edinburgh Council was very negative and opposed to all  
10 that was said. We tried reassure those present that  
11 the review was not an investigation or inquiry. We were  
12 seeking to establish what local authorities had by way  
13 of records, where they were and where we could get  
14 information about policy and practice.

15 "In early 2006 I contacted the Church of Scotland.  
16 I received an open, positive response. The Church of  
17 Scotland offered to co-operate in any way that it could.  
18 I had a constructive meeting with the person responsible  
19 for oversight of the children's residential  
20 establishments that the church provided.

21 "I had a difficulty in finding out who to  
22 communicate with on behalf of the Catholic providers.

23 "In 2006 I met with the Secretary of the Bishops'  
24 Conference. I learned that the children's residential  
25 establishments were provided through religious orders.

1 I appreciated that the Bishops' Conference could not  
2 compel individual orders to co-operate with the review.  
3 I had no power to compel organisations to engage with  
4 the review.

5 "Some Catholic providers were wholly co-operate and  
6 very open about what they knew and did not know about  
7 the nature and state of their records. By and large,  
8 they responded by telling us that they were uncertain  
9 about the scope and extent of the records they held but  
10 were willing to let us access their archives. Not many  
11 had systematic archiving or a record-keeping policy. In  
12 one establishment, records were in a cardboard box in  
13 a basement in no particular order. There was nothing to  
14 protect confidentiality of the contents. It became  
15 clear that many did not understand the responsibilities  
16 in relation to individual personal records.

17 "The order of Christian Brothers, headquartered in  
18 Cork, never replied to my enquiries.

19 "The review found that many local authorities and  
20 other providers did not know what records existed, where  
21 records were located and what they contained. The  
22 review also found that knowledge about systems of  
23 monitoring and inspection had been lost when people left  
24 organisations.

25 "We found that a vast amount of records still



1       existed. Records were scattered across organisations,  
2       archives, and even countries. Some were in the process  
3       of being examined. Some sat in boxes with little or no  
4       hint of what they contained. Some were in off-site  
5       secure storage.

6       "We also found that records had been lost or  
7       destroyed. Potentially important information about  
8       practice was lost when practice changed. When new  
9       guidance was issued previous guidance was destroyed.  
10      This was done, we were told, to avoid the risk of  
11      confusion. This meant we could not find evidence of  
12      what the previous policy and practice had been. Such  
13      losses could have been avoided had appropriate retention  
14      schedules been in place. Historically, organisations  
15      appear not to have recognised that records were  
16      a valuable resource.

17      "We found that there was a lack of Central  
18      Government records about residential childcare, such as  
19      records giving details of which organisations provided  
20      which services, at which locations and over what period  
21      of time. In Central Government records that did exist,  
22      there was evidence of inspections of individual  
23      establishments. We saw evidence of inspectors having  
24      asked to see records kept by establishments. Amongst  
25      other things, inspectors were looking for evidence of

1       action taken in response to findings of the previous  
2       inspection.

3       "The findings of the review pointed to an urgent  
4       need to take action to preserve historical records so  
5       that former residents could have better prospects of  
6       getting access to their records and information about  
7       the residential schools and children's homes in which  
8       they lived as children.

9       "Where possible during the review, we turned to  
10      people who had worked for organisations to find out  
11      about past provision and practice. One man had written  
12      a book about his experience as an inspector. He was  
13      approaching 100 years of age when we met him. He had  
14      a remarkably clear memory and give us valuable insight  
15      into policy and practice in the past.

16      "Some organisations had good records. For example,  
17      Barnardo's had individual records for all the children  
18      they had cared for throughout the period we were  
19      concerned with. The records were archived in a way that  
20      made them easily accessible and identifiable. Records  
21      of all kinds were well-organised and there was  
22      an archivist who was able to highlight files that might  
23      be of assistance to us in carrying out our work.

24      "We recognised that Barnardo's was, and is, a large  
25      organisation. It would have had greater resources than

1 many much smaller organisations, enabling it to maintain  
2 good record-keeping system and employ an archivist.

3 "When survivors asked to access records held by  
4 local authorities, they were not allowed to do so  
5 without a social work official being present. That made  
6 many reluctant to view the records because they did not  
7 want somebody else seeing what had been written about  
8 them. They would have preferred to go into a room with  
9 their file and read it alone.

10 "In reading their files, some former residents  
11 learned about circumstances in their past life, before  
12 being in a residential care setting, of which they had  
13 been unaware. That was both a surprise and in some  
14 cases a shock to them. Others were disappointed to find  
15 no regard of incidents they remembered such as when they  
16 were punished. Some thought records were selective. We  
17 tried to reassure them. We said records may have been  
18 made but not filed due to clerical error. Some were  
19 concerned that there were no records of medical  
20 inspections, visitors or events they took part in such  
21 as concerts.

22 "The person in charge of the Quarriers archive,  
23 Josie Bell, had previously been a member of staff in  
24 Quarriers. Some former residents remembered her, and  
25 felt that an independent archivist should have been

1       appointed. When we visited Quarriers, we found the  
2       archivist very helpful. She pointed us to records we  
3       might be interested in, such as minutes of the meetings  
4       of the board of Quarriers and annual reports. The  
5       annual reports were a fascinating insight into Quarriers  
6       over the years. They were largely celebratory in the  
7       way school annual reports are.

8       "The focus of the review was on the systems of laws,  
9       rules and regulations that governed residential schools  
10      and children's homes and on how those establishments  
11      complied with these. To do this, we sought records and  
12      other documentary evidence that would inform our  
13      understanding of the extent to which the laws, rules and  
14      regulations were respected. That process drew our  
15      attention to organisations' record-keeping and what they  
16      had done in terms of preserving records and making them  
17      accessible. Historically, record-keeping seemed to be  
18      seen as a necessary, but unwelcome, chore. Once  
19      a record was made, the file was put away and the record,  
20      it would seem, was not seen as having any further  
21      relevance or usefulness.

22      "I was critical of record-keeping in my report.  
23      Organisations thought that I had expected them to keep  
24      everything. That was not the case. I was expecting  
25      them to have kept records which showed they complied

1 with laws, rules and regulations, and used such records  
2 as a resource in the improvement of provision and  
3 practice. Historically, the notion of records as  
4 a resource was not generally evident.

5 "In mid-2006 I set up an advisory group. The group  
6 included a representative of the Catholic Church.  
7 Another member had been a senior health professional and  
8 had a very good knowledge of organisational systems.  
9 There was a representative of the National Archives of  
10 Scotland and a former member of the Education Department  
11 Inspectorate. Professor Andy Kendrick was also a member  
12 I took advice from the advisory group on proposals I had  
13 for dealing with particular issues and on how to respond  
14 to any difficulties which cropped up.

15 "As part of the review I commissioned two reviews,  
16 a literature review undertaken by Professor Kendrick  
17 looking at the incidence of abuse in children's  
18 residential establishments across the period spanned by  
19 my review, and a review by Susan Elsley of societal  
20 attitudes to children and social policy changes in the  
21 period 1950 to 1995.

22 "Research material about children's lives in  
23 Scotland and the experience of those in residential  
24 establishments was scarce. Attitudes to children had  
25 changed over time as had attitudes to punishment and how

1 to respond to complaints.

2 "I had regard to what the law specified could be  
3 done in respect of the use of corporal punishment.  
4 There was repeated evidence through the testimony of  
5 individuals, and some documentary evidence, of legal  
6 limitations not being adhered to.

7 "As regards emotional or psychological abuse, the  
8 legal and regulatory provisions did not adequately  
9 protect children from such abuse. We heard accounts of  
10 inappropriate responses from adults to children, such as  
11 denigration, humiliation, and excessively harsh verbal  
12 responses which demeaned and belittled them.

13 "Particularly during the early part of the review  
14 period, some people employed to work in the residential  
15 childcare sector were probably unsuitable. By that  
16 I mean people were employed who did not possess the  
17 range of skills to deal with children in an appropriate  
18 way. Often people were employed because they were  
19 available and willing to work for a very poor wage. In  
20 some establishments, residents were retained when they  
21 were due to leave and given work to do. In their new  
22 role they followed practices they had experienced as  
23 children in their residential settings. There was no  
24 legal requirement to employ staff with residential  
25 childcare qualifications. There were poor standards of

1 staff recruitment, training and oversight, coupled with  
2 the negative effect on recruitment of low pay. The low  
3 pay issue continued across the period spanned by the  
4 review.

5 "Children were isolated from their families and in  
6 some, perhaps many, children's residential  
7 establishments those in charge appeared to have  
8 a dismissive attitude to parents and other family  
9 members. Parents, often it seemed, were not taken any  
10 more seriously than the children.

11 "Children generally did not talk about their abuse.  
12 If they did they were not believed. We heard of  
13 children being told 'You are making it up. Don't you be  
14 telling lies. Go away and play'. Some former residents  
15 recalled that when a member of staff was spoken to by  
16 a manager following a complaint, nothing changed. It  
17 seemed that a lot happened that was not recorded, not  
18 followed up and not acted upon.

19 "Given the remit of the review and the information  
20 we gathered in the course of our work, it would not be  
21 appropriate to attempt an assessment of how well the  
22 system treated children in general in residential  
23 establishments. We came across evidence of good or  
24 acceptable practice and of poor and unacceptable  
25 practice. Some children experienced very good care and

1 spoke of it being better than the care they would have  
2 received had they been at home. Very few said that  
3 everything and everyone was bad all the time.

4 "I was not asked in the remit to make  
5 recommendations. However, given the findings of the  
6 review, I considered it necessary to make certain  
7 recommendations.

8 "The recommendations can be found in chapter 7 of  
9 the review report. They were grouped into three broad  
10 categories and focused on (a) current provision to  
11 ensure the welfare and safety of looked after and  
12 accommodated children, (b) former residents' needs, and  
13 (c) records.

14 "I recommended more should be done about access to  
15 records and there should be a review of the public  
16 records legislation. I also recommended the setting up  
17 of a national task group to review regularly services  
18 for looked after children. I had in mind an independent  
19 public body having the capacity to challenge Government  
20 and hold Government to account for what it said it was  
21 going to do.

22 "I could not find any extant record of what was done  
23 in response to the recommendation of previous reviews  
24 and inquiries over the years. To some extent the same  
25 recommendations came up time and time again. That was



1 a concern for me. I felt there needed to be a means of  
2 monitoring action in response to the review's  
3 recommendations and progress towards fully implementing  
4 them. I saw a national task group as a way of doing  
5 that.

6 "The Scottish Government responded very positively  
7 to many of the things I recommended. It issued a press  
8 release on the day my report was published welcoming my  
9 findings. Survivors came to the press conference at  
10 which I present the review's findings. Their response  
11 was very positive. They welcomed my report, endorsed my  
12 findings, supported my recommendations, and hoped that  
13 the review would be a basis for progress towards their  
14 ultimate goal - a public inquiry.

15 "The review was not an investigation of particular  
16 experiences of abuse. For individual survivors it could  
17 not answer the question 'Why was this allowed to happen  
18 to me?' but the review identified a number of factors  
19 which may have given rise to circumstances in which  
20 children in residential establishments could be abused.  
21 Many of those factors were systemic failings.

22 "First, there was a failure to follow consistently  
23 the safeguards in the legal provisions applying to  
24 children in residential establishments. If asked 'Had  
25 each establishment done everything required by law,

1 would that have prevented abuse?' my answer would be  
2 'No'. Perpetrators of abuse can be clever, devious and  
3 sometimes stupid. Had the legal requirements been  
4 adhered to consistently, I am convinced there would have  
5 been less physical abuse. The law regarding corporal  
6 punishment during the review period was clear and very  
7 specific.

8 "Second, the review concluded that there was  
9 a failure to listen and give adequate weight to  
10 children's complaints and concerns about their  
11 treatment. Children were often told 'You are lying, you  
12 made it up' or 'Run along, it didn't mean anything. It  
13 wasn't harm to you'. That kind of dismissal was common.  
14 Insufficient attention was paid to what children were  
15 saying.

16 "Third, during most of the period covered by the  
17 review, there was a public acceptance, even endorsement,  
18 of corporal punishment. Whilst corporal punishment may  
19 have been common in wider society, that did not make it  
20 acceptable to ignore the limits specified for the use of  
21 corporal punishment in children's residential  
22 establishments. In the review and later in TTBH we  
23 heard frequently about former residents experiencing  
24 excessive physical punishment.

25 "Fourth, during the period covered by the review

1       there were no agreed national standards of care for  
2       children in residential establishments. Some efforts  
3       were made to improve standards of professional knowledge  
4       and conduct but there had never been an explicit set of  
5       standards.

6       "Fifth, there was inconsistent and at times  
7       insufficient monitoring and inspection of children's  
8       residential establishments. Different people whose job  
9       it was to inspect and monitor looked for different  
10      things and were not necessarily informed by the same set  
11      of standards or expectations. Also, at times, there was  
12      insufficient monitoring. A range of people had  
13      responsibilities in children's residential  
14      establishments that could be regarded as monitoring.  
15      I am not sure that they recognised that their  
16      responsibilities involved monitoring.

17      "Sixth, boards and members of the local authority  
18      councils had a visitation responsibility in some cases.  
19      All the records we found, and we did not find many,  
20      seemed to suggest that those were regarded as VIP  
21      visits. Those in charge of children's residential  
22      establishments knew in advance of such visits. Efforts  
23      were made to have everything in good shape for the  
24      visitors. That was not unworthy but such visits would  
25      not have enabled actual monitoring.

1           "Seventh, there was ineffective management in some  
2           residential establishments at the level of the person in  
3           overall charge. We looked for evidence of managers  
4           putting on record advice on improving practice that had  
5           been given to individuals, such as houseparents,  
6           following a complaint. We looked for, but could not  
7           find, anything which indicated that the manager had  
8           exercised his or her functions correctly in dealing with  
9           a complaint.

10          "Eighth, there were poor standards of staff  
11          recruitment, staff training and oversight, coupled with  
12          the negative effects on recruitment of low pay for care  
13          staff.

14          "Ninth, especially in the earlier part of the review  
15          period, members of the public, including some parents of  
16          children in residential establishments, were reluctant  
17          to question or challenge the decisions and responses of  
18          those in charge of such establishments, particularly  
19          voluntary establishments, in relation to complaints  
20          about standards of care and the well-being of the  
21          children.

22          "Tenth, some of those in charge of children's  
23          residential establishments adopted a superior, even  
24          dismissive, attitude towards parents and other family  
25          members of the children in care of such establishments.

1           "Time To Be Heard.

2           "A conference was held on 25 November 2008 entitled  
3           'Historic Abuse Systemic Review - One Year On'.

4           "Around that time the Scottish Government announced  
5           there would be a consultation on an acknowledgment and  
6           accountability forum.

7           "In September 2009 the Scottish Government decided  
8           to pilot a confidential forum which subsequently was  
9           called 'Time To Be Heard'. There was unbridled anger  
10          amongst many survivors at the decision to exclude  
11          an accountability function from the pilot.

12          "The decision to test the pilot forum using only  
13          former Quarriers residents was largely settled before  
14          I became involved with its development and  
15          implementation.

16          "One factor which influenced that decision was the  
17          perceived difficulty in getting institutions to  
18          co-operate and participate in a pilot if they had not  
19          been subject to prosecutions. Another was the fact that  
20          Quarriers had good records and that was seen as a way of  
21          facilitating the pilot forum in contacting people.  
22          I wrote a letter addressed to everyone who had contacted  
23          Quarriers in the previous five years seeking their  
24          records, inviting them to apply to take part in the  
25          pilot forum.

1           "I was asked to take part in two public meetings  
2           in February and March 2010. One was for professionals  
3           in the residential childcare system and one for former  
4           residents of children's homes and residential  
5           establishments. The purpose of the meetings was to  
6           present the rationale for taking TTBH forward on a pilot  
7           basis using a single care provider and to explain the  
8           TTBH process.

9           "By that stage the Scottish Human Rights Commission  
10          had advised the Scottish Government that it was unhappy  
11          about a pilot forum being launched before the completion  
12          of its report. The SHRC had been asked to develop  
13          a human rights framework for an acknowledgement and  
14          accountability forum. Before its work was completed  
15          Scottish Ministers decided against an acknowledgement  
16          and accountability forum and opted instead for  
17          a confidential acknowledgement forum. They did so  
18          without consulting the SHRC.

19          "Professor Alan Miller of the SHRC came to both  
20          meetings. At each meeting he spoke on behalf of the  
21          SHRC. He argued that what we were doing would be  
22          helpful and could be relevant to the wider delivery of  
23          the human rights framework that the SHRC was proposing.  
24          He was very helpful at both meetings.

25          "The meeting for the providers was, relatively

1 speaking, dispassionate, unemotional and broadly  
2 accepting of the pilot forum initiative. From memory,  
3 the issue of the change from what had been promised  
4 (an acknowledgment and accountability forum) to what was  
5 being delivered (a confidential forum for survivors) did  
6 not feature very largely in the discussions at this  
7 meeting.

8 "The meeting with the survivors was an angry  
9 meeting. Some survivors were unhappy with the decisions  
10 that had been taken. The reason for their anger was  
11 that the pilot forum was losing the element of  
12 accountability they had been expecting it to have.  
13 There would be no opportunity to hold individuals and  
14 institutions to account. They were also very angry  
15 about the choice of a single institution (Quarriers) for  
16 the pilot forum. Those who had been resident in  
17 children's homes other than Quarriers argued that they  
18 were getting nothing as they could not participate in  
19 the pilot. There was also real concern that so many of  
20 those who were old and infirm were not getting  
21 a chance to participate in the pilot.

22 "As the meeting went on, people began to respond to  
23 repeated angry interventions from the floor. One woman  
24 stood up and said that she hadn't been involved in any  
25 meetings of this kind before. She said, 'I can see the

1 value of what is on offer. I don't want this meeting to  
2 be informed only by the views of those people who have  
3 spoken before now, I want my views to be reflected.  
4 I don't like being here in an atmosphere of this kind.  
5 I find this meeting hurtful and I totally respect the  
6 best intentions of what is on offer.' The atmosphere in  
7 the meeting changed following her intervention.

8 "Before TTBH began I set up an advisory group.  
9 Helen Holland was a member of that group. She acted in  
10 a wholly professional manner. On 30 August 2010, she  
11 and Chris Daly submitted a Petition to the Public  
12 Petitions Committee of the Scottish Parliament for 'Time  
13 For All To Be Heard'. Helen Holland was driven to do so  
14 by a sense of outrage at the fact that TTBH was  
15 restricted to one institution and that former residents  
16 and other institutions, particularly those who were  
17 ageing and/or ill, did not have access to TTBH.

18 "During TTBH many people said they experienced abuse  
19 while in care. What struck me was that we heard this  
20 from people who did not know each other and from people  
21 who did not know who else was coming to talk to us or  
22 what period they would be talking to us about. We were  
23 hearing repeatedly about the same types of abuse and the  
24 same abusive practices. I saw this as a form of  
25 coincidental corroboration of the individual accounts.



1            "We heard from a wide range of people, including  
2            people holding senior positions in society and people  
3            who were making a first disclosure. Many of these were  
4            people who were not pursuing a claim for compensation  
5            nor wanting to support others making such a claim. None  
6            were people who were simply repeating what they had read  
7            in the newspapers. I and the other commissioners felt  
8            that the people who came to us were being honest and  
9            that many, for whatever reason, felt the need after many  
10           years to unburden themselves of their experiences as  
11           children in residential care.

12           "Many participants in TTBH told us about abusive  
13           experiences while in the care of Quarriers. We were  
14           also told about cottages where practices were considered  
15           to be good and in which children had very happy times.  
16           There were cottages in which people had mixed  
17           experiences. Those taking part in TTBH said management  
18           were aware of these disparities but did nothing to  
19           change things.

20           "The development of a Restorative Justice Toolkit  
21           took place at the same time as the development of the  
22           pilot forum. The papers that TTBH gave to each  
23           participant included information on the Restorative  
24           Justice Toolkit. If they were interested, they were  
25           given contact details they could follow up, but TTBH was

1 not promoting or driving this. The Restorative Justice  
2 Toolkit had been developed in parallel with TTBH and was  
3 a matter between Sacro and Quarriers. I did not have  
4 direct involvement with the restorative justice pilot.

5 "My overall conclusion was that there were many good  
6 people within the system who were doing good things.  
7 The problem was that there were many instances of either  
8 neglect or disregard of the legal obligations or  
9 rejection or ignorance of what would have been the right  
10 way to respond to children's needs. There was  
11 a considerable element of trust within society that  
12 childcare establishments would look after children  
13 properly and keep them safe and that did not always  
14 happen.

15 "Children are in a special position if they are in  
16 the care of the State. During the review period  
17 standards of care had to be considered against what was  
18 understood to be in the best interests of the welfare of  
19 children. That might mean differences in practice and  
20 treatment in comparison to what was happening outwith  
21 children's residential care settings. The law applying  
22 to children in care differed at times from popular  
23 opinion and societal norms. That was something I felt  
24 people needed to be aware of.

25 "You cannot necessarily compare the experience of

1 a child in the community with a child in residential  
2 care because they are not subject to the same legal  
3 protections. For example, we did not require, and still  
4 do not require, parents to maintain a punishment book.  
5 During the review period, the law required that a record  
6 of any punishment should be kept when a vulnerable child  
7 was in the care of the State. The assumption was that  
8 a residential childcare establishment would be a place  
9 of safety. The law expected a child to be safe and  
10 protected when in State care. A domestic home could  
11 have been or might not have been a safe place.

12 "People working in children's residential  
13 establishments needed a clear and regularly updated  
14 distillation of the key childcare principles and legal  
15 obligations that should have informed their work.  
16 Realistically, in their day-to-day practice they were  
17 often unable to draw on detailed advice and guidance.

18 "The disappointment and anger of survivors who were  
19 precluded from participation in TTBH by the choice of  
20 a single institution for the pilot forum was  
21 understandable. Their discontent with the  
22 Scottish Government's strategy related to the fact that  
23 many of them were ageing and in poor health. They  
24 argued their hopes of getting closure through  
25 acknowledgement were at serious risk because of the

1 passage of time.

2 "The decision to exclude an accountability dimension  
3 from the pilot forum added dramatically to their lack of  
4 confidence in the Scottish Government's action programme  
5 for survivors.

6 "The Scottish Government's strategy to act  
7 sequentially rather than concurrently in addressing  
8 survivors' needs was deeply regretted, even resented, by  
9 survivors with whom I met. That approach added to the  
10 distress and sense of neglect that so many expressed.

11 "Survivors' pressure for Government action to  
12 address their needs was, in my experience, driven at  
13 least as much, if not more, by a profound sense of  
14 injustice and the need to be believed rather than by  
15 pressure for redress, however much they were entitled to  
16 that.

17 "TTBH, despite its limitations, demonstrated  
18 unequivocally the value of a confidential forum. That  
19 it did so in the midst of such profound disappointment  
20 at the decision to exclude an accountability function  
21 from its remit is all the more significant in validating  
22 the need to be heard and believed.

23 "I have no objection to my witness statement being  
24 published as part of the evidence to the Inquiry.  
25 I believe the facts stated in this witness statement are

1 true."

2 My Lady, the witness statement is signed and it is  
3 dated 1 July 2020. My Lady, that concludes the read-ins  
4 and tomorrow we should be hearing from two witnesses.

5 LADY SMITH: Starting at 10 o'clock as usual, is that right?

6 MS BENNIE: Yes, that is correct.

7 LADY SMITH: Very well. That is the end of the evidence for  
8 today. I will rise now and I will be back at 10.00 am  
9 tomorrow.

10 (4.03 pm)

11 (The Inquiry adjourned until 10.00 am on Wednesday,  
12 25 November 2020)

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