

Thursday, 26 November 2020

(10.00 am)

LADY SMITH: Mr Peoples.

MR PEOPLES: My Lady, the next witness, who is appearing via video link, is Jean MacLellan.

LADY SMITH: Good morning. First of all, please tell me what you would like me to call you, Jean or Ms MacLellan?

A. Jean is absolutely fine.

LADY SMITH: Very well. Jean, could we begin by you taking the oath, please. If you would raise your right hand and repeat after me ...

MS JEAN MACLELLAN (sworn) (via video link)

LADY SMITH: Jean, I can see you clearly and I can hear you clearly at the moment, and I take it that it's the same, that you can see and hear me all right just now?

A. Yes.

LADY SMITH: Do let me know if there are any problems with either the audio or the video because it is very important that we maintain this quality of communication throughout your evidence. We can stop or break at any time if necessary.

A. Thank you, I will do that. Can I also thank you for affording me the opportunity to stay on the island.

LADY SMITH: That is all right. I understood your reasons

1 for asking to be able to do that.

2 A. I am grateful.

3 LADY SMITH: I will now hand over to Mr Peoples and he will
4 take from it from there.

5 Questions from MR PEOPLES

6 MR PEOPLES: Good morning, Jean.

7 A. Good morning, Jim.

8 Q. Can I just begin by identifying the signed statement you
9 provided to the Inquiry. For the purposes of our
10 transcript it is WIT-1-000000376. You don't need to be
11 concerned about that, it is just for our purposes.

12 Can I ask you in the beginning to turn to the final
13 page of your statement and confirm that you have signed
14 the statement on the last page?

15 A. I have, yes, electronically, some time ago, August.

16 Q. Can you also confirm for me at this stage that you have
17 no objection to your witness statement being published
18 as part of the evidence to the Inquiry and that you
19 believe the facts set out in your statement are true?

20 A. Absolutely fine.

21 Q. The full statement is evidence to the Inquiry which has
22 been read and will be considered in due course. Today
23 I may concentrate on parts of the statement but please
24 don't think the other parts are unimportant or are not
25 evidence that will be considered. So I won't

1 necessarily take you through every paragraph today --

2 A. Sorry, can I just clarify? I am making sure it's the
3 final version and I can't really read it from there.

4 LADY SMITH: Can you see the date on the one that you have?

5 A. My difficulty ... background and employment history.
6 That is a version that was offered to me ...

7 Could I see where it talks about what my job is now?

8 MR PEOPLES: Can I just begin by going to the final page
9 again, page 12, because the statement I have has
10 an electronic signature, which you confirmed was how
11 you --

12 A. But I did it on the basis of technology not working
13 particularly well on the day and one of the Inquiry
14 colleagues, [REDACTED], saying that he had formatted my
15 up-to-date statement, and he sent me that, and
16 I believed it to be the statement I have in front of me.
17 The one that I see there that you have is one that
18 I think ... let me see. Would you mind scrolling some
19 more of it, please, just from the start.

20 LADY SMITH: Jean, could you look at the last page. If we
21 can take this one stage at a time. We have a date
22 there, 6 August 2020.

23 A. That would be the right date, but I'm not sure it's the
24 right version is what I am saying. Because the Inquiry
25 team gave me -- my involvement with the Inquiry team

1 dates back to over two years ago, where I had one
2 background meeting with Mr Peoples then, and then there
3 was no further contact until about April of this year
4 when it became clear that I would be called, and I was
5 offered --

6 LADY SMITH: Jean, can I just intervene for a moment. On
7 6 August 2020 did you have an entire statement sent to
8 you -- or before then, for that signature on 6 August,
9 did you have a whole statement in front of you?

10 A. I had a draft statement which I hadn't written, which
11 was prepared for me, and I spent a long time providing
12 additional information to that and altering the tone of
13 that, and the content of that, to reflect my witness
14 statement, my statement. I did sign what [REDACTED] gave me,
15 but --

16 LADY SMITH: Did you read it before you signed it?

17 A. There was difficulty with the DocuSign thing --

18 LADY SMITH: I am sorry, just help me with this. Did you
19 read the document you signed before you signed it?

20 A. I am sorry, I worked with [REDACTED] and I sent him saying
21 I -- I honestly can't remember, but what I know I did
22 was send him my revised statement. He said that
23 wouldn't work on your system. He said that it was on
24 the system. I wrote him saying -- I wrote him or spoke
25 to him, one of the two, saying I could not access --

1 could not see the revised statement. He assured me it
2 was the August one and I took him at his word.

3 LADY SMITH: Look, Jean, what I would like to do is invite
4 Mr Peoples in any event to use the document that does
5 have your signature on it as the basis for his --

6 A. I'm sorry --

7 LADY SMITH: Hang on, Jean, please let me finish. What I am
8 going to invite him to do is use this document as the
9 basis for the questions he wants to ask you, given that
10 it is a document that has your signature on it, but if
11 anything doesn't seem right as we go through it, or if
12 there is anything else you want to add to it, I am sure
13 he will be able to accommodate that. But what I really
14 would like to do now is enable Mr Peoples to start
15 asking the questions that he needs to ask. I think we
16 will see how that goes as we work our way through it.

17 A. Lady Smith, could I say one more thing, which is that
18 the document I was sent in draft was not how I would
19 wish to convey anything, and I worked hard at the
20 revised one, and I have done my best to ensure that the
21 revised version is the one that is on record. There
22 were administrative difficulties doing that. I sent
23 a revised version, and there were difficulties doing the
24 DocuSign, but I was reassured by [REDACTED] that it was the
25 correct version, and I don't think it is the correct

1 version that is here. To be as helpful as I can.

2 LADY SMITH: Jean, I have got that point. We are now going
3 to continue, and I am going to invite Mr Peoples start
4 his questions.

5 Mr Peoples.

6 MR PEOPLES: Thank you.

7 Can I begin by asking you to confirm that you were
8 formerly Divisional Head and Deputy Director of
9 the Adult Care and Support Division within the Health
10 Department of the Scottish Executive/Scottish
11 Government?

12 A. Yes.

13 Q. I think that you have a social work background, is that
14 correct?

15 A. I was a social worker a long time ago. I have had
16 various roles through life. I worked in Government from
17 1996. I was a social worker in the 1970s and 1980s and
18 a social work manager. I worked for a non-departmental
19 public body, CETSU which is now the equivalent of the
20 Scottish Social Services Council, for some years. I was
21 also an FE lecturer and a university lecturer, and I had
22 a number of roles when my children were small on
23 a part-time basis.

24 Q. I think you were also, for a time within
25 the Scottish Executive, a social work services

1 inspector?

2 A. I was.

3 Q. I think then, as I understand it, you transferred to
4 what would be perhaps best described as more of a policy
5 role, and you became Divisional Head/Deputy Director of
6 the Adult Care and Support Division in due course, is
7 that correct?

8 A. That's right.

9 Q. Today with you I intend to focus on issues relating to
10 adult survivors of non-recent abuse in institutional
11 care, because that is really what we are concerned with
12 during these hearings.

13 A. Yes.

14 Q. We have already heard, and perhaps you will just
15 confirm, that responsibility for health issues relating
16 to adult survivors of abuse in institutional care were
17 part of the remit of Shona Robison, the Minister for
18 Public Health?

19 A. That is right. I worked for different ministers over
20 the period. I began in 2005 when Lewis Macdonald was
21 the Minister.

22 Q. Prior to the submission in August 2002 of a petition to
23 the Petitions Committee of the Scottish Parliament by
24 Chris Daly, which we are calling the Daly Petition,
25 I think you -- well, you certainly told us in the

1 statement I have in front of me that there had been
2 a previous petition, 279, in October 2000, relating to
3 childhood sexual abuse, is that correct?

4 A. That is right, and that was the beginning of my policy
5 work. Malcolm Chisholm had been a Minister of Health
6 and he had worked with childhood sexual abuse survivors,
7 specifically sexual abuse. Because his constituency was
8 in an area of Edinburgh where he was in contact, worked
9 with, supported, some street workers who had been abused
10 in their childhoods, and that created his interest and
11 his involvement.

12 Q. I don't want to take this too short, but what
13 I understand is that a cross-party group on survivors of
14 childhood sexual abuse was launched in 2001, a short
15 life working group on care needs of people who had
16 survived childhood sexual abuse, wherever that had
17 occurred, was established?

18 A. Yes.

19 Q. That short life working group reported in 2004 to the
20 Scottish Executive and identified, broadly speaking,
21 service failings for that group of people, and that in
22 2005, in September, what has become known as the
23 SurvivorScotland Strategy, a national strategy, was
24 launched primarily for survivors of childhood sexual
25 abuse in the beginning, is that correct?

1 A. Correct.

2 Q. I think around that time there was established, as part
3 of that strategy, something called the National
4 Reference Group which was chaired by you?

5 A. That is right.

6 Q. Just taking this further a little bit. Later, I think
7 around 2007, a sub-group of the National Reference Group
8 was formed to look specifically at services for adult
9 survivors of in care abuse, and the In Care Survivors
10 Service Scotland was launched in September 2008, is that
11 correct?

12 A. That is right. There were a number of subgroups
13 throughout the period of roughly 2005 to 2013. But
14 there were a number of groups of which the one you have
15 described is one.

16 Q. I think the point you are making, or I understood you to
17 be making, was that clearly these were things that were
18 happening quite separate, to a large extent, from the
19 calls in the Petition, the Daly Petition. These were
20 things that were going on at that time in any event?

21 A. What I am trying to describe is there was a bit of
22 a history before the National Reference Group was up and
23 running, and some work was being undertaken within
24 Justice, some within Childcare, and the bit that I have
25 described with Mr Chisholm in the Health Department,

1 where the emphasis was very much on health and
2 well-being in its broadest sense.

3 Q. I am going to ask you some questions at this stage just
4 so we have some understanding about the National
5 Reference Group, if I may?

6 A. Of course.

7 Q. First of all, it was quite a large group, was that
8 right? I have seen something that it may have been
9 about 25 people, is that correct?

10 A. I think that would be accurate, yes.

11 Q. It was made up of a range of individuals and maybe you
12 could just tell me briefly what the composition was in
13 terms of representation?

14 A. It was made up of survivors, some of whom were there in
15 individual capacities, some of whom were there
16 representing organisations. INCAS was represented, the
17 Former Boys and Girls from Quarriers was represented.
18 There were others. So there were people who were
19 clearly survivors and known survivors, there were others
20 in the group, because of my privileged role as Chair,
21 I knew to be survivors but who were not necessarily
22 disclosed as such to retain their confidentiality.

23 Q. But there were also, I take it, a range of
24 professionals --

25 A. There were.

1 Q. -- on the group?

2 A. So there were voluntary sector organisations, there were
3 representatives from the cross-party group, there were
4 people who had particular expertise in their own rights,
5 a particular individual who specialised in trauma,
6 for example, because it was important that we didn't
7 inadvertently cause any trauma through the workings of
8 the Reference Group and that we were always looking to
9 be respectful of survivors, first and foremost. Because
10 in 2004 it was -- sometimes it felt like a very
11 different world, and the biggest thing at the beginning
12 was that people wanted to be believed, and not everyone
13 in society at that time did believe, survivors felt, and
14 not everyone believed in the extent or the depth of
15 harm, and not everyone understood how damaged many lives
16 could be. And because of that, many survivors were keen
17 to participate in order, principally, to be believed and
18 also to try and ensure the mistakes of the past didn't
19 continue in the then present and the future.

20 Q. Can I just perhaps clarify one point. What was the
21 status of this group? Was it an independent body, was
22 it an advisory body giving advice and recommendations to
23 Scottish Government, or was it primarily advising the
24 Health Department? What was it?

25 A. It was a group that advised the Scottish Government

1 which was serviced by Scottish Government officials.

2 Q. You were the Chair of that group for quite a long
3 period, is that correct?

4 A. That's right.

5 Q. You have told us it was made up of a range of interests,
6 including survivors. Had any thought been given when it
7 was established to having what I might term
8 an independent Chair, someone who was not also a lead
9 official in Health in relation these issues? Was that
10 something that thought was given to at the time?

11 A. The reason I was Chair was that I was policy lead and we
12 were trying to develop policy, so it wasn't unusual that
13 I was Chair. At that time there was a push across
14 Government for civil servants to be active and to be
15 visible in trying to understand issues of importance to
16 people in Scotland and to provide advice to ministers
17 about that. It was also a time when there was
18 encouragement to support agendas across the departments
19 of Government. So there were colleagues from Education
20 and Justice that joined. I was a -- I suppose the word
21 that comes to mind is "co-ordinator", really.

22 LADY SMITH: Jean, was any consideration given before you
23 were appointed as Chair to having an independent person
24 as Chair?

25 A. No.

1 LADY SMITH: Was there any particular reason for that?

2 A. What I am describing is what would be regarded as the
3 usual ways of working at that time, that someone like me
4 would chair, as I did with adult protection work or
5 carers work or policy work on learning disability.
6 There weren't external people chairing any of these
7 either. So what I am describing is a norm at that time.

8 MR PEOPLES: In the version of the statement I have there is
9 a statement in paragraph 14, and we can maybe bring that
10 up for you.

11 A. Yes, I see it.

12 Q. It says:

13 "The focus of the National Reference Group was not
14 primarily on obtaining justice and legal remedies for
15 survivors, although the agenda did widen out as time
16 passed."

17 In paragraph 13, the preceding paragraph of the
18 version I have, it says -- there is reference to tension
19 within the group at times. Can I ask you this: was this
20 tension at times because the focus of the group was not
21 primarily on obtaining justice and legal remedies for
22 survivors? Because I think you say in the statement
23 I have at paragraph 42 that the group was seen as the
24 obvious point in the system for survivors to look to to
25 drive all relevant changes, presumably including legal

1 solutions, but there was a limit to what that group
2 could deliver. Can you help me with that?

3 A. I can. When the National Reference Group started it was
4 initially to fulfil -- assist with fulfilling the
5 SurvivorScotland Strategy, that is what it started out
6 as. And most people were delighted to get started and
7 to make their contribution. So it was new to everyone
8 at that time and it does feel like it was a different
9 country, a different time.

10 They could be difficult meetings, and in part of
11 that was because survivors could take very different
12 views amongst themselves. There were occasions where
13 some survivors said that they were afraid of others
14 because of the level of assertiveness at times, and so
15 there were established ground rules to try and enable
16 people to feel safe.

17 Over time the agenda also altered. At the beginning
18 time bar was a very, very big issue for people and it
19 wasn't in the remit of the group. As I say, we were
20 trying to fulfil SurvivorScotland Strategy. But taking
21 the bigger point of well-being, over time the work
22 developed and different subgroups developed to take on
23 different issues, of which what ultimately became Time
24 To Be Heard was one component.

25 Q. I am just trying to get a sense of what was the tension.

1 Is the tension the situation you have just described,
2 or was it just generally where you have got a lot of
3 people with different interests in the same room
4 discussing no doubt difficult issues? Was it just
5 a general tension that you could have at the time, and
6 it wasn't just confined to perhaps some tensions between
7 survivors as you have just outlined in your previous
8 answer?

9 A. I think I have covered it as well as I can. Because it
10 was new to everyone, because it was innovative, because
11 it was a large group. Had it been smaller then everyone
12 wouldn't have had the opportunity to contribute. So the
13 management of that large group needed to be very
14 sensitively handled and appropriately handled, and
15 survivors had very different views on the way forward so
16 those tensions would arise.

17 One of the tensions was that it was a National
18 Reference Group for child sexual abuse, but a number of
19 people in the group said that, although that is what the
20 cross-party group had been about that had led to the
21 Reference Group being set up, they wanted it to be for
22 all forms of childhood abuse, and that was ultimately
23 agreed. But some people in the group did not favour
24 that, so there was a tension around that because they
25 wanted the emphasis to be on sexual abuse.

1 I am offering that as an example, Jim. Does that
2 help?

3 Q. We have got your answer. I think we are just trying to
4 get an understanding of how these things operated.

5 Can I move on to something else for the moment.
6 Adam Ingram, who was the Minister for Children -- the
7 Minister for Education and Young People, I think the
8 label has changed over time. I think he was Minister
9 for Education and Young People. In any event, he was
10 Education Minister. He made a statement in the
11 Scottish Parliament on 7 February 2008, and I am not
12 going to take you to that, but of course you will
13 appreciate that that was a statement where he said that
14 the Scottish Government was going to look at a possible
15 truth and reconciliation type model and was going to
16 explore that as part of, I think, a response to both the
17 Shaw Review and the Scottish Law Commission Reports that
18 had been published towards the back end of 2007.

19 You will probably recall that happening. I'm not
20 going to ask you in detail, but you are aware that that
21 was perhaps a starting point for what was described as
22 truth and reconciliation, a public statement?

23 A. I do recall, yes.

24 Q. If I move forward from February 2008 to
25 30 September 2009, at a ministerial meeting ministers

1 decided to follow the recommendation of officials and go
2 down the confidential forum route which Adam Ingram has
3 told us was a rather different model to the one that he
4 had announced in the Scottish Parliament on
5 7 February 2008. You will be familiar with that
6 development or that change, are you not?

7 A. I am.

8 Q. Would you agree with Adam Ingram that what was decided
9 upon was a rather different model to the one that he had
10 perhaps had in mind when he stood up in Parliament
11 in February 2008?

12 A. I wouldn't be able to say what was in his mind. I would
13 be able to say that the words "truth and reconciliation"
14 came from (inaudible - noise interference) we had moved
15 into this area, we had two lead advisers who were
16 specialists in the field working in the team, and they
17 advised that there wasn't much written about the kinds
18 of approaches that became Time To Be Heard. But they
19 directed me to some work and, on that basis, I made
20 a very basic starter paper that had the words "Truth and
21 Reconciliation" as the header. I would make
22 a distinction between the intent of something and the
23 language used because, as the years passed, the words
24 "truth and reconciliation" became "acknowledgement and
25 accountability", and they also became "Time To Be

1 Heard".

2 So the intent was broadly that survivors would be
3 believed, listened to, and that they would be
4 acknowledged that there would be accountability as well,
5 and we would need to talk together about what
6 accountability meant. For some people it meant
7 financial compensation for a very small minority in my
8 view, for others it meant having an opportunity to give
9 testimony in the way that Time To Be Heard did. For
10 others it was about forms of what I would broadly define
11 as redress, where people who had had very painful
12 experiences, who had suffered deeply, were looking for
13 compensation in the form of: let me learn, let me go to
14 further education college, let me catch up on something
15 in my life that I wasn't able to do as a child and find
16 the resource to do that.

17 LADY SMITH: Can I just pick up on one thing said earlier
18 there, Jean. The group had, you tell me, two lead
19 advisers who were specialists in the field working in
20 the team. Who were these advisers?

21 A. They were on the group as part of my staff complement.
22 They were called Anne Macdonald, who was the original
23 Petitioner in a Petition that was referenced at the
24 beginning here, and Sarah Nelson, who both were members
25 of the cross-party group on CSA and --

1 LADY SMITH: They were both members of your staff, you say?

2 A. They were, they became members of my staff so that we
3 built up the expertise. As I said earlier, this was
4 a very new area to try and make as much progress as was
5 feasible but to have expertise that did exist at that
6 time alongside us. So Anne Macdonald was on the
7 cross-party group, I think she was a vice convener,
8 and Sarah worked in Edinburgh University and is very
9 well-known on CSA issues, as is Annie. But Annie worked
10 in Fife with KASP, that was Kingdom Abuse Survivors
11 Project, she was a counsellor there. So they came to
12 work in the team part-time. We also ultimately had two
13 legal advisers --

14 LADY SMITH: You took them on as part-time members of staff,
15 is that you are saying?

16 A. Yes. I am sorry if I appear to be cutting across you,
17 because it is in and out for me.

18 LADY SMITH: Okay. So we have two people Anne Macdonald,
19 who had been the original Petitioner, and Sarah Nelson.
20 It's not that they were regular Scottish Government
21 civil servants, but you took them into your team for
22 this purpose, one of them had worked with Kingdom Abuse
23 Survivors, Fife, and the other was a lecturer at
24 Edinburgh University? A researcher?

25 A. Yes, she worked in Edinburgh University and I think she

1 still does. They were both highly regarded. I am
2 paraphrasing their histories now for brevity, but they
3 were seen as lead voices and supporters of survivors.

4 LADY SMITH: Thank you.

5 MR PEOPLES: Could I ask you about a third person here who
6 may have had quite an influential role prior to the
7 ministerial decision, Sue Moody. Did she join your team
8 in May or thereabouts of 2009 from the Crown Office and
9 Procurator Fiscal Service on a part-time or secondment
10 basis?

11 A. She did. There was another person that came along later
12 who was also from a legal background, Louise Carling.

13 Q. I think Sue Moody is the one I am perhaps more
14 interested in at this stage because I think she did
15 write a paper that was the basis of advice given to
16 ministers in September 2009, is that correct?

17 A. She did a lot of the groundwork for it and she
18 summarised the options and the advantages and
19 disadvantages. Although she was the principal author,
20 it was widely shared internally and across departments
21 and, from memory, the Lord Advocate was copied in. She
22 came because we wanted, again, the level of expertise
23 necessary to progress this agenda.

24 Q. Just in relation to Sue Moody, she comes in
25 comparatively late in the day. There has been

1 a consultation exercise on an acknowledgement and
2 accountability forum which began in October 2008, it
3 ended in April 2009. She comes in around May 2009. Can
4 you just help me with this: whose idea was that? Was it
5 a Justice idea or a Health idea?

6 A. You mean --

7 Q. To bring her in.

8 A. I would say it was a Health idea but everyone was
9 satisfied with that. It wasn't controversial. And we
10 also throughout had the benefit of SGLD as well, so
11 there was an assigned lawyer from there who worked with
12 us throughout the period. The division had access to
13 SGLD lawyers from the outset.

14 Q. Were they taking a fairly keen interest in this issue?

15 A. The SGLD lawyers, yes. We had a very good working
16 relationship with them. The person that did most work
17 was Kirsty McGrath.

18 Q. In the statement I have, and I don't know if you can
19 confirm this, it says that the NRG, the National
20 Reference Group, discussed a proposed truth and
21 reconciliation or, as it came to be known, an
22 acknowledgment and accountability forum at some length.
23 Is that correct?

24 A. Yes.

25 Q. I think you tell us, in the statement at least that

1 I have, that the discussion within the group included
2 what a forum with an element of accountability would
3 mean in practice, and you indicate in the statement
4 I have that differing views emerged on that issue?

5 A. Yes.

6 Q. You also say in the statement I have:

7 "The majority view within the group was that
8 acknowledgement was the more critical of the two
9 elements."

10 Is that your sense?

11 A. Considerably so, yes.

12 Q. But you do say, again in the version I have, that
13 Helen Holland and Chris Daly who were on the group
14 wanted both elements as part of any forum?

15 A. They did, but they were supportive of acknowledgement
16 and accountability. I would say their emphasis was on
17 accountability. And taking that word "accountability"
18 again, I took it that what they meant was time bar and
19 changes to that and their unhappiness with that
20 situation.

21 Q. Again in the version I have, so I'd better be careful
22 because it may not be the version you have --

23 A. That is fine. I am absolutely chilled.

24 Q. You tell us the discussions were heated at times on this
25 issue?

1 A. They were. That is what I was meaning earlier about
2 differences in the group.

3 Q. Did the NRG discuss a confidential committee type model
4 at length?

5 A. All varieties of possibilities were discussed. So, yes,
6 they would have done.

7 Q. So when did discussions about that particular model
8 first begin within the group?

9 A. I couldn't give you a precise date but the National
10 Reference Group met every twelve weeks or so, and this
11 issue, whether it had the header of "Truth and
12 Reconciliation" or "Acknowledgement and Accountability",
13 was on the agenda each time. And wherever the thinking
14 was at, debates would happen, and we would try and get
15 to the next stage. It was about debate, consideration,
16 and advice to ministers.

17 Q. Certainly from the records we have seen of the NRG
18 meetings, which I think were roughly quarterly as you
19 probably indicated, there was an agenda item that would
20 come up: truth and reconciliation/acknowledgement and
21 accountability. But what I was really interested in was
22 that there is nothing I think about the confidential
23 committee model being on the agenda for discussion as
24 an alternative to an accountability and acknowledgement
25 forum. That is why I am asking when did that particular

1 model receive discussion?

2 A. I can't give you a when, but I know that we talked about
3 acknowledgement being critical for the majority, most of
4 the group. And by implication, because you are asking
5 me to recall things over twelve years ago, the
6 confidential forum model, it might not have been called
7 those words, but that intent of having a place that
8 people could go to be acknowledged, to have
9 a confidential forum experience. What you are looking
10 for I think is precision that probably didn't exist at
11 that time as precisely as you are asking --

12 Q. I think --

13 A. -- it was evolving.

14 Q. Perhaps I could just put this to you at this stage, and
15 we can maybe look at some documents in due course, but
16 Sue Moody, who had come in in May of 2009, produced
17 a paper which was first discussed, as I understand it
18 from the records, at an NRG meeting on 26 August 2009.
19 She wasn't there, but I think there was a lengthy
20 discussion about the paper?

21 A. Yes.

22 Q. Do you remember that?

23 A. I have it on file.

24 Q. I think we will look at some documents. But do you
25 remember on that occasion, whatever else was discussed

1 prior to those meetings, there was quite a long
2 discussion, was there not, about her paper?

3 A. Yes.

4 Q. Sue Moody's paper?

5 A. Yes.

6 Q. Maybe this isn't a bad time look at a few documents just
7 to see if these might assist your recollection. We know
8 when the ministerial decision was taken but I am going
9 to take you back a little bit to try and get some
10 picture of the situation.

11 The first document I would like you to have a look
12 at is a document SGV-000060023. It should come up on
13 the screen. If we just pause at the top there, this
14 bears to be an advice note from you?

15 A. Yes, it would --

16 Q. Yes? Dated 2 October 2008, addressed to the Minister
17 for Public Health, that was Shona Robison, the Minister
18 for Children and Early Years, which was Adam Ingram, and
19 the Cabinet Secretary for Justice, that was
20 Kenny MacAskill at that time?

21 A. Yes.

22 Q. The heading of this advice note is "Proposal to Develop
23 an Acknowledgment and Accountability Forum for Adult
24 Survivors of Childhood Abuse - Consultation"?

25 A. Yes.

1 Q. I think we know at that stage you were nearly at the
2 point of issuing a consultation paper for discussion on
3 such a proposal, is that correct?

4 A. Yes, and the words "truth and reconciliation" in one of
5 the group meetings, people didn't like those terms
6 because -- people on the group, the NRG, didn't like
7 those terms because they thought it was too closely
8 associated with atrocities in South Africa. They liked
9 the word "truth", they liked the word "reconciliation",
10 and at that time there was lots of work where, because
11 truth and reconciliation was about healing, there was
12 research and so on, ways of working, where healing was
13 the issue, and healing was the intent around
14 acknowledgment and accountability. And the National
15 Reference Group were of the opinion that
16 "acknowledgement and accountability" would be better and
17 that is why those words are there now.

18 Q. I don't think that is contentious and I'm not planning
19 to spend a lot of time on why the name changed from
20 "truth and reconciliation" to "acknowledgement and
21 accountability" because I think you are correct in what
22 you say.

23 But perhaps I could look a little further into the
24 advice note of 2 October which preceded the consultation
25 paper which was issued on 10 October of the same month.

1 If we scroll down a little bit more, it gives some
2 background to this note about the debate on
3 7 February 2008 when Adam Ingram made his statement on
4 truth and reconciliation. It tells us in paragraph 4
5 that the general idea had been considered by ministers
6 when they met on 18 December of 2007 and it had then
7 been agreed to scope the potential for the introduction
8 of such a model in Scotland as a means "constructively",
9 as it is put, to address recommendations in the
10 Shaw Report and the implications in the Scottish Law
11 Commission Report. So that is the background to this
12 advice note.

13 If we just go on a little bit, it says:

14 "Following discussions with [the Reference
15 Group] and others, we are proposing a slightly modified
16 proposal to that announced by ministers. The feedback
17 we have received is that a paper which proposed a truth
18 and reconciliation forum or model would suggest that
19 that the Scottish Government has predetermined the
20 outcome. This is of course not the case. The
21 consultation paper therefore does not propose a specific
22 model, nor does it commit ministers to taking forward
23 such a forum. Instead it identifies the need to engage
24 in different ways with survivors to establish if and
25 what a confidential forum could offer and how it might

1 relate to the formal criminal and civil justice systems
2 and the wider legal framework (eg European Convention on
3 Human Rights considerations). It also tries to set out
4 the possible advantages of such an approach."

5 Then there is further discussion.

6 Pausing there. The proposal, which seems to be
7 directed towards a confidential forum as perhaps
8 something that is beginning to be attractive at least to
9 officials, is described as a slightly modified proposal
10 to that announced by Adam Ingram. I don't think he
11 characterised it that way, but that is how you
12 characterised it, is that correct?

13 A. It is how I characterised it. That is all I can say,
14 that is how I characterised it.

15 Q. You say the consultation paper does not propose
16 a specific model. If that be the case, why did the
17 consultation bear to be a consultation on a proposed
18 acknowledgement and accountability model? Why say that
19 if that is not the proposal that is being consulted on?

20 A. I am not understanding what you are saying.

21 Q. I don't think it is very difficult really, with due
22 respect. I am saying that you say in this note to
23 ministers the consultation paper does not propose
24 a specific model. But in fact what was consulted on was
25 a proposal for an acknowledgment and accountability type

1 forum. Is that not what happened?

2 A. It had the header of "Acknowledgement and
3 Accountability" and the questions asked were: do you
4 want something that is about acknowledgement? Do you
5 want something about accountability? Do you want both?

6 So it wasn't at that stage leading to a particular
7 thing, in my view. What that paragraph that you are
8 talking about is saying is that the majority of people
9 were saying they wanted a forum that enabled them to
10 talk, confidential in that sense, rather than justice
11 routes. I am paraphrasing.

12 LADY SMITH: When you say the majority of people, is that
13 the majority of the National Reference Group?

14 A. Yes, and others that we were in contact with because
15 there were other survivors that we spoke to. When we
16 come to talk about the consultation itself, you will see
17 that we were trying to --

18 LADY SMITH: I'm sorry to interrupt but I'm a bit confused
19 now. This expression "the majority of people", are you
20 saying it is the majority of the National Reference
21 Group? Or it only becomes a majority when you add other
22 people that you had spoken to who weren't members of the
23 group?

24 A. No, the majority of the Reference Group.

25 LADY SMITH: All right. Hang on, I have a supplementary

1 question. Confirm this for me: the National Reference
2 Group was comprised of various people, some but not all
3 of whom were survivors?

4 A. That is right.

5 LADY SMITH: Thank you. Mr Peoples.

6 MR PEOPLES: Just before we leave this advice note, it seems
7 to me, and I wonder if you would be prepared to at least
8 accept this, that officials giving this advice, and it
9 bears your name as the lead official, seem to be leaning
10 towards a confidential type forum, because paragraph 5
11 certainly gives a strong hint of that, does it not?

12 A. I have done the best I can in describing what I remember
13 at that time. Mr Ingram had a view but Ms Robison had
14 a view as well and her view was about therapy,
15 a therapeutic approach. Other ministers took different
16 views. Mr Ingram did take the view that you have
17 described and ultimately agreed to a confidential forum
18 much further on after consultation.

19 Q. Can we look at another document very briefly for one
20 particular reason. The consultation paper that was
21 issued on 10 October 2008, about eight days after this
22 advice note -- can we put it on screen.

23 SGV.001.001.7859.

24 That is the letter that was sent to consultees and
25 it is headed "Proposal to Develop an Acknowledgement and

1 Accountability Forum for Adult Survivors of Childhood
2 Abuse." Do you accept that anyone reading that heading
3 might be forgiven for thinking it was a proposal to
4 develop a particular type of forum, namely an
5 acknowledgement and accountability forum?

6 A. No, I don't accept that, because the words originally
7 had been "truth and reconciliation", the survivors group
8 had asked for it to become "acknowledgement and
9 accountability". We were trying to respect what
10 survivors and members of the National Reference Group
11 wanted to go out as the overarching title and
12 "acknowledgement and accountability" can be very broadly
13 interpreted. These were the two critical things that
14 people were looking for: the acknowledgement of what had
15 happened and accountability. Different people looking
16 for different elements of that, as I have said earlier.
17 Most people were looking for acknowledgement and that
18 was borne out by the consultation, in my view.

19 Q. Maybe we can turn to the consultation now. We will look
20 at the briefing to ministers in a moment because I think
21 they received a briefing on 24 September 2009 but, as
22 you say, before then there had been a consultation
23 exercise, which was triggered by the letter we have just
24 looked at, which took place between October 2008 and
25 April 2009. I think it divided into really two parts.

1 First was a traditional consultation in a sense between
2 October and January, as a result of which I think some
3 51 responses or thereabouts were received, four of which
4 were from survivors or people who represented those
5 interests. And there was then a second period of
6 consultation between February 2009 and April 2009 where
7 it was attempted to try and gauge the views of survivors
8 as a distinct class. Is that your recollection of how
9 things were done?

10 A. Broadly, yes. But the written consultation yielded 51
11 responses and I think something like 16 of them didn't
12 go into the public domain. You know that aspect where
13 consultees are asked if they want their material to be
14 disclosed publicly? Something like 16 or so of the 51
15 responses said no, they didn't.

16 Q. Are you saying these were from survivors?

17 A. What I am saying is -- the number you are giving is four
18 survivors. I am not confident that that would be the
19 case for two reasons: 16 were not disclosed, and also in
20 consultation people can represent an organisation and
21 still be a survivor, but they wouldn't say "I am a
22 survivor" because they have the right to disclose or not
23 to disclose. So I know that some people that
24 represented organisations were survivors.

25 Q. Let me proceed then. Can I put it this way at least: in

1 the briefing that ministers ultimately received, was
2 considerable emphasis put on the responses to the
3 consultation exercise between October 2008
4 and April 2009 on a proposal for an acknowledgement and
5 accountability forum, would it be fair to say?

6 A. Yes --

7 Q. I think --

8 A. -- six-month period, which is unusual, and took the
9 written form you have talked about. But the other
10 forums were reaching out to what I might define as
11 silent people who would not necessarily respond to
12 a written consultation. There were workshops that
13 people were invited to, should they wish to come. That
14 was the second component. And the third component was
15 some one-to-one interviews to try and get around the
16 perspective on survivors' views.

17 Q. I think we will come to it, we will have a look at the
18 briefing in a moment, but --

19 A. I just want to say that is why it took so long. Because
20 you will know that a conventional consultation within
21 Government is turned around in two months or so. This
22 one took a long, long time to prepare, to try and get it
23 as accurate as possible but as wide as possible.
24 I think somewhere in it we say that this is not
25 a conventional consultation, because we were trying to

1 be as inclusive as possible, and we took a long time
2 over the consultation period to do that as well, to do
3 the written, the workshops, and the one-to-ones to try
4 and be rounded.

5 Q. Were ministers told that survivors were wanting
6 an opportunity to tell their stories and have them
7 recorded? Was that something that was conveyed to
8 ministers as part of the briefing?

9 A. Ministers would have different knowledge levels about
10 that --

11 Q. Can we just stick with the question --

12 A. -- Ms Robison it would be a given, for others it might
13 not be. But, yes, all ministers were advised that --

14 LADY SMITH: Jean, I am going to ask Mr Peoples to ask the
15 question again. Can you listen to it and tell him what
16 your answer is, please?

17 Mr Peoples.

18 MR PEOPLES: Were ministers told by officials in the
19 briefing in particular that survivors wanted
20 an opportunity to tell their stories and have them
21 recorded? Was that said? Part of the advice?

22 A. I cannot tell you if it was said in the briefing. It
23 was known. It was a given. It was discussed over many
24 months rather than just in one briefing. That was
25 understood.

1 Q. In the version of the statement that I have at
2 paragraph 20, you say:

3 "The consultation exercise showed not all survivors
4 were interested in restorative justice or financial
5 compensation."

6 And you say:

7 "The majority wanted to be acknowledged, listened
8 to, respected, believed and, probably above all else, to
9 contribute to ensuring the experience would not be that
10 of children in care now or in the future."

11 A. Yes.

12 Q. So you feel the consultation exercise showed that?

13 A. I do, yes.

14 Q. So what were the survivors saying about accountability?

15 A. I can reference that. The summary -- you will have the
16 summary of the consultation responses which stretches
17 to ...

18 Q. 18 pages or so?

19 A. 18 pages or so. So this was put together by I think
20 Jeannie Munro, who was one of the policy members of the
21 team, and she drew together what folk had said. So one
22 of the questions: do you think acknowledgement and
23 accountability is an appropriate --

24 LADY SMITH: Jean, hang on, Mr Peoples has a question.

25 MR PEOPLES: Can I take you to a document which I think you

1 may be referring to so we can look at it for ourselves
2 before you give your answer. Can we look at
3 SGV.001.001.7899. That bears to be "In care survivors.
4 Development of acknowledgement and accountability forum
5 for adult survivors of childhood sexual abuse. Summary
6 of additional survivor responses to the
7 consultation: February-April 2009".

8 It begins just by saying:

9 "We know from survivors that it can be very
10 difficult for them to make their voices heard. We
11 wanted to make sure that as many survivors as possible
12 could give us their views on the issues raised in the
13 consultation paper. To assist us in achieving this, we
14 approached agencies who provide support services to help
15 us gather more survivors' responses. Four survivor
16 agencies across Scotland helped with us this. We are
17 grateful to them for their support. In total we
18 received 36 responses ..."

19 The gender breakdown is given: 15 male, 21 female.
20 The age range is 16 to 60-plus years. Survivors abused
21 in care and looked after settings is 19 of the 36
22 respondents.

23 If we move to the next page which is attempting to
24 summarise the responses. The first question there in
25 bold is:

1 "Should Scotland adopt an acknowledgement
2 a accountability forum?"

3 And the answer given based on the responses received
4 is:

5 "The overwhelming response to this question was yes,
6 the forum should happen."

7 It then says:

8 "If so, do you think this is a good title or should
9 it be changed and, if so, what should it be called?"

10 What we are told there is:

11 "Most survivors were in favour of the title
12 'Acknowledgement and Accountability Forum'. Some felt
13 it was a bit cumbersome and could perhaps be made less
14 official sounding."

15 Then there is a question:

16 "If you think it should be adopted, what elements
17 would need to be included? These are just a few
18 examples to consider but we would like to hear your
19 thoughts and ideas."

20 And there are bullet points: acknowledgement and
21 apology; acceptance of accountability from the
22 individual abuser; the organisation where abuse took
23 place; society as a whole.

24 And it goes on:

25 "Survivors emphasised the need to be believed. Most

1 of them felt that some kind of acknowledgement could
2 achieve this but they didn't agree about who should make
3 the acknowledgement. Survivors had different views
4 about the benefits of an apology. Some saw it as
5 a meaningless gesture, questioning who would apologise
6 and what it would achieve. Others did want an apology
7 but disagreed on where the apology should come from.
8 Abusers don't often admit what they have done is wrong.
9 Most survivors agreed that abusers and organisations
10 that looked after children should be held accountable."

11 I'm not going to go through this whole document but
12 it seems to me already it's pretty plain that if you
13 were asked by a minister: what are survivors saying
14 about what type of forum they want? They want
15 an acknowledgement and accountability forum. Most are
16 not unhappy with the title, and most seem to want to
17 include an element of accountability. Do you agree with
18 that?

19 A. The first thing I will say is I am sometimes appearing
20 to cut across you because there is a bit of a time delay
21 thing going on with me, so forgive me if I appear not to
22 be listening or responding within an appropriate time
23 lapse.

24 The document you have is one of -- there are three
25 components of the consultation. The one you have is

1 about the workshops. The one I have in front of me is
2 the written responses and the numbers are different and
3 some of the emphasis is different. For example, it says
4 that there was agreement from -- should we have
5 an acknowledgement? The first question.

6 "It would provide a valuable service that is not
7 currently available. It reflects the needs of survivors
8 and their strong desire to be heard and their
9 experiences validated and acknowledged. It could help
10 address issues from the past and potentially play
11 an important part in a survivor's recovery. There would
12 be great scope for lessons to be learned to help shape
13 future practice and to better safeguard people.

14 "It was emphasised that any proposed forum must be
15 well structured and set up, there must be a clear
16 framework and remit. At the same time it was
17 acknowledged that the forum would not be suitable for
18 all and that for some survivors they would prefer not to
19 be involved. It would be vital that the needs of these
20 silent survivors were recognised in other ways and that
21 resources for them were maintained.

22 "To take the question about 'Do you think
23 acknowledgement and accountability is appropriate?' The
24 vast majority felt that the title 'Acknowledgement and
25 Accountability' was not appropriate. The title was

1 viewed by many as too professional. There was a clear
2 desire for it to be more appealing and engaging to
3 survivors, have a briefer, simpler and clearer title
4 which would help achieve this. It was also suggested
5 that survivors themselves should choose the name since
6 the focus of the forum would be primarily on them and
7 their needs and that is ultimately what happened with
8 Time To Be Heard. There was a --"

9 Q. Can I stop you there --

10 A. Could I just finish the paragraph because I think it
11 is --

12 LADY SMITH: No, Jean, I don't want the rest of the
13 paragraph at the moment. I want to let Mr Peoples ask
14 you a question.

15 MR PEOPLES: What I am putting to you is --

16 A. I am trying to answer the last one because the next bit
17 is --

18 LADY SMITH: Jean, Jean. Listen. We are looking at the
19 document that is on screen. I want Mr Peoples to be
20 able to deal with that. I suspect he is going to ask
21 you what the heading, at least the title, is of the
22 document you are reading from and then we can deal with
23 any issues that are arising from that document.

24 This is going to become very confusing and we won't
25 be clear which document we are talking about. So please

1 listen to his next question.

2 Mr Peoples.

3 MR PEOPLES: What I am reading from or have read from is
4 a summary of additional survivor responses to the
5 consultation between February and April 2009, and that
6 is saying that most survivors want a model that included
7 an element of accountability. Do you agree?

8 A. That component is.

9 Q. That is the period when survivors were getting the
10 chance to make their views known, the wider group if you
11 like, is that correct?

12 A. Yes. But the widest group was the written consultation
13 in terms of who it was circulated to.

14 Q. We have the document, I am not sure I can take this
15 document much further. We have it and we have to
16 no doubt decide the significance of that document and
17 what it tells us but we have heard your answer.

18 LADY SMITH: Can we confirm with Jean the title of the
19 document she was reading from and the dates perhaps that
20 it relates to.

21 MR PEOPLES: I am not actually sure which one it was. Can
22 you help us with that, Jean? Which document --

23 A. I can give you a number, is that the way to best do it?

24 Q. Give me what you have and we can no doubt consider it in
25 due course, if necessary.

1 A. It's SGV.001.001.7883, and it's the summary of the
2 written consultation, the 51 respondents. The one that
3 you have just taken me through is one of the wider ones.

4 LADY SMITH: What is the date on --

5 A. There was the written one and then there was the
6 outreach one is a better way to describe that.

7 LADY SMITH: Jean, what is the date on the one you were
8 reading from?

9 A. It is ... there is no date on the beginning of it and
10 I am now at page 17, 18. There is no doubt, I don't
11 think. It says "Consultation on the proposal to develop
12 an acknowledgement and accountability approach for adult
13 survivors of childhood sexual abuse", and it's called
14 "Summary account of acknowledgement and accountability
15 consultation" and it goes on for 18 pages in total, and
16 it ends with an appendix which breaks down the
17 respondents so ... I can't help you further, I am
18 afraid.

19 LADY SMITH: Does the document state who prepared it?

20 A. No. It was put on the web, it says.

21 MR PEOPLES: I think I can help. I think I have worked out
22 what document is being referred to.

23 Can we look at -- it should be in the bundle --
24 SGV.001.001.7881 is where I think it starts in our list.
25 It's one of the documents -- it's headed "Consultation

1 on the proposal to develop an acknowledgement and
2 accountability approach for adult survivors of childhood
3 sexual abuse", is that right? That is what you are
4 reading from?

5 A. Yes, this is the right version, and that is --

6 Q. You say the right version --

7 A. -- the summary of the written consultation.

8 Q. You say the right version. It is one of your other
9 components, if you like?

10 A. It is one of them. I mean it's the right version in
11 terms of what I have in front of me rather than its
12 content. It's what I have in front of me, so you have
13 identified the correct version rather than the right
14 version.

15 Q. Well, it's the version you were reading from --

16 A. Yes.

17 Q. And on page 3, SGV.001.001.7883, I think as you read out
18 something from that. If we just go to page 3, it says:

19 "Should Scotland trial an acknowledgement and
20 accountability forum?"

21 And it starts:

22 "There was unanimous agreement from respondents that
23 it would be a good idea to trial an acknowledgement and
24 accountability forum ..."

25 And then it gives the reasons that seem to have been

1 provided. So on the face of it at least, there seems to
2 be a unanimous agreement that such a forum would be
3 a good idea, whoever the respondents referred to may be.

4 Then in the second question:

5 "Do you think 'Acknowledgement and Accountability'
6 is an appropriate title or would you prefer others terms
7 to be used?"

8 It says:

9 "The vast majority of respondents felt that
10 the title 'Acknowledgement and Accountability' was not
11 appropriate ..."

12 And then it goes on I think as you said, and indeed
13 there is some suggestion of alternative titles. Then
14 there are various other questions asked.

15 Just so that we are clear, Jean, this was an attempt
16 to summarise the initial consultation between
17 October 2008 and January 2009, was it not?

18 A. I think that is right. And the key component for me is
19 in paragraph 2 where:

20 "There appeared to be a general acceptance of the
21 word 'acknowledgement' but an uneasiness, apprehension,
22 about the word 'accountability'."

23 It is this thing, we keep going back to the
24 difference in language and intent:

25 "For many, the word 'accountability' had

1 connotations of the legal process and of assigning blame
2 and proof of guilt. This was viewed as conflicting with
3 the primary aims of any proposed forum which would ..."

4 There's a typo there.

5 "... which would provide the chance to be heard and
6 believed and the opportunity for healing. Many felt
7 that an affirming environment was needed in which all
8 participants felt safe with no fear of being silenced
9 and no fear of any repercussions."

10 Q. Jean, can I ask you to go to final page of that
11 document, appendix 1, page SGV.001.001.7898, which gives
12 a breakdown of the respondents.

13 A. Yes.

14 Q. I am not going to read all of this, but it's pretty
15 obvious I think when we look at them that, yes, there
16 may be organisations that represent the interests of
17 survivors, but there are also a lot of other
18 organisations that have a more general function, such as
19 a number of local authorities.

20 A. The purpose in the consultation partly, in any
21 consultation, is to get all parties to think about their
22 responsibilities, and consultations with this wide
23 distribution can do that.

24 Q. But on the face of it what this appendix is telling me,
25 and I don't know whether you are prepared to agree this,

1 is that perhaps the majority of the respondents there
2 wouldn't be described as survivors or necessarily
3 organisations that all represent the interests of
4 survivors, they may have an interest in the matter but
5 not necessarily representing survivors as such?

6 A. No, I wouldn't agree.

7 Q. You don't agree with that, okay. We will have to --

8 A. Some of the organisations --

9 Q. We --

10 A. Some of the organisations that would give a response
11 like some of the ones that are -- if I take Kingdom
12 Abuse Survivors, they would be replying on behalf of
13 a number of their membership who would be survivors.

14 Q. If we go back again. Once we moved on from this written
15 consultation and we see the respondents who did produce
16 a response, we have a separate consultation exercise
17 between February and April, and we have seen from the
18 previous document what the views of survivors were
19 during that second consultation exercise. So we have
20 both that we can look at.

21 A. Yes. It was the same exercise, though, extended over
22 the period that had different components. It was the
23 same exercise. Because it was being taken very
24 seriously and because outreach was happening, and it was
25 complex and there were split views on things and some

1 things that there was consensus about. It varied.

2 Q. One thing, and I may just deal with this now. In the
3 version of your statement I have, you say at
4 paragraph 21 that you struggled at some point in the
5 past to see how care providers would accept
6 responsibilities at that time and act upon them. I am
7 just wanting to see how relevant this was to the
8 thinking of officials and the advice of officials.
9 Because you also said in relation to accountability in
10 the final part of paragraph 19 of the statement I have:

11 "To achieve accountability would mean getting all
12 relevant institutions to actively participate, accept
13 their involvement and potentially negotiate with their
14 insurers about the ensuing implications. All of this
15 activity had yet to begin."

16 So what are you saying? Are you saying that you had
17 considerable reservations about whether, if there was
18 an accountability type model, the institutions would
19 take part, is that what you are saying?

20 A. I am saying that my job as a civil servant was to be
21 honest, show integrity, impartiality, objectivity. My
22 job was to give advice to ministers, and they set
23 parameters for my role. And it was well known with
24 ministers and with the team in which I worked that
25 getting care providers on board was going to take a long

1 time.

2 Q. So were you not convinced, at the time that the
3 consultation was taking place and you were having to
4 give advice to ministers, that care providers would
5 accept a responsibility or indeed participate in
6 an acknowledgement and accountability type forum, is
7 that the position?

8 A. The position is that some care providers had been
9 challenged for what had gone on in their institutions
10 and some had been found guilty. Others I wouldn't know
11 about, but I do know that some care providers said their
12 insurers said they would need to be careful about
13 engaging because of potential litigation. That was part
14 of the agenda.

15 LADY SMITH: Who told you that, Jean?

16 A. Are you looking for me to name an individual or
17 an organisation?

18 LADY SMITH: I want to know when you say:

19 "I do know that some care providers said their
20 insurers said they would need to be careful about
21 engaging because of potential litigation."

22 Who said that to you?

23 A. -- that should funding get to such a point --

24 LADY SMITH: Going back to my question: who told you that?

25 A. Quarriers.

1 LADY SMITH: Quarriers.

2 A. When we were getting started.

3 LADY SMITH: Anybody else? Did anybody else tell you that?

4 A. I am trying to recall.

5 LADY SMITH: It is just that you said some care "providers".

6 A. What I am trying to do at the moment is think about
7 meetings that happened with care providers, like
8 groupings, and informally that was said there as well,
9 not necessarily in the formal sessions, but it was
10 a view that was out there. And with Quarriers, they --
11 that was part of what they needed to navigate for the
12 pilot to happen. Their insurers were fine with it, and
13 we can talk about why Quarriers was selected and so on,
14 but there was that view out there, Lady Smith, that care
15 providers had to consider what their insurers were
16 saying, because should litigation get to the point that
17 they were no longer solvent then children might be put
18 at risk that were current residents. That was
19 a consideration too.

20 LADY SMITH: Mr Peoples.

21 MR PEOPLES: Arising out of those discussions with Quarriers
22 and others, perhaps mainly informally, about --

23 A. Yes.

24 Q. -- whether there was any willingness to either engage in
25 a forum that had accountability built in or indeed

1 accept responsibility and indeed commit to contributing
2 to a compensation or redress fund, did those discussions
3 steer you to recommend a confidential committee model to
4 ministers in September 2009?

5 A. No, I wouldn't say it did. It was the preferred option
6 that ultimately went up in the paper that Sue proposed,
7 but should ministers have decided on a different model
8 that would have been absolutely fine too. I wasn't
9 wedded to a particular approach. The work to date had
10 suggested a pilot was necessary, a pilot that would make
11 people feel safe. And as you will know, when it did
12 happen there was a small element of accountability
13 through the Restorative Justice Toolkit that was
14 produced by Sacro and which some members of -- the
15 people that went to Time To Be Heard used.

16 Q. Was cost a consideration which led you to recommend
17 a confidential committee model to ministers in
18 September 2009?

19 A. The Civil Service code requires me to deal with the
20 public fairly and efficiently, to use expertise and
21 professional knowledge and to be mindful of public
22 value. So, yes, that was a consideration. And at the
23 time we were talking about, it was 2008 where there was
24 the financial collapse as well, and so part of what
25 I was considering in my civil service advisory role was

1 what was pragmatic and what was feasible to achieve,
2 because at the same time survivors are saying "Nothing
3 is happening. Something has to happen. Can we make
4 progress here?" And I was trying to strike a balance
5 and respect them and get what could happen to happen if
6 ministers approved it.

7 But it was for ministers to approve, not for me, and
8 not for me to have a preference other than through views
9 that were gathered and evidence that was maintained.
10 And you will see that the options paper went through
11 a number of options. Although that one was listed as
12 the preferred one, it didn't mean that ministers needed
13 to take that advice.

14 Q. We will come to that.

15 A. They could have decided otherwise.

16 Q. While on the subject of cost, Adam Ingram told the
17 Inquiry that in terms of the figures involved in what
18 I call the Irish, Republic of Ireland, model, the full
19 model that had been looked at by officials before the
20 ministerial meeting, that there was no way that
21 Scottish Government could, in 2008, do anything like
22 that given the costs that were involved there. Was that
23 your position too?

24 A. Yes, that was the position. That was the position of
25 all ministers at that time, that the money wasn't there

1 at that time. We were in the middle of a recession.
2 What Mr Ingram is saying is what others thought, said
3 and felt at that time.

4 Q. Did anyone suggest, for example, either officials or the
5 ministers directly responsible for these issues: why
6 don't we go and talk to the Cabinet Secretary for
7 Finance and ask him whether he can make money available
8 should that be the option that we want to go down, the
9 Irish type model, the full Irish model? Did anyone
10 consider doing that?

11 A. That would be for ministers to consider.

12 Q. Well, did they do it to your knowledge?

13 A. Not to my knowledge --

14 Q. Did they ask the Cabinet Secretary --

15 A. -- would be their decision.

16 Q. But do you recall them coming to a decision: we will go
17 and talk to the Cabinet Secretary for Finance and ask
18 him whether, if we were to go down that route, the money
19 can be found. Do you recall anything of that happening?

20 A. No, I don't.

21 MR PEOPLES: Maybe this would be a good time to have a short
22 morning break.

23 LADY SMITH: Yes, we will take the morning break now if that
24 would work for Jean.

25 I normally take a break about halfway through the

1 morning. Would it work for you if we took the break
2 now, Jean?

3 A. Yes. How long before you would like me to come back,
4 Lady Smith?

5 LADY SMITH: About quarter of an hour or so, but we will
6 keep in touch with you and let you know when we are
7 hoping to start again. Thank you.

8 (11.22 am)

9 (A short break)

10 (11.44 am)

11 LADY SMITH: Jean?

12 A. I can't see you any longer.

13 LADY SMITH: Just a minute. Can you hear me?

14 A. I can hear you but -- I can see you but I can't ... You
15 have gone again.

16 LADY SMITH: When I speak you should hear me.

17 A. I can hear you but the screen is different from what it
18 was before. It had you and Mr Peoples and myself and it
19 has altered, and you have disappeared again. But I can
20 hear you.

21 LADY SMITH: The way the system works is you should get
22 video when I am speaking, and when Mr Peoples starts
23 speaking you should get video of him.

24 A. You have just become visible, thank you.

25 LADY SMITH: Good. Mr Peoples.

1 MR PEOPLES: Can I perhaps begin with one matter I would
2 like just to sort out at this stage about the statement,
3 the signed statement.

4 A. Yes.

5 Q. We have caused some enquiries to be made during the
6 break to clear up the point you made at the beginning
7 about the signed statement, and can I just say that the
8 Inquiry has disclosed that you emailed your finalised
9 statement to the Inquiry on 3 August 2020 and it was
10 converted into a format that I have in front of me and
11 was signed by you on 6 August 2020.

12 Can I say this: I can assure you there is no
13 difference in any material respect to the statement that
14 I have been working off this morning that you have
15 signed. At the start, for example -- I am asked that
16 this be compared with your email. At the start,
17 I think, for example, the first two paragraphs of the
18 statement I am reading off were a single paragraph in
19 your email and they have just been broken down. And
20 I think the other differences are either words omitted
21 or capitals not used when they should have been.
22 I don't think there is anything in substance so far
23 as --

24 A. I agree totally with you, Mr Peoples, that the line of
25 questioning very much follows my statement. I am

1 content. It was at the beginning where I couldn't
2 recognise what I had written with the change in
3 formatting, essentially. But I am fine with this and
4 totally happy to continue.

5 Q. I can give you that reassurance.

6 A. Thank you.

7 Q. And hopefully that will reassure others who might have
8 been concerned there was some material difference
9 between the two versions.

10 A. I really appreciate that. Thank you for doing that for
11 me.

12 Q. Can I just clear up one other matter and go back to the
13 National Reference Group because I think there's
14 something that maybe we didn't pick up this morning.

15 So far as the National Reference Group is concerned,
16 I asked you some questions earlier today about its
17 composition. Can I just confirm that so far as
18 representation of survivor groups on the main group, the
19 National Reference Group, was concerned, the only
20 survivor group on the main group was INCAS represented
21 by Helen Holland and Chris Daly, is that correct?

22 A. No, the Former Boys and Girls of Quarriers were on too.

23 Q. Well, can I just -- perhaps I will take it this way. My
24 understanding, and no doubt we can clarify this in due
25 course, is that so far as David Whelan is concerned, who

1 is also associated with FBGA, the Quarriers group, he
2 was on a sub-group of the NRG which looked specifically
3 at services for in care survivors. That group was
4 established in 2007, I think, and reported in early
5 2008, and that I think ultimately led to the In Care
6 Survivors Support Service being set up. I am told that
7 he was not on the main group, the group of 25, is that
8 correct?

9 A. My memory is that he was.

10 Q. I am sure we can sort this out, but I am just putting to
11 you that I don't think you are necessarily correct, at
12 least that is the information I am getting.

13 Also, so far as groups were concerned, again I am
14 being told -- so I am just putting it to you to get your
15 comment -- that FBGA, which was a group that campaigned
16 and was formed before the period we are looking at, that
17 they were not as a group represented on the main group
18 of the National Reference Group. Do you disagree with
19 that?

20 A. It is not a question of disagreeing, it is just not my
21 memory. I could have got it wrong. There are --

22 Q. We can check that in due course.

23 Just on one other point: you said that only you were
24 aware there were people on the main group who were
25 survivors who may not have been linked or associated

1 with particular groups, such as INCAS or FBGA or
2 whatever. Was that your position this morning?

3 A. Yes, it is my position.

4 Q. But that these people would not have necessarily, as
5 I understood your evidence, have disclosed that fact to
6 anyone, but you knew that through some kind of
7 information you had, is that right?

8 A. That is what I am saying, people shared some very
9 private and individual perspectives that made it clear
10 that they were survivors.

11 Q. Can I just ask you this also: the people you have in
12 mind, and I don't know how many we are talking about
13 here, but the people you have in mind, are you saying
14 they were all in care abuse survivors or they were
15 simply survivors of abuse as children?

16 A. I can say some were in care abuse survivors.
17 I couldn't, in the mists of time, give you what kind of
18 survivors. I couldn't categorise in the way that you
19 are looking for. But I know that some were, in the way
20 that you have defined them, who were additional to INCAS
21 and it might be Former Boys and Girls of Quarriers.

22 Q. We can maybe move on with that explanation.

23 So far as -- I had asked you before the break about
24 whether cost was a factor in the preferred model and
25 indeed the decision of ministers, and I had referred you

1 to what Adam Ingram said on that matter. Can I ask you
2 at this stage to look at a couple of documents which
3 show some of the activity in the run-up to the meeting
4 of ministers. I just want to see what you can tell us
5 about those.

6 The first is SGV-000060024 which should come up on
7 the screen, hopefully. That is a document which bears
8 to be an acknowledgement and accountability discussion
9 on 19 May 2009, which would be shortly after the
10 consultation closed, and it says it's a discussion to
11 inform recommendations to ministers on the next steps.
12 Can you recall, would that have been a discussion you
13 were present at? Does this help you?

14 A. Could you scan it further down?

15 Q. Yes, we can scroll further down. I don't think we see
16 who was present in the document, other than Annie,
17 I think there is a reference to Annie.

18 A. There is a reference to Sarah who --

19 Q. Sarah?

20 A. I think at the beginning there.

21 Q. Perhaps we could scroll back up to check. Yes --

22 A. Yes, there's a reference to Sarah. Sarah and Annie are
23 the two lead professionals --

24 Q. Annie Macdonald?

25 A. Yes, and Sarah Nelson.

1 Q. What I am really interested in is were you that
2 the meeting? Can you recall?

3 A. I can't recall but it doesn't look like a meeting
4 I would be at. It looks like more of a chat in the team
5 without me, because I wasn't at everything they did.
6 Obviously they carried on with their own work and then
7 discussed with Sue.

8 Q. That is Sue Moody?

9 A. Sue Moody, yes.

10 Q. Who had just joined the team?

11 A. From the timeframe you have indicated -- that is
12 indicated at the top, yes.

13 Q. If we just stay with this document for a moment --

14 A. I can't tell you its status, I am sorry.

15 Q. I will just ask you a little bit about it to see if we
16 can get some context and some idea of where matters
17 stood at that point.

18 There is a heading, which is underlined,

19 "Recommended Pilot". It says:

20 "Check Sue's concerns on international evidence.

21 Quarriers otherwise considered suitable: records

22 maintained; abuse proven; no inquiry held;

23 chief executive willingness to participate."

24 A. Yes.

25 Q. And there are some next steps that seem to have been

1 agreed at that meeting.

2 It's then said in bold:

3 "No approach until ministers have considered
4 options."

5 Do you see that?

6 A. I do.

7 Q. So it does look that as early as 19 May 2009, shortly
8 after the consultation had closed, that Quarriers had
9 been identified, at least by the officials at this
10 meeting who were perhaps taking quite a direct role in
11 this, as suitable for a pilot, and indeed there seems to
12 have been some indication that the chief executive had
13 shown a willingness to participate in the pilot, and
14 this is under a heading "Recommended Pilot", and that
15 may suggest that by that stage officials had some
16 particular type of pilot in mind, such as a confidential
17 committee forum. This is the suggestion I am making to
18 you. Can you recall if that was the case?

19 A. I can't. But I can -- like you, I have been thinking in
20 the break, and what the consultation made clear,
21 and I quote, is that:

22 "Any forum is not intended as a way of bypassing
23 legal justice either for those who have been abused or
24 the alleged perpetrator."

25 Which would, to my mind, counter a view that you

1 have expressed several times now, that we were down the
2 road and we were going there anyway.

3 Often what would happen, to pick up the Quarriers
4 point, is that officials would be thinking about the
5 next stage, avoiding any ... any unnecessary delay,
6 shall we say, by coming up with some options for where
7 a forum might be located. And as I said earlier, when
8 Quarriers was ultimately agreed by ministers, it did
9 have a restorative justice element in it, it had
10 an element of accountability.

11 Q. We may come to that but --

12 LADY SMITH: Mr Peoples, before we leave this page that is
13 on the screen --

14 MR PEOPLES: We are not leaving it yet.

15 LADY SMITH: Let me flag up I am quite interested in the
16 "Pilot Purpose" paragraph and the reference to cost
17 there, but it may suit you to come back that.

18 MR PEOPLES: No, we can just read that paragraph under
19 "Pilot Purpose":

20 "To assess range of outcomes of forum for those who
21 choose to apply. What, if any, variation in
22 expectations for: proven cases; those who had
23 compensation; others. To test cost implications. To
24 assess level of pre/during and post forum support. To
25 assess and support the needs of organisations'

1 representatives."

2 So this is giving some of the potential purposes of
3 the pilot and what it might either disclose or achieve.

4 That is really what that paragraph is about?

5 A. That is what it looks like, and the list there is quite
6 a conventional one when scoping something.

7 Q. The other paragraph that catches my eye --

8 LADY SMITH: Just before you leave that paragraph, I notice
9 the sentence:

10 "To test cost implications".

11 A. Yes.

12 LADY SMITH: Tell me about that.

13 A. That would -- as I said already I don't have any memory
14 of being at this particular meeting, but things were --
15 a given was that you would always look at cost
16 implications of any policy activity, so that is why it's
17 listed there.

18 LADY SMITH: So that would be the cost implications of the
19 confidential forum?

20 A. Yes. Yes, to test what that looked like, possibly in
21 terms of location, staffing, those who chaired and
22 participated, travel costs, support costs. Because one
23 big element was -- to prepare, we used the In Care
24 Survivors Service to help individuals who wanted to come
25 along, that they were supported before and during and

1 after, and it was to look at all of those costs in the
2 round.

3 LADY SMITH: How would the figures be identified?

4 A. Annie did quite a lot of the logistics to support
5 Tom Shaw and Kathleen Marshall and Anne Carpenter by
6 finding a venue, for example, that had a cost attached
7 to it. There would be the costs of the daily rates for
8 the individuals who conducted the forum hearings. There
9 were admin staff who were employed as well. There would
10 be overnight accommodation, often for more than one
11 night as I understand it. And there were people who
12 were as far away as Canada.

13 Now, it was very important that the Government team
14 stood back once the logistics were established, like
15 we -- there was a venue and there was a committee and
16 there was an advisory group that helped with that. We
17 stood back. So then there was a gap before we got
18 Tom Shaw's findings at the end of the process so that it
19 was independent.

20 LADY SMITH: I get that. But at this stage it hasn't
21 started. Am I to take it that that sentence about
22 testing cost implications tells me that advice would
23 normally be given to ministers about the likely cost of
24 the option that was being proposed?

25 A. In this particular instance we knew that it was a modest

1 budget that we were working with.

2 LADY SMITH: Did you have a budget?

3 A. There was a programme line that was for survivors, and
4 some of that went to the SurvivorScotland service that
5 I talk about in the earlier parts of my statement, and
6 some of it -- I think ultimately there was extra money
7 for running of the venue and so on.

8 LADY SMITH: So did you have a budget for this option, the
9 confidential committee option at that stage?

10 A. I can't recall if there was a firm budget from which we
11 drew down or whether the expenses were just accrued and
12 then they were paid, I can't remember which way round it
13 was, but I have defined as well as I can the nature of
14 those expenses.

15 LADY SMITH: Thank you. Mr Peoples.

16 MR PEOPLES: Before I leave this document, as I was about to
17 say, forum members. We see under that that a number of
18 names have been identified as contenders for the forum,
19 the recommended pilot presumably, including Tom Shaw.
20 I'm not going to mention everyone else but that is -- so
21 it had got to the stage on 19 May, whether you were
22 there or not, that potential panel members for the forum
23 had been identified and were to be discussed with
24 Sue Moody, is that right?

25 A. That appears to be what is said there and it would have

1 been happening anyway. Whatever the nature of the forum
2 became, there would need to be people who had expertise
3 of a particular type, whether it was --

4 Q. I just wondered about that. It's in the context of
5 a recommended pilot, something -- they have something in
6 mind, and they have people in mind that might be members
7 of that recommended pilot, and it looks for all the
8 world that there are potential members for
9 a confidential committee model?

10 A. I don't see that at all.

11 Q. You don't see that. Okay, we will move on --

12 A. Because, well, because the people that were ultimately
13 chosen would have been able to deal with
14 an accountability component in my view.

15 Q. Can we go to another document just to see if we can
16 piece together what was going on in the run-up to the
17 meeting of ministers.

18 Can we move on to August, to SGV-000060026. We see
19 there this is a meeting you were at --

20 A. Yes.

21 Q. -- which was described as a Health, Education and
22 Justice officials meeting on the proposal to undertake
23 an acknowledgement and accountability forum?

24 A. Yes.

25 Q. This is a note of a meeting on 3 August 2009 at

1 St Andrew's House in Edinburgh. You were present, and
2 there was quite a number of other persons present.
3 There was three other -- four others from Adult Care and
4 Support, which was your team, is that right?

5 Anne Macdonald, Sue Moody, Sarah Nelson and Alex Tod?

6 A. Yes. Alex was an admin worker.

7 Q. And then we see someone called Paul Allen from Civil Law
8 Division and Anne Hampson from Civil Law Division. Do
9 they sit in Justice?

10 A. They sit in Justice and they were people dealing with
11 some of the Damages Bill and stuff like that, and
12 time bar. Paul was the allocated person to help with
13 the cross-cutting nature of work we were undertaking.

14 Q. The other names there, just for completeness, are
15 Janine Kellett of what is called the Care and Justice
16 Division, and the Deputy Director, at that time,
17 Olivia McLeod, Care and Justice Division. Do they sit
18 in Justice as well?

19 A. No, they sit in Education.

20 Q. I see. So there is representation from three
21 departments?

22 A. Yes.

23 Q. If we scroll down a bit to try and get a flavour for
24 this. Before we go much further, there are some
25 apologies from Jeannie Hunter. She was in the Adult

1 Care and Support Division? She was in your team?

2 A. She was, she was a policy member, at a similar level to
3 Anne Hampson who worked to Paul Allen.

4 Q. Lachlan Stuart, what is he?

5 A. That is not a name I can recall at all. Heather Stevens
6 I think worked for Olivia.

7 Q. Okay. There is a heading at paragraph two of this note
8 of meeting, "Discussion on Draft Minute". Can we take
9 it that that is a discussion of a draft minute or
10 briefing for ministers for the meeting that took place
11 in September 2009? It looks that way to me.

12 A. Yes, it was an opportunity for everyone to discuss it,
13 debate it, and obviously all these people don't work
14 directly day-to-day. It was an opportunity to catch up
15 with one another, understand what was going on in the
16 respective portfolios, some of the issues that might be
17 pertinent. Olivia MacLeod was at that time,
18 for example, doing major work on promoting the quality
19 of residential childcare in that time and going forward
20 to try and improve a perspective that was held by some
21 people that residential care was not necessarily a good
22 option. She was doing a lot of work on --

23 Q. Okay --

24 A. -- that residential care provided good outcomes. So
25 although that is way out from the core of the meeting,

1 it was an opportunity to actually co-ordinate our
2 thoughts and not to contradict or clash with each other,
3 I suppose, just to make -- we were trying our best to be
4 coherent.

5 Q. What we see there is the way you conducted this meeting
6 is that you called on various interested parties at the
7 meeting to share their thoughts on the draft minute, and
8 Olivia McLeod and her colleague Janine Kellett makes
9 some points that are recorded here in relation to the
10 relative advantages and disadvantages of the three
11 proposed options, which seem to be the confidential
12 committee model, which became the preferred option, the
13 investigation committee model, and a combination of the
14 confidential and investigation committees.

15 The next point that appears to have been made by
16 them is:

17 "Survivors want to tell their stories in confidence.
18 They want acknowledgement and understanding of
19 an injustice done to them."

20 Pausing there, were you aware of what basis they had
21 for saying that survivors wanted to tell their stories
22 in confidence rather than in some other way? Do you
23 know what the evidence for that was that they were
24 relying on?

25 A. I wouldn't make it as strong as "evidence", Mr Peoples,

1 but they like ourselves worked with survivors, and that
2 was a common thing, that people would say they didn't
3 want to do that publicly. Some had had experience of
4 going to court and had found it adversarial and had
5 found it traumatising, others had had very positive
6 experiences of that environment. So it varied hugely.
7 But the overall sense was that a private space was what
8 people were looking for. I wouldn't say it was as
9 strong as "evidence".

10 Q. If we go on, we see two other points that are made more
11 in relation to the issue of compensation, perhaps, is
12 that:

13 "The majority are not seeking monetary compensation.
14 There was a recognition that some survivors want their
15 day in court with the possibility of abusers facing
16 prosecution."

17 And it says that neither of the option one or two
18 preclude that happening.

19 Again it may be difficult for you to recall now, but
20 would these observations about what the majority did or
21 did not seek and who wanted their day in court, would
22 these again be based not on hard evidence perhaps but
23 just -- they may have been drawing on what they
24 considered their general experience in this area?

25 A. I couldn't comment.

1 Q. You can't comment. Okay, fair enough --

2 A. I can't do any better than --

3 Q. That is fine. I just wanted to ask you --

4 A. But what I would say is they did a lot of work in 2004,
5 when Mr McConnell as First Minister made his Apology, so
6 maybe it relates to their knowledge and deeper working
7 at that time.

8 Q. Okay.

9 LADY SMITH: Jean, what is that note referring to when it
10 refers to the "investigation committee model"?

11 A. This is I think -- Sue Moody's paper refers to three
12 different approaches, the options, so --

13 LADY SMITH: Sorry, what was an investigation committee
14 model?

15 A. It was more towards accountability, I would say, in
16 summary. I don't have that piece with me.

17 LADY SMITH: What would it have done that a confidential
18 committee model would not have done?

19 A. In my view, it would have enabled survivors to bring
20 people to a session. It would have possibly led to
21 prosecutions.

22 LADY SMITH: How?

23 A. Because there would be the opportunity for those running
24 that model to be in contact with the relevant
25 authorities, Police and Procurator Fiscal, and to

1 support anyone that wanted to go down that road to do
2 so.

3 LADY SMITH: That doesn't really seem to fit with the word
4 "investigation". Who was going to investigate and what
5 were they going to investigate?

6 A. I would need the paper in front of me to better answer
7 this.

8 LADY SMITH: All right. Mr Peoples.

9 MR PEOPLES: I think the terms "confidential committee" and
10 "investigation committee" are expressions or terms that
11 have been drawn from the Republic of Ireland model.
12 These were the terms used for two different types of --

13 A. Yes, they are.

14 Q. One of which was along the lines of Time To Be Heard and
15 was confidential, the other was an investigation
16 committee that was set up to hear complaints, determine
17 allegations of abuse, and I think they may have had some
18 powers to pass on information to the relevant
19 authorities as well. I am not sure in the case of the
20 confidential committee that that was the arrangement,
21 I think that stayed within the confidential committee.

22 So that I think is why we see these terms being used
23 at that time. Does that help you in any way? Because
24 your officials had looked at the Irish model, if I --

25 A. The team had -- I wasn't there, but they had gone to

1 Ireland. It is not to say that the Irish model was
2 being promoted above others but there was knowledge
3 although visits weren't made to other places.

4 Q. If we go on. Let's assume that the investigation
5 committee model is a reference to the Irish -- or
6 an aspect or a component of the full Irish model. We
7 see in the last bullet point there as one of
8 the contributions, it would appear, from Olivia McLeod
9 and Jean Kellett:

10 "The investigation committee model entails high
11 legal costs."

12 The action point in bold:

13 "This should be highlighted more in the annex on
14 options."

15 So it looks like someone has decided: we are going
16 to have to highlight this particular feature when we
17 brief ministers.

18 A. Yes.

19 Q. Yes?

20 A. That would be standard, to highlight anything of note
21 whether it was financial or otherwise.

22 Q. Is that right? It might be standard to discuss costs as
23 an aspect of a briefing but that is going further than
24 that. That is almost saying, well, there may be
25 a number of relevant considerations, but one thing you

1 had better put in bold among all of these is the high
2 legal cost of an investigative committee model, at least
3 based on the experience of Ireland. That is surely what
4 it means?

5 A. I think, with due respect, there are many other things
6 that are highlighted in bold too and I wouldn't read it
7 in that way. High legal costs would need to be
8 identified among other costs. We have talked about what
9 the costs of a confidential forum might be and I have
10 tried to quantify them.

11 Q. If we move on in that document, I don't want to go
12 through all of it, but if we just carry on --

13 A. Yes.

14 Q. -- to the next page. I think I noted there was some
15 discussion at that meeting of the advantages and
16 disadvantages -- sorry, the advantages of piloting
17 a project with Quarriers. Am I right? If we keep
18 scrolling down, I think there is something, maybe not by
19 them. If we carry on scrolling down.

20 Yes, 2.4. Your team, in sharing their thoughts,
21 were making the point that there were advantages of
22 piloting a project with Quarriers and explains what
23 these advantages were considered to be. So we have
24 that. Although it is also said in the third bullet
25 point that:

1 "Lawyers and insurers from Quarriers may have
2 reservations about the pilot proposals. A meeting is
3 being held with them next week."

4 So maybe that is where you got your sense that there
5 might be difficulties because of the insurance
6 complications, is that fair comment?

7 A. I think that is fair comment.

8 Q. I will maybe move on then, I don't want to spend too
9 much time, but we see there clearly there is
10 a discussion amongst officials.

11 I understand, and you may or may not be able to help
12 me, that the following day, on 4 August 2009, officials
13 met with Helen Holland and Chris Daly of INCAS. Were
14 you at that meeting, can you recall?

15 A. We did have separate meetings with Helen and Chris from
16 time to time. Have you a record of that meeting?

17 Q. I don't have it in front of me, but the question
18 I wanted to ask you is this: were they told at that
19 point that officials were preparing a briefing on
20 a model that did not include accountability? Can you
21 recall if they were made aware that that was --

22 A. I can't.

23 Q. -- the direction of travel?

24 A. I can't.

25 Q. You can't, okay. If they weren't made aware, would

1 there have been a reason for that?

2 A. All I can say is that we had very open and regular
3 contact with all survivors. Helen and Chris were
4 proponents of a particular approach and we were
5 respectful of their perspective as we were of anyone
6 else's.

7 Q. Maybe I can take you on again to the later part
8 of August, 26 August of 2009. Can we look at
9 SGV-000019655. That is a note of a meeting on 26 August
10 of the National Reference Group at Glasgow Caledonian
11 University which you chaired?

12 A. Yes.

13 Q. We can see that a number of people are there, including
14 Chris Daly and Helen Holland, do you see that?

15 A. Yes.

16 Q. If we just scroll down a bit further, further down
17 again.

18 We see that one of the matters discussed at that
19 stage is an acknowledgement and accountability issue.
20 Can I take you to another document first because it does
21 refer to a discussion on a paper that Sue had produced,
22 so let's maybe look at what Sue produced before we look
23 at the meeting itself so we know what is being talked
24 about ... (Pause). Can we go to SGV-000063502.

25 That does bear, on the right-hand side at the top,

1 to be a paper that was circulated at the NRG meeting
2 in November, but I think it was also circulated for the
3 meeting in August and was recirculated in November.
4 I don't think you will disagree with that, that is
5 the paper that was discussed in August?

6 A. The print is absolutely tiny.

7 Q. I will help you with it a little bit.

8 A. Yes, thank you.

9 Q. The paper bears to be an update on an acknowledgement
10 and accountability forum and it sets out progress to
11 date and plans to establish an acknowledgement and
12 accountability forum for adult survivors who experienced
13 in care abuse as children. It also considers the links
14 between the work of the reference group and any forum.

15 Then there is a bit of background and I am not going
16 to go through that in detail. It is referring to the
17 Tom Shaw Review and the fact that:

18 "... many [survivors] would like their experiences
19 ... heard and recorded - a means of acknowledging and
20 believing what they need to tell."

21 And it refers to a recommendation by Shaw that:

22 "The process of relating to and responding to former
23 residents needs to be respectful, empathetic and
24 constructive; for some, the experience to date has been
25 dismissive and abusive. Listening to them and believing

1 them is essential - after all that's what so many of
2 them were denied as children in residential child care."

3 So that is the starting point of the background
4 information in the paper.

5 Then there is reference to the Adam Ingram statement
6 announcing a:

7 "... commitment to scoping a truth and
8 reconciliation forum to address issues for adults who
9 had suffered any form of childhood abuse whilst in
10 care."

11 It does say there:

12 "Funding of £375,000 per year for three years was
13 set aside for this purpose."

14 So there does seem to have been some funding
15 decision at least by that stage of the paper.

16 LADY SMITH: Yes. Is that for scoping? It's too much for
17 scoping alone.

18 MR PEOPLES: It looks like the cost of the forum.

19 LADY SMITH: It looks like the cost of the forum.

20 A. I think it must have been the cost of the forum from
21 Annie's --

22 Q. Yes, it wasn't the cost of considering -- that is an
23 attempt to budget the whole forum, is that right?

24 A. I think it would be, yes.

25 Q. I think that is probably the likely reading.

1 A. Yes.

2 Q. It then says in paragraph 4:

3 "This commitment stands alongside other proposals to
4 assist survivors that will be familiar to members of
5 this Group. All these initiatives come under
6 the umbrella of the National Strategy for Adult
7 Survivors of Childhood Sexual Abuse."

8 And there is reference in annex A to other projects
9 of direct relevance to in care survivors. Then
10 paragraph 5 over the page it says:

11 "Staff involved in this part of the Strategy
12 implementation include Jeannie Hunter [who you
13 mentioned] and Annie Macdonald and Sarah Nelson ..."

14 Then we see they have been joined by Sue Moody:

15 "... who is on secondment half time from the Crown
16 Office and Procurator Fiscal Service to assist with the
17 legal, procedural and planning issues arising in
18 relation to the Forum. Jean MacLellan has overall
19 responsibility for the Strategy, including this area of
20 work."

21 Stopping there, by this time the Scottish Human
22 Rights Commission had been commissioned to advise on
23 human rights issues to inform the development and design
24 of an acknowledgement and accountability forum. We have
25 heard evidence about that but I think we have to bear

1 that in mind, is that right?

2 A. Well, it wasn't to --

3 Q. The Human Rights Commission had been commissioned by
4 then to prepare a Human Rights Framework for
5 an acknowledgement and accountability forum?

6 A. It wasn't specifically, from my memory, for
7 an acknowledgement and accountability forum. My memory
8 is that the Scottish Human Rights Commission was set up
9 in 2008 and, with ministerial permission, I approached
10 them and asked if, in order to do what you read earlier
11 about listening and respecting and so on, we could work
12 with them. They were at the stage where they were
13 devising just what their remit would be and ultimately
14 they made a commitment to work with us on survivors'
15 issues.

16 Part of what they did was give advice to how the
17 confidential forum was undertaken, and they also
18 produced the Framework which was a broader thing than
19 accountability and acknowledgement, it was the basis of
20 what became the interactions.

21 Q. You can take it -- by the way, we have heard evidence
22 from Duncan Wilson of the Commission who told us about
23 the progression to an interaction process, and I will
24 ask you later some questions about that process and the
25 Framework.

1 If we go back then to Sue Moody's paper, the next
2 paragraph in the paper is progress to date and is called
3 "Results from the Consultation" and says:

4 "With assistance from the Reference Group, a
5 consultation paper seeking views on a proposed forum to
6 be called the 'Acknowledgement and Accountability Forum'
7 was circulated in October 2008. Extensive efforts were
8 made to ensure that all of the stakeholders had the
9 opportunity to respond and particular attention was paid
10 to reaching survivors whose voices might not otherwise
11 be heard."

12 And we have looked at the summary account and the
13 summary of responses and so forth this morning.

14 Then it says at paragraph 7:

15 "Respondents strongly supported a forum, although
16 they had mixed views on what its remit should be, and
17 they also wanted an initial pilot to test out the
18 viability of a forum."

19 In using the word "respondents" there, it does
20 appear that the author of this paper, Sue Moody, was
21 describing all respondents to the consultation process,
22 not simply survivors.

23 A. I think so.

24 Q. She is not giving a lot away about the results, though,
25 under a section headed "Results", because we don't

1 really learn very much other than that there were mixed
2 views, is that right?

3 A. What I am thinking is that anyone in the group would
4 have had access to the consultation. It depends what
5 time we are talking about --

6 Q. Okay.

7 A. -- consultation. So people would have seen the
8 consultation, and at each of the acknowledgement and
9 accountability sessions -- at each of the National
10 Reference Group sessions this work was discussed as
11 a standing item, so this is one of many documents and
12 many discussions.

13 Q. But it might have been helpful, do you not think,
14 looking back, they might have got at least a little bit
15 more information in this paper if there was going to be
16 a discussion?

17 A. I don't know what paper was there at that time.

18 Q. It was this one.

19 A. Just this?

20 Q. Well, I don't think we are aware for the agenda that
21 anything else in relation to this particular issue was
22 before this particular meeting.

23 A. I think --

24 Q. You think there was?

25 A. I think because this item was a standing one, any papers

1 pre-dating the consultation would have been discussed at
2 previous meetings.

3 Q. Going on to the next --

4 A. And I think -- I don't know at what point, but there
5 used to be a requirement that any consultation was
6 analysed in a given period, and that was made public on
7 the web, on the Scottish Government website. So
8 depending on how far in this is post-consultation, the
9 summaries of the three approaches taken to consultation
10 would have been put on the web. And I can't say for
11 sure, but that kind of stuff would have been discussed
12 and papers tabled and distributed, but I can't guarantee
13 that. But if you look at just that line alone, I would
14 agree that that is scant if that is all that there was.

15 Q. If we go on to the next heading, "Human Rights
16 Framework":

17 "During the consultation process we were approached
18 by the Scottish Human Rights Commission who offered
19 their expertise --"

20 A. That is an error, we --

21 Q. I was going to say, you told us earlier it was you who
22 approached them, not the other way round. So you think
23 that's an error in this statement?

24 A. I think that is an error. Because I distinctly remember
25 meeting Alan Miller, who was the Chair and recently

1 appointed Chair of the Commission, and I was to meet him
2 in the new offices for the Scottish Human Rights
3 Commission. And I arrived and he was locked out because
4 he didn't have the right passes, or whatever, so we had
5 to decant elsewhere.

6 Q. We see that what is said about the involvement of the
7 Commission is that:

8 "They had offered their expertise ..."

9 Whether they did --

10 A. They did, because (inaudible - overspeaking).

11 Q. If I can just read on:

12 "... in considering how the rights of both survivors
13 and those involved in institutions where abuse had
14 happened could best be protected in any forum. The
15 Commission has been commissioned to provide a Framework
16 for the Forum which will ensure that the rights of all
17 parties are represented."

18 That has all the appearance of a forum where it will
19 not just be survivors who are represented, it will be
20 other parties, and that the whole purpose of having the
21 Human Rights Framework was to ensure that the rights of
22 all parties were protected from a human rights
23 perspective. Do you agree with that? That is the way
24 it reads.

25 A. I have given you my perspective on what I thought the

1 Scottish Human Rights Commission were to do and I have
2 explained I approached them because of their expertise.
3 Duncan was a superb ally and did tremendous work for
4 survivors throughout the period and Sue and he worked
5 together. He was on an advisory group, as I have said,
6 and in my head there was a Framework, a Human Rights
7 Framework, for not just accountability and
8 acknowledgement, but for all of the work that we were
9 undertaking that led to the InterAction --

10 Q. Yes.

11 A. -- because the forum was only going to be a pilot. We
12 needed some underpinning that was much more substantial,
13 and --

14 Q. Yes, you're perfectly correct --

15 A. -- doing work in parallel, because if we had been linear
16 it would have taken years longer to do anything on
17 behalf of survivors, and pragmatism was part of this,
18 doing our best with the remit that was given.

19 Q. You are perfectly correct that the Human Rights
20 Framework was much wider than simply acknowledgement and
21 accountability. The only point I was putting was that
22 in the beginning, what they were asked to design was
23 an acknowledgement and accountability forum, but they
24 certainly took the opportunity to look at it in
25 a holistic and wider way and come up with an overall

1 response to issues of non-recent abuse which was not
2 confined to acknowledgement and accountability.

3 A. I would say that when we did come to the forum, my
4 understanding is that, because Duncan and Sue worked
5 closely together, that the work that SHRC was doing did
6 inform how the forum was conducted, and also because
7 Duncan was on the advisory group and he worked closely
8 with Tom Shaw. I would say the Scottish Human Rights
9 Commission also at times said that they didn't -- they
10 wanted to be observers, they wanted to monitor, and they
11 at that time or somewhere around that time were also
12 thinking that they would take up time bar as
13 a particular issue.

14 So there was being observers, being monitors, and
15 being active in one part of the overall agenda,
16 ie time bar. So sometimes they would draw back from
17 being very active participants for their reasons of
18 objectivity and balance and so on.

19 Q. Don't worry, I am going to ask you a little bit about
20 the Commission and their involvement in Time To Be Heard
21 and so forth, but if we could carry on with Sue Moody's
22 paper. "Setting up a Pilot Forum" is our next heading
23 at paragraph 10:

24 "We are currently working towards establishing
25 a pilot form in 2010 which would provide the opportunity

1 to test out whether the idea of a forum is helpful
2 and feasible. We have looked at a variety of different
3 models for a pilot, particularly the confidential and
4 investigation committees that were used by the
5 Ryan Commission ..."

6 That's the Republic of Ireland.

7 "... to collect evidence and give survivors the
8 chance to describe their experiences."

9 And then this section of the paper finishes:

10 "At present, the Confidential Committee option seems
11 to offer a way forward that fits with human rights
12 requirements for survivors and alleged abusers but no
13 decisions have been made about the pilot as yet."

14 A. Yes.

15 Q. Then it goes on to say if the ministers agree, there is
16 a proposal to set up an advisory group to oversee the
17 pilot and that there will be a record of the proceedings
18 but confidentiality will be an issue in terms of the
19 nature of the record, and then there will be
20 an evaluation and so forth.

21 It says:

22 "The Human Rights Commission has also offered to
23 consider whether and, if so to what extent, any pilot
24 met human rights requirements."

25 Then it gives a section dealing with the role of the

1 Reference Group in relation to the pilot, I am not going
2 to read all of that out.

3 A. Okay.

4 Q. Well, we can read it, but I don't think it is necessary
5 for present purposes.

6 A. That is fine.

7 Q. Then if we look at "Next Steps" at 14, I will finish
8 with this paper:

9 "A meeting of Ministers in Education, Justice and
10 Health Directorates (and including the views of the
11 Lord Advocate) will be held in September to consider the
12 options for a pilot. It would be helpful for us to be
13 able to give ministers some feedback from members of
14 this group about the proposals for a pilot."

15 So the idea seems to have been, well, we will have
16 a discussion and we will feed back the views of the
17 group to ministers as part of the briefing, is that
18 right? That's what it says.

19 A. I don't know really what is meant by:

20 "It would be helpful for us to be able to give
21 Ministers some feedback from members of this group ..."

22 Members of the group were being asked for their
23 feedback at regular intervals and what they said was
24 often subsumed into what became submissions. We are
25 concentrating on written documentation, but there were

1 all sorts of conversations and less formal things where
2 there was a strength in what survivors said too.

3 Q. If we can now go back to the Reference Group meeting of
4 26 August 2009, which we had on screen a short time ago,
5 that's SGV-000019655.

6 A. Yes.

7 Q. We have had a look at Sue Moody's paper, and can we go
8 back to the section "Acknowledgement and
9 Accountability". I think one of the problems perhaps
10 for that meeting might be that Sue Moody wasn't actually
11 present. That was not maybe the most helpful situation
12 in the world.

13 A. Again I would say we were pragmatic, doing the best we
14 could. We were trying to make progress. I can't recall
15 why Sue wasn't there, whether she was off sick or
16 elsewhere, but trying to maintain momentum really and
17 get the agenda forward. Because all the while survivors
18 are saying "What is happening? What is happening?" And
19 "What are we doing?" Not just in relation to the
20 confidential forum, but to all the services they were
21 looking for. And as I have said already, time bar was
22 huge. There was that case where -- I can't remember --
23 Bowden?

24 Q. Don't you worry about the legal cases. We have heard
25 evidence about the legal cases and the background so you

1 can take it we are quite familiar with that.

2 A. I am sure you are, I am just trying to convey my memory,
3 not in any way suggesting --

4 Q. Don't worry about your memory on that one.

5 Can we go back to the "Acknowledgement and
6 Accountability" section of the meeting to see what was
7 discussed. There is quite a lengthy note of the
8 discussion of the paper that Sue Moody had prepared.

9 A. Yes.

10 Q. The record of the meeting says you intimated that:

11 "Detailed papers on all of the options will be
12 presented to ministers shortly and that the decision for
13 proceeding with a pilot lies with them."

14 You opened the discussion, and it's recorded that:

15 "A lengthy discussion on acknowledgement and
16 accountability followed and a large number of points
17 were raised."

18 It says:

19 "It is hoped that the below provides an accurate
20 summary of the issues discussed. Queries on access to
21 justice were discussed at length. Time bar essentially
22 bars survivors from access to justice and infringes
23 their human rights. In Care Survivors Service Scotland
24 has had several contacts from survivors on this issue.
25 It was highlighted that time bar was an issue for all

1 survivors, not just in care. Also mentioned was that
2 not all survivors wish to go down a legal route,
3 therefore the forum would be a positive opportunity for
4 them as a restorative justice approach. The role of the
5 Commission [the Human Rights Commission] was discussed
6 in the light of this issue. The Commission have openly
7 expressed that it is an area they wish to scrutinise.
8 We discussed evaluation of any pilot and it was agreed
9 this would inevitably provide with rich details of
10 survivors' feelings and experiences in relation to
11 time bar as well as other areas where they feel justice
12 has been compromised for them.

13 "It was agreed that we incorporate Articles 5 to 8
14 of the Declaration of Human Rights into the paper to
15 ministers. Details of the Articles are in annex A to
16 the paper. It was clarified that any advisory group set
17 up for the acknowledgement and accountability would not
18 be a sub-group of the Reference Group.

19 "There was a great deal of discussion on how the
20 journey for survivors giving testimony to the forum who
21 go. For example, there could be no expectation that
22 they could give their evidence in one go/one day,
23 therefore it is important to think about how flexibility
24 can be built in. Confidentiality/anonymity on alleged
25 abuses was discussed as was their human rights. There

1 will need to be further discussion on this.

2 "The group asked if we could invite Alan Miller or
3 someone from the Commission to the next meeting to give
4 a presentation."

5 Jeannie Hunter was given the task of doing that.

6 "The role of local authorities was discussed and
7 their placement of children, the fact that parents very
8 often paid financial contributions towards their care
9 and how we can, if we go forward, get local authorities
10 to take some financial responsibility for support for
11 survivors."

12 Towards the end of this note of this discussion it
13 is recorded:

14 "It was asked why the confidential model, not the
15 investigative model, had been chosen as possibly the
16 best route for the forum."

17 That is sort of a reference to Sue Moody's paper.

18 "It was explained that in Ireland both models were
19 used. The investigative model was hugely expensive (the
20 vast majority of this expenditure was on legal fees) and
21 it was doubtful whether the process had been in the best
22 interests of the survivors."

23 Then it finishes:

24 "The findings of the forum would definitely form the
25 basis of a public record."

1 The explanation towards the end of that note about
2 the Irish investigative model being hugely expensive,
3 and doubtful whether the process had been in the best
4 interests of survivors, who gave that explanation in
5 answer to the question why the model had changed? Who
6 gave that? Was that you?

7 A. No, it wasn't me. I hadn't been to Ireland to see what
8 was going on, others had. I would imagine, although
9 I don't know, it would have been Jeannie.

10 Q. Sorry?

11 A. I imagine it would have been Jeannie Hunter.

12 Q. Okay.

13 LADY SMITH: Sorry, Jeannie who?

14 A. Hunter, nee Munro. She got married. It may be that you
15 have her down as Munro or Hunter. She was the policy
16 officer that was part of the team.

17 MR PEOPLES: Can we move on, yet again, and go to the
18 briefing that ministers received for the ministerial
19 meeting, and it's at SGV.001.001.8028.

20 We see there that this is a briefing to the Minister
21 for Public Health and Sport, Shona Robison, the Minister
22 for Children and Early Years, Adam Ingram, the Minister
23 for Community Safety, Fergus Ewing, and the
24 Lord Advocate, Elish Angiolini I think at that time.

25 A. Yes.

1 Q. I don't know whether you can help me with this. Was
2 this your work or was this put together by
3 Jeannie Hunter, Sue Moody or a combination of efforts?

4 A. If this is just the background thing it is likely to
5 have been written by Jeannie.

6 Q. But the purpose is to brief the ministers for the
7 meeting and to decide whether the pilot, as it is put in
8 paragraph 1 of the document:

9 "... an acknowledgement and accountability forum for
10 adult survivors who experienced in care abuse as
11 children and, if so, to agree which model to pursue from
12 a range of options in annex A."

13 We see in the background section there is
14 a reference to SurvivorScotland, to Adam Ingram's
15 statement in February 2008, and that he announced a key
16 component, that of scoping a truth and reconciliation
17 forum to address the needs of adults who had suffered
18 childhood abuse while in care. It is then said that
19 funding of £375,000 for three years was set aside for
20 this purpose. I think we can take it that was the
21 estimated budget for the whole thing?

22 A. Yes.

23 Q. It is said this was a response to Shaw Review
24 recommendations. It is said the SurvivorScotland
25 National Reference Group helped to prepare the

1 consultation paper which we looked at briefly earlier
2 today. It is explained that, at its request, the term
3 "truth and reconciliation" was replaced by
4 "acknowledgement and accountability" as the former was
5 thought to be too closely associated with South Africa.

6 Then annex C contains information about
7 the consultation process. Paragraph 4 refers to the
8 Scottish Human Rights Commission and it is stated there
9 that they were commissioned to provide a Human Rights
10 Framework for the forum which will ensure that rights of
11 all parties are represented. And then it refers to the
12 fact that there was a visit to Ireland.

13 Then paragraph 4 ends with:

14 "We are aware the Irish Commission's work is likely
15 to cost €136 million of which 60% was spent on legal
16 costs. We are seeking to ensure that we keep within
17 a modest budget and the proposals are designed
18 accordingly."

19 I think that echoes what you said earlier about --

20 A. It does.

21 LADY SMITH: I see on the Irish Commission's work we are
22 told that it "is likely" to cost about €136 million, so
23 that is a prediction. But then it says over 60% "was
24 spent on legal costs".

25 A. Yes.

1 LADY SMITH: So one is telling you what a percentage in the
2 past was, and the other is telling you what a total is
3 likely to be.

4 A. I agree.

5 LADY SMITH: Whereas it's not actually telling you what the
6 percentage on legal costs for the future is likely to be
7 as a proportion of a figure that isn't definite, it is
8 an overall prediction.

9 A. I agree. That is fair comment.

10 LADY SMITH: It's a little confusing.

11 A. It is. All would I say in mitigation, although this is
12 a very important point you make, we were working with
13 lots and lots and lots of work, trying to progress
14 an agenda, trying to be balanced, trying to do what was
15 ever possible. But I can see that that looks erroneous
16 in the way that it is described. It does suggest that
17 it is expensive in the round --

18 LADY SMITH: Well, one can say something seems expensive.
19 But tell me this, Jean: did you know whether the rates
20 at which lawyers were being paid in Ireland was in line
21 with the rates at which lawyers would be paid for
22 an investigation committee type of exercise here?

23 A. You would need to address that specific point to Sue who
24 did the costings or people who went to Ireland to find
25 out what was going on there.

1 LADY SMITH: Am I to take it from that you have no memory of
2 being told that --

3 A. Not of that particular component of that overall likely
4 cost, no.

5 LADY SMITH: Jean, I wasn't going to ask you about the
6 overall cost, I was going to ask you whether you had any
7 memory of being told that the lawyers' costs in Ireland
8 would be in line with what lawyers would be paid in
9 Scotland --

10 A. I am saying very clearly no.

11 LADY SMITH: No. Because of course Ireland is a different
12 jurisdiction.

13 A. Indeed.

14 LADY SMITH: Yes. Thank you.

15 MR PEOPLES: If I can pass on to the discussion section, it
16 says to ministers that there are options set out in
17 annex A with the preferred option being the confidential
18 committee forum.

19 If we pass over to paragraph 6 of the minute or
20 submission or briefing, it records that an informal
21 discussion had already taken place with the
22 Chief Executive of Quarriers. I suppose that doesn't
23 sit easily with the idea there was to be no approach
24 until ministers had decided what to do. Do you recall
25 we looked at that earlier?

1 A. I would say informal discussion of that nature did
2 happen because had ministers said no, we would go back
3 to Quarriers and say it's not what ministers want. As
4 it was they said yes, and because we had had some
5 initial discussions we were able to progress to the
6 forum more quickly than otherwise would have been the
7 case. A big pressure was that survivors were regularly
8 saying "Look, there are older people here who are frail
9 and we need to address their needs soon". I and many
10 others were mindful of those pressures too.

11 So an informal discussion with Quarriers would not
12 have been unusual but it wouldn't have been able to
13 share that at a Reference Group until ministers had
14 agreed or disagreed with that proposal.

15 Q. It does very much look, and we will look more at the
16 briefing, that we have had these meetings of officials
17 and we have this briefing that you, perhaps, and others
18 who may have been at this meeting on 30 September, were
19 pretty confident of the outcome, were you not?

20 A. No. No, I wasn't confident of the outcome.

21 Q. Okay --

22 A. This was advice and there was a preferred option there.
23 But my job was to advise. It is for ministers to
24 decide, not me, and not that of any official. To give
25 advice and, if there was a preferred option, to say that

1 but not to -- not to say that that was going to happen.
2 It is for ministers to decide. A civil servant advises
3 and only advises.

4 Q. Don't worry, I think we get that as a general
5 principle --

6 A. It is a way of life and a day-to-day way of being. That
7 is very important.

8 Q. Annex A in this document, the briefing, is an options
9 appraisal for a pilot forum which is headed
10 "Acknowledgement and Accountability Forum". But in fact
11 it's not actually an option appraisal for that, it's
12 an option appraisal for either that or something else,
13 is it not?

14 A. Yes, I think that is just a label. It's listing that,
15 as I have mentioned --

16 Q. It is quite an important label really, isn't it?

17 A. (Inaudible - overspeaking) -- language and intent.

18 Q. If we look at that --

19 A. (Inaudible - overspeaking) -- that shorthand would help
20 people understand that it was the same thing that had
21 been discussed all along. To change that at this moment
22 could have potentially been confusing.

23 Q. If we look at annex A, I'm not going to go through it
24 all, we have been through it with other witnesses, but
25 one thing I draw your attention to is paragraph 3, where

1 there is a reference to:

2 "Key issues for the Commission [in Ireland] were the
3 hugely escalating costs of their inquiries and the
4 delays in completing the work. The original estimate
5 was €2.5 million over two years. The Auditor-General in
6 Ireland now estimates the cost at €136 million over at 9
7 years ..."

8 And then in bold:

9 "... with the majority of that expenditure on legal
10 fees for appearances before the Investigation
11 Committee, where there were also significant delays."

12 The majority of costs point is highlighted. Why
13 can't one simply have that said? What was the need to
14 highlight it?

15 A. I didn't ask for it to be highlighted so I am
16 speculating that survivors, knowing that, may not have
17 approved of that, because survivors may have wished for
18 whatever funding there was to go directly to benefit
19 them in their lives. But that is entirely speculative
20 on my part. That could have been an assertion made.

21 Q. I am not wanting to engage in speculation, but I will
22 remind you we looked at the meeting of 3 August 2009
23 when it was indicated that the draft minute might
24 highlight more the high legal costs. It does seem to me
25 that one could plausibly argue that the reason it's in

1 bold is because of that suggestion, and that is not
2 speculation.

3 A. It is also because we were in austerity and all the
4 other reasons that we have talked about earlier.

5 Q. Okay. So we get the reference to that and it's in bold.
6 There is a discussion of the various options. No action
7 is option one, the confidential committee model, which
8 starts at paragraph 6 and runs for quite a number of
9 paragraphs --

10 A. Yes.

11 Q. -- and refers no doubt to the advantages of that forum
12 as opposed to the other alternatives which is the
13 preferred recommendation.

14 A. Advantages and disadvantages for each are given.

15 Q. Yes, you set that out. But there is quite a lot of
16 discussion of that particular option if we look at --

17 A. There is discussion on --

18 Q. -- the paragraph.

19 A. -- it's not simply that there are advantages and
20 disadvantages in anything, nothing else in between.

21 Q. Okay. Then if we --

22 A. I suppose the point I would want to make is if costs are
23 going to meet the needs of survivors, and would they
24 address a gap in legal rights or remedies, and would it
25 prevent further abuse, and would it restore public

1 confidence? Those sorts of questions were key.

2 Q. If we go to option 2, the confidential committee model,
3 at paragraph 9 we see again in bold the reference to 60%
4 of the Commission's costs were to cover legal fees, to
5 it's again highlighted in paragraph 9?

6 A. And again I would say that in any discussion with
7 ministers you are asked about costs.

8 Q. Well, yes, but they are intelligent people. Surely if
9 it had been said once they could have picked that up.

10 If we look at paragraph 15 we have the Auditor
11 General who seems to be -- again, it's now converted
12 into 60% of 136 million, I think. €78 million has been
13 spent on legal costs is his estimate. So it's said for
14 the third time. Was there a concern that this point
15 would be missed?

16 A. I think the concern would be to try and move on with
17 something that was practical and feasible in that time
18 and that costs were one component of what was being
19 discussed in terms of advantages and disadvantages.

20 I think some of the stuff being in bold is to draw
21 attention to a fact, I suppose. But there are other
22 things in bold in other documents that you have shown me
23 that don't relate to finance, they relate to a series of
24 other issues. So I think there is a possibility of
25 overreading into the bold font. Sometimes people talk

1 in bold because that is their particular style.

2 LADY SMITH: Jean, I see that option 3, the investigation
3 committee model at paragraph 14, covers in six bullet
4 points --

5 A. It does.

6 LADY SMITH: -- all the aspects of the work that that model
7 would involve. Wide-ranging, a thorough job. The
8 confidential committee pilot option would have been
9 a much smaller, more limited, considerably more limited
10 exercise, yes?

11 A. Yes, and it was a pilot.

12 LADY SMITH: Yes, of course.

13 A. Other decisions could be made about, well, that wasn't
14 sufficient and we should be doing investigative
15 committee approaches, and that was wrong and it didn't
16 work. There was an openness but there was also a moving
17 forward: let's get people to where they want to be, to
18 be listened to, to be believed, to be acknowledged, to
19 give their testimony. Because time was passing and --

20 LADY SMITH: Jean, I appreciate that. It's a different
21 issue I want to raise with you. If you are comparing
22 cost --

23 A. Yes, I appreciate I am digressing, but --

24 LADY SMITH: If you are comparing cost, to compare the cost
25 of the more limited, much more limited exercise of the

1 confidential committee pilot with the cost of the
2 detailed, wide-ranging work that would be done in
3 an investigation committee model, it would be like
4 comparing apples and pears, to use a very familiar
5 expression. They are two different things, aren't they?

6 A. They are.

7 LADY SMITH: Yes, thank you.

8 MR PEOPLES: Just before I pass on to annex C, which deals
9 with the consultation process, unless you can correct
10 me, and I don't think you will be able to, there is
11 nothing said about the views of the NRG, there is no
12 feedback information in this briefing as far as I can
13 see, which was something Sue Moody seemed to think would
14 be a good idea?

15 A. That is not to say it didn't happen, though, because
16 lots of conversations happened within the meetings with
17 ministers --

18 Q. But this is a briefing.

19 A. -- and Ms Robison was very familiar with the work of the
20 National Reference Group because she was briefed about
21 it regularly in relation to all of its remits, so --

22 Q. Mr Adam Ingram wasn't, though. He wasn't as intimately
23 involved but he was at the meeting and presumably he had
24 an equal vote in the decision, so surely in fairness to
25 him he could have been told something about that?

1 A. I don't know that he wasn't, because he had officials
2 from Childcare that were on the National Reference
3 Group, officials that worked directly to him. So
4 I can't answer whether that happened or it didn't, but
5 he did have officials on the Group.

6 Q. I don't want to spend too much time on annex C and the
7 consultation process but it sets out the summary of
8 responses, and I think you would agree with me that what
9 it doesn't do, and I think Shona Robison at least on
10 reflection thought might have been a good idea, was to
11 separate out the views of, on the one hand, survivors
12 and, on the other hand, other consultees. That might
13 have been helpful to ministers?

14 A. I think it could have been, yes. And we have all got to
15 be open to acknowledging things that could have been
16 better.

17 Q. Yes, because the first question that is given in the
18 summary of responses:

19 "Should Scotland trial an acknowledgement and
20 accountability forum?

21 "Unanimous agreement."

22 But then if we go to the second bit:

23 "If so, do you think 'acknowledgement and
24 accountability' is an appropriate title, or would you
25 prefer other terms to be used?

1 "'Acknowledgement and accountability' rejected by
2 vast majority as 'professional' rather than
3 'user-focused'.

4 "No clear alternative title offered."

5 So it doesn't quite sit with --

6 A. That is -- again, Mr Peoples, that is one of the three
7 bits of the consultation. And in the version I have,
8 that was the response to the written consultation, there
9 are many suggestions as to what it could be called
10 instead, I think.

11 Q. Yes, but that wasn't the majority view of the survivors
12 who responded to the consultation. They seemed to be
13 quite comfortable with "Acknowledgement and
14 Accountability" as a title, and indeed they wanted
15 accountability built into the forum that ministers were
16 to pilot.

17 A. And they also said that accountability made them feel
18 uneasy and that they had -- that had connotations with
19 the legal process and assigning blame and proof of
20 guilt:

21 "This was viewed as conflicting with the primary
22 aims of any proposed forum."

23 They also say that. So it's not binary. The names
24 they offered were "No more secrets, no more hurt",
25 "Speaking out", "Acknowledgement and rectification".

1 And the actual words of "acknowledgement and
2 accountability" were the words that the National
3 Reference Group put forward to change from "truth and
4 reconciliation".

5 Q. I think we are clear on what your position on this is so
6 I don't want to spend time going over the same ground.
7 But can I also make the point that annex E deals with
8 pilot forum appointments and advisory group and
9 indicates the qualities and expertise required of the
10 Chair. And there is a particular individual that has
11 been identified who has already been approached to see
12 if he would become Chair.

13 A. If the answer had been no from ministers, he would have
14 been contacted and said that is not going to happen.

15 Q. But the point I am about to make, and maybe you are
16 anticipating it, is that we have four options on the
17 table, one of which is a confidential committee where
18 perhaps a Chair has been identified as a suitable -- or
19 a person has been identified as a suitable candidate,
20 and then there's even the remit of the advisory group
21 that would be attached to this particular model.

22 But we are seeing nothing of that kind in relation
23 to any of the other options. Why can't -- does that not
24 suggest to you that there was one option on the table in
25 truth?

1 A. No, no. It was a preferred option, it wasn't an only
2 option. And the person that was identified to chair
3 a confidential forum in your view could have been the
4 same person that would have led another type of review.
5 As I said previously, that was possible.

6 LADY SMITH: Mr Peoples, it is 1 o'clock. How much longer
7 do you expect to be?

8 MR PEOPLES: I might have half an hour. There are one or
9 two issues that I think we need to cover.

10 LADY SMITH: Jean, we are going to stop for the lunch break
11 now, I hope that works for you. I am sure you are ready
12 for a rest. I will sit again at 2 o'clock.

13 A. Thank you. 2 o'clock, so an hour.

14 LADY SMITH: Thank you.

15 (1.01 pm)

16 (The short adjournment)

17 (2.00 pm)

18 LADY SMITH: Good afternoon. Jean, I can see that you are
19 there. Welcome back. Are you ready for us to continue?

20 A. I am indeed. That was lovely, having a break.

21 LADY SMITH: Good. I hope that helped. I will hand back to
22 Mr Peoples and he will carry on with his questions.

23 Mr Peoples.

24 MR PEOPLES: Good afternoon, Jean. Can I move on now to the
25 ministerial meeting of 30 September 2009 and can I put

1 before you a note of that meeting, SGV.001.001.8059.

2 A. Yes.

3 Q. Do we see there that there were three ministers present
4 and Shona Robison was considered the lead minister,
5 I think, for the purposes of that meeting. Is that
6 correct?

7 A. Like myself being co-ordinator on the policy side, she
8 was the co-ordinating minister on behalf of the rest.

9 Q. You were there along with I think two members of your
10 team, Jeannie Hunter and Sue Moody, as we see?

11 A. That is correct.

12 Q. Then there was Anne Hampson from Civil Law and
13 Janine Kellett from Looked After Children, which would
14 be Education. Anne Hampson would be --

15 A. She worked for Mr Ewing.

16 Q. It's a note of the meeting. I don't know whether you
17 can help us after the passage of time, but did you
18 prepare this note or would it have been prepared by
19 someone else?

20 A. Normally ministerial meetings would be done by one of
21 the private secretaries. I certainly didn't write this
22 one.

23 Q. Right --

24 A. Equally, I can't guarantee that it wasn't a civil
25 servant, but convention would be that a private

1 secretary would have been there and taken the minute.

2 Q. If we just look at it, it's not a long note, but if we
3 look at what it says:

4 "Agreement was reached at the meeting to conduct
5 a pilot of a forum to give adult survivors of in-care
6 abuse the opportunity to describe their experiences.
7 The proposals contained in the submission to Ministers
8 of 24 September were accepted."

9 Then it sets out:

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

11 First of all "Confidential Committee Model" is the
12 heading and it says:

13 "There was discussion instigated by Mr Ingram about
14 the strength of the model being proposed and whether
15 a confidential committee would be ambitious enough,
16 particularly since it was proposed that the institution
17 from which survivors would be drawn should not be given
18 any formal status at the Pilot Forum. Officials noted
19 the difficulties (revealed in the work of the Irish
20 Commission on the Investigation of Child
21 Abuse) associated with institutions' direct involvement
22 in the process, as the Pilot Forum would then have to
23 consider evidence from both parties. All parties would
24 have to be given legal representation. This could
25 radically alter the nature of the process, making it

1 more difficult to create a therapeutic environment,
2 adding hugely to costs, creating possible delays, and
3 taking the focus away from survivors."

4 A. Sorry, Mr Peoples, I lost a bit there. It was the point
5 where you talked about considering evidence from both
6 parties and then I lost you.

7 Q. I am just reading from the note of the meeting, Jean.
8 If I carry on from where you last picked it up:

9 "All parties would have to be given legal
10 representation. This could radically alter the nature
11 of the process, making it more difficult to create a
12 therapeutic environment, adding hugely to costs,
13 creating possible delays, and taking the focus away from
14 survivors. Institutions might refuse to take part in
15 such a fact-finding process. Ms Robison stressed the
16 therapeutic nature of the pilot forum. The extensive
17 consultation that had taken place with survivors and the
18 significant contribution made by the National Reference
19 Group taking forward the SurvivorScotland Strategy were
20 noted."

21 Then the action is:

22 "It was agreed that consideration should be given to
23 finding ways of involving the pilot institution ..."

24 That's Quarriers I think at that stage.

25 "... which would not adversely affect the process

1 through, for example, restorative justice approaches."

2 It is also said:

3 "It was agreed that the current name
4 'Acknowledgement and Accountability' was not an accurate
5 representation of what was proposed and was not favoured
6 by those who responded to the consultation exercise."

7 And the action point was:

8 "The forum's advisory group should be asked to
9 consider a more appropriate title drawing on the views
10 of the consultees."

11 So that is the substance. The ministers accepted
12 the advice of the officials and we looked at the
13 briefing before lunch. There does obviously seem to
14 have been some concern expressed by Mr Ingram about the
15 strength of the model, and he told us about that in his
16 evidence so I'm not wanting to spend too much time with
17 you on that. He has explained he did have concerns and
18 why he had, because he was the Minister, announced
19 perhaps a different type of forum with more
20 accountability built in directly.

21 Can I ask you this. So far as the preferred model
22 is concerned, there is a bit more detail about
23 Quarriers, but so far as the substance of the note is
24 concerned, does the note in your view, if you can recall
25 back, does that fairly reflect what the main points

1 discussed were at that time, as far as you can recall?

2 A. I think it broadly does. As Ms Robison was the minister
3 to whom I reported directly, I have better recall of her
4 position, and I recall all three ministers having
5 discussed the options, and although Mr Ingram had the
6 reservations that you have described and he has
7 described to you, he ultimately agreed this was the way
8 forward. They all agreed on it.

9 Q. Can I ask you this, if you are able to help me with
10 this. I read out part of the note where it began:

11 "Officials noted the difficulties associated with
12 the investigative committee model ..."

13 And then there are various difficulties pointed out.
14 When it says that officials noted these difficulties,
15 can we take it that these were officials who were saying
16 at the meeting "These are some of the difficulties,
17 Ministers, that you have to be aware of?" Is that why
18 it's put in that way?

19 A. Yes. And the word in the minute that I think is
20 important is the word "could", "could", making it more
21 difficult to create ... and the basis of that was about
22 a therapeutic environment, because so many survivors in
23 terms of volume wanted a therapeutic environment where
24 they could give their testimony and be believed and
25 listened to. And as Tom Shaw's subsequent Report

1 evidences, the model that was agreed on this date did do
2 that for people. The vast majority of the hundred-plus
3 that came forward found it therapeutic.

4 A few wanted to take the additional option of the
5 restorative justice thing and that was based on --
6 Mr Ingram, as I recall, asked if the chosen way could
7 have any strengthening within it, and the way in which
8 it was attempted to strengthen that was the Sacro
9 pilot -- well, not pilot, it was a toolkit with the
10 words "Restorative Justice", and people that went to
11 Quarriers were asked if they would like to partake in
12 that so some people did. And from my recall, Quarriers
13 provided some money to address some of the issues that
14 people who went to that component used.

15 Q. I don't know if -- obviously the Daly Petition in 2002
16 had called for a number of things, including apologies
17 from State bodies and care providers who looked after
18 children in institutions where abuse had taken place,
19 had asked for an investigation into past abuse and
20 treatment of children, and it also asked for
21 a sympathetic listening forum to which people could go
22 if they chose to give their experiences in that type of
23 setting, so it was asking for three things. And to some
24 extent I think we can see the confidential committee
25 only met one of those aspirations, the listening forum,

1 rather than the investigative model that they were also
2 wanting, and they had had by this stage an Apology from
3 the First Minister.

4 Were you aware of that? Did you think about that
5 when you prepared this briefing or your officials
6 prepared it, that they were looking for three key
7 components?

8 A. I was aware the Petitioner was looking for three things,
9 and I was also aware that the Petitions Committee had
10 debated that. For the first time I think in the history
11 of the Petitions Committee, the three ministers that we
12 have just talked about went to the Petitions Committee
13 and were questioned about what they were doing and why.

14 Q. You don't need to help us with the evidence of ministers
15 to the Petitions Committee, we did hear some evidence
16 about that from Mr Ewing yesterday so I am not going to
17 trouble you with that?

18 A. Sorry, am I missing the point?

19 Q. No, I am just -- I am just wanting to establish whether,
20 at the time of the briefing, you had had regard to the
21 original Petition and the various requests that were
22 contained in that Petition, and I am just reminding you
23 one of them was not just a listening forum but also an
24 investigative type of model.

25 A. Yes, I was aware of it amongst a number of other

1 factors. That Petition pre-dated my being involved in
2 the work at all. It was led by the Education Department
3 prior to any of the work in Health, so they were the
4 leaders on that particular Petition. But I was aware of
5 it, yes, and what it was asking for. I did know what it
6 was asking for, yes.

7 Q. Can I now move you on to another meeting which happened
8 after the ministerial decision. There was a meeting of
9 the National Reference Group on 25 November 2009 and
10 I can put that on screen. SGV-000024461. That was
11 a meeting that you chaired and it was the first National
12 Reference Group meeting after the ministerial decision,
13 is that correct?

14 A. Yes.

15 Q. I think we see there who was in attendance and I think
16 it included Chris Daly and Helen Holland?

17 A. And other survivors.

18 Q. Well, okay. And I think Sue Moody was present at that
19 meeting as we can see from the document on screen?

20 A. Yes.

21 Q. Can you recall whether prior to that meeting
22 Helen Holland and Chris Daly had been informed of the
23 ministerial decision that had been taken on
24 30 September?

25 A. No, I can't specifically. All that I can do is say what

1 I said earlier, that Chris and Helen had meetings from
2 time to time with Sue and sometimes I was involved in
3 these. I can remember one meeting, but I couldn't give
4 you a date, that was with Chris on his own. They
5 happened infrequently but they did happen.

6 Q. So far as that meeting is concerned, was it one of
7 the meetings where it was quite heated and at times an
8 angry meeting? Because we have heard some evidence
9 about this in the course of the Inquiry. It appears
10 that it was quite a heated and angry meeting at times?

11 A. I wouldn't say it was angry, I would say it was heated,
12 and I would say that that was attributable to some
13 degree in Chris Daly being dissatisfied with the
14 ministerial decision.

15 Q. If we just look at the minute itself of that meeting,
16 which is to do with acknowledgement and accountability.
17 It's paragraph 4 I think of the minute. Do we see there
18 that -- can you see it okay?

19 A. Yes.

20 Q. If we go to paragraph 4, we see initially Sue Moody
21 advised that ministerial approval had been given for
22 a pilot forum, and she appears to have made
23 a presentation with slides on the arrangements for the
24 forum and the advisory group.

25 It is recorded:

1 "There was considerable discussion on survivor
2 involvement in the establishment of the forum as
3 survivors were currently being interviewed about their
4 expectations by the Scottish Institute for Residential
5 Childcare."

6 A. Yes.

7 Q. A number of points are made. The first is:

8 "Survivors' views had been sought through the
9 written consultation and through the various outreach
10 workshops. There would be survivors on the advisory
11 group."

12 I think that happened.

13 "Sue Moody and Anne Macdonald were meeting the
14 Scottish Institute for Residential Childcare to avoid
15 unnecessary duplication. There was a need to have
16 a pack of options for people considering attending the
17 pilot forum. All of the work was to be
18 survivor-centred. The importance of working in harmony
19 with the Human Rights Commission was a point made whilst
20 also recognising their independent status."

21 There was also a point raised about how data could
22 be best collected to provide statistics on abuse and
23 also about procedures to be put in place to refer
24 persons who were identified as abusers to the police if
25 they worked with children. And there was also

1 a discussion about the requirement of support for
2 survivors in the event of retraumatisation. And there
3 was a discussion about whether the forum should focus on
4 one organisation or several organisations.

5 And finally the other bullet point is:

6 "The need to formally evaluate the pilot as it would
7 raise expectations for the future."

8 Can I ask you about one of these for the moment,
9 whether the forum should focus on one organisation or
10 several organisations. We have looked at other
11 documents, including the minutes of the meeting and the
12 meetings of officials before the ministerial decision,
13 and it very much looks as if Quarriers had been chosen
14 by 25 November of 2009, is that correct?

15 A. By the time this meeting had happened there was -- what
16 I described earlier as informal meetings were becoming
17 more formalised. It was a process. It wasn't --
18 I don't know how far through I would say it was, but
19 there was a big imperative to consider where to begin.
20 Ministers had now made their decision and one of
21 the concerns that they had was to ensure that frail and
22 older people would also get hearings quickly. Trying to
23 find a place that had taken children from all over
24 Scotland rather than a bit of Scotland, trying to find
25 a place where it was already clear that abuse had taken

1 place, prosecutions had been successful, and also
2 a place where the board of the organisation wanted to
3 co-operate because they wanted to be able to move
4 forward and demonstrate that what they were doing was
5 positive and to accept their past and to move on from
6 that past through listening to all those who wanted to
7 come forward for this pilot.

8 Q. I understand that those would be the reasons why
9 a single institution was selected for the pilot, and
10 I think you are articulating those reasons and there are
11 some records to that effect in evidence we have heard.
12 But the question I really wanted to know was whether the
13 decision to have a single institution involved in the
14 pilot had already been taken by the time of this
15 meeting. Is the answer not yes, it had been?

16 A. I think it was made by then, because I think it was
17 discussed in the ministerial meeting you have just
18 talked about.

19 Q. Yes. It may well be that Tom Shaw had been formally
20 appointed by this meeting as well?

21 A. I couldn't honestly say. But a point would be that,
22 Tom Shaw having been appointed, he would have been
23 within his rights to say "I don't want to go about
24 business this way", and go back to ministers and say
25 "I don't want to go to Quarriers, I want to do it

1 another way, and here are my reasons". That was still
2 feasible, highly feasible.

3 Q. But --

4 A. Because decisions are made and they are not necessarily
5 decisions that stand for all time.

6 Q. I get the point you are making. But the point I am
7 raising about this bullet point is that those who were
8 attending the meeting and raising points, certainly
9 whoever raised this point doesn't seem to have been
10 aware until then that there was a single organisation
11 that was to be the choice for the pilot.

12 A. As you say, there are the mists of time, and I can't be
13 any more helpful than I am genuinely trying to be
14 explaining that I think, yes, Quarriers was very much
15 there. But equally if Tom and the others on the Forum
16 and the advisory group had said "No, we've got a better
17 idea", then that is what could have happened. That is
18 all I am saying --

19 LADY SMITH: Mr Peoples, am I right in thinking we have the
20 letter appointing Mr Shaw amongst our documents?

21 MR PEOPLES: I am not sure it is here, but I have a vague
22 feeling that I have seen a document that says
23 12 November.

24 LADY SMITH: 12 November. That is the one I was thinking
25 of.

1 MR PEOPLES: It may not be, but I don't want to take up time
2 just now. We can check that out. But I can maybe put
3 another matter to you as well which comes out of
4 evidence --

5 A. I just don't want to give the impression that Tom didn't
6 have his own locus. He did. He was independent.

7 LADY SMITH: Jean, that is not what Mr Peoples was
8 interested in. It is that --

9 A. I am just trying not be misleading either --

10 LADY SMITH: The short point was that it seems from
11 a document we have that, by the date of this meeting,
12 Tom Shaw had been appointed and both Mr Peoples
13 and I recall the document, which was a letter to
14 Tom Shaw, having been dated 12 November 2009. So that
15 would be about two weeks before this meeting, just a day
16 short of two weeks before.

17 MR PEOPLES: Let's just assume that that happened, but there
18 is another matter I was going to put to you. Because we
19 have also heard evidence in the course of this Inquiry
20 from Helen Holland in the first phase of the Inquiry.
21 She gave some evidence about this meeting and I would
22 just like to put this to you for your response. Her
23 recollection was that there was a booklet handed out at
24 this meeting which was to do with Time To Be Heard, and
25 that a question was asked, I think probably by INCAS or

1 either Helen Holland or Chris Daly who were present at
2 that meeting, asking why the name had changed to Time To
3 Be Heard. And her evidence, as I recall, was along the
4 lines that, when she asked this question, you told one
5 of the officials present not to answer that question.
6 Can you recall doing that?

7 A. The first thing I would say is it couldn't have been
8 Time To Be Heard at that point because I don't think
9 Time To Be Heard was what it was called then. Because
10 I think Tom and the advisory group working with
11 survivors came up with that name some time later than
12 this date.

13 Q. So you don't you think that -- if she recalls a booklet
14 being handed out at a meeting, it may not have been this
15 meeting?

16 A. It may not have been. Certainly it wouldn't have Time
17 To Be Heard on it because Time To Be Heard wasn't the
18 name yet. Because, as you say, Tom has just started two
19 weeks ago and so he hasn't met with people to work out
20 together what they would like to call the entity.

21 Q. Were you on the advisory group?

22 A. No.

23 Q. No?

24 A. No. But there were two people, Annie that I explained
25 earlier was responsible for the logistics of getting

1 a venue and so on, then Time To Be Heard had its own
2 staff, and Sue and Annie were available to Tom and to
3 the other two members should they wish for that.

4 Q. Do you recall any occasion when you were at a meeting
5 and you were asked or -- sorry, an official, another
6 official, was asked why the name had been changed to
7 Time To Be Heard, do you recall an occasion when that
8 happened and that you stepped in and told that official
9 not to answer? I am just wanting your recollection.

10 A. I don't have that recollection. All I can say is
11 that --

12 Q. Could it have happened?

13 A. -- I am really sorry if I upset Helen by any of my
14 behaviour. I would also say that I don't recall this
15 occasion. As I have explained from the outset today,
16 they were at times difficult meetings and I was, I hope,
17 courteous and appropriate, and on occasions probably
18 firm in order to move the agenda on. It is possible
19 that I exceptionally, and it would have been
20 exceptionally, stopped an official from saying something
21 that I felt was labouring a point. Much as both of you
22 have said to me today "Can we move on?" I would be
23 doing that.

24 Q. Can we go back to the document itself, the note of the
25 meeting. I read out the various bullet points but the

1 final part of the note of the meeting in relation
2 to this issue records:

3 "Chris Daly [who was at the meeting] expressed his
4 dissatisfaction that the current proposals were about
5 acknowledgement but not about accountability. Jean
6 explained that the team were looking at how to
7 strengthen this aspect and other team members explained
8 that many of these important points were under active
9 consideration."

10 So it certainly recorded that he was expressing
11 dissatisfaction, and he wasn't the only one, was he?

12 A. He is the only one that I can recall. If Helen was at
13 that meeting she wouldn't have been happy either. But
14 the minute doesn't reflect that. But there were other
15 people who were very happy with the meeting, for
16 balance, and I think the list of bullet points evidences
17 that it was a constructive meeting in that people gave
18 of their opinions in all those bullet points. That is
19 evidence of an exchange and a dialogue that was
20 constructive and productive too. When I say:

21 "Jean explained that the team were looking at how to
22 strengthen this aspect ..."

23 That in my mind is a direct reference back to
24 Mr Ingram looking for some strengthening, and that
25 ultimately became the restorative justice component,

1 both the toolkit that could be used in various places in
2 any institution and that it was tested out in the pilot.

3 Q. Can I just leave this point just on one other matter.

4 If it was the case that Helen Holland and Chris Daly
5 first discovered the decision had been to pilot
6 a confidential committee forum, if they first discovered
7 that at this meeting on 25 November, do you not think,
8 looking back, it would have been better to have told
9 them more quickly than that, if that was the situation?

10 A. Can you clarify for me why Chris and Helen should be
11 given that? Because they were Petitioners or because
12 they represented an organisation?

13 Q. I am not really here to perhaps answer your questions.
14 I am just putting a point and it was one that I was
15 asked to put --

16 A. I am just trying to clarify why --

17 Q. You don't think there was a reason why they should be
18 told before the next NRG meeting? Is that your
19 position?

20 A. It wasn't just them that would need to be told, if that
21 was the case. Everyone is the point I am making. The
22 timeframe was very short here.

23 LADY SMITH: Chris was the Petitioner in the 2002 Petition.

24 A. He was, yes.

25 LADY SMITH: Yes. Didn't that put him in a separate

1 category as someone who should be told and not have it
2 sprung on them at the meeting?

3 A. It wasn't a question of springing and, as far as I can
4 recall, that Petition had closed by this point? Had it?
5 I think --

6 MR PEOPLES: I think that is right. That Petition was
7 closed in April 2008 --

8 A. So the Parliament --

9 LADY SMITH: There was another one.

10 MR PEOPLES: There was another one, Time For All To Be
11 Heard, and he was still campaigning for an inquiry.
12 Indeed --

13 A. Yes, he was --

14 Q. -- you must know that because there is plenty of
15 evidence of that, I think. So whatever happened with
16 the Petition, and it wasn't his decision to close it, it
17 was still a live issue?

18 A. It was the Parliament's decision to close it. In terms
19 of protocol, I think that means that ministers had
20 concluded their consideration of that particular
21 Petition. To take up Lady Smith's point about whether
22 Chris and Helen should have, as a matter of importance,
23 been given additional information in advance from other
24 survivors, there was no question of anything other than
25 transparency and openness. This was the next meeting

1 following the ministerial decision and it was shared
2 then.

3 Q. Can I move on to another matter which I can deal with at
4 this stage. I think you touched upon it in one of the
5 answers to one of my questions. If I go back to what
6 Helen Holland said to this Inquiry in phase 1, she
7 mentioned something that she described as
8 "unforgivable". She told the Inquiry that elderly
9 people and some seriously ill survivors that she had
10 been told would be prioritised, and that wasn't just
11 those from Quarriers, and then she said that she was
12 told just before the Time to be Heard process started,
13 or was due to start, she was then told it was only
14 survivors who were in Quarriers who were elderly or ill
15 that would be prioritised. Do you know anything about
16 that?

17 A. I know that Shona Robison was very concerned to ensure
18 that elderly and frail people would be given priority
19 and they were given priority within the pilot.

20 Q. But only Quarriers?

21 A. For the pilot, yes.

22 Q. Yes. But I think Helen Holland's point to us was that
23 she had been told that it would be rather wider than
24 that for the pilot; that other non-Quarriers people who
25 were elderly and frail would be prioritised, and that is

1 what she was saying, and then she was told, no, that is
2 not going to happen. I am just asking you about that.
3 Do you know anything about that?

4 A. I don't know anything further than what I have said.
5 That is all I've got to say on that particular topic.
6 I cannot recall any wider promise being given by a civil
7 servant or by a minister other than what Ms Robison said
8 at the Petitions Committee, where all three came and she
9 said that she was concerned about that issue, and she
10 offered that, in the pilot, older people would be
11 prioritised, and Tom did that. That is all --

12 Q. Can I move on to something else? We have touched upon
13 the Scottish Human Rights Commission and we know a bit
14 about this and we have heard evidence from
15 Duncan Wilson. There are just a couple of points I want
16 to put to you based on the evidence he has given to the
17 Inquiry. The first point is that he told us, so far as
18 the work of the Commission was concerned, there was no
19 agreed delivery date for completion of that work. Do
20 you agree?

21 A. I can't recall, but -- I can't recall.

22 Q. You are not going to disagree then? Because you can't
23 recall.

24 A. I can't agree or disagree because I don't have
25 a piece of documentation in front of me that gives me

1 a date or lacks one.

2 Q. He told us there wasn't one and he seemed fairly
3 clear --

4 A. He is telling the absolute truth. I am not disputing
5 his truth, I am just saying I can't tell you that from
6 my direct knowledge.

7 Q. Very well. The other matter I want to put to you based
8 on his evidence was that he has told the Inquiry that
9 the Commission was not involved in making or informing
10 the decision of 30 September 2009 to pilot
11 a confidential committee type forum.

12 A. It wouldn't be a decision-maker. Ministers --

13 Q. He goes further than that. It wasn't the
14 decision-maker, he is saying that the Commission really
15 wasn't involved in the process that led up to that
16 decision, it was a matter that officials handled,
17 briefed the minister, gave advice, gave recommendations.
18 The Commission wasn't involved in that process up to
19 that point, although they had some involvement
20 afterwards.

21 A. It was involved in what it was to asked to do, which was
22 to construct a Human Rights Framework and what followed
23 from that was the interactions. They were clear at
24 several points that they wanted to be observers and
25 monitors, rather than participants.

1 Q. Yes, but if you could just attend my question. He has
2 said his clear recollection is that the Commission were
3 not involved in the run-up to the decision and, indeed,
4 I think he went further than that; the Commission
5 weren't very happy about the timing of the decision
6 because it was made before their report was published.

7 A. I can add nothing further to what I have said. They
8 weren't involved in the decision-making, but immediately
9 after the decision was made, they were on the advisory
10 group and at the same time one of their other priorities
11 that took up a lot of their time was considering whether
12 to be actively involved in the time bar situation.

13 LADY SMITH: Jean, just to be clear, they weren't involved
14 with the decision. They had not yet reported by then --

15 A. The Framework was broader --

16 LADY SMITH: -- on their Framework --

17 A. The Framework was broader than the pilot though and
18 Duncan had been working on the principles of what would
19 happen with any forum with Sue Moody, because they
20 worked very closely together. That is what I recall.

21 LADY SMITH: Yes, I get that. But, Jean, at the time of the
22 decision and taking matters forward, for example, at the
23 meeting in late November, nothing was known about the
24 final views of the Human Rights Commission.
25 For example, it wasn't known whether they would say,

1 "Don't go down the route of only having a confidential
2 committee procedure, because that contravenes human
3 rights principles" or anything like that. You just
4 didn't know what they were going to say ultimately?

5 A. No.

6 LADY SMITH: But this all went ahead?

7 A. It went ahead because in my mind what was going on there
8 was that they were producing a wider Framework, and they
9 had been working closely together, Sue and Duncan, and
10 Sue was aware of Duncan and the Human Rights
11 Commission's views on how to conduct business, probably
12 more generally than specifically.

13 LADY SMITH: Mr Peoples.

14 MR PEOPLES: There is one other point I think I should put
15 to you from Duncan Wilson's evidence. He told us that,
16 while the Scottish Government responded in full to the
17 Framework recommendations around March of 2011 following
18 the publication of the Time To Be Heard Report, he did
19 say that the Scottish Government did not commit to
20 participating in an interaction process until towards
21 the end of 2011. Do you agree that that was the way
22 things unfolded?

23 A. He has his dates and he knows what they are. I know
24 that Government did commit to the interaction, and that
25 ministers went ahead and did that.

1 Q. Yes, I'm not suggesting -- they did commit. The point
2 was: when did they commit? And can I say I think you
3 said that it was always understood they would commit to
4 the interaction process, at paragraph 34 of your
5 statement, and --

6 A. Yes.

7 Q. -- he said -- just if you let me finish, he said that
8 the interaction process was developed or used by the
9 Commission to avoid an impasse because they weren't
10 getting that commitment, until finally they got it
11 in December 2011. It wasn't part of the Framework, it
12 wasn't part of the recommendations, it was a solution to
13 meet a problem. Do you agree?

14 A. I understand what Duncan is saying and I have explained
15 my part in that. My understanding is that Government
16 were always willing to take part in the interaction.
17 There was no obstruction to that. I cannot explain the
18 timeframe that he is describing.

19 MR PEOPLES: I think that is the end of my questions.

20 I hope I have covered any questions that other parties
21 would wish me to raise. (Pause). I'm not getting any
22 dissent.

23 LADY SMITH: Let me just check. Are there any outstanding
24 applications for questions?

25 Jean, that does complete all the questions that we

1 have for you. Thank you for engaging with us over the
2 link today and having previously provided your
3 statement. It has added considerably to my
4 understanding of the events that we have been covering
5 with you. I am now able to let you go, and hopefully
6 relax for the rest of the day. Thank you.

7 A. Thank you very much. Thank you.

8 (The witness withdrew)

9 LADY SMITH: Mr Peoples.

10 MR PEOPLES: There is another witness, but I think we need
11 a short break to just rearrange some of the furniture
12 and then we can deal with the next witness hopefully
13 shortly.

14 LADY SMITH: I will take a short break just now.

15 (2.37 pm)

16 (A short break)

17 (2.50 pm)

18 LADY SMITH: Mr Peoples.

19 MR PEOPLES: The next witness, my Lady, today, is
20 Michael Russell.

21 LADY SMITH: Thank you. (Pause)

22 Good afternoon. Could we begin by you raising your
23 right hand and repeating after me ...

24 MR MICHAEL RUSSELL (sworn)

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

1 I don't know what the papers are that you have with
2 you. If it is your statement, you also have a copy of
3 your statement in the red folder and it will come up on
4 screen, but if you have notes to assist you in giving
5 your evidence, do feel free to refer to that if it would
6 help you.

7 A. Thank you, my Lady. I would also probably take a note
8 of questions so that I am able to answer them and
9 remember them as we go through.

10 LADY SMITH: If that helps you, do. Whatever works for you
11 will work for us.

12 One question: what do you want me to call you? Your
13 first name or your second name?

14 A. My first name would be fine.

15 LADY SMITH: Very well. If you're ready, Michael, I will
16 hand over to Mr Peoples and he will take it from there.

17 Questions from MR PEOPLES

18 MR PEOPLES: Is it Michael or Mike?

19 A. Whatever you choose.

20 Q. Thank you very much. Good afternoon.

21 Can I begin by, for the transcript, giving the
22 identification number of your signed statement which is
23 WIT-1-000000368. You don't need to concern yourself
24 with that, by the way. The folder does contain a copy
25 but it's also on the screen, and if I bring up

1 a document for any reason it will show on the screen in
2 front of you.

3 Can I begin by asking you to go to the final page of
4 the statement that you have provided to the Inquiry and
5 confirm that you have signed your statement on 3 August,
6 I think it was, 2020. And can you also confirm that you
7 have no objection to your statement being published as
8 part of the evidence to the Inquiry and that you believe
9 the facts as set out in your statement are true?

10 A. Yes, I have signed it, I have no objection to it
11 appearing, and the facts in it are true.

12 Q. You have been a Member of the Scottish Parliament, or
13 you were a Member of the Scottish Parliament from its
14 inception in 1999 through to 2003, and I think you had
15 a break and you have, since 2007 to date, been a Member
16 of the Scottish Parliament. Is that correct?

17 A. That is correct.

18 Q. You tell us in your statement that you were the Cabinet
19 Secretary for Education and Lifelong Learning from
20 December 2009 to November 2014?

21 A. Correct.

22 Q. You will appreciate that today I wish to focus on that
23 period when you were Cabinet Secretary for Education.
24 It's no disrespect if I don't cover everything in your
25 statement, you can obviously rest assured that

1 everything you say as evidence has been read and will be
2 considered, but I may focus this afternoon on certain
3 things which are of particular interest during this
4 hearing.

5 You tell us that between December 2009, when you
6 began your role as Cabinet Secretary for Education, and
7 mid-2014 or thereabouts that you had, if I use your
8 expression, a "tangential involvement" with issues
9 arising from historical abuse of children in
10 institutional care and indeed the responses by
11 Scottish Government to such issues?

12 A. Correct.

13 Q. You may also take it that we have an understanding of
14 what was happening up to the time that your tangential
15 involvement ceased and you became much more directly
16 involved. So we do have an understanding of what was
17 going on in that period when you were Cabinet Secretary
18 and there was an interaction process and so forth, so
19 you don't need to worry about explanations of that kind
20 unless there is something you wish to say or add.

21 Can I take you to something you say I think at
22 paragraph 17 -- you are dealing with various issues that
23 are clearly relevant to the historical abuse of children
24 in institutional care, and you say at paragraph 17 that
25 you were and had always been a supporter of some form of

1 redress scheme. You go on to say that redress was
2 a notable omission during your period as Education
3 Secretary and indeed I think before then. Is that
4 something that you are reflecting back on and feeling
5 was something that ought to have been addressed sooner
6 than perhaps it was?

7 A. Yes, I think that is a fair statement. I see this in
8 hindsight as a developing situation. And when you look
9 at it with hindsight you can see that there were many
10 attempts to do things which were designed to have
11 a beneficial and positive effect. I think everything
12 that was decided upon and put into place had that
13 intention.

14 I think the story is one of continuing to develop
15 the policy and the way in which it was implemented for
16 a number of reasons. One is because things had not yet
17 happened, and redress was one of those things that had
18 not yet happened. My view was that it would in time
19 happen and it would have to happen given the growing
20 evidence that existed. Another one we will come on to
21 was the Inquiry. I think that eventually happened
22 because things built up. But it wasn't at the start.
23 What happened at the start was an attempt to do certain
24 things to help in those circumstances.

25 Q. Yes, I think Duncan Wilson of the Human Rights

1 Commission, who has given some evidence to us, described
2 the situation before the Commission became involved and
3 provided a Framework to Government, and indeed that led
4 to the interaction process, he described the approach as
5 somewhat "piecemeal", I think, in the sense that there
6 were steps, but not maybe part of an overall
7 comprehensive strategy or plan that would address all
8 the issues, including accountability, redress,
9 compensation, apology and so forth. Do you quarrel with
10 that?

11 A. Yes, I do, but I think it was a learning process --

12 Q. Do you agree or quarrel with that?

13 A. No, I wouldn't quarrel with it, I would agree with it.

14 I think it was, however, a learning process. I think
15 there were many people who genuinely wanted to help, to
16 reach out to survivors, to find the right way to do so.

17 And I think I say somewhere in my statement too,
18 I think it was a product of the times. It has been
19 difficult for people to get their heads around the size
20 of this, the nature of this, the impact of this, and
21 I think therefore that has extended and developed the
22 strategies taking place. But InterAction certainly was
23 of great significance because it did put a framework
24 in place.

25 Q. You tell us at paragraph 20, under the section "Truth

1 and Reconciliation", I take it that you were perhaps at
2 least attracted by that idea as a supporter of it,
3 because we have heard evidence in the course of this
4 hearing that that was at least a favoured option
5 in February 2008 when Adam Ingram made a statement in
6 Parliament and it was explored, although it was not
7 eventually the model selected by ministers the following
8 year. But were you in broad terms a supporter at least
9 of that type of model as perhaps an alternative to
10 a court process?

11 A. I was a supporter of it but not necessarily as
12 an alternative to a court process. I think there are
13 elements that all come together. And I think later in
14 my statement -- I don't want to play down the issue of
15 the court process and the legal accountability, but
16 there are other accountabilities, and I became
17 increasingly -- and I think my statement reflects
18 that -- I became increasingly supportive of a process
19 that had a number of -- a review that had a number of
20 elements, one of which was truth and reconciliation and
21 the telling of the story, but not as an alternative to
22 the judicial process because the judicial process must
23 continue and should continue.

24 Q. Sorry, I maybe put that rather badly because in
25 a sense -- maybe I should have said as another choice.

1 One could choose the court route if it was available,
2 but equally perhaps survivors might want to choose
3 a different route involving truth and reconciliation or
4 just simply acknowledgement by saying "I want to be
5 listened to but I don't want to take it any further".
6 I think that was really the point I was driving at and
7 maybe I put that rather badly to you.

8 A. And some people might have chosen the confidential forum
9 route, as they did, as a therapeutic route. I think
10 there were many ways into this. They should all exist
11 together, if not exactly in parallel they should all
12 exist together, and they should be all seen together, in
13 my view, or should have been seen together as the
14 Inquiry.

15 Q. I think Duncan Wilson did say in his evidence that
16 perhaps once the Commission became involved and had
17 produced the Framework, that perhaps there was then
18 beginning to develop a realisation there had to be
19 an overall comprehensive approach involving a range of
20 remedies that would meet the human rights requirements
21 by way of response of the State to the historical abuse
22 of children in care. You don't quarrel with that?

23 A. No, I agree with him on that. And I think the
24 understanding of that and the fact that a legal inquiry
25 was not the only outcome was really important.

1 Q. Just before I move on from truth and reconciliation, at
2 22, paragraph 22, I get the impression from that that
3 had you been Education Secretary in September 2009,
4 which you weren't, you might not have abandoned the
5 truth and reconciliation type model in favour of
6 a confidential forum model?

7 A. I honestly can't say. I think with hindsight I believe
8 that the truth and reconciliation model was something
9 that needed to happen and eventually did happen.
10 Whether I would have thought that in 2009, I simply
11 don't know.

12 Q. As you have already said, and you say in your witness
13 statement at paragraph 26, the interaction process
14 itself was a very significant factor in taking matters
15 forward, is that your --

16 A. Absolutely.

17 Q. We have heard some evidence that at least the reason
18 that that process happened was that it was really to
19 resolve an impasse. The Human Rights Commission had
20 reported, made recommendations in 2010, they had got
21 a Government response in 2011 but not a commitment to
22 implement all the recommendations, and therefore
23 I think, largely through Alan Miller, they used this
24 approach of InterAction to see if they could progress
25 matters. I don't know how much you have a recollection

1 of that being the way things happened but I will put it
2 to you in case you wanted to say anything?

3 A. I don't have that recollection but I have a very strong
4 admiration for Alan Miller. I would not be surprised if
5 that was the case but I can't say whether it was or not.

6 Q. I think Duncan Wilson did say it was really
7 December 2011 before the Government made a formal
8 commitment to participate in the process and, in good
9 faith, consider the outcomes. They weren't committing
10 to necessarily implement the outcomes but they were
11 going to consider them in good faith, and I think he
12 said he explained how that had evolved. But you weren't
13 I think at that stage very concerned?

14 A. No.

15 Q. I think you said there were other perhaps more junior
16 ministers in different departments that were more
17 directly involved even during the interaction process
18 itself until towards the end, is that right?

19 A. That is correct, it was a responsibility held by another
20 of the ministers in my team. I would hear about it from
21 time to time but I felt it was going as it was
22 anticipated. The confidential forum and everything else
23 was taking place. So it was only later I became
24 involved.

25 Q. I don't know if you can help us with this. They were

1 junior ministers and they have been quick to point out,
2 when I have asked them some questions about what was
3 going on at Cabinet level, to say they weren't Cabinet
4 Ministers, they might attend Cabinet from time to time,
5 so they couldn't possibly say what the extent of
6 discussion was on historical abuse of children in care
7 or indeed specific issues like the interaction process.

8 Now, you were a member of Cabinet. Are you able to
9 give us a flavour of whether it was an issue that was
10 recurring between 2008 through to, say, 2013? I know
11 things started to ratchet up then, but maybe --

12 A. I would have to check the Cabinet minutes and agendas to
13 say whether it did or didn't. As you probably know,
14 there are a variety of ways of things being considered
15 by Cabinet. There are items that go on the Cabinet
16 agenda, but there is also a reporting by each member of
17 the Cabinet who chooses to tell, in what is called
18 a SCANCE process, his colleagues about what is happening
19 and I would have to check those too.

20 I think the view was there was a process underway,
21 it was going well, so to speak, in the fact that
22 the confidential forum had taken place, the interaction
23 process was taking place, things were proceeding. It
24 was not concluded, and the options were not concluded,
25 but there was no reason to say that it had gone wrong.

1 And I think if there had been any view that something
2 had gone wrong then I would have intervened as the
3 Education Secretary, I suspect Kenny MacAskill would
4 have intervened, I suspect the Health Secretary would
5 have intervened. But because there wasn't, it was
6 allowed to proceed and appeared to be proceeding well.

7 Q. Would it be right to say that perhaps until 2014, indeed
8 when you become maybe more directly involved, the
9 Cabinet wasn't called upon to make a direct decision on
10 the issue of a public inquiry or other form of
11 investigation of that nature?

12 A. I cannot remember that being a discussion. I am not
13 saying it wasn't, but I can't remember it being
14 a discussion about the specific -- specifically should
15 we have an inquiry?

16 LADY SMITH: Just a small point. When you said there that
17 the confidential forum had taken place, is that the
18 pilot project?

19 A. Yes.

20 LADY SMITH: The Time To Be Heard pilot project you are
21 referring to?

22 A. Yes.

23 MR PEOPLES: Yes, I think the National Confidential Forum,
24 which was the roll-out of the pilot, only happened in
25 2014. I think it was legislation and it began to be --

1 A. Shorthand for the process that was taking place.

2 Q. At paragraph 27 of your statement, and I think it is
3 important, you acknowledge the impact of your own
4 engagement, direct engagement with the survivors, in
5 persuading you of the need for an inquiry. Can you just
6 maybe elaborate on that?

7 A. Yes, I am absolutely clear in my own mind that I would
8 have been -- I would have held probably a view that
9 there should be some form of inquiry, the narrative
10 inquiry that we may come on to later, but the impact of
11 meeting the survivors and talking to them during the
12 interaction process was enormously strong. And I came
13 pretty quickly to the conclusion that what they were
14 arguing was irresistible and what we needed to do was to
15 find the right way to take that forward.

16 Q. We know there was an interaction process, it took time
17 to set up in 2012, it had a range of events in 2013,
18 various events, and out of this whole process emerged
19 an action plan. As part of that action plan, the issue
20 of the Inquiry was dealt with in a particular way, said
21 Duncan Wilson, and essentially what it did was to keep
22 that option on the table. It didn't recommend
23 an inquiry as such, it just recommended I think that
24 consideration be given to other reviews and inquiries
25 and whether there would be added value of a national

1 inquiry. That was the way it was put. I think you may
2 have referred to that in your statement, I am not
3 wanting to go to it, but it was perhaps carefully
4 worded, to use --

5 A. It was very carefully worded, and rightly so. There
6 was -- I think they were very aware that this was
7 a contentious issue, it was an issue in which opinion
8 was divided -- I don't know if it was evenly divided but
9 it was certainly divided -- and there was no policy
10 in place to have an inquiry. And I think that is quite
11 important, there was no policy in place to have
12 an inquiry.

13 Q. Of Government?

14 A. Yes. So if the recommendation had been to have
15 an inquiry, that would have been a very substantial
16 change from where things were. So I think recognising
17 there were different opinions, entirely legitimate
18 opinions, was the right thing to do.

19 Q. If I go back to one of your earlier paragraphs, if
20 I may, your written evidence suggests that generally
21 speaking both officials and ministers, including
22 yourself I think, in the period we are concerned with,
23 were not particularly attracted by what I might describe
24 as a conventional public inquiry process, is that fair
25 comment?

1 A. It is. I think there was a feeling that
2 a public inquiry might take a very considerable amount
3 of time and might not satisfy those who most wanted it.
4 I think that was a genuine point of view. And there had
5 been examples both in this jurisdiction, and I think
6 I use in the statement the Irish examples with which
7 I perhaps am particularly familiar, that there was
8 a reluctance to commission such inquiries.

9 Q. I think you tell us, if I can move seamlessly to
10 paragraph 74 on this matter, in the same vein, that
11 within Scottish Government at ministerial level indeed
12 in 2014 there were opposing views on having an inquiry?

13 A. Yes, and that would be perfectly normal.

14 Q. Yes, and I think you make that point at paragraphs 159
15 to 160, that it is not unusual for Cabinet, for example,
16 to be divided on an issue. You have to discuss it,
17 thrash it out, and eventually reach a position.

18 A. Yes, that is exactly what happens, yes.

19 Q. So it was an amicable division of view?

20 A. It was robust. It remained amicable, certainly.

21 Q. It was robust. And when we are talking about opposing
22 views on an inquiry, if we are looking at those who
23 didn't seem too attracted by an inquiry, do we take it
24 that the sort of inquiry they might have been not
25 attracted to was a public inquiry of a conventional

1 type, a type that had been not uncommon in the past?

2 A. Yes, that is exactly what they were opposing. And
3 I think I am clear in the statement that I myself would
4 have had reservations about that type of inquiry, but
5 I became much more interested in a narrative form of
6 inquiry, in a different form of inquiry.

7 Q. I am going to ask you about that shortly, if I may, but
8 perhaps we can just clear this up. Because some of the
9 junior ministers, because they weren't in Cabinet, were
10 reluctant to be tempted by my question about what views
11 were held in Cabinet, but I think you are in a better
12 position to tell us, and indeed I think you do tell us
13 in your statement, that it was a consistent view of the
14 former First Minister, Alex Salmond -- you say this at
15 paragraph 74 -- that he was one of those who didn't
16 really -- didn't like the idea of a traditional type
17 inquiry. Can you maybe explain what his broad problem
18 with that type of inquiry was?

19 A. I think it was a problem I have mentioned, that
20 an inquiry would take a long time, would tie up people
21 for a considerable period of time, and in the end would
22 probably not satisfy the people who had asked for it.
23 I think there was just that feeling, and it wasn't Alex
24 solely who held it, there were others, many others
25 around the table who held it. I would have said that

1 I probably at one stage was in a minority in saying we
2 have to think about this in a slightly different way,
3 and I only came to that because of my experience of
4 meeting survivors and the interaction process, which is
5 not an experience they had, to be fair.

6 LADY SMITH: Mike, one of the things you just referred to
7 was that an inquiry "would tie up people for
8 a considerable period of time". Who would be tied up?

9 A. Essentially civil servants would be tied up, there would
10 be an expense of the inquiry. It would be a large-scale
11 undertaking.

12 LADY SMITH: But civil servants don't need to be the staff
13 of a public inquiry.

14 A. No, but a great deal of work would be done to prepare
15 for a public inquiry. There would be a great deal of
16 work within the Civil Service and elsewhere.

17 LADY SMITH: That is the preparation for the inquiry, not
18 the length of time the inquiry would take.

19 A. I am not criticising public inquiries per se, I am
20 saying I feel there was a reluctance to commission them.

21 LADY SMITH: It's quite common.

22 MR PEOPLES: Can I pursue this opposition a little further.
23 Those with either responsibilities for justice or legal
24 expertise within Cabinet, would they tend -- did they
25 tend to have a similar view to that of the

1 First Minister? Like, for example, Kenny MacAskill. He
2 was a Justice Cabinet Secretary. Would he have been of
3 a similar view to the First Minister? Would the
4 Lord Advocate at that time be similar?

5 A. Yes, my recollection was that that was the case, that
6 there was a strong view, and particularly from those
7 with judicial experience, that this was not something we
8 should do. And I want to be really scrupulously fair.
9 There was no question of not doing anything, there was
10 a question of doing what we were doing, and if more of
11 that was required I don't think there would have been
12 any difficulty there.

13 It was that, as you referred to it, that
14 "contentious" issue which was referred to in the
15 interaction, in the report, that was the issue: should
16 there or should there not be a type of -- a formal
17 public inquiry of this nature?

18 Q. Duncan Wilson said to us, and he said it was a point the
19 Commission tried to get across, I don't know whether it
20 got through to ministers, that when one is looking at
21 the requirements of the State to investigate past
22 treatment of children in care, for example, which might
23 engage Convention rights, there was no one model that
24 needed to be followed. If you have a requirement to
25 investigate, it doesn't have to be the traditional

1 model, and he said the Commission tried to get that
2 message through.

3 It doesn't sound as if it got as far as the
4 First Minister or perhaps the Cabinet Secretary for
5 Justice or the Lord Advocate, at least at that time,
6 because presumably he could have said "Well, that is all
7 right, we will have something different"?

8 A. That may be a fair observation. My own view was that we
9 could do something different but I came to that view,
10 and I want very much to stress that I came to that view.
11 I wouldn't start out from that position, I would have
12 probably started out from the position of saying it
13 would be very difficult to do the conventional public
14 inquiry. I might have agreed with some of the
15 opposition. I came to the view that there might be
16 another way to do this and that was influenced by
17 InterAction.

18 Q. Because obviously we are here -- one of the reasons we
19 are here is to find out why it took so long to get where
20 we are today, and you tell us in your statement indeed
21 at paragraphs 77 and 78 that you obtained external
22 advice from Lord Gill, who had some experience by then
23 of inquiry work. Can I just ask you, was that your own
24 idea or was the suggestion one from the First Minister?

25 A. I think the First Minister suggested I should have that

1 conversation, which I had.

2 Q. And given the views that you tell us you received from
3 Lord Gill, do I take it that the suggestion was made to
4 perhaps win you over to the no inquiry camp?

5 A. I really couldn't say. I thought it was fair that I had
6 that conversation. When you are invited to have that
7 conversation I think you have to have that conversation.

8 LADY SMITH: Are you saying the invitation came from
9 Lord Gill?

10 A. Well, he must have agreed to the invitation, but the
11 First Minister suggested that I spoke to him.

12 LADY SMITH: Was that on an informal basis?

13 A. Yes.

14 MR PEOPLES: So far as the matter of an inquiry is
15 concerned, and looking more directly at your
16 involvement, at paragraph 37, if we can go back there --
17 I'm sorry for dancing about but I am trying to cover
18 a number of issues. At paragraph 37, if we can go to
19 that, you set out I think two questions really that you
20 were asking yourself in 2014 when you become more
21 directly involved, the first being: at what point is the
22 granting of an inquiry into the historical abuse of
23 children in residential care something that had to be
24 done? And the second question is: if there should be
25 an inquiry, what type of inquiry should it be?

1 So you might have been thinking more along the lines
2 of the Human Rights Commission at that stage than some
3 others?

4 A. Yes, I think I probably was. Those two questions,
5 again, with hindsight, those appear to be the questions
6 I needed to answer for myself, and if I was able to
7 answer the first one in the affirmative and I was moving
8 into that position, then clearly the second one needed
9 to be resolved as well.

10 Q. And you concluded the time was right for an inquiry.
11 Can you explain to us why? You may wish to refer to
12 what you said at paragraphs 38 to 43, but by all means
13 just tell us really what the basic explanation for that
14 conclusion was?

15 A. A number of things came together. There was the
16 decision south of the border to have an inquiry, and
17 clearly that presented some questions for the
18 Scottish Government, should they also have -- should we
19 also have an inquiry? Should we be part of their
20 inquiry?

21 But the second one was obviously the interaction,
22 the recommendations, and they had not come down on one
23 side or the other, but it seemed to me that even by
24 leaving it open, they were indicating a strong argument
25 in favour. And as I have also indicated in my

1 statement, I was strongly affected by meeting the
2 survivors that I met and the experience of going to that
3 InterAction event in Glasgow, which I will never forget,
4 at the Mitchell Library. All those things persuaded me
5 (a) there should be an inquiry, but got me thinking
6 about what type of inquiry we should have.

7 I suppose I was trying to think of what I felt
8 people wanted and might be successful for them. From my
9 own background, which is not a legal background, it's
10 much more a cultural background, and also as
11 a historian, it seemed to me that the telling of the
12 stories was the really important thing, that people had
13 to have the opportunity to say what had happened to them
14 and to create the narrative of what is -- yes, I will
15 use the word -- what is a shameful period. We need to
16 understand as a nation how it happened, and the
17 institutions that were involved need to account for what
18 took place and they need to understand what has
19 happened. That seems to bring in a whole range of
20 disciplines, and a whole range of talents
21 and experiences, and that is where my mind was going.

22 Q. Yes, because I think, as you set out in your statement,
23 you had in mind something very different from
24 a conventional public inquiry or indeed the Inquiry that
25 you are appearing before today, is that correct?

1 A. Yes. There were -- I think the New Zealand example was
2 not a conventional public inquiry, if I remember, and
3 it's a long time since I have seen all that detail, and
4 it seemed to me the jurisdictions that had taken
5 a different view we needed to look at very carefully,
6 and we had started to do that whilst I was still in
7 office.

8 I also felt that if the issue was that there were
9 lots of disciplines that needed to be engaged in --
10 there is the discipline of writing down stories,
11 narratives, there is the research discipline, there
12 would be historians involved, there are theological
13 issues that the churches have to consider which I have
14 a particular interest in at times -- all those things
15 seemed to me to suggest we should bring
16 a multi-disciplinary team together.

17 And when you ask yourself where a multi-disciplinary
18 team would best sit, it seemed to me it might sit rather
19 nicely within a university, which would not just do the
20 job but build an expertise in doing something in
21 a different way. That is where my mind had gone. It
22 wasn't fully formed, there was discussion taking place,
23 I don't think there was much research done by then, but
24 I was talking to officials about that possibility.

25 LADY SMITH: Mike, just a small point. You mentioned "the

1 New Zealand example". What are you talking about?

2 A. I understood there was an approach to the subject in
3 New Zealand that had established some form of inquiry
4 that was not a formal judicial public inquiry. I have
5 no more information than that. I must have known at the
6 time a bit more about it.

7 LADY SMITH: Did you know that since then they have
8 established a Royal Commission --

9 A. I do know that since then. But before then they seem to
10 have taken a different approach. I am simply repeating
11 what I understood at the time. We must have done some
12 research then to look at it. I would have to go back
13 and see what that research was.

14 MR PEOPLES: I think that may have been an inquiry into
15 something that happened in a hospital setting?

16 LADY SMITH: I think it may have been a single incident.

17 MR PEOPLES: It may not have been quite the same situation
18 that gave rise to the model but I think we could
19 probably find --

20 LADY SMITH: Don't you worry about that. I have had cause
21 to find out quite a lot about the current Royal
22 Commission and contact with some of the people involved
23 there so we can do that. Thank you.

24 MR PEOPLES: At paragraph 12, and I think you also maybe
25 deal with this at paragraphs 44 to 48, that is what you

1 had in mind. I think you call it the university model,
2 is how it was put, but you have just given a broad
3 description of what was in your mind, although I think
4 you very fairly said it was quite embryonic.

5 A. It was.

6 Q. And indeed you didn't have opportunity to follow it
7 through because you weren't Minister --

8 A. No.

9 Q. -- when an inquiry was announced?

10 A. Yes. I am definitely not saying it would have happened
11 that way, but that if I had continued with the topic
12 I would have wanted to explore that in some detail to
13 see what we could do to do things in that way. It
14 seemed to me it would answer more questions. It would
15 have to have a judicial component, I am absolutely not
16 ruling that out, because there are crimes that have to
17 be reported, but it seemed to me there was
18 an opportunity here to do something.

19 Q. If I can go back before you had perhaps reached this
20 point, because the survivors event I think was
21 a particularly critical moment for you. The "Damascus
22 moment", as I think you describe it in the statement, is
23 27 October 2014. But before we get to that, perhaps
24 just in terms of the position of Cabinet, I think you
25 tell us at paragraph 60 that there was a very

1 significant Cabinet meeting on 14 July 2014 where there
2 was a very open and full discussion of the sort of
3 issues that this Inquiry has to concern itself with and
4 the sort of issues that your statement deals with, and
5 you seem to be quite complimentary of that occasion as
6 a significant step in the process?

7 A. I think all the Cabinet discussions of this were
8 intense, they were detailed, I think they were
9 an example of how this work should be done within
10 a Cabinet, and certainly I felt with some we made
11 substantial progress, with others we made no progress
12 and we had to return to it. And I think I do quote the
13 former Permanent Secretary commenting favourably upon
14 these, I think he was struck by them, and I certainly
15 thought it was an example of how we should do things,
16 because people came with different points of view and we
17 contended about what we felt should happen.

18 Q. Was that the occasion when they met in Orkney?

19 A. I think it was in Wick. The 14th, I think it was Wick.

20 LADY SMITH: You were on the way to Orkney.

21 MR PEOPLES: But you do say, and maybe this is the point,
22 that there was now a focus on the issue whether we were
23 doing enough in relation to the wider issue of
24 historical abuse. So even if you weren't reaching
25 consensus, there was a realisation that you were asking

1 the question: had you done enough? You had done all
2 these things but should more be done?

3 A. And there were a number of things that were coming
4 together in that. In 2013 there was the issue of the
5 accusations regarding Fort Augustus. In 2014 there was
6 not only the establishment of the inquiries elsewhere
7 but there was the issue of mandatory reporting which was
8 very live at the time. All these things I think
9 prompted the question: have we done what we should have
10 done and is there more we should do?

11 I think in giving this evidence earlier, I said
12 I thought it was a process, and the question was the
13 process was continuing but clearly there were elements
14 within it we needed to do more. I think it was
15 a general acceptance we needed to do more.

16 Q. There is another consideration that I think you point
17 out at paragraph 61. I can quote from your witness:

18 "We had not got to the stage where those who were
19 most deeply affected, the survivors, believed that
20 the issue had been adequately dealt with. There was
21 also the question whether we too were convinced that
22 this had been adequately dealt with."

23 I suppose that might be a compliment to those who
24 just would not go away, they kept asking for more?

25 A. Well, it's a compliment to people who are determined to

1 have justice.

2 Q. Yes, I wasn't saying it in any pejorative way. Yes,
3 they were determined to find justice, and one of
4 the components of finding justice was they wanted
5 an investigation and they wanted a public expression of
6 that investigation where they could tell things to the
7 public, not just in private to someone confidentially,
8 but so the public could understand what was going on?

9 A. Absolutely. They had to have their story told.

10 Q. Also in public.

11 A. Absolutely. They had to have their story told in
12 public, those who chose to do so, and they had to have
13 that acknowledgement.

14 Q. On the road to persuasion, if I can put it that way, you
15 mentioned in your statement that there was
16 an InterAction survivors event on 27 August 2014. You
17 didn't attend that, and you tell us that, but you do
18 refer to the fact that there was a paper prepared by
19 CELCIS which synthesised the discussion of the event,
20 and you say you found that paper compelling as putting
21 a very strong case for having an inquiry and all the
22 benefits that that would bring. So that was a step in
23 the process of persuasion?

24 A. Yes, that process was well underway by then. I was
25 I suppose, in a sense, very focused on seeing how this

1 was playing out as it came to what I thought was the end
2 point of ensuring there was an inquiry.

3 Q. The Government in a letter I think that you signed off
4 on 27 October, or thereabouts, 2014, gave its formal
5 response to the action plan, but I think as you tell us
6 at paragraph 82, that may be so, but really you were
7 wanting more, I think. You just couldn't say what you
8 would like to say in the letter at that point. You were
9 still trying to, I suppose, get consensus within
10 Government, within Cabinet, to be able to make
11 an announcement. Was that where you were heading or
12 trying to head?

13 A. Yes, I thought we were on that journey. We weren't
14 there yet, it sometimes takes a little bit of time to
15 resolve these issues, but I didn't want to close -- it
16 would be utterly wrong to have closed that door because
17 I thought the door was not going to close, but equally
18 I could not say that that was what was definitely going
19 to happen.

20 Q. Can you tell us what happened that day, and you might
21 wish to refer particularly to your written statement
22 between paragraphs 85 and 93. You deal with I think the
23 InterAction group meeting on 27 October 2014. Can you
24 perhaps just capture for us what the significance of
25 that day was and why?

1 A. I went slightly early to the event which is unusual.
2 I had arranged to meet some survivors first of all, and
3 we sat in the Mitchell Library upstairs, and I sat and
4 spoke to some survivors. If you are a constituency MSP
5 you are used to people being angry with you. You are
6 a person sitting there whom they see as somebody
7 representing authority, some of the things that have
8 gone wrong in their lives, and you are used to it.

9 I was very struck with the anger that was shown but
10 I was struck with the ... I am sorry to use this phrase
11 but I'll use it, the righteous anger. They had a right
12 to be angry. And they were difficult, they were not
13 going to be -- it wasn't a conventional conversation,
14 it was very -- it was difficult, it was really difficult
15 for however long it took, half an hour/40 minutes, it
16 was a difficult discussion.

17 I came out of it and went straight into the
18 interaction process, I was due to make I think the
19 opening remarks. I think I indicate in the statement
20 I don't always deliver the words that are put in front
21 of me and I spoke much more personally. I don't have
22 a record of what I actually said, but I spoke much more
23 personally about it and said how affected I had been by
24 the experience I had just had, that I wanted to listen
25 to what was taking place. I thought we had --

1 I mentioned the issue of the inquiry, that I thought it
2 wasn't concluded.

3 I think there was considerable suspicion of
4 the Government. I think there was -- people,
5 particularly survivors, felt they hadn't got that they
6 still wanted and they wanted to know why they hadn't got
7 it and they were going to go on campaigning for it.

8 I was also struck, and I have said this in the
9 statement, by the rigidity of certainly one particular
10 organisation, but I suspect others, and that was the
11 Catholic Church. It seemed to me there was just
12 an absolute rigidity in not wanting to talk about what
13 needed to happen next.

14 I go to lots and lots of things. I don't think
15 there is any I can really remember that I have been so
16 affected by. I stayed for much longer than I intended
17 to stay. I came away saying to myself that this has to
18 happen. I think I said to Alan on the way out, you
19 know, to create the argument for it. That is one of
20 the ways you can move things forward is if people
21 start -- continue to build an argument, you can work
22 with that argument to make change.

23 It was -- it was utterly mind-blowing and it was
24 very affecting and I felt we had to move this on.
25 I didn't feel an inquiry would necessarily answer all

1 the questions, but I couldn't see how you could go
2 through that experience and say to people "No, we are
3 not doing it". I just couldn't see that.

4 Q. I think at that stage did you encourage people who might
5 be pressing for an inquiry to write to you?

6 A. Yes.

7 Q. And indeed you do tell us that you did receive two
8 letters from survivors which in essence, and you deal
9 with this at paragraphs 101 to 111, that were in essence
10 making the case for an inquiry, and I think you find
11 these particularly persuasive and compelling. You
12 didn't agree with everything in them, and I think you
13 say that, but you felt they were raising points that
14 reinforced the need for investigation and the need to
15 look into these issues by way of some form of inquiry,
16 is that ...?

17 A. Yes. I felt that these letters were very important,
18 I encouraged people to make the case for the inquiry,
19 I felt it had to be heard, and it would amplify any case
20 I was trying to make for an inquiry.

21 Obviously the Inquiry knows this, but if you are
22 dealing with people who have suffered very greatly, who
23 were very damaged by the experience, they will be angry
24 and they will have sometimes a scattergun approach in
25 that anger. But I mention the question of the Quarriers

1 records issue. I had never thought of this until
2 somebody came to see me in my own constituency, and the
3 fact that this was repeated in this letter, I find it --
4 we must all find it extraordinary that there was no
5 record of what happened to her, or her existence -- this
6 was my constituent. She was told so many things that
7 weren't true, but trying to find out what was true was
8 virtually impossible. No wonder she was immensely
9 troubled and her life was immensely troubled.

10 I just felt confronted with this, and confronted
11 with this at the InterAction event, confronted with this
12 with constituency cases, we needed to resolve this in
13 the best way possible, and the next step in resolving it
14 was an inquiry of some sort.

15 Q. I think the Quarriers matter, I will just give the
16 reference, it's paragraph 104 of your statement, you
17 deal with that in your written statement.

18 You also received around the same time, just after
19 your attendance at the InterAction event, you received
20 a letter from CELCIS on 31 October, or thereabouts, of
21 2014. You deal with that at paragraph 112.

22 I will just read it out. You say that the CELCIS
23 letter made the point:

24 "Through our regular engagements with survivors
25 before and throughout the interaction process we have

1 witnessed an increasing clarity across survivors' views
2 about the value of a national inquiry and what
3 an inquiry should be equipped to deliver."

4 So I think you were getting a strong indication that
5 CELCIS had been saying: this is what survivors want and
6 they are not there supporting that position. And
7 I think Duncan Wilson said that it was very clear to the
8 Commission from as early as 2010 in the Framework that
9 they were looking to support some form of investigation,
10 they weren't necessarily urging a particular type, and
11 they did say there were various possibilities, but they
12 certainly were supporting it?

13 A. Yes, and this is now absolutely clear, at the end
14 of October 2014, that the argument -- the view that
15 there are two sides to this argument is changing into
16 saying that this actually must happen.

17 Q. Having said all of that, and obviously the meeting on
18 27 October having had a profound effect on you, you
19 still didn't -- it wasn't smooth sailing from there,
20 because I think you did say there was still a bit of an
21 impasse at Cabinet level, at paragraph 125 to 126 of
22 your statement, where there was discussion, you were
23 bringing papers forward, you were no doubt saying what
24 had gone on at these events and so forth, but you
25 weren't making maybe the breakthrough just at that

1 point.

2 But I think events rather overtook that in the sense
3 that -- well, two events were significant. One was
4 there was a change of First Minister, and secondly --
5 well, unfortunately you were perhaps a casualty of that
6 change because you ceased to be the Minister, but
7 I think you were quite pleased that the new incumbent as
8 First Minister was, I don't think it is a big secret,
9 she was a supporter of some form of investigation, is
10 that correct?

11 A. Yes, I felt we were now in a position where this would
12 happen. I would have liked it to have happened so that
13 I could have announced it, not that I knew I was not
14 going to be in Government, but I could have announced it
15 when I was doing the next statement. That did not
16 happen.

17 Again, it was perfectly reasonable for there to be
18 a debate and discussion about this issue. I was asked
19 to go away and do some more work on what was happening,
20 that is not uncommon. And when I made the statement,
21 the statement could not make the full commitment,
22 unfortunately.

23 Q. Yes, because you had been in Parliament I think making
24 a statement in a debate on child protection I think
25 broadly on 11 November and I think you had hoped you

1 would be able to say more than you did. And you did
2 mention that perhaps you were being put under some
3 pressure from some of the opposition. You mentioned
4 Graeme Pearson was pressing on the issue of the inquiry,
5 but I think you were trying to maybe curtail his
6 enthusiasm for pressing that at that time?

7 A. I thought it was fair to him to say, if he was going to
8 press for an inquiry, well and good, but a bit of
9 patience would also work, because I thought we were
10 going to get an inquiry. He didn't heed me, and why
11 should an opposition MSP heed what the minister says?
12 There is no reason at all. So he pressed ahead. I was
13 certain by this stage there would be an inquiry.
14 I think the question in my mind now was what type of
15 inquiry. The debate, if I remember correctly, was also
16 to mark Jackie Brock's report on child protection, and
17 that was something significant that we had done to
18 reassure people that there was the work done and things
19 in place for child protection at that stage.

20 Q. Jackie Brock's report was something you asked for in
21 2014?

22 A. Yes.

23 Q. But that was to look at the current system --

24 A. Yes.

25 Q. -- not to address the issues of adult survivors, but to

1 be reassured that people could have confidence in the
2 current system and also no doubt anything that was
3 happening that they required to know about?

4 A. Indeed, because there had been what are called the
5 "magic circle" accusations and it was very important to
6 reassure people -- to reassure ourselves, but to
7 reassure the wider public that there were robust
8 procedures in place.

9 Q. And just in case there is any dubiety about what you
10 mean by that, the magic circle investigations that you
11 are referring to were things that were being given media
12 coverage, particularly in England, about
13 institutional -- or paedophilia in --

14 A. In Government and other circles. There was a range of
15 accusations which now turn out to be very dubious
16 indeed, but were widespread at that time, and it was
17 right that we addressed them and looked at them.

18 Q. I think that was the climate and the background to the
19 inquiries announced by Theresa May in the summer of
20 2014 --

21 A. There were two inquiries.

22 Q. There were two inquiries, which raised those issues and
23 led to the setting up of the inquiries. So that was
24 part of the context in which you were having to no doubt
25 see if there was a Scottish dimension and so on.

1 I think you tell us that Nicola Sturgeon, at
2 paragraph 135, became the new First Minister on
3 19 November 2014, and that you left Government the
4 following day. For those of us who might be thinking,
5 well, that is unfortunate timing, I think you do address
6 that point to try and reassure that it was not connected
7 with anything that you were doing in relation to these
8 issues, is that correct?

9 A. Governments change. Ministers change. There is often
10 no particular reason for it and quite clearly it is
11 the prerogative of the First Minister to choose the
12 ministerial team. But certainly I don't think it had
13 any connection with this of any description.

14 Q. It was unfortunate but, in fact, it didn't derail the
15 momentum or the process, because there was
16 an announcement the following month by your successor,
17 Angela Constance?

18 A. Who was my deputy, and I was delighted that she was
19 doing the job and she took this forward.

20 Q. Perhaps I can read this for you. At paragraph 141 you
21 do say you were unaware of this until recently. This
22 was a letter of 24 November 2014 by a survivor to the
23 new First Minister, and he wrote:

24 "The very person with whom we believed that we could
25 go forward on the issue of past institutional abuse

1 within Scotland has been removed. Both myself and
2 colleagues were promised a ministerial meeting with him
3 personally in the next week or so to take this forward.
4 Michael was the first minister from the Executive who
5 I met who actually listened and was proactive regarding
6 abuse. He certainly didn't pass the ball, he played
7 it."

8 So I think you were quite --

9 A. I was unaware of the letter until recently, until we
10 were working on the statement. It is very nice of the
11 person to say it. I did feel very strongly. Looking
12 back at that event in October 2014, I did feel very
13 strongly and I continued to show an interest in it.
14 I have not wanted to crowd out my successors, but I have
15 continued to show an interest in it because I think it
16 is an extraordinary scar upon Scotland, and I think we
17 owe a great deal to those who were damaged.

18 MR PEOPLES: These are really all the questions I have for
19 you today. Thank you very much for attending. I know
20 you have other commitments that are quite pressing as
21 well, so we are very grateful you came.

22 LADY SMITH: Are there any outstanding applications for
23 questions?

24 Mike, that does complete all the questions we have
25 for you. Thank you so much for your careful and

1 detailed engagement with the Inquiry. My comments
2 obviously extend to your very helpful statement, some
3 points of which we have highlighted today and have been
4 able to discuss so efficiently and effectively with you.
5 Thank you for that. I am now able to let you go.

6 A. Thank you.

7 (The witness withdrew)

8 LADY SMITH: Mr Peoples.

9 MR PEOPLES: That finishes the evidence for today. We have
10 one more witness before we conclude the evidence, and
11 that witness will be here tomorrow at 10 o'clock.

12 LADY SMITH: 10 o'clock tomorrow morning. That witness
13 won't take longer than the morning?

14 MR PEOPLES: I am not anticipating that.

15 LADY SMITH: Because tomorrow is a public holiday in the
16 afternoon.

17 MR PEOPLES: I think we are actually running hopefully to
18 time. I am hoping that I can give that assurance.
19 I always hesitate but ...

20 LADY SMITH: I don't think there are any obvious gaps in the
21 ticks I have of what I thought we were going to cover
22 this week, save tomorrow's witness.

23 MR PEOPLES: I think we should be fairly safe that hopefully
24 we will finish around lunchtime.

25 LADY SMITH: I will rise now until 10 o'clock tomorrow

1 morning. Thank you.

2 (3.44 pm)

3 (The Inquiry adjourned until 10.00 am on Friday,

4 27 November 2020)

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MS JEAN MACLELLAN (sworn) (via video	1
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