

Friday, 27 November 2020

(10.00 am)

LADY SMITH: Good morning.

Mr Peoples.

MR PEOPLES: Good morning, my Lady. The next and final witness in this hearing is John Swinney.

LADY SMITH: Thank you. (Pause)

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

MR JOHN SWINNEY (sworn)

LADY SMITH: Please sit down and make yourself comfortable.

Mr Peoples will tell you about the red file in a moment but most of what you may need to look at should come up on the screen in front of you.

One question I have is how would you like me to address you in the hearing?

A. Whichever name or title or whatever would be suitable to you, my Lady.

LADY SMITH: That doesn't tell me what you are most comfortable with. Could we not use Deputy First Minister because it is quite cumbersome. John or Mr Swinney?

A. John will be fine.

LADY SMITH: Well, John, I will hand over to Mr Peoples and he will take it from there, if you are ready.

1 Questions from MR PEOPLES

2 MR PEOPLES: Good morning, Mr Swinney.

3 A. Good morning.

4 Q. As her Ladyship said, there is in front of you a red  
5 file which contains a hard copy of a witness statement  
6 you have previously provided to the Inquiry before  
7 giving evidence today. In front of you, you will also  
8 see that there is a copy of that statement displayed on  
9 the screen. If I put up any other document in the  
10 course of the evidence today, it will appear on the  
11 screen in front of you.

12 Can I begin by asking you to turn to the final page  
13 of your statement and can you confirm that you have  
14 signed this statement I think on 5 November of this  
15 year, and can you also confirm that you have no  
16 objection to your witness statement being published as  
17 part of the evidence to the Inquiry?

18 A. I have signed that document, Mr Peoples, and I am happy  
19 for it to be published.

20 Q. I think you say you believe the facts as set out in your  
21 witness statement are true?

22 A. I do believe that, yes.

23 Q. Can I begin by going to perhaps the start of that  
24 statement. You are John Swinney, and you have been  
25 a member of the Scottish Parliament since 1999, is that

1 correct?

2 A. I have, yes.

3 Q. Your background I think before politics was in business  
4 and economic development, is that correct?

5 A. That is correct, yes.

6 Q. (Pause) I think you tell us in paragraph 4 of your  
7 statement --

8 LADY SMITH: We have some feedback coming through. Sorry,  
9 John, this has never happened before. (Pause).

10 Thank you.

11 MR PEOPLES: If we go to paragraph 4, as you tell us you  
12 were elected to the Scottish Parliament, and you did  
13 have a spell as a Member of Parliament in the  
14 House of Commons between 1997 and 2001 also?

15 A. That is correct, yes.

16 Q. You were leader of the Scottish National Party from  
17 September 2000 to September 2004?

18 A. That is correct.

19 Q. When the SNP administration came to office in May 2011,  
20 you were appointed as Cabinet Secretary for Finance,  
21 Employment and Sustainable Growth, and you served in  
22 that role until November 2014?

23 A. In your opening remarks there, Mr Peoples, you said  
24 May 2011. It was May 2007 when the current Government  
25 came to office.

1 Q. Yes, sorry, there were two elections --

2 A. Yes. So 2007, re-elected in 2011.

3 Q. Yes, there was an election in 2007, my apologies, and  
4 then there was a further election in 2011, in May. On  
5 both occasions the Scottish National Party formed  
6 an administration, I think in the first case it was  
7 a minority administration?

8 A. That is correct.

9 Q. And I think in the second it wasn't?

10 A. In the second it was a majority administration, but  
11 I served continuously in Government from May 2007.

12 Q. In the capacity as Cabinet Secretary for Finance,  
13 Employment and Sustainable Growth?

14 A. Yes.

15 Q. So you were reappointed after the election in May 2011?

16 A. I was, yes.

17 Q. You tell us also that you were appointed by the current  
18 First Minister, Nicola Sturgeon, as Deputy  
19 First Minister in November 2014 and have, since then,  
20 served as Cabinet Secretary for Finance, Constitution  
21 and the Economy from November 2014 until May 2016, and  
22 you have served in your present post as Cabinet  
23 Secretary for Education and Skills since May 2016, is  
24 that correct?

25 A. Both are correct, yes.



1       Q. Again by way of introduction, I think you tell us that  
2       when you became Cabinet Secretary for Education and  
3       Skills in May 2016, you took on specific responsibility  
4       for issues related to the Scottish Child Abuse Inquiry  
5       that fall within the remit of Scottish Government?

6       A. That is correct, yes.

7       Q. I don't intend to go through every paragraph of your  
8       statement today. We have it, it's evidence, we have  
9       read it, and we will consider it in due course also.  
10      But there are some issues I would like to pick up with  
11      you, if I may, and I will try and flag up the paragraphs  
12      that I am interested in, but if you want to add anything  
13      please feel free to do so.

14             In paragraph 6 you say a little about the public  
15      petitions process. We have heard quite a lot of  
16      evidence in this Inquiry about the Public Petitions  
17      Committee, obviously against a background of Chris Daly  
18      submitting a petition in August 2002 calling for  
19      essentially three things, an investigation or inquiry  
20      into past abuse, apologies from various State bodies and  
21      others, religious orders and so forth, and also seeking  
22      some form of sympathetic listening forum that would  
23      listen to the accounts and experiences of people who had  
24      been in care and suffered abuse. So these were the  
25      broad aims I think of that Petition, as I think you will

1           be very familiar.

2           So far as the Petitions Committee is concerned, do  
3           you consider that that Committee has been, and is,  
4           an important committee of the Scottish Parliament, and  
5           can you maybe explain why?

6       A. I think it is a very important committee of the  
7       Scottish Parliament. As you referred to earlier on,  
8       Mr Peoples, I had experience in the House of Commons  
9       before the establishment of the Scottish Parliament, and  
10      one of the stark differences between the  
11      House of Commons' process at the time and the  
12      Scottish Parliament as it was established was in the  
13      manner of how representations or concerns by members of  
14      the public could be heard directly by Members of  
15      Parliament.

16           So in the House of Commons, if a Member of  
17      Parliament had a petition of concern from their  
18      constituency, for example, or from a particular interest  
19      that they followed, they would essentially -- if my  
20      memory serves me correctly, after votes at 10 o'clock at  
21      night there was an opportunity to catch the eye of the  
22      Speaker, to essentially read out the petition from your  
23      constituents. That would be read out. You would then  
24      process from your place in the House of Commons Chamber  
25      to the Speaker's Chair and you would deposit the

1           petition in a bag at the back of the Speaker's Chair and  
2           that was the end of the matter.

3           The Public Petitions Committee concept I suppose has  
4           its origins in that, of the ability of individuals to  
5           make direct representations through Members of  
6           Parliament to the Parliamentary process, but with one  
7           very -- or two very significant differences. First is  
8           that members of the public were able to make those  
9           representations directly to Parliament through the  
10          submission of a petition, as Mr Daly did on this  
11          particular occasion, but then also there was a process  
12          for the pursuing of those petitions through the  
13          Parliamentary process. So what invariably happens is  
14          a petition is submitted to the Public Petitions  
15          Committee, they will consider that, they will probably  
16          seek information from the Government if that is  
17          appropriate, or they will perhaps ask another subject  
18          committee of the Parliament to consider some issues. So  
19          in my current role we reasonably frequently receive  
20          petitions which have come from the Public Petitions  
21          Committee to us within the -- to the  
22          Education Committee, and then to us within the  
23          Government for us to make representations about, and  
24          ministers can be called to either a subject committee or  
25          the Public Petitions Committee to make representations.

1           I think what has led up to this Inquiry is I think  
2           an illustration of the power and effectiveness of the  
3           public petitions process because a citizen of our  
4           country has made a petition to the Public Petitions  
5           Committee, it has been considered through Parliamentary  
6           processes, it has been responded to by Government, and  
7           it has culminated in an inquiry which is looking in  
8           a forensic way at the issues that were raised in  
9           Mr Daly's petition. And that is just one example of  
10          where the Petitions Committee process has been  
11          successful in raising concerns felt by members of the  
12          public, and to get due attention to them in the fashion  
13          that they should have that attention.

14        Q. I will maybe come to perhaps the time it has taken to  
15          get to this point or the culmination of the petition,  
16          but can I move on for the moment to paragraphs 8 and 9  
17          where you are discussing the First Minister's Apology on  
18          1 December 2004. You can take it we have heard quite  
19          a bit of evidence about events up to 2004, indeed up to  
20          2014, so there is a familiarity with some of the key  
21          steps and events in the period we are considering in  
22          this hearing.

23                Can I just take it that what you are saying there  
24                about the impact of the Apology is something that you  
25                are expressing as a personal opinion as someone who was

1           in the Chamber at that time, because I think you say it  
2           came across as a genuine and substantive apology. You  
3           are not speaking on behalf of Scottish Government, you  
4           are just saying "That is how it came across to me"?

5       A. Yes, I was in the Chamber when Mr McConnell delivered  
6       the statement. I felt -- I suppose my comments are set  
7       within the context of the time, because the context of  
8       the time was that we were acutely aware, as Members of  
9       Parliament, that there had been quite a lot of toing and  
10      froing between the Public Petitions Committee and the  
11      then Scottish Executive about trying to get the issue of  
12      the inquiry demand, and the demand for an apology  
13      addressed by the Government, and there was considerable  
14      frustration on the part of the Public Petitions  
15      Committee that it was taking too long to get a response  
16      to the petition, and a lot of that is narrated in the  
17      statement that the Scottish Government has given of the  
18      sequence of events over that period.

19   LADY SMITH: John, I'm sorry to interrupt you, and I think  
20           I know what your answer is, but for those who don't  
21           understand the way things work, when you say there had  
22           been quite a lot of toing and froing between the PPC and  
23           Scottish Executive about this issue of the inquiry, how  
24           was it that you knew that at that time?

25   A. It was what I would describe as Parliamentary discussion

1           and chit-chat. So in the circumstances that led up,  
2           for example, to 1 December and the Public Petitions  
3           Committee debate on this subject, there was a lot of  
4           discussion within Parliament about whether that debate  
5           should take place. There are relatively few  
6           opportunities for Committee debates, debates on  
7           Committee matters to take place. There is a discussion  
8           process amongst Conveners of Parliamentary Committees  
9           about essentially who should get that time --

10       LADY SMITH: They bid for a slot.

11       A. They bid for a slot. And at that time I was a Convener  
12       of one of the committees, I was a Convener of the  
13       European and External Relations Committee, so I was  
14       privy to the discussions that were going on about, well,  
15       what should be the topic that comes up on 1 December?  
16       Mr McMahon, who was the Convener of the Public Petitions  
17       Committee, was pressing very firmly to get that debate  
18       on the agenda, largely I think because the Committee was  
19       frustrated at the amount of time it was taking to get  
20       answers out of Scottish Executive at the time. That  
21       difficulty is narrated in the Government's submission to  
22       the Inquiry, my Lady, which I think illustrates the  
23       persistence of the Public Petitions Committee process,  
24       because they wanted this issue aired, and that was then  
25       pressing for the debate to be had on that date. Then,



1           of course, the fact that that debate was happening  
2           I think precipitated the need for Mr McConnell at the  
3           time to say something else on behalf of the  
4           Scottish Executive at that moment.

5       LADY SMITH: That is very helpful. Thank you.

6       MR PEOPLES: You give your recollection of how it came  
7           across to you, the Apology. Can I put this to you --

8       A. Can I -- forgive me. If I may, my Lady, if I could  
9           perhaps complete the answer I was going to give to  
10          Mr Peoples.

11               In hearing that, what was said by Lord McConnell at  
12           the time, knowing how much of a pressure there had been  
13           to get something said on the Parliamentary record, it  
14           sounded to me quite substantive and genuine because of  
15           how much pressure I knew was going on behind the scenes  
16           to get something said. So just hearing those words as  
17           they were said, and as they were responded to by my  
18           party at the time with the words of the then Deputy  
19           Leader of the SNP, Nicola Sturgeon, those words were  
20           embraced by us as being a genuine statement on  
21           the Scottish Executive's part.

22       Q. I suppose, and you will be familiar with this, history  
23           can be a harsh judge, and I suppose in terms of  
24           apologies, the views that ultimately matter most are  
25           those to whom the apology is given, whether immediately



1 the reaction of that section and also no doubt over  
2 time. I think we have certainly heard some evidence to  
3 the effect that perhaps, whatever was felt at the time,  
4 there are those who were not entirely satisfied with  
5 either the wording of the Apology or what accompanied it  
6 at the time in terms of measures that were announced on  
7 1 December.

8 I don't want to take that up with you, but I just  
9 make that point. I don't know whether there is anything  
10 you want to say in response?

11 A. I would, because I suppose I understand clearly in the  
12 point that you make, Mr Peoples, that it doesn't really  
13 matter, frankly, what I think about the Apology, it  
14 wasn't an apology to me, it was an apology designed to  
15 address survivors, and if survivors felt that this was  
16 an inadequate response, then it was an inadequate  
17 response in my view.

18 The second point is that of course with the passage  
19 of time and with the scrutiny that this Inquiry  
20 provides, we now know what was being thought about in  
21 the motivation of the Apology and what were the  
22 considerations being borne in mind. Again, in the  
23 narration that the Scottish Government has provided to  
24 the Inquiry, it is quite clear that there was a lot of  
25 careful wording going on around about that Apology.

1           So I suppose there are two observations: the first  
2           that if survivors were dissatisfied with that Apology it  
3           says to me the Apology was not good enough, however it  
4           sounded to me at the time. And, secondly, with what we  
5           now know, there was a lot of careful wording going on at  
6           the time to, I suppose, position Government as best as  
7           Government could be positioned at the time, and that  
8           doesn't feel to me that it was -- that that was  
9           appropriate, because what was needed was a forthright  
10          apology to people who had suffered in our country and  
11          they should not have suffered.

12          That is a very direct acceptance of responsibility  
13          that the State has to take on and I don't think that was  
14          represented by the Apology that was given in 2004, which  
15          is why I have returned to these subjects in what I have  
16          said to Parliament subsequently.

17       LADY SMITH: So when you are talking about a lot of "careful  
18       wording" going on that you know from reading the  
19       document you have referred to, you will be have been  
20       aware from that that there was legal advice being given,  
21       and legal advice being given late in the day, as to what  
22       the risks were of certain forms of words and what  
23       emerged on it on that advice.

24       A. Yes, I am aware of that from the narration that --

25       LADY SMITH: Yes.

1 A. I wasn't aware of that at the time.

2 LADY SMITH: No, I am not suggesting you would have been.

3 A. I became aware of it when the narration of the timeline  
4 of all of this was produced by the Government.

5 LADY SMITH: And we have heard that in evidence, indeed we  
6 have seen what the advice was.

7 A. Yes. But I think the point you make, my Lady, about the  
8 fact that the legal advice was provided late in the day,  
9 I think illustrates the point or substantiates the point  
10 I was making earlier that there was -- there was a bit  
11 of a hurry to get all of this together, because the  
12 Public Petitions Committee was putting pressure on to  
13 get this issue addressed, and therefore it was all being  
14 done in a very compressed timescale to address that  
15 fact. I think, if my memory serves me right, the advice  
16 from the then Lord Advocate came the day before the  
17 Apology was given to Parliament.

18 Now, on an issue of this magnitude, of this  
19 significance, of the need to say properly to survivors  
20 that the State failed those individuals, I think that  
21 was awful late in the day for that advice to be rendered  
22 and for it to be considered in relation to such  
23 a monumental moment that survivors were looking for. It  
24 wasn't a surprise, it had been there from Mr Daly's  
25 petition, and I think it was just very late in the day.

1 LADY SMITH: Thank you. Mr Peoples.

2 MR PEOPLES: If I can move on. You offer I think some  
3 observations at paragraph 14 about calls for an inquiry  
4 and how things may have, to some extent, quietened down  
5 after the Apology and debate, and you offer one or two  
6 factors that might explain that so far as you are were  
7 concerned. I suppose one general point you are making,  
8 and it's maybe a point that applies to a number of major  
9 issues, is that if you want Government to sit up and  
10 take notice, it helps greatly to have both the "media  
11 platform", I think is the expression you use, and the  
12 Parliamentary platform giving their active support, and  
13 indeed their continuing support, to keep the momentum  
14 going. And I think you maybe sensed that it appeared,  
15 to you at least, that maybe that impetus "diminished",  
16 I think is the word you used, in the period after the  
17 Apology itself. Was that your sense?

18 A. That was my sense, that the Apology was given and there  
19 was almost a sense of the attention moved on to other  
20 issues. And there are always other issues that are  
21 predominating in public debate, either in the media or  
22 in Parliament.

23 I suppose what I was narrating in my answers just  
24 a second ago was that a head of steam had been built up  
25 by the Public Petitions Committee, led by Mr McMahon,

1           and it got to that moment in Parliament where the  
2           Apology had been given, and then I think the sense was  
3           that was it, and the heat went out of it.

4           Q. Although, in fairness, we have heard that during the  
5           period from 2004, December, through to the new  
6           administration, things were going on, the Shaw Review,  
7           Scottish Law Commission Review. So it wasn't as if  
8           things weren't happening, but to some extent maybe they  
9           were less in the public eye?

10          A. I certainly wouldn't want to create the impression that  
11          there was nothing happening, there was a lot of very  
12          good work that was taken on post-2004. But the only  
13          observation I am making in that part of my statement is  
14          that the intensity of focus and pressure wasn't there in  
15          a visible sense.

16          Q. If I could move forward to the period from 2007 through  
17          to 2014 which you deal with in your statement. As  
18          regards that period you were throughout that period,  
19          albeit as a result of two elections, you were the  
20          Cabinet Secretary for Finance during that whole period,  
21          is that right?

22          A. I was, yes.

23          Q. Can I just be clear that what you are saying in your  
24          statement that begins on these matters at paragraph 11  
25          as regards that period, you are essentially offering

1           what might be termed personal recollections as a sort of  
2           insider who was a member of the administration during  
3           that period who was sitting in Cabinet?

4           A. That is correct.

5           Q. Is that a fair comment?

6           A. Yes. I had no direct policy responsibility for any of  
7           these areas of activity.

8           Q. Yes, I think you say that in terms in paragraph 11, you  
9           had no direct responsibility for policy issues relating  
10          to historical child abuse. The way you put it, I think,  
11          is your memory is that such issues were being "aired",  
12          is the term you use or the word you use, at Cabinet  
13          level, and I think you are indicating you had a general  
14          awareness of the steps being taken in that period by  
15          ministerial colleagues, is that right?

16          A. That's right, yes.

17          Q. But it is no higher than that?

18          A. No, what happens at Cabinet is there is a section of the  
19          Cabinet meeting every week which looks at -- and it's  
20          referred to in some of the Government documentation as  
21          the SCANCE process, I actually can't remember what it  
22          stands for, but it is essentially current issues that  
23          members of the Cabinet bring to the awareness of other  
24          members of the Cabinet. Sometimes that is reporting  
25          about things that have happened or things that are about



1 to happen and perhaps to raise issues which do not  
2 require a full Cabinet paper to be brought on particular  
3 issues, and it is to essentially advise colleagues, to  
4 air issues and to seek agreement of Cabinet that members  
5 of the Cabinet are comfortable with the direction of  
6 travel.

7 Q. So it's giving them a general awareness from particular  
8 departments, particular ministers, of what is going on  
9 or what might be about to happen that the whole Cabinet  
10 should perhaps at least be aware of?

11 A. Yes.

12 Q. So far as what was going on in that period in relation  
13 these issues of historical child abuse and policy  
14 decisions, I suppose you would accept that those  
15 directly involved in such issues, including any Cabinet  
16 members that had specific responsibility, would be  
17 better placed than you to give a sharper picture of the  
18 situation in that period?

19 A. I would say that was fair, yes.

20 Q. Indeed we have heard from Mr Russell. He was quite  
21 intimately involved I think in 2014, for example, so he  
22 has a pretty clear recollection of how things went at  
23 that time, and that would be an example?

24 A. Yes, exactly.

25 Q. You have some comments on what is described rather



1           loosely as the time bar issue. I only say that because  
2           we have had some evidence that one has to be very  
3           careful with terminology, that "time bar" can perhaps  
4           conceal fundamental distinctions between prescription  
5           and limitation, but I don't want to push that too far  
6           with you and I appreciate you are not a lawyer.

7           Your own recollection, and again this is a personal  
8           recollection, at paragraph 13, and you are not speaking  
9           I think here on behalf of Scottish Government, is that  
10          the Cabinet was genuinely sympathetic in relation to  
11          that issue, and that is how you put it.

12          The response might be to that, from a survivor  
13          perspective, being sympathetic is not enough, they  
14          wanted action. Do you want to comment on that?

15        A. My use of the phrase "time bar", and forgive me if I am  
16          not in the right space of terminology here, was  
17          essentially about -- was essentially making it possible  
18          for individuals to not be thwarted by restrictions and  
19          be able to raise court cases.

20          I feel as if I am treading into territory which I'm  
21          not --

22        LADY SMITH: You are doing very well.

23        A. I am very pleased to hear that.

24        LADY SMITH: The idea being that you have still got the  
25          card, you still have the right. Your problem is there

1           is a hurdle you are going to have to get over to enable  
2           you to assert that right in the legal process if the  
3           three-year limit has expired.

4           A. Cabinet was very sympathetic to addressing that issue,  
5           and has subsequently done so, but there was a lot of  
6           cautionary words being expressed around the Cabinet  
7           table about whether that was the right thing to do  
8           because of the precedent it may set in a whole variety  
9           of other areas.

10          MR PEOPLES: So that was the sense you were getting: there  
11           were the wider implications that if you do it for one,  
12           you have to consider whether it has a knock-on effect  
13           for other situations where the same problem may arise?

14          A. That's correct.

15          Q. And you were getting those messages strongly,  
16           particularly from those with some legal understanding of  
17           these matters?

18          A. I was.

19          Q. Would that be fair?

20          A. That is fair, yes.

21          Q. But so far as the other aspect where time bar is  
22           concerned, prescription, by that stage I think the race  
23           was run on prescription. The Law Commission had said  
24           "We don't think you should change the law to revive  
25           these claims that have been extinguished". And I think

1           at that stage, as we've asked other witnesses, perhaps  
2           there was a search for another solution for that  
3           problem?

4           A. That is right, and I think -- I didn't detect -- I don't  
5           think Cabinet was persuaded to take any different view  
6           to the view the Law Commission had taken about issues on  
7           prescription.

8           LADY SMITH: The Law Commission had been quite clear in  
9           explaining the difference, namely, once a right had  
10          prescribed that meant it didn't exist anymore -- it's  
11          dissolved, you don't have the card anymore, if you  
12          like -- and to give rights retrospectively would have  
13          quite serious implications. It was not thought right to  
14          do that in principle.

15          A. But what that also then gave rise to, my Lady, was  
16          a requirement for us to consider what we should do about  
17          people who found themselves in that situation where  
18          their claim had essentially been extinguished by time,  
19          which is where we have then arrived at in relation to  
20          the advance payment scheme, which has now been making  
21          payments, and also the redress scheme that Parliament is  
22          currently legislating for.

23          MR PEOPLES: Can I move on in your statement to something  
24          you say as what you consider may have been a turning  
25          point in terms of the issue of an inquiry. You describe

1           it as the revelations about Fort Augustus in 2013. Just  
2           by way of background for those unfamiliar with this  
3           area, I think in July of that year, if I'm correct,  
4           there was quite widespread coverage about allegations of  
5           abuse at Fort Augustus Abbey School, and indeed there  
6           had been a programme by the BBC, broadcast on  
7           29 July 2013, entitled "Sins of our Fathers", which  
8           looked at the school which was then run by the  
9           Benedictine Order, is that right?

10          A. That is correct, yes.

11          Q. So it was getting a lot of media coverage at the time,  
12          and you seem to think that that seemingly had some  
13          impact on the issues of bringing out the prevalence or  
14          potential prevalence of abuse and so forth.

15                 But can I ask you this: what was it about the  
16          Fort Augustus coverage in 2013 that may have made the  
17          Cabinet sit up and take notice, to use my expression?  
18          Because we have heard evidence in this Inquiry that for  
19          many years before then there had been widespread  
20          coverage of historical abuse of children in  
21          institutional care going back to the days before the  
22          Scottish Parliament, and indeed we have been told during  
23          this Inquiry by a number of witnesses that there was  
24          a clear recognition in 2002, certainly on the part of  
25          ministers when the Daly Petition was submitted, that the

1           problem was or was likely to be widespread.

2           So I am just wondering why Fort Augustus? Why not  
3           Quarriers? Why not St Ninian's, Gartmore, De La Salle  
4           in 2003, Quarriers in -- whenever. They had a number of  
5           convictions. Can you help me with that?

6           A. What I think was different about Fort Augustus is that  
7           the revelations came at a moment where the Government of  
8           which I had been a member, and our predecessors, had  
9           taken a number of steps to try to address the issue of  
10          historical abuse, and the Inquiry is familiar with all  
11          of them, I won't recount them.

12          I think what Fort Augustus said to us was:  
13          you haven't done enough. We are seeing this almost  
14          piecemeal revelation of an unacceptable part of our  
15          history as a country, and Fort Augustus was another  
16          seminal moment in the piecemeal revelation of that  
17          shameful part of our history. What it did to the  
18          Cabinet was to say to us: this has to be done properly,  
19          it has to be done fully and comprehensively, and you can  
20          only do that with an inquiry.

21          Q. We have heard evidence during the course of this hearing  
22          that the Scottish Human Rights Commission, who didn't  
23          exist in the good old days in 2002 but was established  
24          in 2006 and became operational at the end of 2008, had  
25          been commissioned by Scottish Government to produce

1 a human rights framework, and I don't want to go into  
2 the detail of that, but ultimately it produced an action  
3 plan and tried to put forward a comprehensive response  
4 to issues arising from historical child abuse.

5 Was that something that Cabinet was alive to and  
6 aware of and did that have any influence in the way  
7 things were perhaps moving?

8 A. Yes, that formed part of the thinking that I was  
9 explaining a moment ago of how we essentially were  
10 taking a number of steps that we thought were effective  
11 in trying to address this part of our country's history.  
12 But by the time we got to 2013/2014 we had realised we  
13 hadn't done enough, we hadn't done this comprehensively,  
14 which is why the debate I think shifted into support for  
15 an inquiry into all of these issues.

16 So we hadn't -- although the Human Rights Commission  
17 had developed the thinking that was there, and we had  
18 taken forward some parts of that, we hadn't taken  
19 forward all parts of that, particularly around the issue  
20 of accountability, and that was an issue which then had  
21 to be addressed through the commission of an inquiry of  
22 this nature.

23 LADY SMITH: John, by the time we are talking about, which  
24 is around "Sins of our Fathers" being broadcast in the  
25 summer of 2013, over three years had passed since the



1           Scottish Human Rights Commission had reported as  
2           a result of being asked to produce a framework around  
3           which the pilot Time To Be Heard would work.

4           A. Yes, and I think I would -- how I would explain that is  
5           that we were taking forward elements of that process  
6           that we thought would address the issues of substance  
7           that lay behind the experience of survivors and what had  
8           given rise to the human rights framework. But what I  
9           would have to accept today is that we had done that in  
10          a piecemeal fashion and we had not done it in  
11          a sufficiently comprehensive fashion.

12         LADY SMITH: Mr Peoples.

13         MR PEOPLES: Can I move on to another matter which has been  
14          explored in the context of the present hearing. You  
15          address this matter at paragraphs 22 to 24 of your  
16          statement, it's the issue of potential cost of  
17          an inquiry and whether cost was a strong factor in  
18          relation to that matter.

19                 Would you accept that we really need to ask those  
20          with direct responsibility for issues relating to  
21          historical abuse of children in institutional care  
22          whether, in making particular decisions, cost was for  
23          them a strong factor? That is really what we need to  
24          do, don't we?

25         A. Yes, I think that is a fair question, yes.



1 Q. Perhaps you could confirm that prior to 2014, no one  
2 came to you as Cabinet Secretary for Finance and asked  
3 you to find the money for an inquiry or indeed, for that  
4 matter, the money for a financial redress scheme? You  
5 weren't getting those representations at that time?

6 A. No, I was not.

7 Q. On the question of an inquiry, the broader question of  
8 an inquiry, is it your recollection that there was not  
9 until 2014 a situation where the Cabinet was asked to  
10 decide whether or not to have a public inquiry? Because  
11 we have heard evidence about consideration at various  
12 points in time, but I am struggling to see there was  
13 ever a formal position where the Cabinet was asked to  
14 decide yea or nay until 2014?

15 A. I think on that sharp question: will we have an inquiry  
16 or not? My view would be Cabinet was not asked that  
17 question until 2014. The issue of where an inquiry  
18 fitted into addressing the issues that we had to  
19 confront as a country was certainly part of the  
20 discussion and the deliberations and the debate that was  
21 going on, but it didn't crystallise into a sharp  
22 question of: are we going to do this or not until 2014?

23 Q. It could have done but it didn't?

24 A. It could have done but it didn't.

25 Q. At paragraph 27, just following this through, and we are

1 in 2014, you personally may have been persuaded in 2014  
2 by Mike Russell's arguments in favour of an inquiry, and  
3 I think that is what you are saying there, but he said  
4 to the Inquiry yesterday I think that there were other  
5 influential figures within Cabinet, including the then  
6 First Minister Alex Salmond and the Cabinet Secretary  
7 for Justice, Kenny MacAskill, as well as I think the  
8 Lord Advocate, it would have been Frank Mulholland at  
9 that stage I believe. They weren't similarly persuaded,  
10 as far as I understood from the tenor of his evidence.

11 And to some extent what you said previously in  
12 paragraph 13, about the caution within Cabinet about  
13 doing certain things, I don't know whether that confirms  
14 what he is saying? I am just trying to put it: there  
15 was a division of view on the merits of a public  
16 inquiry, was there not?

17 A. There was in 2014, yes.

18 Q. A robust division --

19 A. Before I come on to answer that question, if I could go  
20 back to the connection to the caution being expressed on  
21 the time bar issue --

22 Q. Yes --

23 A. -- if I use that shorthand. The caution was about if we  
24 do it for this, what is our argument about the other  
25 circumstances? That was the only caution. It wasn't

1           that there was any deeper issue than that, it was more  
2           about a discussion about if you relax time bar in this  
3           circumstance, what is your argument to not relax it in  
4           other circumstances? I wouldn't want to link that  
5           discussion with this one.

6       LADY SMITH: So the problem with that is that you would  
7           I think readily feel it would not be right to create  
8           a hierarchy of pursuers. Some pursuers are better than  
9           others or more -- a pursuer suing for one type, let's  
10          say clinical negligence, one type of wrong, is not as  
11          worthy of having the time bar relaxed as somebody suing  
12          or having been abused when a child in care, and that  
13          would be what you were grappling with?

14       A. I think that is a very fair illustration of the concerns  
15          that were being expressed in the earlier part -- I refer  
16          in the earlier part of my statement about the  
17          discussions around the question of time bar, that was  
18          very much the debate that was going on at that time.

19       MR PEOPLES: Before you leave that then, I appreciate there  
20          is a different point being made, and you made that  
21          clear. Before we leave that, though, just in relation  
22          to the idea of a hierarchy of claimants, some getting  
23          preferential treatment, that is one argument against  
24          singling out a group, but there was another argument  
25          probably that was current at that time, that if you open

1           the door for one group and you feel under pressure to  
2           open for another, there is a huge cost implication  
3           potentially, and I think that is something we get  
4           a sense of. There were the slopping out cases, for  
5           example, at that time, which were the subject of either  
6           claims or potential claims, and I think we would be  
7           naive to think that that didn't enter the minds of both  
8           legal figures and others, that if we give this class  
9           an open door, then we have another class that can make  
10          the same argument, and we are going to end up with quite  
11          a large potential liability, and cost must to some  
12          extent be a consideration.

13       LADY SMITH: And you wouldn't know what new class might come  
14          round the corner later this year, next year or whatever?

15       A. I think these are the issues that were relevant to that  
16          discussion, very much.

17       MR PEOPLES: Okay.

18       A. When it comes to the situation in 2014, certainly there  
19          was a difference of view within the Cabinet in the  
20          summer of -- summer/early autumn of 2014 about whether  
21          there should be an inquiry, and the Inquiry was  
22          authorised in December after the change of  
23          First Minister had taken place. So there was without  
24          a doubt a division of view within the Cabinet in the  
25          autumn of 2014.

1 Q. I think Mike Russell in his evidence described it as  
2 quite a "robust" discussion. He didn't suggest it was  
3 other than amicable, and he said that is politics for  
4 you and that is the way it should be, but it was robust.  
5 And perhaps there was certainly one school of thought  
6 that public inquiries, for a variety of reasons -- the  
7 time taken, the costs involved, whether they lead to  
8 satisfactory outcomes -- these were the sort of factors  
9 that those that didn't support a public inquiry were  
10 urging perhaps in support of their argument, whereas  
11 Mike Russell was putting forward another perspective, in  
12 particular having to look at what survivors want and how  
13 it will serve their needs.

14 A. Yes.

15 Q. Is that a broad, fair --

16 A. Yes, I would say that.

17 Q. -- interpretation of the respective positions?

18 A. There was a perfectly respectful debate within Cabinet  
19 about this subject but there were two opinions, and one  
20 argument was that an inquiry would not address the  
21 issues satisfactorily, that it would not deliver the  
22 outcomes that survivors hoped for. And there was  
23 another point of view put forward by Michael Russell  
24 which would be informed heavily by his engagement with  
25 survivors, which basically it was a view that we had to

1           confront this issue as a country because we had to do  
2           justice to survivors, we had to enable them to have  
3           their experiences documented, understood and reflected  
4           on and responsibility accepted by the State for what had  
5           happened. He felt that had to be confronted.

6           At that time I found his argument persuasive,  
7           and I supported him in Cabinet. Subsequent to that,  
8           obviously I found myself two years later in the role  
9           that he performed at that time and engaging with  
10          survivors. In the first meeting I had with survivors in  
11          my capacity as Cabinet Secretary for Education  
12          I understood immediately, and I mean within minutes of  
13          that meeting, why he had come to that conclusion after  
14          his interaction with survivors.

15        Q. Yes, I was going to ask you, and I think you have  
16          anticipated, that one of the -- or perhaps the most  
17          profound factor in influencing his view that there must  
18          be an inquiry was when he attended an interaction event  
19          on 27 October, I think it was, 2014, and he spoke to  
20          survivors, and he spoke yesterday about how that had --  
21          if he needed any convincing by then, that that left him  
22          in no doubt of what the right course of action was.

23                I think you were saying you had perhaps undergone  
24          a similar sort of effect of direct engagement with  
25          survivors, that it's a very powerful persuasion, for



1           those that were making the case for an inquiry, to speak  
2           to the survivors and then you will realise why it's  
3           important?

4           A. Yes, I was convinced by Michael Russell's line of  
5           argument at the Cabinet in the summer and the autumn of  
6           2014 and I supported him in his efforts to secure  
7           an inquiry. I have known Michael for about 40 years,  
8           probably, and I trusted implicitly the strength of the  
9           argument he put forward on that occasion, because  
10          I could hear from him, having listened to him for 40  
11          years, I could hear in his voice what was -- what had  
12          influenced his thinking, what had made this profound  
13          impact on his thoughts, and I thought that was  
14          a persuasive argument.

15                 If I had had any doubts in my mind, my first  
16          encounter with survivors in 2016 as Cabinet Secretary  
17          for Education reinforced my view that he was absolutely  
18          right in 2014, and I only wish we had got there earlier.

19          Q. If I could move on. You have a section about the  
20          current Inquiry at paragraphs 31 to 39, and I think  
21          essentially what you are telling us is that you take  
22          a close interest in the work of the Inquiry and the  
23          evidence given by individuals who were children in care  
24          and indeed the published findings of the Inquiry to  
25          date. And I think, and you can tell me if I am wrong



1           about this, you are saying really there that you and  
2           Scottish Government as a whole recognised the importance  
3           of the work which the inquiry has been asked to  
4           undertake, and indeed you say at paragraph 39 that  
5           the Scottish Government will act on any recommendations  
6           made by the Inquiry.

7           Do you want to make a comment on that whole chapter  
8           of your evidence?

9           A. I think, going back to the discussions in 2014, one of  
10          the points that Michael Russell advanced was the  
11          importance that the experiences of survivors were aired,  
12          documented and addressed. And I think when I read --  
13          Lady Smith kindly gave me copies of the documents that  
14          have been published by, the case studies, the three case  
15          studies that have been published by the Inquiry and  
16          I have read them, and the Inquiry has certainly aired  
17          and has documented those findings and they are a very,  
18          very difficult read because of their contents. I think  
19          that is important because I think the country has to  
20          face this, and we have to face it once and for all.

21          When it comes to the final part of addressing it,  
22          that is where the Government has a duty to follow the  
23          work of the Inquiry, to look carefully at what the  
24          Inquiry is identifying in the issues that have been  
25          raised. Then obviously we will get to a moment where

1 the Inquiry will give us recommendations and we will  
2 have to address those recommendations, and I take this  
3 opportunity here to confirm on the Government's behalf  
4 that we will address in full any recommendations that  
5 come from this Inquiry.

6 Q. Can I move on to another part of your statement at  
7 paragraphs 40 to 49 which is headed  
8 "Scottish Government's Current Commitments to  
9 Survivors". You have set out in that section of your  
10 witness statement a number of things that have been  
11 happening, and will happen. Am I right in thinking that  
12 the point of doing that is that you wish to reassure  
13 survivors and others that Scottish Government, during  
14 the life of the Inquiry, is continuing to take steps to  
15 address the needs of survivors, and I think you give  
16 some notable examples of what is happening, one of which  
17 is the financial redress scheme that is currently  
18 I think being legislated for in the Scottish Parliament.

19 So that is the purpose I think of that section of  
20 your report, you go into various initiatives just to  
21 say, well, we just didn't stop by announcing an inquiry,  
22 we are still working separately on the needs as we  
23 perceive them to be, and we obviously take note of  
24 no doubt what is going on in the Inquiry, what the  
25 findings are showing and so forth. But the work goes

1           on, is that right?

2           A. Yes. The Inquiry is one part of what is necessary to do  
3           for the country and the State to repair the damage that  
4           has been done to individuals in the past. So the  
5           Inquiry has that role, to go back to the  
6           characterisation that I said a moment ago, to air, to  
7           document, and then to address, which will be between  
8           the Government and the Inquiry, the findings of the  
9           Inquiry. So that is an important element, a vital  
10          element, of what has to be done.

11          But there is other work that has to be done to  
12          repair the damage that has been done on the watch of the  
13          State to survivors and that takes a number of different  
14          forms. The work of Future Pathways, for example, is  
15          constructed to provide support to survivors in trying to  
16          help them to address some of the issues that they have  
17          experienced. There's a lot of good work.

18          I did a session some time ago, it was pre-lockdown,  
19          so it was probably about a year ago I would think, where  
20          I went with survivors to meet the people from  
21          Future Pathways who provide the support to survivors to  
22          understand myself what is that dialogue like. I came  
23          away from that -- and I attended with survivors,  
24          I talked to them before I went in and I talked with them  
25          afterwards. But what struck me on that encounter was

1           what the Future Pathways team shared with me, that they  
2           viewed their role to be to walk alongside survivors, and  
3           I thought it was a beautiful way to express it, to walk  
4           alongside survivors. So they were there not to  
5           interrogate survivors or to see if they could tick  
6           particular boxes but to walk alongside them, help them  
7           to find their way through the world which they might  
8           find more difficult because of what they have  
9           experienced. I thought it was a beautiful way to  
10          express what it is Future Pathways has to do to support  
11          survivors.

12                 There's then measures such as the advance payment  
13          scheme that we have already launched. I think over 500  
14          advance payments have been made to survivors, these are  
15          for people who are older or who are terminally ill. We  
16          have just reduced the age threshold from 70 to 68 for  
17          eligibility. Then there is the Redress Bill which, as  
18          you correctly say, Mr Peoples, is currently being  
19          legislated for in Parliament.

20                 But there is a crucial connection I think between  
21          the Inquiry and the redress scheme, and that is that I  
22          think the Inquiry, without doubt, is going to help to  
23          provide an evidence base that will make it much easier  
24          and much more straightforward to address the claims made  
25          by survivors. Because the Inquiry, with all the

1           authority that the Inquiry brings under its leadership  
2           from a member of the Inner House, is able to I think  
3           make that journey much more straightforward for  
4           survivors in the pursuit of claims because authority has  
5           been given to experience and testimony as we wrestle  
6           with those claims in the future.

7           So there is a connection between what the Inquiry  
8           does and the agenda that we are pursuing outwith the  
9           Inquiry to properly address the damage that has been  
10          done to survivors by the failure of the State.

11        Q. On the question of a financial redress scheme, and  
12          I don't want to go into the specifics going through  
13          Parliament, it's an opportunity no doubt for people to  
14          make representations and changes and suggestions and so  
15          forth. But do you accept in relation to that step that  
16          it has been far too long in coming?

17        A. Yes.

18        Q. And on the question of an inquiry, would you be among  
19          those who say, perhaps with the benefit of hindsight,  
20          that a national inquiry should have been announced  
21          earlier than December 2014?

22        A. I think it would have been better if that was the case,  
23          Mr Peoples. I think with what we are now seeing the  
24          Inquiry does and documents, I think we would have helped  
25          survivors if we had got here earlier, and I apologise

1           for the time it has taken for us to get to that point.

2           I think a number of what were individually sensible,  
3           rational and considered steps to try to support  
4           survivors and to secure the outcomes that they wanted  
5           were being taken. At no stage in the last, going back  
6           to 2002, was nothing being done. Lots and lots of  
7           things have been done. But I think if you look back at  
8           those -- well, the twelve years between Chris Daly's  
9           Petition and the announcement of the agreement by  
10          Cabinet to an inquiry, lots of things were done. There  
11          was hardly a period in there when there was nothing  
12          happening. There was always something happening in this  
13          respect.

14          The question we have to ask ourselves, and it is  
15          a question I have asked myself, is: was it enough  
16          cumulatively? Individual compartments were all  
17          individually fine, but cumulatively was it enough? No,  
18          it wasn't. And I think we are now in a position with  
19          the Inquiry, with the support services that are  
20          in place, and with the advance payment scheme and the  
21          prospect of a Redress Bill, subject to Parliamentary  
22          approval. Obviously it is, as you correctly say,  
23          a legislative proposal before Parliament just now. On  
24          the assumption that Parliament makes legislative  
25          provision for that then I think we as a country, and me



1 as a representative of the State, are beginning to  
2 address the failings of our country in the past.

3 LADY SMITH: John, you are very frank, thank you, in  
4 recognising that you wish there hadn't been the delay  
5 that there had been.

6 As you have scrutinised the history of the progress  
7 towards announcing the Inquiry at the end of 2014, are  
8 there any particular matters you have identified that  
9 were causative in that delay that could have been  
10 avoided?

11 A. I think -- I think I have to look at the period and  
12 reflect that the moments that have led to what I think  
13 have been the boldest steps in the journey have come  
14 about as a consequence of direct engagement with the  
15 survivors. So Mr McConnell's apology in 2004 was  
16 a direct consequence of the engagement with survivors,  
17 with the Public Petitions Committee and the pressure  
18 that gave rise to that. The direct engagement of  
19 Michael Russell with survivors in 2013/2014 gave rise to  
20 the Inquiry.

21 So there are the two seminal moments, I would say,  
22 in the journey, and they were prompted by engagement  
23 with survivors. So the flipside of that coin, my Lady,  
24 is we should have engaged more and better with survivors  
25 to enable us to come to sharper conclusions, so actually

1 listening to people and hearing them and then saying:  
2 things have to be done. I think that is a big  
3 reflection I would have to take on the period.

4 I think the second thing, and that is quite a hard  
5 judgment on the workings of Government. The flipside of  
6 that is that in any day of the week, and believe you me  
7 this week, it has been one of those weeks, there's  
8 a lot of issues that have to be addressed within  
9 Government on a constant basis. So there is a challenge  
10 to make sure that we maintain all of the intensity of  
11 focus that is required to make sure that we can address  
12 the issues that have to be addressed.

13 LADY SMITH: In this particular case what I am struck with  
14 more and more is that I have heard from many, many  
15 survivors telling me one of the problems when they were  
16 children in care was either nobody listened to what they  
17 were telling people, or trying to tell people about what  
18 was happening to them, or they knew there was no point  
19 in trying to tell them because nobody would listen.

20 Fast forward to 2002, Chris Daly's Petition, "Please  
21 listen to this". Not just "Please listen to this",  
22 "I am giving you what I think would be a useful recipe  
23 with how to address it". Fast forward again, two and  
24 a half years passes before the first step in listening  
25 to what he was asking for in that petition, namely,

1 an apology, but it is not everything that was being  
2 asked for. Fast forward years before the elements of  
3 the petition are listened to again, and it's really not  
4 until the end of 2014 that everything that these people  
5 were asking those in power to listen to was listened to,  
6 and that is one of the abuses that they were complaining  
7 about and one of the abuses that happened to them as  
8 children. It strikes me it's very particular to this  
9 Inquiry, would you agree?

10 A. Yes, I would. And I was re-reading last night the case  
11 study findings that you published, my Lady, on Quarriers  
12 and there is, in the "Reflections" section, just  
13 an awful set of paragraphs about a carer who overheard  
14 boys talking and raised this with the leadership of the  
15 organisation, and it was all -- and it's about "We've  
16 got to do it now. We've got to phone the police now we  
17 must get the police in now", and it didn't happen. She  
18 wasn't listened to. She was a voice for the boys but  
19 she wasn't listened to.

20 So I have to -- I think my reflection to you,  
21 my Lady, is that the landmark moments here are when we  
22 actually listened -- not just heard, not sat in  
23 a meeting, but listened to survivors is when we got to  
24 the right judgments.

25 LADY SMITH: Does that create a wider lesson for Government?

1       A. It does. There are of course, on all sorts of different  
2       questions, competing views, they are not as seminal as  
3       the issues with which this Inquiry is wrestling. As  
4       a former Minister for Finance I would listen to people  
5       on a constant basis wanting money for this and money for  
6       that and all the rest of it, so you have to make  
7       judgments. So it's not always possible to accede to  
8       everybody's requests, but this is of a different order.  
9       This is the nature of who we are as a society and what  
10      we want -- how we want people to be treated within our  
11      society and what we are prepared to confront as  
12      a society. And the conclusion we came to in 2014 was  
13      the only way we could properly confront this as  
14      a country and as a State was to have an inquiry of this  
15      nature.

16     LADY SMITH: Is it really a matter of listening, listening  
17     properly with a view to understanding what it is people  
18     are saying, then considering and then deciding, and even  
19     if the decision is "I cannot do what you are asking me  
20     to do", give that answer respectfully, appropriately and  
21     with reasons?

22     A. Correct. I have read, and indeed the Government  
23     reflects this in its narrative to the Inquiry, I have  
24     read testimony from survivors of some of the ways in  
25     which they have been spoken to or spoken about by

1           representatives of Government and I find it almost  
2           unreadable because it is disrespectful, it's  
3           contemptuous, and people should never be spoken to --  
4           anybody shouldn't be spoken to like that, least of all  
5           people who have had the experiences that survivors have  
6           had.

7           I will probably struggle to find the words to  
8           properly explain how I feel about some of the language  
9           that I have seen used, and not even some of the  
10          language, I suspect some of the perhaps rolling of eyes,  
11          or whatever, which is just completely unacceptable.

12          I am a Member of Parliament, I've been a Member of  
13          Parliament for 23 years. I sit in front of members of  
14          the public every day of the week -- well, I don't do it  
15          just now we, do it on Zoom now. But I have been sitting  
16          in front of members of the public every week for  
17          23 years and it doesn't matter who they are or where  
18          they have come from or whatever, they are entitled to  
19          sit in front of me to be heard properly, with no rolling  
20          of eyes, with respect. And if there is something I can  
21          do for them I will do it, and if there is not, I will  
22          tell them why I can't do it.

23          That is the bond of a Member of Parliament and that  
24          is what I think public representatives should do at all  
25          times.

1 LADY SMITH: Thank you. Mr Peoples.

2 MR PEOPLES: Can I pick up on a couple of things you said  
3 there. This issue which is clearly -- as I say, it went  
4 back decades, this issue therefore was a big issue and  
5 in some ways, although we have heard evidence that cost  
6 was looked at and was perhaps a consideration in  
7 decisions that were taken in response, is this one of  
8 these issues which really transcends money? It is not  
9 about money, and you have just got to confront it, as  
10 you say, and if it takes money then it takes money.  
11 You can't really see it in monetary terms. There are  
12 some issues that we are faced with as a society or as  
13 a politician and you can't really see money as a big  
14 influence. Would you say this is one of these issues?

15 A. Yes. I have seen quite a lot of traffic in the Inquiry  
16 proceedings about money, and obviously I was the  
17 Finance Minister for nine years, and so I was  
18 controlling the money and intimately close with it all.

19 Ironically -- and I have seen references in the  
20 early period of the Government, of which I am a member,  
21 to money being an issue. Ironically, in the period  
22 after 2007, the financial issues were less acute than  
23 they were in 2014. When we came to office in 2007, or  
24 just shortly before that, I was pleasantly surprised to  
25 find out there was £1.6 billion of public money that was



1           being held in an account in the Treasury that hadn't  
2           been spent.

3           So when we came to office -- I stumbled across this  
4           fact in autumn 2006 and stored it away thinking, well,  
5           if I end up becoming the Finance Minister in May it will  
6           be quite handy to have that available to us, and it was.  
7           So we had our block grant arrangements, and there was  
8           also £1.6 billion of money that hadn't been spent.  
9           I found it quite surprising that that was sitting there.  
10          So --

11         Q. Although you weren't approached, there was money you say  
12           that was there that -- perhaps it was a hidden money  
13           tree, perhaps some people hadn't picked up on that?

14         A. There was a hidden money tree at that time so we  
15           obviously used that. So the idea that an argument was  
16           being proffered in 2008 or 2009 saying money is a big  
17           issue, well, we had the ability, we had the ability to  
18           fund the financial priorities that my colleagues decided  
19           upon as being important.

20           I always viewed my role as Finance Minister -- I had  
21           two tasks as Finance Minister: one was to make sure the  
22           Government's record for financial management was robust,  
23           so if the books didn't balance at the end of the year  
24           there was nobody responsible other than me, so that had  
25           to happen and I did that. But my second priority was to

1 help my colleagues to fund the policy priorities they  
2 wished to take forward, and I think generally my  
3 colleagues would take the view that I did exactly that,  
4 I tried to find ways of funding the policy priorities of  
5 the Government. But at no stage did anyone come to me  
6 and say, "Look, we want to have this Inquiry, can you  
7 put the money up for it?" And actually, ironically, in  
8 the early period of our administration, that would have  
9 been easier to fund than it is in the post-2014 period  
10 where money is tighter.

11 Q. Notwithstanding the general financial crisis in 2008,  
12 there was at that stage within Government access to  
13 funds that would fund an inquiry?

14 A. I think if you look at the pattern of the public  
15 finances, in the aftermath of the financial crash, the  
16 then UK Government actually -- although there was  
17 enormous pressure on financial markets, the  
18 UK Government at the time was actually sustaining public  
19 expenditure. Money only started to begin to tighten in  
20 the aftermath of the 2010 General Election, and even  
21 then we didn't begin to feel the effects of that until  
22 about 2012.

23 So I would say the tighter financial period is  
24 actually post-2012 and the period before that --  
25 obviously there were of course many demands for finance

1           for particular things, I did my best to try to fund  
2           them, but undoubtedly I would say the period got tighter  
3           in the aftermath of 2012.

4       LADY SMITH: So if you take 2008/2009, are you telling me  
5           that officials weren't being told "We are in times of  
6           austerity. You have to think about the cost of  
7           everything you are recommending"?

8       A. People would be getting a message about the need to be  
9           careful with public finances, but in the actual  
10          practical tightening of public expenditure,  
11          I wouldn't say that period was -- that period was not as  
12          tough as it has been post-2012.

13       LADY SMITH: Do you remember whether officials were being  
14          told anything about money supply and what they had to  
15          think of in terms of cost?

16       A. We would be challenging, or I would be challenging  
17          Departments of Government to make sure money was being  
18          used effectively. I was pressurising to get value out  
19          of public expenditure. So, yes, I was doing that,  
20          certainly, because I wanted to maximise the effect of  
21          public expenditure. Now, that is different to saying to  
22          people "You can't have money for this policy priority"  
23          because, as I narrate in my evidence statement, there  
24          were big policies commitments with big price tags that  
25          we funded during that period, and I funded them because

1           they were the right thing to do.

2       LADY SMITH: Isn't maximising the effect of public  
3           expenditure always a good principle to be following in  
4           Government, irrespective of outside circumstances such  
5           as the crash of 2008 and so on?

6       A. Yes, it was. It's a central part of the tactics that  
7           I used in the management of the public finances, that  
8           I was constantly challenging how we could get more value  
9           out of the public expenditure that we were making,  
10          because if we were successful in that we could afford to  
11          do other things, and that stretched the capacity. So  
12          often there would be commentary about that period which  
13          expressed a bit of surprise about how we were perhaps  
14          able to afford certain new priorities, but we were able  
15          to afford new priorities because I had stretched the  
16          value of other priorities.

17       LADY SMITH: Thank you. Mr Peoples.

18       MR PEOPLES: The second point I wanted to raise, apart from  
19          the issue of money, and you have helpfully explained the  
20          whole context, and I think you acceded generally to my  
21          proposition that some issues are not about money,  
22          I think that was the sense of your answer. But the  
23          second point you made, which was trying to reflect on  
24          what factors may have contributed to the time it has  
25          taken to get to where we are today, you did say that the

1 "boldest steps", that is your words, were points when  
2 there was direct engagement with survivors, and you had  
3 in mind the run-up to the Apology and the run-up to the  
4 announcement of this Inquiry, which were two of the big  
5 demands of the Daly Petition.

6 Can I see if I can refine that thought a bit  
7 further, that it is not just direct engagement of  
8 Government, it was direct engagement between survivors  
9 and ministers. Because Peter Peacock spoke to survivors  
10 before the Apology on 23 November 2004, as well as  
11 officials doing so, and I think that obviously  
12 Mike Russell has told us that he engaged with survivors  
13 on 27 October 2014 directly. So it is not just even  
14 about engagement, it was engagement by the people who  
15 take the decisions. They had the direct access to the  
16 people who would benefit from those decisions. And  
17 I think you are saying it seems that there were big  
18 steps taken following such engagement, and perhaps that  
19 explains why those steps were taken then and why they  
20 were perhaps bolder than some of the others.

21 A. I think that is probably fair although I wouldn't say  
22 I would exclusively accept that point. I think it is  
23 perfectly possible for engagement to be taken forward by  
24 officials on behalf of ministers, and for that to be  
25 properly conveyed to ministers so that ministers can

1           make a judgment. Because there are lots of my officials  
2           engaged with all sorts of people on my behalf and I will  
3           then consider the output of that, because I simply don't  
4           have enough hours in the day to do all the direct  
5           engagement I would like to do. I do a lot of it, but  
6           I don't have all the hours in the day to do all that  
7           direct engagement. So it is perfectly possible for  
8           those issues to be properly represented.

9           But reflecting on my own engagement with survivors  
10          on this particular topic, I don't think it is possible  
11          to have conveyed to you in a submission what is the true  
12          feelings and hurt of survivors. I think that is tough.

13        Q. Therefore maybe I can put it this way: while I do accept  
14          that officials can no doubt give effect to or find out  
15          something for a minister to take a decision, and you  
16          can't see everyone that wants something done by  
17          Government, but maybe I go back to my point about there  
18          are some issues that are not just about money, but there  
19          are some issues where the direct engagement of the  
20          decision-makers, the ministers, is essential, and maybe  
21          I am putting to you a point that this was one.

22        A. That could be a fair point, yes, and I think -- but  
23          there is a need for ministers to work out how they need  
24          to spend their time and who they need to engage with to  
25          make sure they have a proper understanding and command



1           of the issues that have to be addressed. So there may  
2           well be topics where that direct engagement is  
3           an absolute requirement and others where it can be  
4           undertaken more at arm's length.

5       LADY SMITH: One thing that occurs to me arising out of that  
6           exchange, John, is there will of course be circumstances  
7           where such direct engagement as happens is between  
8           officials and the citizens concerned. When it comes to  
9           a particularly sensitive matter, such as we are dealing  
10          with here, would you agree with me it's really important  
11          to choose carefully the official or officials who are  
12          going to have that engagement?

13       A. Yes, without doubt. I come back to one of the earlier  
14          comments that I made about some of the survivor  
15          testimony that the Government addresses in our narrative  
16          to the Inquiry whereby there are words and phrases used  
17          which are completely and utterly unacceptable.

18                So that must make your point, my Lady, that those  
19          comments have come from people who didn't do that  
20          engagement properly because it is disrespectful.

21       LADY SMITH: So how do you stop that happening?

22       A. You have to make sure that you are choosing individuals  
23          in particular roles, and this is a particularly  
24          sensitive area of policy, that you choose people who can  
25          ensure that they -- well, let me roll back a little bit.

1 Any public servant should operate in a fashion that is  
2 respectful of members of the public. So whether you are  
3 dealing with historic child abuse or policy in our  
4 schools or issues of policing, public servants should be  
5 respectful of members of the public. So although I take  
6 exception to those remarks that I have cited in the  
7 submissions by Helen Holland, for example, if I read  
8 a statement which said that one of my officials had been  
9 disrespectful to a member of the teaching profession  
10 about something they had said, I would think exactly the  
11 same thing. So I make that point for the consistency of  
12 how public servants need to operate.

13 When it comes to issues like this, I think we do  
14 have to recognise that this is very, very tough  
15 territory so the people that you are choosing to go into  
16 this tough territory must be equipped to handle that.  
17 They may need specialist training to enable them to do  
18 so, they may -- I would venture to suggest they need  
19 a personality of a particular type that enables them to  
20 do that.

21 I am particularly fortunate just now that I have  
22 officials who are working in this area of policy where  
23 their commitment to survivors is, in my view,  
24 extraordinary in how they engage, what they do, how they  
25 are helping people. And their empathy is extraordinary.

1           They are respectful. They absorb the concerns and the  
2           fears of survivors and they try to address them. They  
3           act, frankly, in a manner that I would want -- that I am  
4           proud of about how they do that because of their  
5           engagement. But I have to accept that has not always  
6           been the case, because the testimonies of Helen Holland,  
7           David Whelan and Chris Daly contradict that and I accept  
8           that.

9           One of things that I now chair, I chair a national  
10          steering group on trauma training with the objective of  
11          creating a trauma-informed workforce, which is broader  
12          than the issues involved in the abuse inquiry but which  
13          is looking at how the -- a whole host of different areas  
14          of policy we have to understand better: the significance  
15          of trauma and how trauma has affected individuals. I am  
16          acutely aware of this in my role as Education Secretary  
17          about the trauma that children can experience in their  
18          earliest days. I think the Inquiry is familiar with our  
19          policy approach on Getting It Right For Every Child  
20          and what that involves. That has been pursued through  
21          a trauma-informed approach because we recognise that,  
22          without that approach, you will actually never get  
23          somebody over the burden of their trauma to make  
24          recovery as a consequence, so there is an element to  
25          which that training is required to do that.

1 LADY SMITH: Thank you.

2 MR PEOPLES: Can I ask one question arising out of that  
3 before we have a break, if I may?

4 LADY SMITH: Yes, Mr Peoples.

5 MR PEOPLES: I take it that what you have said in answer to  
6 some of the points raised there about perhaps past  
7 deficiencies and acknowledged failings, you are  
8 articulating I think, in a broad sense, that there is  
9 an understanding of those failings, and indeed there  
10 have been steps taken to address them, and you have  
11 mentioned some of the things that are being thought  
12 about, and indeed the steering group.

13 So can we take it then that you can give some  
14 reassurance today that the point has been noted and is  
15 being addressed within Government, the past failings and  
16 the deficiencies in engagement and treatment of  
17 survivors at times, I don't think it is universal.

18 A. There are examples which are cited in the evidence the  
19 Inquiry has heard from survivors which are wholly  
20 unacceptable, and I would take this opportunity to  
21 apologise on the Government's behalf for those examples.  
22 They should not have happened.

23 The point that my Lady puts to me about the  
24 importance of making the correct choices about the  
25 individuals who act on the Government's behalf is

1           a vitally important point and we have to make sure that  
2           is present in all of the decisions that we make about  
3           people that act on our behalf.

4 MR PEOPLES: I do not have too far to go but I think we do  
5 need to have a break.

6 LADY SMITH: Yes, and not to forget the stenographers who  
7 are working away in the background.

8                   We usually take a morning break about now, John, if  
9                   that would work for you, so I will rise for about a  
10                  quarter of an hour. Thank you.

11 (11.27 am)

12 (A short break)

13 (11.46 am)

14           LADY SMITH:   John, are you ready for us to carry on?

15           A.   I am, my Lady.

16           LADY SMITH:   Mr Peoples.

17 MR PEOPLES: Mr Swinney, you have a section in your witness  
18 statement headed "Protection of Children from Abuse",  
19 it's paragraphs 50 to 57. It may come up on the screen.  
20 In that section you mention the very important issue of  
21 protection of children in care now and in the future  
22 from abuse.

23 Can I just pick up something you say at  
24 paragraph 51:

25 "The Scottish Government offers to provide evidence

1           on changes in law and practice that have taken place  
2           since this Inquiry was established."

3           As you know, I think, the Inquiry's Terms of  
4           Reference include a specific term, term 7, which  
5           requires the Inquiry to:

6           "... consider whether further changes in practice,  
7           policy or legislation are necessary in order to protect  
8           children in care from abuse now or in future."

9           So I think you may take it that the offer will be  
10          taken up at the appropriate time. I think maybe today  
11          we concentrate on those who were children in care in  
12          the past, but you have set out some of the things that  
13          have been happening in relation to current child  
14          protection, and we have that evidence, but I am sure in  
15          due course we can get a fuller picture of that. So  
16          hopefully that reassures everyone, including you, that  
17          the matter will be appropriately and properly addressed.

18        A. Certainly. I think what I would say in that respect is  
19          that obviously there has been a great deal of focus on  
20          the issues of child protection over the last --  
21          certainly throughout my Parliamentary career, and what  
22          I note in paragraph 52 is that one of the areas of  
23          continuity of policy that our Government took forward  
24          was the concept of "Getting It Right For Every Child"  
25          which emerged from our predecessors, because we believed



1           that was the correct direction of travel. We have built  
2           on that and taken forward various other steps to enhance  
3           child protection and, indeed, we regularly consider and  
4           I see, as does the Minister for Children and Young  
5           People, assessments by the Care Inspectorate on  
6           assessments of the effectiveness of child protection  
7           arrangements in individual localities around the  
8           country. We see that on a regular basis from periodic  
9           inspections and, as a consequence of that, at times, we  
10          can require local authorities or child protection  
11          partnerships to enhance their practice if we are  
12          dissatisfied with how that is being reported to us, and  
13          we have done that on occasions.

14        Q. I think, without, as I say, going into the detail of  
15          this, that one of the broad policy aims I think is not  
16          simply to improve child protection in the narrower  
17          sense, but to improve outcomes for children who are  
18          looked after, looked after children, whether in a care  
19          setting or looked after children in the community, and  
20          I think that is a key component of the policy as well,  
21          is that correct?

22        A. That's correct and we have focused very much on the  
23          point -- and it comes back to the question of trauma  
24          that we were discussing earlier on, that we have to  
25          acknowledge, and this is at the heart of the "Getting It

1 Right For Every Child" policy, that what happens in the  
2 earliest days of a child's life can determine so much of  
3 their prospects and their outcomes in the years to come.  
4 So making sure that the support is effective in that  
5 respect to assist those children is critical. But there  
6 is also a need to be supportive of the family context in  
7 which they are living, and that has been very much at  
8 the heart of the outcome of the Care Review, which has  
9 resulted in the publication of "The Promise", which is  
10 currently being enacted by the implementation team that  
11 I have appointed to take forward that area of policy.

12 Q. That is the review chaired by Fiona Duncan?

13 A. Correct, yes.

14 Q. One thing you do tell us, which is perhaps a significant  
15 move, is that the Scottish Government has recently  
16 introduced the United Nations Convention on the Rights  
17 of the Child (Incorporation) (Scotland) Bill into the  
18 Scottish Parliament on 1 September this year and the  
19 Bill, if passed, will directly incorporate the United  
20 Nations Convention on the Rights of the Child as far as  
21 possible within the domestic law of Scotland, is that  
22 right?

23 A. That is correct, and the objective of that is to ensure  
24 that practice in Scotland in all respects that would be  
25 covered by the United Nations Convention on the Rights

1 of the Child is what is lived out by children within  
2 Scotland. So the purpose of enactment is to ensure that  
3 all public authorities are operating in a manner that is  
4 consistent with what would be expected of them under the  
5 UNCRC.

6 Q. Deputy First Minister, the final part of your statement  
7 starts at paragraph 58 and it is headed "Response to  
8 evidence of survivors". Can I ask you to give  
9 a response on behalf of Scottish Government at this  
10 stage in relation to these matters?

11 A. I will. I think as I have explained in the course of my  
12 evidence this morning, I hope anyway, is that the  
13 Scottish Government has taken very seriously the issues  
14 that are raised by survivors, and have done since we  
15 came to office and I think indeed these issues were  
16 addressed also by our predecessors. But I think I have  
17 to accept that at times some of the handling and the  
18 approach that we have taken forward to dealing with some  
19 of those concerns have not been appropriately and  
20 effectively handled and addressed, and indeed I have  
21 made comments about the testimony of Helen Holland,  
22 David Whelan and Chris Daly which cause me enormous  
23 concern as to how they have experienced dealing with the  
24 Scottish Government, and I would want to at this point  
25 apologise unreservedly to any survivor who has felt they

1           have not been properly supported or dealt with by the  
2           Scottish Government in raising their concerns and their  
3           aspirations to have their concerns addressed.

4           What I would say is that at all times our approach  
5           has got to be respectful to individuals, and there are  
6           occasions where that has not been the case and it is not  
7           what I would have expected people to appreciate on our  
8           behalf.

9           I think also the Inquiry essentially looks over very  
10          difficult territory for the country and the experiences  
11          of some of our fellow citizens have been wholly  
12          unacceptable. So in commissioning the Inquiry what  
13          I wanted to make sure was the case was that the Inquiry  
14          had every opportunity to explore the experience of  
15          survivors and to essentially hold those responsible to  
16          account for those experiences; whether that is  
17          the organisations that were directly involved in the  
18          delivery of what would be allegedly called "care" or the  
19          Government for presiding over the arrangements in which  
20          this was able to take its course. And, as I have  
21          indicated to the Inquiry already this morning, in the  
22          case study findings I think they give the platform that  
23          is necessary for the testimony of survivors to be  
24          clearly understood and addressed within our country, and  
25          they obviously place a burden on Government to address

1           the issues that arise out of that testimony, which the  
2           Government will pledge to do.

3           Lastly, when I went to Parliament in 2018 to address  
4           a number of these issues, I unreservedly apologised on  
5           behalf of the Government of Scotland for the experiences  
6           that survivors had. I reiterate that apology to the  
7           Inquiry today. The State failed a lot of young people  
8           in the past; children and young people who were at their  
9           most vulnerable and the State failed them. The State  
10          has to take responsibility for that and make account for  
11          it, and I unreservedly apologised on behalf of the  
12          Government and the State in Parliament in 2018 and  
13          I reiterate that apology here today.

14       MR PEOPLES: These are all the questions I have for you this  
15          morning, Mr Swinney, and I thank you very much for  
16          coming and attending and giving the evidence today.

17       LADY SMITH: Are there any outstanding applications for  
18          questions?

19          John, that does complete all the questions we have  
20          for you. Thank you so much for engaging with the  
21          Inquiry, both in terms of your written statement and  
22          coming here today to give oral evidence. I am very  
23          aware obviously of how busy you are, but it was very  
24          important to have you here, and I am very grateful to  
25          you for that. I am now able to let you go.

1       A.   Thank you.

2                               (The witness withdrew)

3       LADY SMITH:   Mr Peoples.

4       MR PEOPLES:   That concludes the evidence in this particular  
5                   hearing.  The plan is that there will be closing oral  
6                   submissions next Friday, a week today, and parties will  
7                   be asked to submit written submissions in advance of  
8                   that.  I think they have been given notice of when they  
9                   are due.  I think it is Wednesday at noon, but I may be  
10                  wrong.

11      LADY SMITH:   I think you may be right about that.  I just  
12                   don't have that in front of me.

13      MR PEOPLES:   That is the plan.  So we meet again here next  
14                   Friday to deal with those matters.

15      LADY SMITH:   Final submissions next Friday.  Thank you very  
16                   much for that.  I will rise now until then, and to those  
17                   of you who have given up what otherwise would have been  
18                   a public holiday today, thank you very much for your  
19                   interest and attendance.  Thank you.

20      (11.58 am)

21                   (The Inquiry adjourned until Friday, 4 December 2020 at  
22                   a time to be confirmed)

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