

Friday, 4 February 2022

1

2 (9.30 am)

3 LADY SMITH: Good morning. Ah, this isn't good.

4 (Pause for sound difficulties).

5 LADY SMITH: I'm going to go out, see if we can sort this
6 out.

7 (9.33 am)

8 (A short break)

9 (9.36 am)

10 LADY SMITH: Dare I speak? Yes.

11 I was told the matter had been sorted. Thank you.

12 Mr Brown.

13 MR BROWN: My Lady, good morning.

14 Today's hearing will start with me making some
15 general observations about the Merchiston phase,
16 followed by submissions from Mr Reid. Then we will
17 break, I would imagine, and then call John Edwards, but
18 we will be finished by lunchtime.

19 LADY SMITH: Thank you.

20 Submissions by Mr Brown

21 MR BROWN: Looking to the Merchiston phase of the boarding
22 schools part of the Inquiry, we heard from 31 witnesses,
23 either in person or by read-in. This element has been
24 very different from previous hearings. We have had
25 fewer applicants, but more insight from teachers and

1 former staff, and that has given a fascinating and
2 instructive insight on how abuse can go on for decades
3 in a school, despite the use, and growing use, of
4 policies and a clear desire to take child protection
5 forward.

6 As a school, Merchiston are to be thanked for the
7 open cooperation they have given to the Inquiry through
8 their solicitors. They have willingly provided
9 significant amounts of material at the earliest stages.

10 Former and current members of staff have been
11 candid, most obviously Andrew Hunter, the former head,
12 notwithstanding the emotional pressure and burden that
13 that will have caused. Their reflection and learning
14 since the events of 2013 and the death of
15 James Rainy Brown has meant failings in implementation
16 of policies, recruitment and the need to act when
17 problems have been visible have all been acknowledged
18 and it's striking, of course, that there is no dispute
19 to any of the abuse that we have heard about.

20 It's apt perhaps to quote from the school's frank
21 part B response, which dates from April 2017,
22 approaching now five years ago. It's a useful summary,
23 perhaps, that talks about Merchiston but reflects all
24 the things we have heard about every school.

25 As they say:

1 "Following our review of available files and
2 complaints covering the period 1930 to 17 December 2014
3 we believe that there may have been psychological and/or
4 emotional abuse, including humiliation of pupils,
5 bullying, voyeurism, including what the school
6 identifies as lewd practices and inappropriate
7 behaviour. It is apt that historically there are
8 occasions where there has either been a lack of rigorous
9 procedures and policies of the type in place now or
10 a lack of full application of the procedures that were
11 in place in respect of some complaints brought to the
12 school's attention."

13 Quoting from one of their own reports by Kate Cherry
14 in 2014, they say:

15 "Looking at issues since 1988, there was a deficit
16 in the school's organisation which did not have in place
17 a mechanism to see the whole picture of individual
18 behaviour of staff. There is evidence that the school,
19 while reacting to all reports of abuse, did not follow
20 through to the strongest extent in accordance with
21 disciplinary policy as it existed at the times of these
22 inappropriate behaviours. When there were concerns
23 raised, looking back, our systems for dealing with such
24 instances were too informal and did not fully follow
25 a disciplinary policy.

1 Before 1998 the school did not have a formal system
2 in place for the recording of complaints and the action
3 taken."

4 There's reflection why this happened:

5 "One explanation is that there were errors of
6 management, where the balance of pupil care and
7 collegiate loyalty or making allowances was not
8 well-judged.

9 On review now, it can be identified that in several
10 cases more timely and robust action could have been
11 taken. When concerns were raised, the school responded
12 by challenging the members of staff, but this was not
13 always done with sufficient rigour and whilst requiring
14 a change in behaviour in order comply fully with the
15 school's ethos and approach to the welfare of boys there
16 was not a specific system in place at the time to
17 measure the effectiveness of intervention. On review,
18 the school considers that too much trust was put in
19 staff and that historically there was a lack of strong
20 formal appraisal system. This led to an apparent lack
21 of rigour in applying disciplinary policy, a misguided
22 sense of support or a loyalty to staff, a lack of rigour
23 in the training of staff in key areas of child
24 protection and well-being, the principle of universal
25 promotion of well-being was not established strongly

1 enough historically to allow the pupils or staff to
2 question with confidence behaviours which they found of
3 concern.

4 It appears that historically the culture was not
5 sufficiently open for the young people to feel they
6 could come forward and some may have felt they could not
7 speak out about abusive and inappropriate behaviour.

8 There also appears historically to have been
9 a mistaken sense of loyalty to the peer year group, to
10 the school, to other staff and historically it can be
11 identified there was a lack of consistent objective
12 scrutiny from the governing body."

13 All of that identified in 2017, as I say, might be
14 seen to reflect every school we have heard about.

15 LADY SMITH: Yes.

16 MR BROWN: But it is to Merchiston's credit that they were
17 so candid and insightful from the outset.

18 LADY SMITH: A feature with Merchiston that is maybe not
19 solely particular to Merchiston but quite striking is
20 the failure to recognise the red flags that allowing
21 staff to become so embedded, so able to do their own
22 thing, so able to virtually become unchallengeable, that
23 these were areas that should have been flagged up as
24 high risk. I have in mind obviously James Rainy Brown,
25 but also Mervyn Preston --

1 MR BROWN: Yes.

2 LADY SMITH: -- who quite quickly became a man who was
3 feared, did his own thing, had his own habits that
4 people knew about, but he was never corrected, and
5 neither of them were ever actually seen as a risk to
6 children.

7 MR BROWN: No. It's the fact that there is a period, and
8 it's interesting and perhaps reflects some of the
9 observations made by pupils in the hearing, that this
10 went on for decades.

11 LADY SMITH: Yes.

12 MR BROWN: And, as Your Ladyship says, it became ever more
13 embedded, was known about by the pupil body, one might
14 suspect was known about by everyone else, but was masked
15 because of that embedding, the loyalty. It's the
16 description of James Rainy Brown in particular: he was
17 Merchiston.

18 LADY SMITH: Yes.

19 MR BROWN: Which is perhaps the most alarming single
20 sentence.

21 LADY SMITH: Mm.

22 Mervyn Preston, for example, was so well regarded
23 that he became deputy head and for a period was acting
24 head --

25 MR BROWN: Yes.

1 LADY SMITH: -- of the entire school. By all accounts,
2 an intelligent man who was a good academic teacher.

3 MR BROWN: Very much so, yes.

4 LADY SMITH: And you also have the risks that then arise, if
5 you take James Rainy Brown, for example, of them
6 introducing others to the school on a casual basis.
7 Now, we have no evidence that there was anything ever
8 untoward done by Reg Woodward, but, again, that was
9 a high-risk set of circumstances and he was just allowed
10 for a period to keep coming to the school and engaging
11 with the children.

12 MR BROWN: Yes. As Your Ladyship is aware -- and correctly
13 says -- there is no direct evidence of Woodward, but it
14 is of moment from more general information that we have
15 received that, like Preston, he was known at his own
16 school by a similar soubriquet. In any event, my Lady,
17 yes, you are absolutely right.

18 LADY SMITH: But it was thought to be okay.

19 MR BROWN: Yes, and there was no challenge and one remembers
20 the letter from Spawforth, the head in the 1990s,
21 clearly aware of the tensions, trying to control it, but
22 a common theme, James Rainy Brown would not be
23 controlled.

24 LADY SMITH: I know to an extent of its time, but as one
25 looks at it now, what you see happening is a fairly

1 relaxed attitude to somebody coming to the school,
2 engaging with the children and no checks in advance were
3 being made about them.

4 MR BROWN: No.

5 LADY SMITH: There's no advance permission. There's no
6 liaison between I think was it Kings School he was
7 coming from, I can't remember, and Merchiston about him.

8 MR BROWN: No. What's striking, remembering that evidence,
9 he was clearly coming as an individual --

10 LADY SMITH: Mm.

11 MR BROWN: -- it wasn't --

12 LADY SMITH: No.

13 MR BROWN: It was purely because of the individual
14 connection with James Rainy Brown, and yet
15 James Rainy Brown was promoting it as if it was
16 organised by Merchiston, which it definitely wasn't.

17 LADY SMITH: Mm-hmm.

18 MR BROWN: So, another good example --

19 LADY SMITH: So it's adding the need to be risk aware.

20 MR BROWN: Oh, absolutely.

21 LADY SMITH: Not just alert to what might just have happened
22 and taking immediate action. It's being risk aware and
23 having a child never get to the stage of being abused.

24 MR BROWN: Well, I think going back to what I just read out
25 from the 2017 part B, there's a recognition that loyalty

1 clouds the red flags that are visible, and that is
2 something one has to be very alive to.

3 LADY SMITH: Thank you.

4 MR BROWN: Thank you, my Lady.

5 I was going to add that the evidence of the last
6 three weeks has simply confirmed what was said in rather
7 clear definition. It has fleshed out and brought to
8 life the unchallenged abuses which were being
9 acknowledged in the part B response.

10 The Merchiston chapter has also been of particular
11 interest given the wide-ranging inspections following
12 the death of James Rainy Brown. It's demonstrated
13 sometimes that inspections work well, and sometimes they
14 don't. It has shown where limitations exist, for
15 example perhaps best shown by the tensions between the
16 2013 and 2015 inspections and the reporting and grading.

17 It's clear from the evidence that there have been
18 times where deficiencies have existed in what the school
19 has been reporting to the Care Inspectorate, but equally
20 there's been deficiencies in what the Care Inspectorate
21 clearly does know and yet does nothing about, because it
22 has felt hidebound or constrained by timescale
23 limitations, one only looks back to the previous report,
24 or one doesn't look at teachers who are seen by the Care
25 Inspectorate as having only teaching responsibilities,

1 not care responsibilities.

2 One might reasonably conclude that any teacher in
3 a boarding school has pastoral and care
4 responsibilities. If nothing else, given the bespoke
5 monitoring systems that cover every aspect of
6 a student's life and which we have heard much about and
7 may hear more about later this morning.

8 Of further moment is the fact that the inspections
9 are themselves not necessarily clear. Much of the
10 content -- Your Ladyship will remember there were
11 39-page reports both for low and medium inspections --
12 has been formulaic and in language that was far from
13 straightforward. In context of what the reports were
14 referring to, the Inquiry has known what it has been
15 talking about because we have a deluge of information
16 which gives the background to it, but it is perhaps
17 striking that from a reader's point of view, without
18 that level of knowledge, it would not be apparent, even
19 if you're working at Merchiston, what is being spoken
20 about.

21 It's been instructive in terms of looking at
22 a school's regime, the impact -- this is touching
23 obviously about what Your Ladyship was mentioning, but
24 we have heard interesting evidence about the horizontal
25 house system, which was special to Merchiston. Its

1 intent, seemingly, was positive, and on the evidence we
2 have heard, it may have meant less bullying than we've
3 heard about in other schools than in the vertical
4 system.

5 That was not everyone's experience plainly, thinking
6 particularly of CCY who in the 1980s -- I'll touch
7 on some of the detail in a moment -- spoke of bullying
8 being rife.

9 The horizontal system -- this is a matter that will
10 be discussed more widely perhaps when one comes to
11 considering all the evidence -- has practical
12 disadvantages: it is burdensome on teachers, given the
13 numbers of new boys that arrive each year and have to be
14 known by the house staff; it breaks progress with work
15 that has been ongoing with a housemaster and
16 an individual pupil; and, more significantly perhaps,
17 thinking of abuse, when allied with the school approach
18 that communication between the years was frowned upon,
19 which we heard about certainly in the earlier decades,
20 it meant, as is recognised in the school's submissions,
21 that prurient bachelor teachers had a fresh intake of
22 boys each year. It's perhaps telling that the two most
23 prolific in terms of decades of abuse were in the junior
24 houses, Chalmers West and then Pringle, where again
25 there is a concern, underlying concern perhaps, that we

1 have Preston, the housemaster of Chalmers West, who had
2 two deputy housemasters we heard about, Ian Robertson
3 and James Rainy Brown, who of course we heard about
4 individually, and there is a sense -- one can put it no
5 higher than that -- of connection.

6 As CCG [REDACTED] said on Day 262:

7 "Well, I mean -- I sort of -- I assume and I think
8 I'm assuming correctly, that if it happened to my year,
9 then it would have happened to all the other years
10 before and after that Mervyn Preston was in place."

11 When I asked him what about the fact that his
12 assistant housemaster and he said:

13 "Yeah, the [REDACTED] teacher."

14 I went on:

15 "The [REDACTED] teacher, from what you saw with your
16 friend, was of a potentially similar disposition?"

17 He said:

18 "Yes. Well, thinking back, I think he was probably
19 allowed to take that position by Mervyn Preston, the [REDACTED]
20 teacher was allowed to stay in that house because they
21 were both of the same mind."

22 Then of Rainy Brown, BRG [REDACTED] said on Day 263, I
23 asked:

24 "The word you used to describe Rainy Brown was he
25 an 'enforcer'?"

1 "Yes ... because you had the impression that he was
2 totally in thrall to Mervyn Preston, that he would --
3 that he would do anything that was required of him, and
4 one thing that he did well was punishments [I'll come
5 back to that] ... Preston wasn't the greatest beater or
6 flogger. He did, but actually a lot of the dirty work
7 was left to Rainy Brown. The actual thrashings."

8 They seemed to be part of the same cohort.

9 I appreciate that's talking about corporal
10 punishment, and yet there is a sense of decades of
11 behaviour by Preston and it is of moment that his cohort
12 included two other teachers who are similarly prurient.

13 LADY SMITH: Yes.

14 MR BROWN: One says that, obviously, thinking about the
15 regime that James Rainy Brown then deployed in Pringle,
16 where he was an outlier and had free rein. As

17 **HYD** described him:

18 "Pringle was a separate entity almost in its own
19 right. JRB was Lord and master."

20 The other factor about the horizontal system that
21 might be seen as a negative is that it meant, allied
22 with the lack of communication between years, that
23 whilst there was clearly a considerable knowledge about
24 teachers, that knowledge came too late.

25 And certainly Merchiston, and this has echoes in

1 other schools, does seem to have been a place where, to
2 use the phrase of the time, people were sent down the
3 drive with some degree of irregularity.

4 As CDR [REDACTED] the teacher, recognised:

5 "... this [happened from] the 19th century onwards,
6 there would be incidents where ... a teacher would be
7 down the drive, and that would happen regularly in this
8 school one year, and that school another year, that sort
9 of stuff. It was a known risk and danger."

10 Where the response was simply an assumption that it
11 would be spotted.

12 That obviously goes back to the red flag. Red flags
13 were there to be seen. Sometimes they weren't seen,
14 but, taking it on, even if they were, the response was,
15 certainly in the past, woeful.

16 LADY SMITH: Mm-hmm.

17 MR BROWN: Looking in a little more detail about the
18 individual elements of sexual abuse, thinking ahead to
19 what might be seen as the standard approach to phases of
20 the Inquiry, looking at teachers, there clearly was
21 sexual abuse. Mervyn Preston. Nudity, watching
22 showering, touching. He used to check hamstrings, baths
23 with boys present, and as CCZ [REDACTED] said on Day 263:

24 "Thinking back now it was obviously premeditated,
25 because the bath must have been run prior to my

1 appearance."

2 CCG said:

3 "That was what we noticed, he was looking at our
4 genitals. That started straight away and continued
5 through our first year."

6 He was told, "Never turn your back on him".

7 The facts of life talk, "We'll be more comfortable
8 in here", said Mr Preston. He sat on the bed and began
9 to expose himself:

10 "And then he wanted me to expose myself too ... As
11 I said I was just a -- I did what I was told ... well,
12 I'm almost sure he wanted me to touch him and I said 'no
13 I don't want to', and then he wanted to touch me and I'm
14 very grateful that I said 'no' ..."

15 That was CCG talking about events from 1958,
16 which he first shared in 2017.

17 And BLQ on Day 262:

18 "... Preston would come in and walk particularly in
19 the first two rows of boys [in the bathrooms], there
20 were rows at the sides as well, and he was the same
21 height as your genitalia and would examine each boy
22 individually, and in some cases touch them ... whatever
23 he had in his top pocket to lift a boy's penis to check
24 if their testicles had dropped, every night during the
25 summer term."

1 BLQ also talked about having to go to his room
2 to ask for permissions:

3 "It was at nighttime, he would be in his room with
4 a dressing gown with his hands behind his back and the
5 dressing gown open in the front so he was totally
6 exposed and naked. It was common knowledge."

7 Your Ladyship will remember BRG talking about
8 his friend going to the swimming pool at the club and
9 the description of Preston "... never taking his eyes
10 off my friend who was swimming and just staring at him
11 the whole time".

12 And CCL thinking into the 1960s:

13 "His nickname, I mean this was almost ridiculous.
14 His nickname was 'Merve the perve'. The whole school
15 knew what he was like. I mean this is almost ridiculous
16 that nobody did anything about it, but that was his
17 nickname."

18 He went on to talk about the inspections for
19 possible sport supports and went on:

20 "It was utterly bogus. I mean, even at 12 and 13
21 everyone knew it was completely bogus."

22 It goes back to the point. It was widely known. It
23 went on for decades. The red flags were there. Could
24 be seen by the boys. It's hard to imagine they weren't
25 seen by the staff, some staff, as well.

1 LADY SMITH: But for the boys, they just lived with it on
2 the basis that's how things were, these are teachers --

3 MR BROWN: That was the common phrase: that's the way it
4 was.

5 A very gentle observation, because I don't push the
6 point, but one witness also made the point that BLQ
7 the teacher, was appointed by Preston. BLQ we heard
8 about perhaps more in the beating side of matters, but
9 it was observed by CCZ that BLQ was reported to
10 be putting hands on the boy's knees while he was wearing
11 a kilt, touching him and asking how puberty was coming
12 on and suggesting that perhaps a physical examination
13 should be done to see how things were coming on. Echoes
14 upon echoes.

15 Moving on to Ian Robertson, the art teacher who was
16 sent down the drive, moving on to a girls' school, which
17 Your Ladyship observed was closely connected to a boys'
18 school.

19 LADY SMITH: I think they're actually next door to each
20 other.

21 MR BROWN: I think that's right, my Lady, yes. But we heard
22 of him tickling genitals and an actual -- what might be
23 described in another forum as an assault with intent
24 with BLQ and the guitar incident.

25 LADY SMITH: Am I right in thinking that's the one example

1 we have of a boy himself going to the head and reporting
2 the matter to the head and that was how it ended up with
3 the art teacher going down the drive?
4 MR BROWN: I don't think that is the incident that triggered
5 it. I think it was spoken to that some prefects went
6 and spoke to the head.
7 LADY SMITH: Ah.
8 MR BROWN: It wasn't specified, as I recall the evidence,
9 what incident actually triggered the prefects -- I may
10 be wrong about that. BLQ was talking about a very
11 individual incident, which I don't think led to -- or
12 did it? Did BLQ ...
13 LADY SMITH: We can check.
14 MR BROWN: We can check.
15 LADY SMITH: There was a teacher who was sent quickly down
16 the drive as a result of a report going to the head from
17 a pupil, whether it was relayed through a prefect or --
18 MR BROWN: We can check.
19 LADY SMITH: -- the person who was the victim of the abuse
20 himself, I don't know.
21 MR BROWN: Yes.
22 LADY SMITH: Interesting.
23 MR BROWN: There's no doubt that something was done by that
24 teacher, which was reported by prefects, as I recall it,
25 and he was out within -- overnight, but I'm not sure

1 that it was directly linked, but we can confirm that.

2 What it shows is, again, a strong willingness to
3 take advantage in rooms by a bachelor teacher and it was
4 simply the description of trying to put his hands down
5 your trousers and kissing him, and the phrase used by
6 BLQ was "sticking his tongue down my throat".

7 Then we also have from the same era, but moving on
8 through the decades, BRW, the teacher, who it was
9 known would sit and stroke legs and sometimes getting as
10 far as genitals, which was a matter of pride, as it was
11 spoken to by BRG. What's fascinating is:

12 "It was a strange mix of we knew this was very
13 unusual behaviour and we thought it was amusing. It
14 never occurred to anybody that this was wrong."

15 Because it was so routine.

16 Your Ladyship will remember the remarkable
17 egalitarianism: that you took your turn.

18 LADY SMITH: Yes.

19 MR BROWN: We had the evidence of OZK though that was
20 a one-off, it would seem, though not insignificant.

21 Then, illuminatingly, and much more recently,
22 DXP, which was from the 1990s into the 2000s and
23 where there were multiple reports by staff of what was
24 going on, but nothing was done.

25 It is perhaps at one level less significant abuse,

1 but it is the nadir of failure by the school to respond.
2 Your Ladyship will recall, and this touches on
3 recruitment, which is a discrete issue, obviously,
4 a Child Protection Co-ordinator seems to have been
5 appointed, on one view of the evidence, simply because
6 someone had to be, a deputy head perhaps not, on
7 reflection, the ideal person given the burdens faced, is
8 appointed, and yet his response, thinking of
9 Mrs Prini-Garcia's evidence, was to make her feel bad
10 for reporting what DXP was doing.

11 LADY SMITH: Yes, I think the high spot was that it was said
12 of this Child Protection Co-ordinator, "Well, it was
13 something he was always interested in, the pastoral side
14 of things".

15 MR BROWN: Yes, it's a lovely example of just appointing
16 someone because someone has to be appointed, for the
17 barest of reasons.

18 LADY SMITH: And still had all his other responsibilities,
19 so that was added to it.

20 MR BROWN: Yes.

21 Then, of course, we have other teachers,
22 Gordon Cruden, RCQ and QZA, running up to the
23 last ten years.

24 Then, of course, we close for the sexual side with
25 James Rainy Brown and one really doesn't need to say

1 terribly much, save that we have heard evidence of
2 prurient interest in children from -- well, running,
3 perhaps, for 40 or 50 years. Massaging legs, given
4 cramp at night, involving taking pants off. Checking
5 hamstrings again in the 1960s. Naked apple dooking.
6 Sharing showers in the 1980s. From Part D, throwing
7 sweets into the showers to see boys picking them up.
8 Naked swimming, a matter that he was spoken to about but
9 did not change his ways. The massaging of the boys in
10 2000, where he was taken to task and responded badly.
11 Being seen with his tackle hanging out in 2001.

12 As Your Ladyship has pointed out, close association
13 with friends who might be seen as having similar
14 interests, according to a number of reports. We've
15 talked about Reg Woodward, but also, much more clearly,
16 Torquil Johnson-Ferguson and the Rua Fiola and
17 Solwaybank schools. Two solemn appearances, in 2015 and
18 2018, one resulting in 18 months and the other a finding
19 on an examination of facts for repeated lewd and
20 libidinous practices, including nudity and digital
21 penetration.

22 Merchiston's connection with Rua Fiola was because
23 of the personal connection between James Rainy Brown and
24 Torquil Johnson-Ferguson.

25 We then move on to physical abuse, thinking of

1 teachers. Discipline from some applicants was perfectly
2 fair, others thought not. Again, going back to the very
3 beginning, BLQ on Day 262, you'll remember still
4 checks behind him when he opens doors --

5 LADY SMITH: Yes.

6 MR BROWN: -- because if you didn't do that and a prefect
7 was there, you were beaten. Teachers though were
8 inappropriate and excessive on the evidence. BLQ
9 himself, the teacher, didn't dispute saying it was
10 important to let boys see the crueller side of life.

11 BLQ again on Day 262 talked about BRW as
12 a teacher was a character:

13 "He would suddenly go, 'Smith, two strokes' and you
14 had to stand up, and he'd -- from the back, it wasn't
15 a wee -- it was from the back, one, two, and then just
16 went and sat down and nobody knew why."

17 He simply beat on whim in an arbitrary fashion.

18 And James Rainy Brown beating excessively in the
19 1960s. CCL talking about this on Day 263 said:

20 "Can you imagine what hysterical tears are,
21 something that's beyond tears? They were really,
22 really, really in pain and they were utterly, utterly
23 shocked and that shocked me to see that and that's one
24 of the reasons not that James Rainy Brown wasn't
25 permitted in his position to beat people, he was, but he

1 was not permitted, I believe, to beat them that hard or
2 that sadistically and that never left me because
3 I was -- I just thought at that moment something went up
4 my spine, which was like a survival instinct, I thought,
5 'Okay, this is not safe, this is a dangerous place to
6 be'."

7 LADY SMITH: That was very powerful.

8 MR BROWN: It's remarkably powerful.

9 LADY SMITH: That one incident plainly still resonates with
10 him to this day and that as a schoolchild he then felt
11 he wasn't any longer in a safe place.

12 MR BROWN: Quite so.

13 But other witnesses used similarly emotive words.

14 **CCZ**, talking about JRB, used the word "frenzy".

15 **HYD**, who at some levels liked

16 James Rainy Brown, described a beating from him as
17 "savage", when asked why:

18 "Because of the intense pain. I don't think I got
19 12. My recollection is it was on each hand with the
20 tawse and it was agony. I just collapsed in pain and
21 tears. And I can remember him picking me up afterwards
22 like a lamb, probably putting me in a chair or bed or
23 something, but it hurt for probably a couple of hours
24 afterwards. I don't know if I'd seen it in those terms
25 then, but looking back at it now, certainly brutal."

1 Remembering that he was a lawyer:

2 "Yes, if you look at the law on self-defence and
3 what not, this was beyond reasonable force, definitely."

4 The other thing to remember is James Rainy Brown was
5 beating the youngest members of the school.

6 And after his death, we have correspondence provided
7 by the school. One witness said:

8 "He had a voyeuristic, sadistic streak."

9 Which perhaps sums it up very neatly.

10 We also have the aspects of beating from other
11 teachers. Rainy Brown was warned for beating after
12 corporal punishment was stopped. So was QZA .

13 Going back to teacher CDR , HYD said:

14 "It was so bad that even the at the
15 school said that they'd gone to CDR and asked him to
16 tone it down, because people were starting to regard
17 with contempt, such was his fervour in
18 beating."

19 The only thing that was striking as distinct from
20 other schools that it seems to be a matter of
21 understanding that one wrapped the wrists.

22 LADY SMITH: One thing that troubled me about that was more
23 than one witness said that was to stop your veins
24 bursting. It was quite a lurid picture that was being
25 painted, but it sounded as though they knew if you

1 didn't protect the skin, you would be bleeding from your
2 wrists quite badly after one of these beatings.

3 MR BROWN: One could. What struck me was we've heard of
4 that sort of concern in other schools. It can be viewed
5 as a credit or debit, perhaps more of a credit, that the
6 risk was understood and something was done about it,
7 because Your Ladyship will remember from other schools
8 that that was the fear: it would go further and be much
9 more injurious.

10 LADY SMITH: The link between Christianity and the beating
11 came at an interesting time, because as you'll be aware,
12 Mr Brown, of course, the report, or review if you can
13 call it into the actions of John Smyth at Winchester
14 College was published just a couple of weeks ago.

15 MR BROWN: Yes.

16 LADY SMITH: And that was very, very much the extreme of
17 beating, flagellation, frankly.

18 MR BROWN: Yes.

19 LADY SMITH: Carried out in the name of Christianity. It's
20 terrifying.

21 MR BROWN: Yes.

22 LADY SMITH: Put shortly.

23 MR BROWN: Well, I think self-flagellation has been long
24 understood as terrifying, but this is a transition to
25 children.

1 LADY SMITH: That was being driven by a teacher -- sorry,
2 not a teacher, a visitor at a school, somebody who
3 inveigled their way into the school, a high-profile
4 lawyer, who inveigled their way into the school.

5 MR BROWN: Yes.

6 LADY SMITH: It happens. It can happen.

7 MR BROWN: It happens. And did, clearly.

8 There was emotional abuse. One thinks particularly
9 of the traumatic effect of the cold baths from
10 James Rainy Brown and the impact that that has had and
11 we heard about, which seems to have been very profound
12 on one child in particular.

13 Then moving on to peer abuse, sexual contact was not
14 uncommon, and again, to the school's credit, I make
15 reference to the third appendix that they provided in
16 their Part D, sex, violence and [unclear] education,
17 which paints a very clear picture of life in the 1950s
18 and perhaps the normalising, which might perhaps be
19 understandable in a boys-only school, but it could
20 become non-consensual. There was clearly evidence of
21 sexual comments between boys, some abuse in the 1970s
22 and the 2000s and sexualised bullying in 2013, which was
23 dealt with.

24 The physical side, we heard a lot about that in
25 other schools, not so much in Merchiston, but again to

1 their credit, the Part D at pages 29 to 32 and their
2 addendum in April 2020, with another five pages of
3 records, was very clear and showed that there had been
4 physical abuse by pupil on pupil.

5 Going back to the horizontal system and bullying in
6 particular, as I said, BRG thought the horizontal
7 system led to less bullying as compared with his
8 experience at other schools, principally Edinburgh
9 Academy, but one remembers CCY in the 1980s talking
10 about being hung up by his underpants on coat hooks. It
11 wasn't unusual, he said, long rows of coat hooks:

12 "It wasn't an unusual experience for the older boys
13 to grab some of the younger boys and literally hang them
14 from their underpants until they tore."

15 One did hear a lot about emotional abuse and this
16 was again spoken to very openly by the school in its
17 Part D and that included the isolation we heard so much
18 about if you weren't the right type, which in the
19 Merchiston sense, certainly at times focused on not
20 being a rugby player. CCL, talking of the 1960s,
21 said:

22 "There were usually kids who weren't very clever,
23 weren't very good at sports, they used to be, not so
24 much bullied a lot, but they just looked a bit sad and
25 lost and you know people would be mildly cruel about

1 them. I'm saying 'mildly cruel'. What they experienced
2 of was probably a lot worse than that."

3 "Was any effort made to address that?

4 "No."

5 CCZ in the 1960s:

6 "If you were no good at sport, well, it made you
7 a non-person, really. There was a lot of violence there
8 but there was a lot of psychological bullying. People
9 would comment about their parents and their parents'
10 lack of wealth or physical attributes and it was
11 constant. It was really -- if you weren't on the way up
12 and being what the institution expected you to be, you
13 were fair game for ridicule and contempt."

14 Then CCY in the 1980s:

15 "At the bottom of the pile would be the boys who
16 weren't sports orientated at all. They could be some of
17 the most intelligent boys on the planet, but it didn't
18 matter."

19 Then the references again common to, I think, most
20 boys' schools, of homophobia being the ultimate slur,
21 common and brutal as CCY spoke to in the 1980s,
22 events corroborated by CCG, who was horrified that
23 a senior boy like CCY could be treated so badly.

24 Your Ladyship will remember the account of
25 a 15-minute session of abuse with younger boys joining

1 in outside the dining hall and then the description of
2 CCB, a quiet introverted kid who was smart, a boy
3 who won awards because he was that smart, and just
4 wanted to be left alone. He was remembered in Pringle
5 as someone who cried himself to sleep at night in the
6 dormitory in the first term aged 11 in form 2 in Pringle
7 and being sort of made fun of in the dark by one of the
8 boys in the year above:

9 "I remember him being bullied in other years."

10 So it went on. No systems in place to deal with it.
11 And, as with other schools, a code of silence that
12 prevented it being discussed.

13 That allows me to move on briefly to other themes
14 that are common to other schools.

15 Problems with recruitment and references, which was
16 a constant. Recruitment was ad hoc, said Prini-Garcia.
17 Removal was ad hoc. Ian Robertson and OZK, just down
18 the drive, no reporting. And other education jobs,
19 certainly in the case of Ian Robertson. Gordon Cruden
20 was encouraged to resign after complaints were made.
21 References were given but opaque about the detail to
22 some degree and the head at the time was unwilling to
23 put in writing to the next school full details, save to
24 the other head himself. He wouldn't go further.

25 Gordon Cruden talked about being told not to be

1 candid, but Your Ladyship will remember the letter he
2 got from the first interview where he was given good
3 advice, followed it, and was then employed.

4 Then recently, QZA, notwithstanding being found
5 out looking at pornography, the link to a previous
6 incident was not made, nonetheless was given a reference
7 in 1997, post the smacking of a pupil, for a job he
8 didn't get where no mention was made. Then in 2009 for
9 a job which was in terms where he would be left alone
10 one on one with pupils of all ages, no mention of recent
11 misdemeanour.

12 But more recently still, with RCQ, a glowing
13 reference had to be followed up with an amendment in
14 2015, the amendment containing matters which were known
15 at all times, and yet were not spoken to.

16 Governance. Far too much reliance on old boys and
17 recognised loyalty that protected staff. Although in
18 this chapter of the boarding schools' Inquiry we have
19 heard, interestingly, about abuse of governor power,
20 with the case of QZL, which, as an aside, might be
21 seen as a flawed example of mandatory reporting --

22 LADY SMITH: Yes.

23 MR BROWN: -- and the harm that can come, where an unfounded
24 allegation -- as it was accepted in due course to be by
25 the reporter, who couldn't substantiate it -- was taken

1 to the nth degree, save of course the alleged abuser was
2 never told.

3 Perhaps most interestingly of all, because of the
4 candour of Andrew Hunter, we heard a lot about
5 leadership, which is, as has been said repeatedly,
6 fundamental. Andrew Hunter was very candid in his
7 evidence. He recognised that leadership is crucial to
8 the running of a school and that qualities of
9 resilience, confidence, experience and decisiveness are
10 all required. But we have a lot of examples of lack of
11 leadership. Not reading staff files. The response to
12 the complaints against DXP, being too trusting and
13 inclusive of staff. Not looking back at the file,
14 thinking of QZA.

15 But as importantly, it's clear that to lead, you
16 require proper and adequate support, and that was,
17 I think from the Merchiston evidence, lacking. And
18 significantly lacking, whether it be by adequate staff
19 resourcing or, as Andrew Hunter now champions, mentors.
20 Whatever the resource is, resource is crucial.

21 One saw that also, that lack of resource, in the
22 desire to fill gaps. Thinking back to the first [REDACTED]
23 [REDACTED] who simply had to fill a gap,
24 perhaps inappropriately, but more recently with RCQ,
25 appointing someone of necessity one got the sense,

1 a good candidate on paper, notwithstanding the concerns
2 that were live throughout the school.

3 There have also been new themes too and one of them
4 we touched on with QZL is the lack of adequate and
5 fair discipline of teachers and perhaps the need to look
6 out for teachers as much as pupils. Thinking of the
7 impact that teachers who are failing may impact pupils
8 because of their difficulties.

9 QZL, QTL and DRW were all examples of
10 staff who were perhaps not adequately looked after,
11 which may have had impact further on, thinking
12 particularly of RCQ, where there was undoubted
13 impact on senior pupils.

14 And systems, QZA was perhaps very candid,
15 talking about systems:

16 "They took up a lot of time, but I think it was
17 felt, well, putting it bluntly, I think it would
18 probably have been felt if we hadn't done these things
19 or some of these things, we'd have been taken to task by
20 outside bodies, ie the inspectors. They wanted to see
21 proof of this or that and perhaps we didn't follow,
22 cross Ts and dot Is and check sufficient details whether
23 people actually read the thing."

24 I think, from recollection, a fair number of them
25 were introduced and discussed in INSETs, so to be fair

1 there would have been that to bear in mind, but it's
2 an interesting picture of the transition that we know
3 about in the last 20 years, where having the policy
4 seems to have been more important than implementing the
5 policy.

6 All of that said, we have also heard how much has
7 changed at Merchiston and it is clear that a growth
8 mindset was required there and appears certainly to be
9 in place there now.

10 It's striking, remembering the evidence of
11 Gordon Cruden, talking about the stark difference he saw
12 in moving to Bloxham School in 1986. In essence nothing
13 was left to chance in the Oxfordshire school, given the
14 systems in place which actually worked, and it is
15 a very, very stark difference between what was in place
16 in the 1980s in Merchiston and which it seems to have
17 taken them until the last few years to achieve.

18 As Cruden said of pupils there:

19 "It was made plain to them that this was the route
20 to take if this went wrong, this was the route to take
21 if that went wrong. There can never have been any doubt
22 from the moment they came as to who to speak to in the
23 event of a problem. It was the same for staff. We knew
24 as staff who to speak to, you know, housemaster, head of
25 department, but also the school chaplain was available

1 to members of staff."

2 Systems were in place and worked and were
3 understood.

4 Merchiston has undoubtedly caught up, at times
5 painfully, but to their credit it appears they were keen
6 to learn. Thinking most recently of their willingness
7 to take advice from the public sector, the local school
8 and the local secondary.

9 As we heard in the last two days of the evidence,
10 both from Andrew Hunter but from the chair of the board
11 and the current head, the school has tried to learn from
12 its failings and has done so learning lessons which they
13 thought other schools would be wise to learn from.

14 It is perhaps disappointing that, as
15 Jonathan Anderson commented, Merchiston has been very
16 open in offering to share their experience but he wasn't
17 sure whether the time has yet come for schools to come
18 together and reflect. I asked him have others actually
19 been receptive or sought you out? To which he answered:

20 "Not directly as specifically as yet. Generally
21 yes, specifically no. Hopefully [he added], perhaps the
22 conclusion of the Inquiry might provide that
23 opportunity."

24 And it may be something we can discuss with
25 John Edward, but the Merchiston chapter I think has

1 shone a light on areas that all schools would benefit
2 from looking at.

3 LADY SMITH: Indeed.

4 MR BROWN: Unless I can assist Your Ladyship with any other
5 specific matter, those are my submissions.

6 LADY SMITH: Thank you very much.

7 Mr Reid.

8 Submissions by Mr Reid

9 MR REID: Good morning, my Lady.

10 LADY SMITH: Good morning.

11 MR REID: My Lady, at the opening of this case study,

12 Merchiston Castle School said:

13 "It is now clear that not every pupil received the
14 experience at Merchiston Castle School on which the
15 school prides itself today. The school wishes to
16 acknowledge that those events took place and to publicly
17 acknowledge their profound regret that for the pupils
18 concerned Merchiston Castle School was not the safe
19 environment that it should have been and did not provide
20 the supportive, caring and educational experience to
21 which they were entitled. The school unreservedly
22 apologises for that."

23 The Inquiry's now heard a great deal of evidence of
24 those experiences. As the school acknowledged at the
25 start of the case study, there's only so much that can

1 have been conveyed on the printed page and thus at the
2 time that comment was made. That's why the school has
3 been represented here throughout the evidence, not just
4 by its lawyers but the chair of the board of governors
5 has attended in person every day and the headmaster for
6 various practical reasons has attended by WebEx every
7 day and the school is grateful to the Inquiry for having
8 made that facility available to them.

9 LADY SMITH: Can I say, I do recognise what a substantial
10 commitment that has been on their part.

11 MR REID: Thank you, my Lady.

12 LADY SMITH: I appreciate that.

13 MR REID: As was hopefully clear when each came to give
14 evidence, listening to that evidence has had a genuine
15 effect upon them. Listening to the lifelong impact upon
16 those that have given their evidence of their experience
17 of the school and the fact that so many warnings of
18 those experiences could have been avoided, had the
19 warning signs been identified earlier on, is a sobering
20 and humbling experience and the school wish to reiterate
21 the apology that was offered. It is unreserved, and the
22 school is sincerely sorry.

23 My Lady, it's perhaps important to stress what this
24 submission is not. It's not in any way a challenge to
25 any of the evidence that my Lady has heard. It's not

1 an attempt to excuse or diminish the seriousness of what
2 happened. As Mr Brown has outlined, from the beginning
3 of this process in 2017 the school has sought to be open
4 and transparent with the Inquiry and to cooperate as
5 fully as it could.

6 Sunlight, and I steal this from Lord Bingham, is
7 a powerful disinfectant. However uncomfortable it has
8 been at times the scrutiny of the Inquiry has been
9 welcomed and ultimately the school and the experience
10 its pupils will receive will be the better for what it
11 has gone through.

12 Mr Brown has presented an overview of the evidence
13 and a commentary on the key parts of that, and I don't
14 propose to go into the detail of that. Not, I hope,
15 my Lady understands out of any lack of respect for the
16 powerful testimony that we have heard, not to diminish
17 the significance that we were hearing people give
18 accounts for the first time after decades when they
19 engaged with this Inquiry, but instead it reflects the
20 school's approach to this Inquiry from the start, which
21 is that those voices must be heard, the lessons that
22 they teach us must be learned and the school does not
23 wish to seek to gloss or frame that evidence in any way.
24 It has been very much a case of opening the books and
25 letting the Inquiry learn what can be learned from what

1 went wrong in the past.

2 I do, however, wish to make remarks on perhaps three
3 chapters.

4 First looking at the events of the past.

5 Then looking at the response to those events when
6 they first came to prominence.

7 Then making some observations on the future and the
8 steps that have been taken to hopefully avoid any of the
9 mistakes of the past.

10 My Lady, looking back at the totality of the
11 evidence, it seems to me that the Inquiry's actually
12 heard about several different iterations of the same
13 school.

14 In its earliest iteration, the Inquiry heard
15 evidence dominated by Mervyn Preston and the regime that
16 he presided over of, when my Lady heard some of the most
17 serious allegations of sexual abuse.

18 In later iterations, the focus perhaps shifted away
19 from those most serious allegations of sexual abuse to
20 the, if you like, the emotional abuse and the lack of
21 the support. Physical abuse was probably present
22 throughout, I don't seek to diminish any of it to any
23 parts, but seek to make the point we've actually heard
24 about three or four different schools in the course of
25 the evidence.

1 Throughout we've heard evidence about the challenges
2 pupils faced if they didn't fit the Merchiston mould,
3 and I'll return to that later on.

4 A fairly constant presence throughout those
5 different iterations of the school was
6 James Rainy Brown, from the very beginning as pupil, but
7 throughout almost the totality of the period as teacher,
8 and I'll say more about him shortly.

9 LADY SMITH: Not just as teacher, because he carried on
10 living at and being engaged with the school after he
11 ceased teaching.

12 MR REID: Yes, indeed. A lifelong relationship beyond his
13 retirement.

14 But as a preliminary observation on the events of
15 the past, the shortcomings of the school appear to me at
16 least to fall into broadly two categories. There was
17 behaviour such as the most serious sexual abuse that
18 we've heard, the excessive beatings, that were
19 absolutely wrong, whatever the standards of the time,
20 whenever they happened, they were absolute wrongs.

21 Secondly, there's behaviour of which it's, in my
22 submission, could illustrate the school failing to keep
23 pace with developing standards of acceptable behaviour.
24 My learned friend touched on just at the end, it was
25 kind of slow to keep up and to develop and to evolve.

1 Hopefully we'll come on and I'll submit there's been
2 quite a catch up in the last few years.

3 That throughout my Lady heard evidence I would
4 suggest is redolent of the attitude that a change for
5 the better is a contradiction in terms. Again, I've
6 stolen that from Lord Reid, but it seemed to me to
7 capture --

8 LADY SMITH: He stole it from somebody else.

9 MR REID: Yes.

10 LADY SMITH: Do I take it that what you're getting at,
11 really, is there are situations such as here, or such as
12 I think Lord Reid was referring to, the acutely
13 misogynistic make up of the legal profession, anything
14 that's different must be better, so you don't have to
15 say it's a change for the better.

16 MR REID: Yes. I think that's the point --

17 LADY SMITH: He was getting at.

18 MR REID: The point I make in response to that is hopefully
19 the Inquiry has heard the evidence, not least from the
20 current leadership of the school, which offers some
21 reassurance that mindsets have changed and engaging with
22 what the school should be.

23 It may be helpful to dwell on three issues before
24 moving on to the response of the school.

25 First, it is a clear and repeated theme that pupils

1 either had nobody to report concerns to or considered it
2 pointless raising concerns. That deficiency was plainly
3 an important factor in allowing the culture in which the
4 likes of Mervyn Preston and James Rainy Brown operated
5 to endure.

6 In my submission, it suggests that there are two
7 aspects to this shortcoming. On the one hand, there's
8 the structural failing. The processes were either not
9 in place or they were perceived to be insufficiently
10 robust for the pupils and staff to engage with them, and
11 I think it was Andrew Hunter recognised that the
12 perception is the reality. It doesn't matter if you
13 have the processes there if they're perceived not to be
14 worth engaging with.

15 Part of that may be down to the horizontal structure
16 of the school, and I'm going to return to this towards
17 the end. But it is recognised that one drawback of that
18 structure, which, certainly on the evidence my Lady
19 heard, has not been sufficiently well-guarded against in
20 the past, was that the likes of Preston and Rainy Brown
21 effectively got a new cohort of boys year after year,
22 and with limited communication between the year groups,
23 it was to an extent a fresh slate. The pupils'
24 institutional memory didn't exist because of the way
25 they moved on and couldn't communicate with those that

1 followed them.

2 On the other hand, I think it's important to
3 recognise that we're talking about children, and the
4 children themselves will find it difficult to express
5 and to articulate concerns they necessarily have. They
6 just will struggle to find a language to explain either
7 what's happening or how they're feeling about it, and
8 thus the systems have to recognise that there will be
9 inherent difficulties or challenges in the communication
10 and to accommodate those.

11 I know my Lady's discussed this at an earlier stage
12 of this Inquiry with one of my colleagues, but, in my
13 submission, the structures that are in place had to
14 recognise the inherent issues that it's looking to
15 children to report the concerns and they will have
16 inherent difficulties in articulating those problems.

17 LADY SMITH: The whole vertical/horizontal debate is a very
18 interesting one. You may be coming back to that --

19 MR REID: Yes.

20 LADY SMITH: -- there are pros and cons in both. But
21 talking about reporting, one of the things a child would
22 not have is if they have a sibling at the school, the
23 older brother in their own house, which would be one
24 obvious port of call within some families --

25 MR REID: Yes.

1 LADY SMITH: -- or a housemaster who they've got to know
2 over more than a year --

3 MR REID: Yes.

4 LADY SMITH: -- and they feel more comfortable with.

5 MR REID: Yes. I think, my Lady, there was mixed evidence
6 on the extent to which there was communication between
7 siblings. There was some evidence that suggested it was
8 very frowned upon between years and there were some that
9 families that could communicate, but it wasn't
10 facilitated. It was at best frowned upon.

11 LADY SMITH: What I was told was it was as stark as: you
12 weren't allowed to speak to boys outside your house.

13 MR REID: Yes.

14 LADY SMITH: Outside your own year group.

15 MR REID: Yes, which has a --

16 LADY SMITH: Maybe you could find a way of speaking to
17 a brother somehow. That's how the evidence came across.

18 MR REID: I don't disagree with that.

19 The second point I was going to dwell on for
20 a moment is James Rainy Brown. It's clear from the
21 evidence that he was a polarising figure at the school.
22 For many he was the personification of Merchiston and
23 that was meant in a positive way. But it's clear that
24 he also cast a long shadow and dark shadow over the
25 school.

1 He appears to have become, in his own mind at least,
2 bigger than the school. The Inquiry has heard of the
3 challenges of managing James Rainy Brown, both from --
4 you know, Andrew Hunter gave evidence about this, but
5 also his successor, or one of his successors, QTL, in
6 Pringle, and the continuing presence and, I think,
7 shadow that you operated under whilst he was there post
8 retirement, still living at the school, still engaged in
9 the life of the school.

10 My learned friend has said more about him and
11 I don't demur from any of that.

12 What he certainly does serve as is an illustration
13 of the challenge of managing and holding to account such
14 a strong individual with such a strong connection to the
15 school, which gave him a breadth of influence and power
16 that certainly in the later years was unparalleled,
17 that he appeared to have a power and an influence that
18 exceeded that of the headmaster, because of his
19 relationship with governors and staff and his longevity
20 with the school and because he was such a polarising
21 figure, that he was believed to be the personification
22 in an extremely positive light by people who had
23 proceeded to serve on the board as governors.

24 It's clear that Pringle House was run and was
25 allowed to be run as a personal domain. That plainly

1 should never have been allowed to happen. It is clear
2 that had it not been allowed to happen, that many of the
3 events this Inquiry has heard about would likely have
4 been avoided.

5 As the Inquiry has heard, the behaviour ranged -- my
6 learned friend summarised it -- from the naked showering
7 and the naked swimming with the boys to excessive and
8 severe beatings, and, from one witness at least, an
9 allegation of extremely serious sexual abuse.

10 Finally, my Lady, the Inquiry has heard evidence of
11 positive experiences, and some of that evidence has come
12 from people who have both given evidence of fairly
13 distressing experiences at the school but nonetheless
14 acknowledged positive aspects of it.

15 LADY SMITH: Oh, absolutely. A number of the witnesses were
16 admirably fair --

17 MR REID: Yes.

18 LADY SMITH: -- and keen to convey that there were decent
19 people at the school, decent, good teachers. They
20 weren't saying everybody was like this.

21 MR REID: Yes. What I do want to say is.

22 I don't rely on that as mitigation.

23 Secondly, the school did not seek out positive
24 examples from the Merchistonian community, a deliberate
25 decision, a conscious decision was taken not to seek

1 positive experiences. That's not what the Inquiry is
2 about, and any such positive comments have to be put in
3 their proper context.

4 It's clear that what should have been unacceptable
5 to a certain extent became normalised for a number of
6 pupils. There was a culture of normalising the abnormal
7 and these would not necessarily have known better.

8 The evidence across almost every iteration of the
9 school also gives the impression of a very traditional
10 stiff upper lip culture within the school and it's
11 instructive to recall some of the definitions of that
12 well-known phrase.

13 One, taken from the Oxford Dictionary, is: to keep
14 calm and hide your feelings when in pain.

15 The Cambridge University definition is: someone who
16 does not show their feelings when they are upset. That
17 puts a rather different light on a stiff upper lip
18 culture. It is perhaps why it is also said:

19 "Below every stiff upper lip there is a trembling
20 lower lip."

21 The simple point that the school acknowledges is
22 that whilst many may speak fondly of their time at the
23 school, those experiences do not deserve to detract from
24 the distressing evidence the Inquiry has heard. It
25 brings back -- my Lady and I have had a similar

1 discussion in an earlier phase of this Inquiry and one
2 of the points I made at that stage is it almost becomes
3 a plea of aggravation, because the fact that so many
4 people have a positive experience of it, it aggravates
5 the fact that there were pupils who didn't. It was
6 possible, but they didn't have it.

7 In terms of the school's response to concerns that
8 arose, I suggest this might be helpfully considered in
9 two parts.

10 First, there was, if you like, the ad hoc responses
11 to individual events throughout the period up to 2013.

12 Then following the death of James Rainy Brown, if
13 you like, there's a more systemic or systematic response
14 as issues came out and engagement with authorities.

15 LADY SMITH: Sorry to go back a moment.

16 MR REID: Of course.

17 LADY SMITH: There's something else, it's in the same vein
18 as looking at the fact that there were teaching staff or
19 other staff who were valued and did a good job by the
20 children and did not abuse the children, nor did they
21 facilitate the abuse of children by others.

22 In the Merchiston case study, there was a striking
23 example of two prefects in Pringle -- I think it was
24 spoken to by BRG -- who looked out for them after
25 the terrible incident of the boys being badly, badly

1 beaten after James Rainy Brown coming around the corner
2 and seeing them having a football game with a rolled-up
3 sock that they regularly were allowed to have by the
4 prefects before they went to bed at night. I think he
5 said after that there were two wonderful prefects who
6 were house prefects who looked out for them and tried to
7 save them from James Rainy Brown's excesses.

8 MR REID: Yes.

9 LADY SMITH: It could operate in a prefect system. You
10 could get the reverse in a prefect system, depending on
11 how well it was organised and monitored.

12 MR REID: Yes. My Lady, there was that example and the
13 example where the prefects took their concerns to the
14 headmaster to have something done about it, which we --
15 this Inquiry has heard a lot of evidence throughout
16 various case studies about the flaws of prefects and the
17 abuses of power by prefects, but those were striking
18 examples of very good prefects challenging -- and we've
19 heard how difficult they were to challenge -- a very
20 powerful figure and doing the best that would be
21 expected of a prefect.

22 LADY SMITH: It is the difference between looking on the
23 role of prefect as being a role where the boys who
24 fulfil it can be taught about taking responsibility and
25 taking care of others --

1 MR REID: Yes.

2 LADY SMITH: -- and conversely the role of prefect being
3 viewed as giving boys power.

4 MR REID: Yes. It's whether the abuse of power or the
5 positive use of that responsibility, and those were
6 striking examples of it being used for the positive.

7 LADY SMITH: It's not just with power comes responsibility.
8 In the case of a prefect, the power is all about --

9 MR REID: Yes.

10 LADY SMITH: -- being responsible and caring.

11 MR REID: Yes.

12 My Lady, I was about to make a few observations on
13 the response, first on what I call the more ad hoc
14 response and the Inquiry has heard evidence at various
15 points in time when concerns were raised about conduct
16 of various staff on various issues. Almost invariably,
17 the response to that was to manage it in-house.
18 Allegations which properly ought to have been reported
19 to the police or the authorities were not. Even when
20 staff left post, when they were sent down the drive,
21 a positive reference omitting details of why they had
22 left usually went with them.

23 It's easy to see why some thought there was no point
24 in raising concerns when we see how some of the concerns
25 that were raised were invariably managed.

1 Again the school -- I don't propose to pick over the
2 detail, but do acknowledge that opportunities to
3 intervene were missed and that when action was taken it
4 was invariably insufficient. That the red flags, if not
5 ignored, were certainly masked by loyalties or the power
6 or influence of those who were subject to the concerns.

7 The school does not shy away from the fact that
8 those mistakes were made over an extended period of time
9 and clearly had a direct and negative impact on the
10 experience of a number of pupils.

11 Following the death of James Rainy Brown, I would
12 suggest there was a more systematic or systemic
13 response. There was extensive engagement with the
14 regulators. On James Rainy Brown, Andrew Hunter
15 explained the influence he had in evidence, which
16 I would suggest was fairly powerful, and described that
17 shadow that he continued to cast even after his death
18 and the response to that, the polarising effect that had
19 on how he should be acknowledged, what should be done
20 with the legacy. He was still a presence in the school
21 and managing that response.

22 Andrew Hunter discussed at length the engagement
23 that took place with the regulators, where the school
24 went from consistently impressive inspection reports to
25 requiring to undertake significant improvement matters

1 as a matter of urgency, I'd suggest the school engaged
2 in that as fully and as constructively as it could.

3 I don't make any comment on the inspection, the
4 system. The Inquiry will look at that separately.

5 The school's response to that challenge did allow
6 Education Scotland to feel able to write to the school's
7 parents by November 2016 in these terms:

8 "The board of governors has provided astute and
9 forward-thinking, strategic direction helping the school
10 to continue to improve. A well-qualified and
11 experienced external committee has been established to
12 provide independent scrutiny and challenge to the board
13 and school leaders on their approaches to child
14 protection and compliance. This innovative development
15 demonstrates the school's commitment to continue its
16 improvement in this important area of their work."

17 I hope my Lady saw from the current leadership that
18 that work continues to today.

19 The school acknowledged that mistakes were made in
20 their response to events following the death of
21 James Rainy Brown. From the perspective of the staff,
22 the evidence of QZL was distressing to listen to.
23 Both his treatment by a member of the board of governors
24 and how he was left in ignorance of what would otherwise
25 have been odd behaviour by the school.

1 In a similar vein, QTL [REDACTED] evidence showed that the
2 way she was dealt with sat in sharp contrast to the more
3 diffident response to allegations that had been made
4 against others a few years earlier.

5 It's clear that the revised procedures and policies
6 were not in themselves sufficiently robust. My Lady's
7 heard a chapter of evidence about RCQ [REDACTED].

8 Andrew Hunter was candid in his evidence about the
9 response to the various allegations and I would suggest
10 that he and the school more generally have reflected
11 long and hard on what happened and how things could have
12 been handled better.

13 As has already been said, I don't seek to defend or
14 excuse the mistakes that were made. Andrew Hunter was
15 candid about those mistakes that happened during his
16 time as headmaster, and I would suggest it was clear
17 from his evidence that the burden of those mistakes
18 continues to weigh heavily upon him.

19 In fairness to him, under his leadership many
20 positive changes were made at the school and he laid
21 many of the foundations for the work now done by his
22 successor. The example of the trial nights at the
23 school, my Lady asked the current headmaster whether
24 that was his initiative, and he very candidly said it
25 was not something he could take credit for, that was

1 an Andrew Hunter innovation.

2 Andrew Hunter explained that part of the problem was
3 that he came into a post as a new headmaster but had no
4 formal mentoring and clearly struggled to understand
5 where he should be turning to for advice and support.

6 In one passage of his evidence he said:

7 "If we go back to LADO, I mean, I never found it
8 easy working out who was I supposed to contact when.
9 Whether it was the Registrar's office for Independent
10 Schools Scotland, HMIE or Education Scotland or the Care
11 Inspectorate or the Scottish Social Services or the
12 police. I never really -- and we tried our hardest to
13 do road maps. So eventually I told them -- I used to go
14 to every single one of them, because I was so frightened
15 of making mistakes."

16 Again, that's not highlighted as some sort of
17 excuse, but it does in my submission highlight a gap in
18 the support that's in place for schools and their
19 leadership.

20 LADY SMITH: In Andrew Hunter's case, also, he hadn't
21 previously been a head, as you know, nor had he
22 previously been a deputy head.

23 MR REID: No.

24 LADY SMITH: I don't suggest that a school should never
25 appoint as a head somebody who hasn't previously been

1 a deputy at the very least, but if they do decide to
2 appoint somebody who hasn't, don't they have to
3 recognise that and recognise where the gaps in his
4 experience are, not to say that he's not capable of
5 acquiring the necessary skills, but he can't draw on
6 experience, so he's going to need more training and
7 support. Is that right?

8 MR REID: Absolutely. There's a hierarchy. You don't have
9 to go through every step of it, but if people jump
10 steps, that has to be recognised and reflected in the
11 support they are given when they go to the elevated
12 post. That would be true for this as any walk of life.

13 LADY SMITH: It's very human to go into such a leadership
14 post as that and find it very difficult to say to
15 others, governors or whoever, "I've never done this
16 before and I'm not sure what I'm doing. Where do I get
17 help?" That has to be second-guessed, doesn't it?

18 MR REID: Yes. And in a role where you're spotlighted,
19 because people are turning to you for leadership and
20 decisions and guidance yourself, it's very acute.

21 I sat as a part-time chair for the first time
22 yesterday, I understand what it's like to jump up and
23 have a spotlight on you.

24 LADY SMITH: And realise nobody else is going to make the
25 decision but you.

1 MR REID: No, and a headmaster who has no experience in
2 a head or deputy position is in an acute position and
3 needs support.

4 As I said, that highlights a gap in the support that
5 was in place for the school's leadership team. That is
6 in part a matter for the school to address. And
7 my Lady's heard the support that's in place for the
8 current headmaster. But also, in my submission, it
9 shows a contrast with arrangements in England, where
10 again Jonathan Anderson's given evidence about LADO and
11 the school has a single point of contact where advice
12 can be sought, so it's not just turning to a regulator,
13 who has some sort of supervisory role over you but
14 somebody who can also advise.

15 It's a matter for the Inquiry as to what conclusions
16 can properly be drawn from the case study, but I would
17 suggest Andrew Hunter's experience, coupled with what
18 Jonathan Anderson explained about having the LADO
19 framework, indicate the sort of processes and procedures
20 that can be put in place to support a school in trying
21 to get it right and making sure that that assistance is
22 offered.

23 My Lady, I now propose to turn and say a few
24 comments about the future.

25 It's often said that a person is the sum of their

1 experiences, whether they're positive or negative. They
2 all shape the person they are and the person they will
3 become, and that, in my submission, is just as true of
4 a school as it is of a person.

5 Like people, institutions have memories that will
6 fade with the passage of time. Lessons from the past
7 can be forgotten and old mistakes made again. History,
8 as the saying goes, has a habit of repeating itself.

9 This Inquiry in the report that will be produced in
10 due course is critical in that respect. It will
11 preserve those memories, those mistakes, those lessons
12 recorded for the future.

13 As the Inquiry has heard, the current leadership is
14 committed to ensuring the school of today, while true to
15 the traditions of Merchiston.

16 For example, Merchiston's always been a rugby
17 school, we've heard a lot about that, but hopefully
18 rugby now takes its proper place and is put in a proper
19 sense of perspective within the broader school.

20 But whilst true to those traditions, provides its
21 pupils with a much better school experience. The work
22 of this Inquiry will ensure that their successors will
23 be unable to forget the importance of that commitment to
24 continual improvement.

25 The Inquiry heard from both the current chair of the

1 board of governors and the current headmaster. If the
2 school did once fall into the category of believing
3 a change for the better is a contradiction in terms,
4 it's suggested that they are the very antithesis of such
5 thinking. Both gave examples of the systems and
6 processes that have been introduced to modernise the
7 approach of the school. In respect of the board, there
8 have been changes in recruitment so as to obtain
9 governors with the specialist knowledge and experience,
10 in particular in respect of child protection issues, on
11 to the board.

12 There has been an investment in facilities to ensure
13 that they are fit for the modern age.

14 In respect of the school, Jonathan Anderson spoke in
15 detail about the work done in respect of pupil voice,
16 identifying and supporting any pupils who needed
17 additional assistance finding their feet at Merchiston
18 so as to maximise their potential, and embedding of the
19 Notice/Check/Share approach that now operates throughout
20 the school.

21 It is suggested that it is also clear there is
22 a mutual respect between board and headmaster, which
23 sees the former not trespass onto what might be
24 described as the executive operation of the school, and
25 that is perhaps something that could not have been said

1 of previous iterations of the board.

2 Whilst not sitting most comfortably under this
3 heading, I do want to make a few brief observations on
4 the horizontal structure which it employs.

5 That sees boys remain with their year group
6 throughout their time with the school. Instead of
7 progressing up the hierarchy of a particular house they
8 move through the different houses as they move up the
9 school. It has advantages, most notably fostering bonds
10 between the entire year group of boys of any given year
11 and building in a structural impediment to bullying by
12 older boys.

13 It has its disadvantages, and we've touched on some
14 of those. Most notably, the boys changing housemaster
15 every year and thus limiting the time and the
16 relationship that can develop with a particular
17 housemaster.

18 There is no one perfect system. There are pros and
19 cons. As the Inquiry has heard, there are elements of
20 the vertical system in the school today. Pringle House
21 now spans several of the lower age group years and
22 forthcoming renovation works will introduce a degree of
23 a vertical system higher up the school.

24 The point I wish to make and wish to reassure the
25 Inquiry about is this: the school do not pretend to have

1 the perfect system. It's a structure which is kept
2 under review and is revised as appropriate. It does
3 continue to be reviewed, and I think the chair of the
4 board of governors sought to assure my Lady in that
5 regard.

6 The years following the death of JRB and the close
7 and critical scrutiny that the school were subject to
8 were undoubtedly challenge for all those involved. It
9 has, however, produced the school of today. That
10 school, it is suggested, has clearly learned the lessons
11 of the past. It is also suggested that it's not
12 complacent. It learned that the hard way, with the
13 [REDACTED] who in turn was exploiting
14 a relationship with senior pupils. It has learned the
15 hard way about complacency.

16 The school cannot undo the mistakes of the past. It
17 can, however, learn from them and seek to share that
18 learning. My learned friend touched on that aspect
19 towards the end of his submission.

20 For whatever concerns the Inquiry has about the
21 Merchiston of the past, the school hopes that the
22 Inquiry is left reassured that the Merchiston of today
23 and tomorrow offers the caring and supportive
24 environment its pupils deserve.

25 When all that is said and done, a core truth

1 remains: too many pupils for whom the school was in loco
2 parentis and whose families had made a significant
3 commitment in entrusting of children to attend the
4 school did not receive the care and the education they
5 were entitled to. That is a source of deep regret for
6 the school.

7 If I can return to something else I said at the
8 opening of this case study, the school of today is
9 wholeheartedly committed to supporting the Inquiry in
10 its work to ensure that the lessons of the past are
11 learned and the mistakes of the future are prevented.
12 The school is determined not to be defined by past
13 mistakes, but instead by the lessons it has learned and
14 the implementation of those lessons.

15 Whilst that is easy to say and it's easy for me to
16 say, hopefully the evidence the Inquiry has heard from
17 the school reassures the Inquiry and all those who have
18 an interest in this phase of the Inquiry of the
19 sincerity of those words.

20 Beyond restating a sincere and unqualified apology
21 on behalf of the school and that continuing commitment
22 to learn from the mistakes of the past, those are the
23 submissions for Merchiston Castle School.

24 LADY SMITH: Thank you very much indeed, Mr Reid. That's
25 very helpful.

1 We will rise now for a break and sit at -- when will

2 Mr Edward be ready, do you think?

3 MR BROWN: I imagine he'll be ready at short notice.

4 LADY SMITH: He is here.

5 Very well, we'll have a brief break and then move

6 on.

7 (10.58 am)

8 (A short break)

9 (11.20 am)

10 LADY SMITH: Mr Brown.

11 MR BROWN: My Lady, the next witness is John Edward.

12 John Edward (affirmed)

13 LADY SMITH: John, welcome back. You have been here before

14 so you know how it works, but just because you've been

15 here before doesn't mean that I don't want to remind you

16 that if you have any queries, concerns, if you want

17 a break, if there's a problem at any time helping us

18 this morning with your evidence, please let me know.

19 You must be as comfortable as you can in giving your

20 evidence.

21 Thank you for the paper you have provided. That's

22 been very helpful to be able to read in advance, and

23 I have done so and look forward to hearing you talk

24 about it and any other issues that arise in our

25 discussions this morning.

1 If you're ready, I'll hand over to Mr Brown and
2 he'll take it from there. Is that all right?

3 A. Yes, thank you.

4 LADY SMITH: Thank you.

5 Mr Brown.

6 Questions from Mr Brown

7 MR BROWN: My Lady, thank you.

8 John, hello again.

9 A. Hello.

10 Q. Her Ladyship has just referred to the report you've
11 produced, for which thanks. It's document SCI000000052
12 and you see it in front of you on the screen.

13 You have been present, one way or another,
14 throughout the entirety of the hearing, is that --

15 A. Yes, myself and my colleague.

16 Q. Yes. You have followed from the start, remembering back
17 to the days when we were hearing from the various
18 institutions and government bodies that had impact and
19 through all seven schools. So you have produced this
20 note of wider reflections.

21 We'll touch upon some aspects of that, touch upon
22 some more general subjects that have arisen then
23 obviously you have the opportunity to tell us your
24 thoughts and what in an ideal world --

25 A. Yes.

1 Q. -- you would like to see change.

2 Looking at the beginning and just going through the
3 report sequentially, we see in the second fuller
4 paragraph, the note:

5 "... focuses only on those areas raised that are the
6 specific responsibility of schools in co-operation with
7 key regulators and public bodies. It does not address
8 any wider issues for education or society as a whole,
9 where responsibility may be shared -- not least with
10 parents or carers."

11 I suppose the only observation about that is
12 boarding schools, as we've heard, can in reality be the
13 point of contact for the child. There is better
14 relationship, we have heard from the schools, with
15 parents. But in some cases there really is full
16 devolution to the school. Would you agree with that?

17 A. Yes, absolutely. It wasn't to step away from that at
18 all. It's simply to recognise that particularly some of
19 the more recent challenges and threats for young people,
20 whether it's online or in other forms of bullying or
21 whatever it might be, that a lot of that happens outside
22 of the purview of the school as such, and therefore we
23 are dealing with a working group for the Scottish
24 government right now on gender-based violence. There it
25 a whole range of issues in there that are much more

1 societal than a school.

2 Q. Indeed so, thank you.

3 You then talk about the culture, ethos and
4 exceptionalism and I think for my part at least I'm
5 happy to have read it, but I don't think there are
6 issues particularly that I would wish to follow up on.

7 Over the page on page 2 we move on to independent
8 listening/culture of silence/boarding. In paragraph 1,
9 you talk about school counsellors, educational
10 psychologists and the like and we've obviously heard
11 that that is a matter that has developed significantly
12 over perhaps the last 20 years?

13 A. Yes.

14 Q. Some schools faster than others, but you make the point
15 the primary responsibility is to the young person, not
16 to the school leadership, though you would agree, as
17 we've heard, subject to child protection and safety?

18 A. Yes.

19 Q. That will trump everything?

20 A. Absolutely. It would be the equivalent of going to see
21 a GP or an educational psychologist outside of the
22 school. You wouldn't expect that GP to then go back to
23 your employer or whoever it was to pass on what they'd
24 spoken about.

25 Q. Indeed. From your perspective in SCIS, being the

1 umbrella body to whom the schools report and come to
2 with issues, has that bedded down as a concept easily or
3 is it something that is still causing anxiety?

4 A. I wouldn't term there being any anxiety. There's always
5 issues in terms of the responsibility and roles of some
6 of these people. Some will for instance have NHS
7 access, some may have been former NHS members of staff.
8 Some will be people who share that with other pastoral
9 roles within the school, depending on the size of the
10 school.

11 In some cases there is not a mismatch but there's
12 a difference in level of responsibility or level of
13 experience that some of these people will come to it
14 with, but we've sought to address that with others in
15 things like virtual communities of practice where they
16 speak to each other. For instance here in Lothian, NHS
17 Lothian chair a meeting of these people within the
18 independent sector once a month or twice a term.

19 Q. Who provoked that?

20 A. A bit of us and a bit of the NHS actually, but also
21 a request from individuals in schools we need to
22 understand better -- if it's the growing vaccination
23 programme or if it's issues to do with mental health or
24 introduction of HPV or whatever it might be.

25 Q. That's Lothian. More broadly?

1 A. Similarly in the areas where there's big presence,
2 I know for a fact in Perth and Kinross there's something
3 similar. Conversations are happening in Aberdeen and
4 Glasgow. It rather depends on the Local Authority area,
5 to be honest.

6 Q. And the local health board, presumably?

7 A. Yes.

8 Q. But would be something, presumably, of benefit to all?

9 A. Absolutely. That's something we've always stressed.
10 For instance, just as an example, during COVID-19 I've
11 received a lot of information from NHS Lothian's
12 infection control and other bodies, which I've simply
13 topped and tailed and sent on to the entire sector
14 saying, "You should have this too". Just because we're
15 getting it from Lothian doesn't mean to say that Greater
16 Glasgow and Clyde or Tayside or wherever shouldn't have
17 it too.

18 Q. It's an example where it is a good thing that SCIS
19 exists to disseminate more widely --

20 A. Yes. If we didn't exist in that respect, you would have
21 had to create something like us over the last two years,
22 certainly.

23 Q. In paragraph 2 you talk about considerable focus on
24 mental and psychological well-being in recent years has
25 not always been reflected in literature about boarding

1 school syndrome, attachment issues, what were you
2 meaning by that?

3 A. Just from a personal perspective, if I read some of the
4 literature that's written about things like this, there
5 are elements I don't recognise in today's schools and
6 it's a conversation I have had, sometimes directly or
7 virtually, with journalists and others about aspects of
8 these issues where they don't actually have very recent
9 experience of being inside schools and talking to the
10 network within schools about well-being and about
11 safeguarding.

12 It's not to in any way diminish the points they have
13 been making, but just to say that every day that we're
14 working there is work being done to address some of the
15 issues that they've raised.

16 I think the point about ICT is an important one.
17 You've heard many, many examples of children tearfully
18 leaving their parents and not seeing them for months, if
19 not years. Whereas now one of the problems that schools
20 may have is encouraging children not to spend so much
21 time on a device in contact with their families.

22 Q. I think, as we've heard and we know we heard evidence
23 from one applicant, now a psychiatrist, who thought it
24 of moment in the last three weeks, that is boarding
25 school syndrome paper. I think we know that dates from

1 2012.

2 A. Yes.

3 Q. Is your point simply the world has moved on quite
4 considerably in the last ten years?

5 A. Yes.

6 Q. Okay. In the third paragraph you're talking about --

7 LADY SMITH: Sorry, just to pick up on that paper, the
8 particular academic he was referring to I think probably
9 was Professor Schaverien.

10 A. That's right, yes.

11 LADY SMITH: Her work dates back some years now and seems to
12 draw a lot on an era when a 7- or 8-year-old would be,
13 as you say, wrenched away from parents --

14 A. Mm-hmm.

15 LADY SMITH: -- and shut up in a boarding school with no
16 contact with family for the entire term, perhaps.

17 A. That's right.

18 LADY SMITH: Or little contact with the family, damaging the
19 parental bond.

20 The point you make, I think, is that as of 2022 --
21 goodness, we're at 2022 -- the circumstances have
22 changed and that's not what happens with young children.

23 A. No. Almost the opposite. I mean, it's interesting to
24 observe during the pandemic that one of the biggest
25 crises or concerns for schools was that children would

1 be away from their families. If you think of children
2 coming from the Far East in the winter of 2019/2020,
3 some of them weren't able to return home for 12 months
4 because of restrictions in one country or the other and
5 that was a concern for the schools and a concern for the
6 families, not a recognition this is how it's always
7 been.

8 LADY SMITH: Of course. And had to be addressed?

9 A. Yes.

10 LADY SMITH: They may, in those circumstances, I suppose,
11 not even have been able to have contact with their local
12 guardians?

13 A. No, in some cases.

14 LADY SMITH: Mr Brown.

15 MR BROWN: Thank you, my Lady.

16 I think coming on to paragraph 3, this perhaps ties
17 in with what has just been discussed, you say that the
18 choice of conversion from day to boarding school of
19 pupils today is usually child driven.

20 A. Yes.

21 Q. So the anxieties perhaps expressed in the boarding
22 school syndrome is of its time. From your sense, the
23 world has changed?

24 A. I certainly have -- I've been doing this for, gosh,
25 almost 12 years now. I haven't any experience of the

1 syndrome and the situation as discussed. Much more,
2 I've heard the situation of parents almost being put in
3 a difficult position by the child insisting that they
4 board along with their friends.

5 Indeed, I remember one situation where a child
6 submitted an application form to a boarding school
7 without telling their parents.

8 But as I said, the idea that you would have
9 a meeting with parents and a child with the school --
10 the schools will say this themselves -- and that child
11 could be sitting in the middle of that meeting and
12 having their future discussed and their views not be
13 listened is just not a world I recognise now.

14 LADY SMITH: John, am I right in thinking that if you take
15 Edinburgh, for example, which has boarding schools, more
16 than one boarding schools, within the city boundaries,
17 there are quite a number of children boarding at the
18 schools even although their home is in Edinburgh, and
19 that may well come from the child wanting to board
20 rather than miss out on the full boarding experience as
21 they see it.

22 A. Exactly that. I can think of two or three family
23 friends who have been in that exact situation, where
24 indeed their house was visible from the school, but they
25 chose, because they felt that leaving the school at

1 8 o'clock in the evening or whatever, they were missing
2 out on some of the more informal aspects and just
3 spending the time with their friends that they would
4 want -- if you were at a day school and you met your
5 friends in the evening, it's the same thing. Plus more
6 access to sports facilities and things like this.

7 LADY SMITH: Mr Brown.

8 MR BROWN: I'm just interested where you get the information
9 to justify the statement. It might be said of course as
10 a representative of SCIS you would say that.

11 A. No, I mean there's -- we don't take the approach in our
12 organisation that we're there to lobby on behalf of the
13 sector come what may. Where there are failings there
14 are failings and we will seek to address them with the
15 schools through training or whatever else and outside
16 advice. This is simply an observation from the schools
17 that the idea that -- this is something I have tested
18 again with them in recent weeks: what would the
19 situation be if clearly a child was unwilling or
20 uncertain. A couple of heads reported that this has
21 happened, where the school has had to say to the
22 parents, "We don't think this is the right thing to be
23 doing".

24 Q. That's what I was coming on to, because I think we heard
25 the current Merchiston head, Jonathan Anderson,

1 confirming that there have been situations where he has
2 said, "I don't think this is working".

3 A. Yeah.

4 Q. You have that broader view --

5 A. Yes.

6 Q. -- that's being said in other schools also?

7 A. Yes.

8 Q. Okay. Because, as we know from the tail end of
9 paragraph 3 you say:

10 "It is important that external inspection reports
11 also represent pupil voice ..."

12 Pupil voice has taken on greater emphasis. Is that
13 a fair general observation?

14 A. Yes. It's an expression that is used a lot. I'm not
15 sure in every line of our work that it's entirely
16 understood or taken on as seriously as in some cases it
17 might be -- for instance, in some national working group
18 it's simply you get somebody from the youth parliament
19 to sit in on the meeting and therefore you've covered
20 "youth voice", but in this case what it is is if you are
21 inspecting the pastoral facilities of a school or indeed
22 the educational facilities and abilities of a school,
23 you cannot do that without speaking in detail to the
24 people who are receiving the service.

25 Q. Yes. We know from the read-in evidence of Iain Lamb he

1 was saying the student voice it is heard by the Care
2 Inspectorate. Would you agree with that?

3 A. Absolutely. Definitely for the Care Inspectorate,
4 because after all what they're inspecting is that
5 pastoral and care side. It's called school care
6 accommodation in their language.

7 On school inspection sides perhaps less so, simply
8 because school inspections happen less. You know, we
9 have a professional engagement process with schools from
10 Education Scotland, which is very valuable and quite
11 challenging for schools in terms of inspection of their
12 academic provision, but by definition that means there
13 are fewer full inspections and therefore fewer
14 opportunities to have perhaps the same level of dialogue
15 you would have, although you will always take
16 questionnaires or whatever to pupils when there's
17 a process like that going on.

18 Q. That may be because of circumstance over the last few
19 years. Would you anticipate that there will be a return
20 to -- or do you have anxieties that we won't --

21 A. We are told that inspections were due to restart, full
22 inspections in schools, this term. I think that's still
23 being delayed because of the current mitigations, but
24 even then the frequency of full school inspections,
25 certainly in our sector, is fairly few and far between.

1 Schools can go at least half a dozen years without being
2 inspected.

3 Q. Is that satisfactory, in your view?

4 A. I think -- I don't think schools worry that it doesn't
5 capture what they're getting right and wrong, because,
6 as I say, there are quite useful and intense
7 professional engagement discussions with the
8 Inspectorate, but I suppose for the wider reassurance of
9 the teaching body, the parental body, of the general
10 public, school inspections are an undeniable good and
11 therefore, in the best possible world, were there more
12 inspectors and more time, then it would be better to do
13 it more often.

14 Q. We will come on to inspectors and inspections as
15 a discrete topic in a moment.

16 A. Yes.

17 Q. Paragraph 4 of this section talks about SCIS supporting,
18 and I think it's commonly acknowledged by I think
19 everyone who has spoken to the Inquiry that SCIS is
20 viewed very favourably because of the work it does.
21 Would there be an argument for formalising SCIS further?
22 Because it does seem to be, in a sense, a voluntary
23 organisation.

24 A. It is, it is. It's worth saying that every mainstream
25 boarding facility in Scotland, for instance, is a member

1 of SCIS. We represent probably 98.5 per cent of pupils
2 outside of state or home teaching in Scotland. There
3 are some very small faith schools, for instance, that
4 aren't members.

5 What further formal capacity you could give us,
6 I don't know, because we should not replace the
7 responsibility of the Inspectorate. We should not
8 replace the responsibility of the Scottish government to
9 register the schools in the first place. I'm not sure
10 we should replace the responsibility of other agencies
11 to provide a voice for the child, for instance. There
12 are parental bodies that our schools are part of, but if
13 you're getting into discussions of things like LADOs,
14 I'm not sure it's appropriate that we provide both
15 advice on what schools should do but also, if you like,
16 sit in judgement on them.

17 Q. Thank you. I just wondered whether you were content
18 with the status quo or thought there should be change.

19 A. No, I think we have the support of all our schools. Our
20 membership grows rather than decreases. A newly created
21 Muslim school in Glasgow joined us just a couple of
22 months ago, so I'm comfortable that we're representing
23 the sector.

24 Would I like to have more staff and more resources?
25 Of course I would, but that's true of any organisation.

1 Q. Thank you.

2 Let's move on then to oversight of independent
3 schools and the associated issue of reporting to those
4 who oversee.

5 It's been a pretty constant refrain from heads there
6 have been times -- I'm thinking we heard reference to
7 Andrew Hunter's evidence in closing submissions from my
8 friend 20 minutes ago, saying there were still
9 difficulties, and this is in the last ten years, who do
10 you talk to? It still wasn't clear.

11 Do you still have that feeling?

12 A. Yes. Yes. Again, the last two years are slightly
13 different because everyone's been in -- not panic mode,
14 but in emergency mode for the last two years, so
15 therefore the engagement with public services, with
16 Public Health Scotland, with whoever, has been
17 different.

18 But I would think it would certainly be on
19 a monthly, if not a weekly basis prior to that that
20 I would get a phone call from a school saying, "We have
21 an issue", whether it's a cyber attack, whether it's
22 graffiti from outside, whether it's a child protection
23 question, whether it's a safeguarding question, whether
24 it's a recruitment question: who do I go to? Who do
25 I tell? Should I just tell the registrar and he'll tell

1 everybody or ... and then we have to go through this
2 conversation of:

3 "Well, have you told Education Scotland? If it's
4 a teaching issue, should it go to the GTCS? If it is
5 an issue that affects the school substantially should it
6 go to OSCR as a notifiable incident?"

7 For instance.

8 The idea that you're going through that list every
9 single time you have the question doesn't sit quite
10 right with me. There should be an automatic
11 understanding in people's minds of who this goes to.

12 LADY SMITH: I think I counted seven potential candidates
13 almost every time.

14 A. Yes.

15 LADY SMITH: From the Registrar of Independent Schools,
16 Education Scotland, the Care Inspectorate, GTCS, OSCR,
17 SSSC and possibly Disclosure Scotland.

18 A. Yes.

19 LADY SMITH: No doubt are likely to fly through a head's
20 mind every time something of the sort you've mentioned
21 comes up and they don't know whether they have to tell
22 all of them, any of them, one or more of them, and
23 whether any of them will speak to each other about the
24 subject they've discussed.

25 A. And how do you define the issue you're discussing? So

1 where does the duty of candour under the Care
2 Inspectorate meet the requirement to report under GTCS
3 and so on and so forth. Education Scotland, people
4 can't take direct complaints to Education Scotland.
5 It's a different process. So there in our case you'd go
6 to the registrar, but in the registrar's case, a lot of
7 what he has to do is make sure the government is sighted
8 as to any issues that might come up.

9 It's a lot, and some of the schools you've been
10 hearing from in the last months are substantial
11 organisations with large support staff. That's not true
12 of all of our schools. We have schools going from 2,700
13 down to 12, and therefore there may be people behind the
14 scenes who are doing a lot of different jobs. Therefore
15 sitting and making a judgement as to whether this is
16 a notifiable incident to the charity regulator, for
17 instance, is quite a big ask.

18 LADY SMITH: Or whether, as I was alluding to earlier, they
19 think they're seeing a risk in place about which they
20 need to do something but they're not sure what.

21 A. Mm.

22 LADY SMITH: Which is not going even as far as a notifiable
23 incident, but they really would welcome a discussion
24 with the right person outside the school --

25 A. Yes.

1 LADY SMITH: -- to help them with their next judgement about
2 where to go.

3 A. Because there have been examples where agencies or
4 government or even ministers expressed themselves
5 unhappy they found out about something later down the
6 line. It's not the school's responsibility to ring
7 these people up, because they've done their formal
8 responsibility, but in the same way -- our child
9 protection training changes all the time, but one of the
10 things that used to happen a lot when I first sat in on
11 them was staff will be presented with individual
12 scenarios: do you think this is a child protection issue
13 or don't you? Usually, nine out of ten would be, and
14 people would usually, if they're coming new to the
15 sector or new to boarding or whatever it might be,
16 underestimate the level at which these things should be
17 triggered.

18 If you just think of that as one example, that's
19 a big responsibility to put on people.

20 LADY SMITH: Mm-hmm.

21 Mr Brown.

22 MR BROWN: I meant from this flow a number of different
23 issues, which we might deal with very shortly, but
24 obviously LADO we'll come to. The issue of mandatory
25 reporting, which is flagged up.

1 A. Yeah.

2 Q. Although I think, as we know, there are issues. That is
3 not a simple one.

4 A. No.

5 Q. We know that, because it's legislated for in some
6 countries --

7 A. Yes.

8 Q. -- but other countries have chosen not to. And when it
9 is, there are a number of basic questions which need to
10 be addressed and which perhaps are not terribly simple
11 questions like: who is covered? What must be reported?
12 Who do you report to? And should there be sanctions?

13 A. Yes.

14 Q. It's not a simple "one size fits all"?

15 A. It's not, and I understand the enthusiasm, the
16 importance that bodies attach to mandatory reporting,
17 and at times I've been slightly surprised by
18 government's unwillingness to go as far as that. But
19 I entirely understand, and you've heard this morning, as
20 you've heard many times, there are problems attached to
21 reporting something when you haven't got all the
22 evidence, and even the simple act of suspending somebody
23 without prejudice can have -- well, the most severe
24 consequences.

25 Q. I think remembering back to the very beginning of this

1 chapter of the Inquiry, we heard of the case of a false
2 allegation leading to suicide.

3 A. Absolutely, yes.

4 Q. It's perhaps something that would bear --

5 LADY SMITH: And a very damaging experience suffered by
6 QTL

7 A. Exactly.

8 MR BROWN: Absolutely.

9 LADY SMITH: In the case study.

10 MR BROWN: Yes. Going back to the issue of oversight, we
11 know -- we talked about it in the first phase of this
12 chapter -- the oversight of independent schools. One
13 has the registrar and then the various bodies underneath
14 and the various quite rigid statutory obligations that
15 have to be met. From your perspective, it is undoubted
16 that headteachers, whether they be of a large
17 organisation with support or a tiny organisation with no
18 support, are still facing difficulties in knowing what
19 to do.

20 A. Yes.

21 Q. Is that fair?

22 A. Absolutely, yes.

23 Q. What would you suggest as a resolution to that?

24 A. Well, I mean in terms of -- it's clear -- if you have
25 a teacher about whom allegations or complaints are made,

1 it's fairly clear you go to the professional body in
2 terms of teaching. Likewise, a member of non-teaching
3 staff, if they're SSSC-registered and so on.

4 It's more the functioning of the school and their
5 response to certain issues.

6 The process of registering as a school is a long,
7 time-consuming one. The form is substantial and the
8 questions are substantial. We have at least two schools
9 in Scotland that are currently still in abeyance waiting
10 for their post-registration inspection.

11 But after that process happens, it rather peters
12 away. So you have the registrar in charge of the
13 register, but the responsibilities to monitor all the
14 aspects of the registration process are then farmed out
15 to other people.

16 I think schools -- particularly if you come from
17 down south, where it's clearer. Again, there are many
18 comparisons to be made with down south and it's not all
19 sweetness and light and it's also partly because the
20 sector down south is enormous by comparison, so it's
21 easy to have the capacity for resources.

22 But let's take the example at the beginning of this
23 case study with the GTCS, it was the GTCS that requested
24 that full registration of teachers be brought into
25 place, something that we had discussed with them for

1 probably 15 years. But yet when they brought that
2 process in, they themselves did not know how many fully
3 registered teachers there were in the independent
4 sector. If they don't know, holding the register of
5 teachers, I'm not sure who else could be held
6 responsible for knowing. And there are other examples
7 you can think of like that.

8 The registrar himself, and it is a he at the moment,
9 when I first started this role, knowing who the
10 registrar was was a casual bit of information. Oh, it's
11 changed -- and it changed on a very regular basis. But
12 there was somebody I would have a good will conversation
13 with now and again. All of a sudden, the responsibility
14 changes -- this comes back partly from the implications
15 of the closure of the Hamilton School in Aberdeen, which
16 is the only school I can think of, possibly in post-war
17 history, where the government has stepped in and said,
18 "This school closes at 5 o'clock", and the registrar's
19 responsibilities were shifted out of the Scottish
20 government to sit within Education Scotland but as
21 a standalone, so his job actually changes as he walks up
22 and down the corridor.

23 There is actually less resource behind the Registrar
24 of Independent Schools than there was before then,
25 because the current registrar was the assistant

1 registrar before. There isn't an assistant registrar
2 now.

3 If there is an expectation that that is the key
4 document and the key process for schools, you know, it's
5 perfectly understandable that afterwards your teaching
6 and learning is measured by Education Scotland and How
7 Good Is Our School. It's perfectly understandable that
8 your pastoral responsibilities in nursery or boarding
9 are measured by the Care Inspectorate, but if the
10 overall existence as an independent school is dependent
11 on that registration, then it strikes me that that's --
12 the person who holds that should have -- this is no
13 criticism of the individual. It should be a more
14 clearly defined and perhaps empowered role.

15 One example I give -- again, this is not a criticism
16 of the individual -- the Scottish government regularly
17 publishes the register of independent schools, every
18 three or four months. The latest version went online
19 last week. I had to write immediately to the registrar
20 to point out over half a dozen errors on their own
21 register, as to who the proprietor or the head of the
22 school was or the address or the ownership or whatever.

23 I understand as a tiny sector -- we're 4.5 per cent
24 of school education in Scotland -- that we are not
25 everybody's priority. But if you're going to take on

1 the responsibility of registering us, then somebody
2 somewhere needs to be absolutely certain they're getting
3 the right information.

4 And as I think I said in my initial submission two
5 years ago, one of the things that used to happen was
6 a census of the independent sector. That stopped in
7 2010. So although information is taken by the registrar
8 about teacher numbers and certain things, there isn't
9 a collective gathering of information in quite the same
10 way as there used to be, nor indeed as would happen in
11 the state sector.

12 Q. Has a similar census stopped in the state sector too?

13 A. No. But then that's true of a lot of things. If you
14 look at what's called Insight, which is the benchmarking
15 system for state schools, we can't be part of that, not
16 because there's a lack of will, but because partly we
17 weren't included in the planning process in the
18 beginning, but also we were never required by law to
19 gather, for instance, ethnicity data, which we now do
20 voluntarily, because we think it's useful to know, but
21 with the absence of that, we couldn't then take part.

22 For instance, here in Edinburgh, just as an example,
23 you have one in three pupils outside of state education
24 in secondary. So any benchmarking that Edinburgh does
25 and the Local authorities around it is missing over

1 30 per cent of the pupils.

2 Q. Is that one thing where the private sector might be
3 brought in to be --

4 A. Well, I think there's a decision that has to be taken.
5 Politics and ideology aside, I've always said that if
6 you were setting up an education system in Scotland you
7 wouldn't start with the system we have now. But that's
8 probably true of every national education system.

9 But we have what we have. We have 70-odd schools
10 working extremely well, with which parents and children
11 are very happy.

12 If that's the case and that reality is there on the
13 ground, you have to -- but the government takes
14 responsibility for them, as they do and they pass
15 legislation like non-domestic rates or like
16 James Martin's report on Butterstone or whatever it
17 might be. If they're going to take responsibility, then
18 they have to at least acknowledge that we are part of
19 the system.

20 I will leave you with just one example, there is no
21 benchmarking of our schools when it comes to attainment
22 or whatever else compared to the rest of the school age
23 population of Scotland, but when PISA tests are done
24 internationally as to how Scotland is performing, our
25 schools are asked to take part in that. That seems to

1 me a fundamental contradiction.

2 Q. I think you may remember the evidence of
3 Professor Paterson who was, I think, despondent about
4 the lack of information generally in the private sector
5 and more widely.

6 A. Yes, and I don't deny that some in authority may not see
7 us as their problem or their issue, but we are
8 ultimately their responsibility, because they have taken
9 that responsibility upon themselves.

10 Q. One specific question. You talk about the registrar.
11 I think he is the top of the tree, but from what you're
12 saying, is a tiny or part organisation which has
13 restricted in the last years?

14 A. Yes.

15 Q. Resource is obviously not a matter for us, but do you
16 have concerns about the operation of the registrar, just
17 in terms of that formal oversight and the manner in
18 which it is deployed?

19 A. Well, "concerns" might be strong, but I would certainly
20 hope that if any one person in Scotland had the
21 understanding of where the sector sits at any one time,
22 who's in, who's out, who is doing what, it would be the
23 registrar.

24 I would be interested in the response you would get
25 if you wrote to the other agencies we talked about, the

1 GTCS, SSSC, OSCR, and said, "Do you know who the
2 Registrar of Independent Schools is and where to find
3 them?" I'd be interested to know the answer to that,
4 because I suspect you wouldn't get an affirmative answer
5 each time.

6 Q. I think, as we know, the one example of the registrar
7 acting was with Merchiston.

8 A. Yes, that's happened in other cases. Because the
9 registrar is also the conduit through to ministers. So
10 if there is a case that comes up that might attract
11 wider attention, then obviously the registrar has
12 a responsibility to ministers to make sure they are
13 sighted, so Merchiston's not the only time that
14 a special inspection, if you like, has been triggered.

15 And as I say, with the Hamilton School in Aberdeen
16 it reached a situation that a crack squad from Education
17 Scotland and the Care Inspectorate went in and I was
18 phoned by the registrar I think it was, it may have been
19 the cabinet secretary, at 2 o'clock to say, "This school
20 shuts at 5 o'clock".

21 So the responsibility that the registrar has in
22 terms of pulling the biggest lever is substantial, but
23 perhaps not necessarily with enough -- not with enough
24 data, but they're maybe not receiving as much as they
25 should be receiving from everybody else.

1 Q. From what you're saying, the registrar has a big lever?
2 A. The ultimate.
3 Q. It's the ultimate lever and that's the point I perhaps
4 was trying to make. Either nothing happens or the big
5 lever is pulled --
6 A. Indeed, and --
7 Q. -- should there be something --
8 A. I mean, what lies in between partly is the issuing of
9 directions to schools under the terms of the -- I think
10 the 1980 Act. But even then, as some of the authorities
11 ruefully observe, it's not the best way to do it.
12 Sending people a letter that sounds incredibly
13 legalistic saying, "You are being issued directions and
14 you'll be found" -- I forget the word, but, "... you'll
15 be found incompatible with those directions [or
16 something] if you don't meet this". In the case of at
17 least one school it was a very straightforward thing of
18 informing them, "Could you please send us your parental
19 contact process" or whatever it might be.
20 But it's like you go from no lever to a very big
21 lever to the ultimate lever and the level of discussion
22 in between is not perhaps what it should be.
23 Q. It's simply from what we have heard about individual
24 schools, one of the failings has been open communication
25 at the school level and perhaps communication between

1 the school and other bodies.

2 Do you think there is a route for greater open
3 communication from the registrar in a more discrete form
4 with that sort of scenario to resolve difficulties?

5 A. Yeah. At least as the sort of first point of contact
6 for difficulties. We've mentioned elsewhere issues with
7 the police and others and the work with Local Authority
8 child protection groups.

9 There ought to be somewhere you start that
10 conversation and somebody who -- as I say, during the
11 pandemic the registrar has been extremely valuable. We
12 have this issue with lateral flow supplies or whatever
13 or asymptomatic testing and he has been able to help
14 bring different parts of government and the NHS together
15 on that. But I'm not sure that that was ever part of
16 their role beforehand. I would like to hope that one of
17 the positives of the pandemic was that that more
18 integral role will continue.

19 Q. And in other spheres, perhaps?

20 A. In other spheres, yes.

21 Q. What spheres are you thinking about?

22 A. Well, I mean just -- the obvious one in the arena we're
23 in is child protection. Ultimately, if -- you know,
24 schools, as I hope you have heard over I think 60 days
25 of evidence, take these issues extremely seriously.

1 Indeed, as an observation, if I thought they didn't take
2 it seriously, I wouldn't be sitting here today, and
3 I don't think most of the heads would either -- any of
4 the heads would.

5 But however seriously they take it, there is
6 a judgement call they have to make about what then to do
7 with that. When, for instance, there is the welfare of
8 young people involved, and in some cases the
9 allegations -- not just in terms of mandatory reporting
10 of teachers, but allegations towards young people may
11 not be quite what they were presented to be and the last
12 thing you want is the police rolling up the drive to
13 investigate the actions of 13-year-olds without knowing
14 precisely what it is they are asking.

15 I think there needs to be some kind of -- not
16 clearing house but first port of call for these issues
17 that isn't leaving it up to schools to go: is this
18 a pastoral issue? Is this a teaching issue? Is this
19 a police issue?

20 As I say, if you don't have the day-to-day contact
21 perhaps you used to have with the local constabulary or
22 you don't necessarily have a very strong relationship
23 with the child protection committee, that may be quite
24 a difficult ask. Especially for small schools who may
25 not have encountered some of the issues they're dealing

1 with at all before.

2 Q. Well, nine, ten months have passed since we first talked
3 about these sort of difficulties. Thinking of the
4 police, and we'll come onto -- because everything is
5 interlinked. Has there been any change from your
6 perspective in Police Scotland reporting?

7 A. No. No. In Police Scotland terms, no. I mean, it
8 would be difficult to be -- to judge honestly, given the
9 sort of emergency mode we've all been in. And the
10 welfare and the well-being alarms that have been going
11 off for pupil have been mainly as a result of the
12 pandemic.

13 But in terms of the relationship with the police,
14 no, I haven't seen any -- I haven't been informed of any
15 change in that in recent months, no.

16 Q. No. But I think there's a clear theme from the schools
17 saying in the past it was better because you had a local
18 number to ring and a local officer, of whatever rank,
19 who knew the school, you knew them and you could get
20 advice. That's gone.

21 A. That's gone. You know, it's not for us to judge the
22 reasons for centralising police, but if you go through
23 101, you're going through 101 whether you're in
24 Helensburgh or Elgin.

25 Q. And you're going through 101 whether it's child

1 protection or a car blocking the road?

2 A. Yes. And therefore you're requiring people to make
3 a judgement -- it comes back to, you know, people in
4 other bodies who may not spend much time in and around
5 independent schools. It's a big ask of somebody perhaps
6 on a police switchboard to make a judgement about what
7 is a child protection issue and what isn't.

8 Q. It would presumably be -- even allowing for the single
9 unified force -- a help if there was a contact number
10 for child protection issues so you spoke to an officer
11 who knew about it?

12 A. Yes. I don't know for instance what the situation would
13 be for a secure unit or for other residential care
14 accommodation in the state sector, but I'd be interested
15 to know what they would do in that situation. I suspect
16 through their Local Authority they might have more of
17 a link.

18 Q. Well, this takes us on inevitably to LADO.

19 A. To LADOs, yeah.

20 Q. Because LADO has been spoken of, and this is, as you
21 say, there are some aspects about the English setup that
22 no doubt could learn from Scotland, but LADO is
23 something that for those who have experienced it, it
24 seems to be viewed as a good thing --

25 A. Mm.

1 Q. -- and something that would be really of benefit from
2 a Scottish perspective.

3 A. It would make so many aspects of what we've been talking
4 about in the last few minutes much more straightforward,
5 because not only would you be reporting to the first and
6 appropriate port of call, but you would also be
7 reporting to somebody who presumably had the
8 professional knowledge and understanding of these sort
9 of issues, that they would be able to make a -- not
10 a judgement, but make a -- make a call on the level of
11 assistance and interaction that was required.

12 Q. I think if we, sorry, just put the screen to page 6 and
13 the chapter in your report where you're talking about
14 external contacts and LADO, paragraphs 1, 2, and then 3
15 talks about the police in particular. You make the
16 point:

17 "As it stands, the relevant child protection
18 committee (CPC) and a Scottish Local Authority could not
19 fulfil this role as it does not have a remit to
20 investigate complaints or allegations about individuals.
21 In addition, the 32 individual Local Authorities have no
22 specific role relating to independent schools
23 collectively."

24 In England, the provision is Local
25 Authority-based --

1 A. Yes.

2 Q. -- and does allow access from independent schools.

3 Looking at the Scottish Local Authority setup, can you
4 say whether a similar provision could easily be created?

5 A. It could be created. It would be difficult, because for
6 instance in Edinburgh, you know, by average one in three
7 of all the cases that might be reported to LADO would be
8 reported in Greater Edinburgh, so therefore the LADO in
9 Murray or in Argyll and Bute might be twiddling their
10 thumbs for long times. So you might need to have a sort
11 of east, west, north LADO, if you like, although that
12 would then reduce that local understanding.

13 But at the moment we really have, apart from when
14 a childcare issue is registered with a Local Authority
15 and agencies need to leap into action -- and we do. We
16 have, for instance, looked-after children in our schools
17 as well who will be part of that -- there isn't -- it's
18 not clear to me how you would mandate a Local Authority
19 to have that responsibility. They have no
20 responsibility for independent schools.

21 Again, unlike England where there is a range of
22 different models of school, from free schools,
23 academies, whatever, state boarding, it's a much clearer
24 divide here -- if you leave Jordanhill School to one
25 side for the time being -- there's us and the state

1 sector. To be, small p, political in the current
2 climate it's difficult to see Local Authorities
3 volunteering x resource for, in the case of some Local
4 Authorities, one or two boarding schools.

5 In principle, I think it's a great idea. But in the
6 Scottish system, I'm not quite sure how it fits. Only
7 two-thirds of the Local Authorities in Scotland have
8 an independent school in them at all.

9 Q. Would that be a pointer towards a national LADO for all
10 schools who can address child protection issues, which
11 really should not be local?

12 A. No, because -- I mean, for instance, just theorising,
13 a national LADO, for instance, would presumably have the
14 contact details of the child protection committees in
15 the relevant Local Authorities. That's not difficult to
16 do. As I say, we have a very good relationship
17 personally with the Edinburgh Child Protection
18 Committee, who indeed I spoke to about LADOs to see if
19 they'd ever thought about such a thing.

20 Q. And?

21 A. No, is the answer, because they didn't feel that they
22 needed to. You know, they have a system in place.

23 But yes, that -- I mean the more obvious thing would
24 be that it wouldn't be dependent on a Local Authority to
25 take somehow responsibility for the boarding pupils in

1 their -- if we go back to the issue of boarders who are
2 not from England, who are not from outside the
3 United Kingdom, but living along the road or coming in
4 five miles, you know, a lot of our schools will probably
5 be serving eight, seven, six Local Authority areas in
6 terms of where their pupils come from, so there's
7 another level of complication there as well.

8 Q. I was just thinking about the police analogy, because
9 the reality now may be that if you have a child
10 protection issue in Moray, it will be an officer in
11 Stranraer who has that responsibility.

12 A. Yeah.

13 Q. If one acknowledges that the local connection is lost by
14 a centralised force, nonetheless one could have
15 provision for a national response.

16 A. I can think of a relatively recent case, not in
17 a boarding school but in a day school, where a very
18 serious child safety issue had to be addressed and they
19 had to work with child protection services, foster
20 services and the police across at least three different
21 Local Authority areas, depending on where the carers
22 lived, where the incident happened, where the school
23 sat.

24 I can understand for a Local Authority that's not
25 a concern they have to make very often, because very

1 rarely do you have pupils coming in from outside.

2 Q. Sticking with the Local Authority model, we know again
3 from Merchiston in the last three weeks that Merchiston
4 benefitted from input from the deputy head from the
5 local state school, Firhill --

6 A. Mm-hmm.

7 Q. -- who provided insights that were new and useful.

8 A. (Witness nods)

9 Q. Thinking more broadly then, what exists currently in the
10 state provision that would be of benefit to the
11 independent schools?

12 A. I'd be pushing my knowledge to pretend I know too
13 seriously about that. But I mean all education services
14 will be plugged into their child protection committee in
15 the relevant Local Authority. And that -- because it
16 all falls under the same responsibility. The care
17 services, social work, whatever, all fall under the same
18 Local Authority as education. Then it's a more
19 straightforward conduit.

20 Ultimately the responsibility for every child in
21 Local Authority education is at the first stop under the
22 director of education of that Local Authority.

23 Whereas -- yes, I mean there -- understandably,
24 there's a lack of understanding within Scotland as to
25 actually who even runs our schools. I mean, we've seen

1 this many times of people not understanding -- I mean,
2 charitable status is a contentious issue, but what
3 charitable status demonstrates is they are
4 not-for-profit, independently run organisations.
5 They're not businesses in that respect and they're not
6 schools in the same way.

7 Again with the comparison down south, you have
8 governors in state schools down south, so people at
9 least have the understanding of a level of governance,
10 albeit informal, which doesn't match up here because it
11 doesn't work in the same way at all.

12 Q. Trying to bottom out the issue of LADO, which seems to
13 be something that everyone agrees would be a good idea,
14 is there a way of cutting through the Gordian knot to
15 achieve it?

16 A. I think it must be possible to discuss the concept at
17 a national or regional level, and by regional I mean
18 four regions of Scotland perhaps, without saying to
19 Local Authorities simply, "This is your responsibility
20 now, deal with it", because I understand that that
21 wouldn't necessarily be what Local Authorities would
22 expect they would have to do.

23 But if you take the national refresh of child
24 protection guidance, if you take the refresh of GIRFEC,
25 which is all about multi-agency working, it doesn't seem

1 to me a big leap to say as part of that:

2 "We have to acknowledge the responsibility for
3 children in pastoral care, whether they're in a secure
4 unit or they're in a boarding school."

5 Q. Going back then to page 3 of your report, at the top of
6 that page, we've been talking obviously at the outset of
7 oversight and there being confusion about who you report
8 to.

9 A. Mm-hmm.

10 Q. Putting LADO aside, you say:

11 "A similar confusion may exist at times in terms of
12 reporting. While bodies have discrete roles and focus,
13 schools have to consider reporting expectations for any
14 issue -- with differing degrees of detail and
15 severity ..."

16 A. Yeah.

17 Q. Then you go back to Her Ladyship's list of seven
18 possible bodies for different things.

19 I know that SCIS have produced flowcharts and
20 documents for parents how to report a complaint.

21 A. Yes.

22 Q. You start with the school and if that doesn't work you
23 do this, then you move on to that. Although,
24 interestingly, the Care Inspectorate don't seem to
25 feature in the flowchart?

1 A. No. I suppose because at the time it was written we
2 thought that pastoral issues would be treated
3 differently, but also there's a recognition that
4 I suppose the Care Inspectorate you can make direct
5 complaints to, so therefore I don't know if we've
6 updated that since the duty of candour was formalised,
7 but maybe we need to double check that.

8 Q. That was one of the things that was drawn to my
9 attention helpfully, that they don't feature, but they
10 perhaps might.

11 A. (Witness nods).

12 Q. Again, being practical about it, LADO aside, what's the
13 resolution to that lack of clarity from the point of
14 view of to whom does a school report?

15 A. I mean part of it is training, because there won't ever
16 be a straightforward answer because if a teacher is
17 acting inappropriately in some respects, it's
18 a straightforward teaching ability issue, but if they're
19 acting inappropriately in other respects it's
20 a straightforward police issue. I mean, I have tried in
21 the past to create a flow chart of the legislation that
22 covers independent schools. This is all the issues you
23 have to check as a governing board that you're in
24 compliance with. It's almost impossible to do, because
25 again, unlike England where the DFE tend to bring out

1 small short sharp regulations now and again on very
2 specific issues, we get the Education Act 1980, we get
3 the Children and Young People Act, you know, whatever,
4 and lots of it flows from that in secondary legislation
5 or regulation, so it's difficult to second guess every
6 possible route that somebody would have to go down.

7 Because, as I say, even if it was an issue of
8 a teacher acting inappropriately, it could be three or
9 four of those bodies. You know, if it was a teacher
10 acting so sufficiently inappropriately that they were
11 going to be on the next day's front page of a tabloid,
12 then I would suggest a phone call to OSCR as well,
13 because in theory the safe running of your charity is at
14 risk, potentially.

15 LADY SMITH: I was also struck, John, in reading a little
16 bit more about the LADO system, it's much more than just
17 advising a school of who they have to report to.

18 A. Yes.

19 LADY SMITH: They seem happy to talk to a school in advance.
20 They're thinking, well, what's the problem. The school
21 tells them, "We're thinking of doing this, are we
22 missing anything?" They can talk that through.

23 A. Yes.

24 LADY SMITH: If there is the sort of problem that needs to
25 be reported, not only identifying to whom the report has

1 to be made, but having a continuing responsibility to
2 liaise with all the agencies involved, to do what they
3 can to see that they're working well together for child
4 protection interests, and resolve any problems if they
5 can between them.

6 A. Yeah.

7 LADY SMITH: Monitor how things are going. Watch for things
8 being done sooner rather than later, because a child
9 protection issue can't lie on a shelf for a long time.

10 A. Mm.

11 LADY SMITH: It's quite an extensive support beyond just --

12 A. Yes.

13 LADY SMITH: -- saying you have to report to the charities
14 regulator or every what.

15 A. Speaking to representatives of the sector down south, or
16 indeed heads who have been down south before, there is
17 inevitably part of that that falls on the character and
18 the knowledge of that individual LADO --

19 LADY SMITH: Of course.

20 A. -- but to a certain extent, that's some of the
21 discussion that can happen with local Authority Child
22 protection experts. Indeed we've used some of them in
23 our training in the past. It's also a conversation that
24 used to happen with the local bobby.

25 LADY SMITH: Yes.

1 A. You know, you know what you would do in this situation;
2 we're providing it to you to have that discussion before
3 everything blows up. Not waiting to take action and
4 therefore leaving a child at risk or anything like that.
5 But simply saying, "This is a situation where we don't
6 think it's as straightforward as it might first appear,
7 where do we go from here?"

8 MR BROWN: I'm obliged, because that's in a sense that's one
9 of the roles you also fulfil.

10 A. Yes.

11 Q. You're the default to go to, "What do we do if ..?"

12 A. Yes.

13 Q. Or, as I think I'm certainly aware of from one of the
14 current heads, you phone a friend south of the border,
15 who phones the local LADO, who says, "Yes, we've dealt
16 with this".

17 A. Yes.

18 Q. Whatever way you look at it, either it falls you on,
19 a voluntary body, or you have to go elsewhere outwith
20 the existing system.

21 A. Yes. In some respects we are and are happy to be
22 a default 33rd Local Authority in certain issues, but
23 only in an advisory capacity. We recognise that.

24 Q. Yes.

25 Thinking of the various bodies who are set out and

1 from whom we heard, save OSCR, at the outset of the
2 Inquiry, we heard about specific things that might be
3 changed, we heard about -- thinking of GTCS -- a desire
4 for greater involvement in processes. Has anything
5 changed as far as you are aware in the last 10 months?

6 A. Not substantively, no. There is a consultation just
7 closing at the moment with the GTCS about registration
8 of teachers, which we have some concerns about. So
9 that -- there is a formal process underway that may
10 affect that.

11 Otherwise, in terms of Education Scotland's
12 inspectorate capacity, you obviously have
13 Professor Muir's report on education reform following
14 the Scottish election, so there will be change afoot
15 somewhere, whether it's in the nomenclature or something
16 more complicated than that, it's not for me to say, but
17 I think in my now almost 12 years, I think I've sat
18 through three framework discussions on the role of the
19 inspectorate, just as I think I'm on my third iteration
20 of the name of the Care Inspectorate.

21 So there's -- you know, for those who say that
22 education is slow-moving and sclerotic, there are a lot
23 of areas where it perhaps changes too often.

24 Q. Let's talk about inspection then, which is the next
25 heading. You've talked about the gaps in inspections

1 and one of the sea changes that we seem to have heard is
2 a recognition by teachers that inspections are there to
3 be welcomed rather than to be feared.

4 A. Mm.

5 Q. From your perspective in SCIS, is that a fair
6 reflection --

7 A. Absolutely.

8 Q. -- of the sector?

9 A. Yeah. We have very good relations with Education
10 Scotland. In pre-pandemic days we used to meet the lead
11 inspector of independent schools at least termly, if not
12 more. As I say, there are link inspectors for groups of
13 schools, again, paradoxically, in those regional areas,
14 plus this QUIPE process which I referred to in
15 paragraph 2 but also in my previous paper.

16 There's a very good understanding I think between us
17 and the Inspectorate as to how that process works, when
18 the Inspectorate is looking for assessors to be part of
19 the inspection process they usually get deluged by
20 requests from independent schoolteachers wanting to be
21 part of that. Partly because they see it as
22 a professional duty, but also for their own personal
23 development.

24 I think in that respect people understand pretty
25 much where they sit with the school inspectorate. The

1 confusion, I think, as with everybody, has been: where
2 is the Inspectorate? Because of course whereas everyone
3 knew where HMIE was, when it got subsumed within
4 Education Scotland, there was a sense that, at least to
5 a public eye, it disappeared slightly.

6 Q. All right. Just thinking about Education Scotland, you
7 talk about the benefit of link inspectors and we've
8 heard that from the school, because they perform a role
9 where there is ongoing and that's perhaps the crux?

10 A. Yeah.

11 Q. Rather than just responsive to a problem there's ongoing
12 discussion, so lines of communication are open and
13 relaxed. QUIPE, is that in public domain?

14 A. It is. There's a briefing paper on it on the Education
15 Scotland website. It is only for us, so I'm sure there
16 are some who look askance at that and think why are we
17 getting different treatment, but it's actually because
18 the regularity of engagement in terms of full
19 inspections of the timetable is even sparser for us than
20 it is for the state sector, but also because there's
21 a recognition that our schools will be doing -- it's not
22 just are they teaching -- are they in loco parentis, do
23 they have these pupils in on Saturday morning, so on and
24 so forth? It's also: are they teaching to GCSE,
25 A-level, are they teaching IB, are they teaching in

1 a Montessori or a Steiner approach, is it a Muslim
2 school?

3 There are inevitable distinctions that the
4 Inspectorate have to make which come out very well
5 through the QUIPE process. If you ask a head about
6 having been QUIPEd -- to use a horrible expression --
7 they find it a robust and quite challenging process.

8 Q. What I'm thinking about is accessibility to the sector.

9 A. Yes.

10 Q. Inspection reports are publicised and can be read
11 online. QUIPE, other schools can read other schools'
12 QUIPE?

13 A. Yes. A letter is sent after each QUIPE report.

14 Q. To the school?

15 A. To the school, but that is made public on the Education
16 Scotland website.

17 Q. The facility is there for other schools to see what's
18 going on?

19 A. Yeah.

20 Q. Do they do that, though?

21 A. They do. I've touched on it at the end of paragraph 2
22 that it would be good -- if you take the learning and
23 teaching side of Education Scotland, it would be good if
24 the national agency could pick out bits, "Actually, that
25 worked quite well".

1 Q. That's what I was thinking of.

2 A. "That's maybe something you should all explore."

3 That works beyond the independent system as well.
4 We steal absolutely shamelessly from the state system
5 every day of the year and would encourage them to do the
6 same of us. There are plenty of examples of teaching --
7 I sat in on a seminar yesterday about decolonising the
8 curriculum, being run by the National Museums and by one
9 Local Authority.

10 Fascinating stuff, which I'm sure some of our
11 schools will find very useful, but there's no end to
12 best practice that can be picked up.

13 And I think, particularly in the case of curricula
14 stuff, teaching to a different curriculum. We talk at
15 the moment about education form and how to keep
16 education broad in the Curriculum for Excellence. We
17 have IB schools that do exactly that, where you'll be
18 doing seven or eight subjects right up to your last year
19 at school, so there is plenty to be shared there and
20 that needn't just be academic. That can also be
21 pastoral, well-being, whatever.

22 Q. That's inevitably where I was leading, but in terms of
23 Education Scotland and the educational side, there is
24 material there, but it would be a useful thing as
25 a generality for expertise to be shared?

1 A. Yeah.

2 Q. Thinking in terms of child protection, that obviously
3 then moves into the pastoral side and Care Inspectorate?

4 A. Yes.

5 Q. Care Inspectorate, we appreciate, have a colossal role.

6 A. Yes.

7 Q. They cover too much?

8 A. Well --

9 Q. Thinking from the point of view of the boarding school
10 sector.

11 A. I don't think they cover too much, I think -- and the
12 last 24 months have about a classic example of this.
13 They have an enormous responsibility for institutions
14 that are far higher risk than their own. In the days of
15 Tier 4 visas where pupils were coming in from outside
16 the United Kingdom to board, the boarding sector used to
17 constitute a third of all the Tier 4 visas that were
18 handed out by the Home Office, but in terms of the cases
19 that were subsequently referred back to the Home Office
20 for abuse of a Tier 4 visa it was something like
21 1 per cent. So we're a highly regulated, low-risk area
22 like that.

23 I think that's true as well on the care side. Not
24 to be complacent in any way, but I understand if you're
25 looking at secure units, if you're looking at some of

1 the more acute additional support services that Local
2 Authorities provide, right through in some cases to
3 looking at what happens in Polmont, for instance, going
4 from there to a boarding school may be quite
5 an intellectual -- not intellectually -- what's the
6 word? Quite a leap to make.

7 We have found -- it's anecdotal, but I think it
8 probably speaks to something greater -- that at times
9 schools are sent forms saying, "Here's your annual
10 return to the Care Inspectorate, let us know how many
11 people died on your premises last year". Because that's
12 the form that goes to care homes. We understand there's
13 only 21 boarding schools in Scotland, therefore making
14 some kind of bespoke system is hard, but it shouldn't be
15 that hard to get those basics correct.

16 But we entirely -- you know, the Care Inspectorate
17 has a huge role and therefore to take time out to do our
18 bit we understand is a tiny bit, but as you've heard for
19 the last ten months, it's a desperately important bit
20 and therefore -- and we do have -- we try and have
21 structured discussion with each lead person in the Care
22 Inspectorate -- we've just got a new one in the last
23 couple of months -- and have them in to training courses
24 and so on and have them dialogue with the boarding
25 schools so that everybody understands each other.

1 Q. That's the point you suggest, that it might be worth
2 considering a link inspector, as you have --

3 A. At least formally. That's not to diminish the role of
4 the nominated lead person in the Care Inspectorate, but
5 that may simply be -- well, I think that falls under his
6 or her responsibility now, whereas link inspectors, it's
7 a clear list of who does what.

8 Q. We've heard again, looking to the English approach,
9 which is a much bigger pond, of the Independent Schools
10 Inspectorate, which has a background in terms of those
11 inspecting within the system who understand it, just as
12 you do, as you've been saying, with people who have
13 taught in private schools now volunteer --

14 A. Yeah.

15 Q. -- for Education Scotland. I think as a reality it's
16 unlikely that that would be countenanced, but would
17 there be benefit in greater specialisation, do you
18 think?

19 A. Specialisation, yes, or at least continuity in terms of
20 the people who are going in and out and comparing
21 boarding school with boarding school rather than
22 boarding school with old folks' home, or whatever it
23 might be. Not that they're doing that, but just so that
24 people recognising -- if they're regionally based, they
25 may only see one or two boarding schools in the course

1 of a year, whereas if it was a more thematically
2 based ...

3 The ISI, like all inspectorates, has as many
4 detractors as it has supporters and I sit in a general
5 secretary's group of the school and heads associations
6 across Britain and at least an hour of each of their
7 monthly meetings are spent pumping their guns about the
8 Independent Schools Inspectorate, even though it's their
9 own creation. That is the nature of inspectorates.

10 I have never detected -- I may be speaking out of
11 turn -- in our schools a desire to not be inspected by
12 the same people who are inspecting every other school in
13 Scotland.

14 Q. You like the idea of link inspectors translating across.
15 What else would you do, thinking of Care Inspectorate?

16 A. Well, one thing that -- and again this is a bit of work,
17 but there are national boarding standards in England.
18 I'm not sure you have to go and write national boarding
19 standards for Scotland, because I think if you combine
20 Care Inspectorate guidance with the registration of
21 independent schools in the first place you've probably
22 got three-quarters of the work there. But that might --
23 going back to my point about a checklist of regulation,
24 it might be a useful place to start in terms of this is
25 what you're going to be held to, because whereas in

1 schools it's all how good is your school? Irrespective
2 of state or independent, there isn't the equivalent --
3 Q. I think we heard last week from Jonathan Anderson about
4 the inspections down south. There is the bar of
5 standards you have to meet come what may and then you
6 move on to the assessment that you have --
7 A. Yes.
8 Q. -- in Scotland.
9 A. Again, bear in mind, you know, we are boarding. We're
10 21 schools, 2,500 boarders, maybe. England has 64,000
11 in the independent sector, plus however many more in
12 state boarding. So the body of work there is so much
13 greater that can be supported.
14 Q. Sure, but having the base standard --
15 A. Absolutely.
16 Q. -- as they do in England, would that be of benefit --
17 A. Yes.
18 Q. -- because is it something that could translate easily
19 north?
20 A. Yes. I don't think it would be much more than a day's
21 work, frankly, to pull out of -- to put a kilt on
22 boarding standards in Scotland, with a combination of
23 Care Inspectorate standards and -- and actually a little
24 bit of How Good Is Our School or whatever. Just these
25 are the baselines, as you say. Every school will expect

1 to be well, well, well above those baselines.

2 But I think if you took the registration document
3 itself and said, "Do you have this, do you have that, do
4 you, as of James Martin's report, have two people who
5 are clearly designated as child protection leads?"

6 You know, there's a lot of boxes you could tick very
7 quickly.

8 Q. Okay. Finally in terms of inspection: reports.

9 Reports, as you heard me say earlier on this
10 morning, certainly Care Inspectorate reports, don't
11 always strike the uninformed reader, me, as the easiest
12 things to make sense of. Do you understand my --

13 A. Yes. And to be fair, in every discussion of how
14 inspections are recorded and reported, both Education
15 Scotland and Care Inspectorate that I've sat in on these
16 sort of framework reviews, the biggest complaint is: all
17 people do is turn to the last page and look at the
18 numbers. They want to see whether you're a 5 or a 6 or
19 whatever it used to be and they don't necessarily read
20 the narrative.

21 Q. But the narrative itself is somewhat opaque --

22 A. Yes.

23 Q. -- because it talks about events -- we've seen this
24 recently in Merchiston. We know what it's about because
25 we've been given all the paperwork from Merchiston --

1 A. Yeah.

2 Q. -- but the casual reader, a parent, or even a teacher in
3 the school who wasn't involved, wouldn't have a clue.

4 A. No, no.

5 Q. Is that fair?

6 A. It's fair. I mean there used to be a supporting -- what
7 was it called? The RIF. The supporting framework
8 report that would go to the school and then the school
9 would have to adapt or digest that in its own way, but
10 that wasn't necessarily always sent on directly to the
11 parents I subject data and subject access these days it
12 probably is something that parents would expect to have
13 got automatically.

14 But yeah. It is the danger of all bubbles,
15 including the education bubble, that they talk in
16 a language that only they understand.

17 Q. Actually just making a clear narrative of why the school
18 was inspected, what areas, in paragraphs, and then some
19 sensible detail of what caused anxiety.

20 A. That data is all there and the justification is all
21 there. As you say, it's maybe pulling it together.

22 Q. Yes. Again, sorry, this is your opportunity, any
23 thoughts we should take away with inspection reports
24 from your perspective?

25 A. I don't think I -- there's nothing burning from our

1 side. Simply -- I mean it comes back to the basic
2 point: schools want to be inspected and they want to
3 have these reports and they want to share these reports.
4 They're not -- this is not a process that -- and
5 I appreciate that we've heard many times of schools
6 backing away from -- well, don't let the inspectors see.
7 That is just -- that's not the world we live in now. It
8 couldn't be anyway, because children have far much more
9 agency, they would see through it if parents didn't.

10 Q. Yes.

11 A. So -- but yes. Is there a way of making it -- not more
12 of a moment, but more of a public engagement with the
13 actual findings of the process.

14 I mean, there is in terms of the parental body
15 because they will now be in -- you know, questioned as
16 part of the process, but whether that is fed back in the
17 same way, I'm not sure. Inevitably, it would be
18 self-selecting. Some parents would be very actively
19 involved in that process and want to know about it and
20 then want to ask questions of the school afterwards.
21 Other parents won't. That's the reality.

22 LADY SMITH: John, in fairness this may be more a question
23 for the Care Inspectorate and I should have thought of
24 it much earlier, but do you have any feel for who the
25 Care Inspectorate think is their -- or who is in their

1 audience? Who are their readers when they are writing
2 their reports?

3 A. Yeah. I wouldn't want to second guess them.

4 I think there is a general misunderstanding in a lot
5 of areas -- I'm not necessarily saying this is true of
6 them, but the fact that the governing boards of schools
7 are the proprietors of schools I think is quite often
8 misunderstood. So there is a sense that somehow the
9 school is part of a bigger process and therefore this
10 stuff will somehow be acted on separately. You know,
11 maybe -- I don't want to create work for anybody here,
12 but maybe there should be a direct dialogue with the
13 governing board as a body. Governors will be involved
14 in inspections, but perhaps that's where some of the
15 reporting should happen, for instance.

16 LADY SMITH: I just wondered whether the Care Inspectorate
17 should always be thinking about the wide range of people
18 who will have an interest in their output and from the
19 youngest, that actually probably comes from teenagers
20 who may themselves read the inspection reports --

21 A. Yes.

22 LADY SMITH: -- through you've mentioned parents, Mr Brown's
23 mentioned maybe a prospective teacher who wants to get
24 the lowdown on the school they're thinking of
25 applying --

1 A. If you think about any service inspected by the Care
2 Inspectorate, there will be a different group of people
3 who take interest in their findings. Whether it's the
4 children of the care home that their parent is in or
5 whether it is the parents of somebody who is in secure
6 care or whatever. There will be a different community
7 and perhaps -- yes, a recognition of the diversity of
8 that community in our sector, yes.

9 LADY SMITH: And what, in fairness to them, they need to be
10 told.

11 A. And also, what processes have been undertaken to get to
12 the end result of inspection. It's an incredibly
13 detailed and intensive process for the school, but they
14 may not necessarily always report back to parents going,
15 "Today we're spending an awful lot of time doing stuff
16 for this inspection", but they probably ought to
17 because, as we've heard, parents don't always take
18 an active part in what's happening at school.

19 LADY SMITH: Mr Brown.

20 MR BROWN: Perhaps at its simplest, it's a public document
21 which has had input from pupils whose voice it
22 apparently matters much more now --

23 A. Yes.

24 Q. -- they are documents which can be picked up by anyone
25 of school age and above, can be read easily, understood,

1 and give a picture of the school.

2 A. Yes. And it is a useful -- I always say it's a useful
3 thing to remember that any document even I send out to
4 my head is effectively a public document. Everything
5 will end up in some form or another, whether formally or
6 informally in the public arena, so just treat everything
7 as that.

8 There shouldn't be secrets or impressions that
9 people want to pass on that don't deserve to be aired
10 further -- unless obviously in the situation of
11 a personal assessment of a staff member or whatever.

12 LADY SMITH: It's a very important point you make about
13 avoiding secrets. I think I'm right in saying that the
14 inspection report immediately following the suicide of
15 James Rainy Brown is very coy in simply touching lightly
16 on difficulties in the summer term or problems in the
17 summer term.

18 I looked at that and pretended I was an outsider,
19 I wouldn't have had a clue what they were talking about.
20 I wouldn't have known, as a prospective parent, that
21 that was something I needed to find out more about, or
22 as a prospective teacher. I couldn't quite fathom why
23 that's the way the Inspectorate work when they're
24 writing their reports. Particularly when at the time
25 they were right in there within days, if not hours, of

1 the suicide talking to the school talking about it.
2 They knew everything to do with it. They went back
3 through the school records. You just wouldn't know that
4 from reading the report.

5 A. Yes.

6 LADY SMITH: I was puzzled.

7 A. Yes, and that sometimes differs from the strength of the
8 reaction they might give to something else that's found
9 that will be -- that will get publicity or will get
10 a wider area. I couldn't possibly answer for them,
11 but ...

12 LADY SMITH: Mr Brown.

13 MR BROWN: Thank you.

14 You touched briefly about subject access request and
15 that leads us into the thorny issue of recruitment and
16 references, which you talk about at some length in this
17 document.

18 A. Yes.

19 Q. I appreciate it is not your responsibility to give
20 advice, but it clearly is an issue that schools have
21 struggled with, from your experience but also from what
22 we have seen --

23 A. Mm-hmm.

24 Q. -- and really quite recently, which is troubling
25 perhaps.

1 There's been yet more legislation, but you say in
2 paragraph 2, page 3:

3 "There is a very substantial body of best practice
4 in school recruitment, supported by membership
5 associations and specialist education employment legal
6 advice. The Care Inspectorate can check that schools
7 are ensuring safeguarding questions are covered in any
8 relevant interview."

9 We heard obviously last week that's only from their
10 perspective for teachers who are involved in pastoral.

11 A. Mm-hmm.

12 Q. Would you agree that in a boarding school now all
13 teachers can be seen to be involved in pastoral?

14 A. Yes. I mean it comes -- in part that touches on the
15 single central record idea that came from down south as
16 well. It makes perfect sense to have a single
17 identifiable list of everybody who's been checked and
18 how they've been checked, because the reality is in
19 schools people will not go unchecked, but whether the
20 right person is asking the right question of who there
21 is, if you had a single list, that might be an easier
22 way of doing it.

23 Q. Yes. You talk about the single central record on
24 page 5, and that is something that you think should
25 be --

1 A. I think it's something well worth looking at, because
2 some schools do it already, some schools in Scotland do
3 it voluntarily, but although it presumably is yet
4 another administrative burden on staff in schools, these
5 presumably are checks that are happening anyway.

6 Q. Yes.

7 A. And if they're not, there's probably questions to be
8 asked.

9 I think I said in my report, statement to the
10 Inquiry, however many months ago it was, that the only
11 example I've had personally where I was asked was a head
12 who was genuinely concerned that when he followed up
13 a reference of someone in Australia, it was only by
14 chance almost that the phone call came through from the
15 archdiocese of wherever it was to alert him to an issue
16 which wouldn't have flagged up on internal Disclosure
17 Scotland documents, because it was nothing to do with
18 Scotland.

19 But the fact that this covers those things to do
20 with working outside the UK for instance seems to be
21 just -- it's another set of reassurances. Because there
22 will be people coming from all sorts of places.

23 Q. I think you make the point in paragraph 4 under the
24 "Recruitment and references" heading about changes
25 post-Brexit?

1 A. Mm.

2 Q. That may have implications about GAP students, less
3 scrutiny?

4 A. (Witness nods)

5 And, you know, modern languages. We have a national
6 commitment to teach one plus two modern languages.
7 Those modern languages are not all going to be taught by
8 Scottish teachers, because we don't speak those
9 languages at the moment. If we're going to have people
10 coming in speaking French, German, Spanish, whatever,
11 and the system we previously relied on to very quickly
12 source identity checks in the EU has gone -- and it has
13 gone -- then that just is another issue to think about.

14 It's something you already think about when you're
15 recruiting a GAP year student from South Africa or
16 New Zealand or wherever, but there is a very substantial
17 number of teachers who came from elsewhere in the EU
18 through mutual recognition of their professional
19 qualifications.

20 Q. You mention in paragraph 3 the PVG scheme and we've had
21 information provided by Disclosure Scotland talking
22 about changes. Do you have any comments on the reforms
23 that have been taking place?

24 A. No, I think it's too early to say really. It was
25 a cumbersome and slow progress and the pandemic will not

1 have helped that.

2 One small thing that we were pleased to see, which
3 was something we raised at the time of the Act being
4 reviewed, was what about people who are in schools but
5 not employed by schools. Instrumental music instructors
6 was the example we had, but there will be others. Sport
7 coaches. An instrumental music instructor by definition
8 sits in a room unsupervised with a child. But of course
9 in almost every case they're actually employed by the
10 parent, the parent are billed directly. So it's not the
11 school's right or responsibility to PVG check them. And
12 there's -- as I said, that's one of the loopholes that
13 we think is now covered.

14 Q. Yes. You then talk about the process of giving
15 references.

16 A. Mm.

17 Q. This has been particularly troublesome, most simply
18 because people simply haven't been honest in giving
19 references in the past but quite recently. Aware of
20 issues which are just brushed under the carpet. That's
21 intolerable, I take it you'd agree?

22 A. Absolutely.

23 Q. There seems equally from what you write and what others
24 have said, to be a terror about writing references: what
25 do you say? Are you going to be sued? Can you make

1 reference to the various authorities that we're aware
2 of? Does it really come to this? I think as Her
3 Ladyship said on more than one occasion, if you are
4 factually accurate about things, there is nothing to
5 worry about?

6 A. It is -- it shouldn't be an issue, but we know it has
7 been. As I use the example that now quite often the
8 safeguarding questions are simply:

9 Do you have any concerns "yes" or "no"?

10 Has this person ever been part of disciplinary
11 action "yes" or "no"?

12 Because they don't want to say any more that may
13 lead that person to then go, "Ah, yes, but, nothing
14 actually came of it and therefore it's all right".

15 It's not ideal. You want to have a situation where
16 people are honest in their references and somebody who
17 is honest enough who seeks a reference knows full well
18 what will be included in that reference.

19 There is still the element of choice, that you
20 simply don't ask your previous employer for a reference,
21 but schools will ask why you didn't. As I say, even
22 where people now may rely on a conversation over the
23 telephone with references, the very, very strong advice
24 and best practice is that that is subsequently recorded
25 and put on file as well.

1 Q. The mentality seems to be: we will make allusions which
2 we hope are picked up by the next school?

3 A. I think that was the case. I don't think that's the
4 case now. I think genuinely the biggest concern that
5 a lot of people will have about employment references
6 now is data protection.

7 Everybody's had the fear of God put into them by
8 GDPR and everything else and they are worried about
9 putting down stuff that they might subsequently be --
10 you know, not necessarily sued for, but at least be
11 given a hard time about. Especially in those borderline
12 cases. If somebody was accused of something, was
13 cleared, but there were concerns still registered about
14 their behaviour or their motivation or whatever, that
15 has to be recorded. But they may come back and say,
16 with the help of a useful solicitor, saying, well,
17 there's nothing on paper that says they did anything
18 wrong.

19 It's just that awkward area where people who were
20 trying to do the right thing in terms of reference,
21 following things up, not taking generic references "to
22 whom it may concern", that may be passed around from
23 pillar to post, it shouldn't be the situation where they
24 have to resort to going onto the telephone solely to get
25 the truth.

1 I know from my own experience giving some references
2 to people who I know in the school sector, but also in
3 my own staff, some people who've come from schools, that
4 some of the questions that are asked on forms are very,
5 very generic and simply: Do you have --

6 For a role that is -- one of my former colleagues is
7 now head of a school, but the questions they were asking
8 me about her ability to work with children were simply,
9 "Did you ever discipline her, "yes" or "no"?"

10 And that's not enough. Obviously if I'd ticked
11 "yes", hopefully they'd have been straight on the phone
12 to me, but it doesn't strike me as the most intuitive
13 way of doing it. But I don't think that's any -- in
14 this case, any fault of the schools. I think it's just
15 people have had -- and there are a lot of law firms that
16 will be very helpful in terms of guiding people -- we
17 retain a firm ourselves to update guidance on the taking
18 of references, on disciplinary matters, on furloughing,
19 on whatever it might be, on redundancies, these sorts of
20 things, who understand the nature of proprietors,
21 governing boards and these sorts of things, but it is --
22 I do sense that people have had slightly the fear put in
23 them by -- maybe by anecdotes rather than reality, but
24 just of what people can then come back and ask.

25 In the same way there is a certain mythology about

1 the subject access request in the schools. You must
2 provide everything that's ever been said about your
3 child, even if it was never, you know -- it is supposed
4 to be an academic request fundamentally, but we have
5 people asking about the school budgets, where are the
6 papers that went to the last finance committee and so on
7 and so forth. There is a sort of -- there's not
8 an industry, but there are some misconceptions building
9 up as to what these things are actually for, I think is
10 probably the best way to put it.

11 Q. You have heard Her Ladyship say on a number of occasions
12 the way forward potentially is simply to be absolutely
13 honest.

14 A. Mm.

15 Q. So that questions, "Was there a disciplinary action?"
16 Yes, tell us about it, and the person can then explain
17 that no action was taken because ...

18 A. That is the default situation. It's just they are being
19 told at times, "Be careful what you put down in
20 writing". That's not to say that in every case the
21 person about whom there may have been concerns -- those
22 concerns would not have been taken up. So none of the
23 heads I know will be happy enough to think, "Well,
24 I ticked the box and therefore wherever they go, good
25 luck to them". That's not how they thing, because

1 ultimately the welfare of children at someone else's
2 school is just as important to them as the welfare of
3 children at their own.

4 Q. Exactly, but we still seem to be in the world of you
5 will allude and hope the next school asks the right
6 questions.

7 A. No, I think it is more than that now. Even if it's
8 a tick-box process in part of it, they go above and
9 beyond that. I mean, the very fact that there isn't
10 a legal obligation to provide it in the first place,
11 I mean, they know their responsibility and they know
12 their responsibility to themselves if nothing else. And
13 if they -- you know, as they've all said sitting in this
14 chair, they will reflect on everything they've said in
15 this chair and that will be part of it. But I can't
16 think in my 12 years of any situation where people have
17 worried about putting too much into a reference. It's
18 just how -- sometimes how that will be dealt with.

19 In the end, schools will have to deal with that.
20 They'll have to deal with the legal repercussions if
21 somebody takes umbrage. But, as you say, if it's proven
22 or it's recorded, then that's all to the better.

23 LADY SMITH: Two things, John. I wonder if one other thing,
24 some point the school will have to deal with is the
25 issue of whether they owe a legal duty of care to

1 children in other places.

2 A. Mm.

3 LADY SMITH: If they stay silent and don't provide
4 a reference -- don't have a duty to provide a reference,
5 but if there was something as a matter of fact they knew
6 about that teacher and they didn't provide it by way of
7 information in a reference, are they going to be in the
8 firing line for that?

9 I think I'm right in saying thus far that's never
10 been tested in court, but never say never. On the other
11 side, perhaps this discussion underlines the importance
12 and good sense of keeping careful records of all
13 engagements with staff in relation to matters of concern
14 or of potential concern.

15 A. Yes.

16 LADY SMITH: Because surely that will increase the
17 confidence of a head who's asked for a reference in
18 saying, "Well, actually, I have to tell you this
19 happened and this is how we dealt with it".

20 A. Yes.

21 LADY SMITH: And the head can always fall back on the
22 contemporaneous record.

23 A. Absolutely. That record may include, for instance, in
24 previous references: this is the written record of
25 a telephone conversation that took place.

1 LADY SMITH: Yes.

2 A. I may be being naive here. I think it is inconceivable
3 that any head in a school these days would allow
4 themselves for a moment to think:

5 "Well, this person's not my problem any more and
6 therefore I will not go to the nth degree."

7 I just do not think that is the world in which they
8 work and I don't think -- you've heard a lot about the
9 culture in which people came through schools, came
10 through into management and so forth. That's not the
11 culture that people are brought into senior management
12 now.

13 As I say, I mean it quite clearly, I would not be
14 sitting in this chair if I had the slightest hesitation
15 that people didn't take these things first and foremost
16 as their primary responsibility.

17 LADY SMITH: Thank you.

18 Mr Brown.

19 MR BROWN: Thank you, my Lady.

20 I think moving on, because I'm conscious we approach
21 1 o'clock -- we've talked about single central record,
22 I don't think we need to touch on that because you're
23 very clear.

24 We've talked about GTCS and obviously we heard about
25 issues with registration of teachers at the beginning.

1 A. Mm.

2 Q. (a) that GTCS's records didn't seem to be accurate in
3 terms of numbers, but perhaps more problematically, the
4 hurdles that were put in place of teachers coming from
5 Firth of Scotland. Is that something that troubles you
6 or --

7 A. Yes, and it has probably since the day I started, you
8 know when full registration was a proposal or an idea,
9 then it became proposed legislation, then it came into
10 force and then there was the implementation element of
11 it. All the time we had been in discussion with GTCS
12 about we as a sector represent the what ifs. What if
13 this is somebody who is coming in as a chaplain but also
14 teaches Latin. What if this is someone who is coming in
15 as a geography teacher but is also a hockey coach? They
16 may not have followed the traditional degree path into
17 teaching.

18 We have heads or potential heads who have been
19 questioned by the GTCS on their suitability to teach,
20 despite having been heads for 20 years in very
21 well-respected and recorded schools and I still have
22 serious concerns that the registration process has grown
23 arms and legs in a way it was never intended to.

24 The government asked the GTCS to provide a system of
25 re-accreditation of teachers. Re-accreditation of

1 teachers is a different thing from making a judgement of
2 coming from being the head of a boarding school down
3 south for 15 years as to whether you're capable of
4 running a boarding school north of the border.

5 A more modern issue with that is also diversity.
6 This is from conversations with heads, they get down to
7 a shortlist where they may be able to increase the
8 diversity in their school, whether ethnic or any other
9 respect, they simply cannot because those people have
10 not followed the traditional degree path recognised.

11 For instance, down south you can complete that --
12 your past experience will be recognised. That's not the
13 up here. I wonder what the purpose of all of that is,
14 because it clearly isn't making for better teachers,
15 because these people are tested and proven and it
16 clearly isn't meeting the needs of the schools, because
17 again boarding schools particularly, but not just
18 boarding schools, have a different demand of individual
19 members of staff.

20 But also, you know, Scotland needs more teachers.
21 We don't recognise the Teach First scheme, for instance.
22 I'm not sure that it was the intention of some people in
23 minds of the re-accreditation scheme that GTCS should be
24 passing judgement over the previous careers of qualified
25 teachers.

1 Q. We talked about this 10 months ago. I appreciate the
2 last 10 months have not been the obvious time for
3 reflection, because it's been dealing with Covid.

4 A. Yes.

5 Q. But do you get any sense of a change of approach or is
6 it still --

7 A. No, I'm afraid our latest response to the GTCS
8 consultation I mentioned at the beginning is pretty --
9 to use an often-used phrase -- robust. We still have
10 concerns about that.

11 Q. Thank you.

12 We have talked about LADOs, you then touch about
13 regulation, you have mentioned James Martin's
14 independent review, mentioned mandatory reporting in
15 passing and it not being straightforward.

16 The final point, point 3 on page 7, the first
17 distinct paragraph, you make reference and you've talked
18 about this in terms of the central record, about keeping
19 children safe in education, statutory guidance in
20 England explicitly sets out the legal duties you must
21 follow to safeguard and promote the welfare of children
22 and young people under the age of 18 in schools and
23 colleges. That's something you make reference to it
24 being covered by the How Good Is Our School provisions,
25 but you think that should be a distinct statutory --

1 A. I don't see how it would be any harm, if only to the 21
2 schools who do boarding to -- HGIOS is a very
3 interesting document, quite unusual in its respect, in
4 that it is very much about reflection, about
5 self-improvement. It's not, "You must do this" in big
6 bullet points. But the flipside of that is there isn't
7 a list of what you must do.

8 If I read that section in "keeping children safe in
9 education", it seems to be a nice clear description of
10 what schools are there to do. Every school in Scotland
11 knows that, they know precisely what their obligations
12 are, but I think in -- particularly on the back of
13 everything we've heard for the last few months, it would
14 do no harm to have that pulled out and made explicit.

15 Q. Thank you.

16 Information management, we've heard about the
17 different bespoke systems that I think are in place in
18 all the schools that are still functioning.

19 You talk about the independent sector not being part
20 of SEEMiS, the state monitoring system, is that a gap?

21 A. If I'm honest, no, because if our sector were offered
22 tomorrow free access to SEEMiS, I'm fairly confident in
23 saying not a single one would take it. They find it
24 a clunky system. Some Local Authorities find it
25 a clunky system. When we were talking in the next

1 paragraph about the "Recording and monitoring incidents
2 of bullying", it was very difficult to get that to
3 adapt. Schools have done, as they quite often have to
4 do, as indeed they have done with the pandemic with
5 distance teaching, have gone off to other providers,
6 said:

7 "This is what we need. We need a management and
8 information system that does this, does this and does
9 this, by the way, these are the GIRFEC responsibilities,
10 can you factor them in?"

11 And in most cases they've come up with pretty much
12 bespoke systems, so I don't -- I don't want to speak ill
13 of SEEMiS, but I don't think anybody would be rushing to
14 the door to take part in it, no.

15 Q. Thank you.

16 Redress is a matter that is for others, perhaps.
17 You mention it but in our context we'll leave that
18 elsewhere.

19 A. Yes.

20 Q. We heard from Helen Harrison, the head of Fettes, that
21 there were conversations going on between the heads of
22 schools still active and under the Inquiry's eye, with
23 you.

24 A. Mm.

25 Q. That was correct, I take it?

1 A. Yes.

2 Q. There has been a great deal of conversation?

3 A. Yes. I was checking, I think the first meeting we had
4 about this Inquiry was in 2015. That was not the
5 schools then selected, I think that was a wider group,
6 but since then we've been in regular contact. There
7 is -- as is the way of 2022 -- a WhatsApp group of the
8 heads represented at this Inquiry, just to talk about
9 stuff that comes up. It's nothing secret or divisive.
10 It's simply a way of communicating, as we communicate
11 with all of our heads, through WhatsApp and everything
12 else.

13 So, yes, we've been meeting regularly with members
14 of the team here as well and that conversation happens
15 daily.

16 Yesterday I was in a call with the child protection
17 staff of the Scottish government, looking at how we
18 would actually move quicker than Local Authorities in
19 refreshing national child protection guidance. Last
20 week I was in the first meeting of the new Education
21 Scotland National Network on Safeguarding for Children.

22 Listening to what has happened here has reinforced
23 what we're doing, but we haven't waited for whatever
24 conclusions the Inquiry may draw to act.

25 Q. No, I was just interested whether as between 2015, when

1 you first all met, and now, do you see, as the person
2 holding the umbrella, a greater willingness amongst the
3 individual schools to learn from each other?

4 A. Yes. I mean, I'm not sure there was ever a reluctance,
5 at least in my time, because although the sector seems
6 quite competitive from the outside, on something as
7 basically important as child protection, everyone's
8 going in the same direction so there's no -- there was
9 support from the other schools who were not called for
10 this Inquiry. In some cases there but for the grace of
11 God go us. But we have made a point in SCIS and in our
12 meetings with heads in various different arenas of
13 talking about this Inquiry to the sector and saying,
14 "Irrespective of you being a day school, or irrespective
15 of you never having had boarding, this stuff all
16 matters". We've made sure that it's been a conversation
17 that's happened to everybody.

18 Has there been a substantial change? Perhaps not
19 noticeably, because I think a lot of them were there
20 already. Anybody who's come into headship in the last
21 five, seven years, has been conscious of IICSA and
22 yourselves, and that's the way it should be.

23 Q. Can I ask about headship/leadership, because obviously
24 that has become a focus in the last three weeks,
25 particularly last week, and the burden that being a head

1 carries, which from Andrew Hunter's perspective was very
2 significant. Lack of resource, perhaps lack of
3 experience.

4 From SCIS's point of view, is leadership something
5 that's taken on greater focus?

6 A. Yes. In the sector generally. I mean, we have started
7 to do more about moving into leadership positions in our
8 professional learning events and training middle
9 management for what comes next. We've also extended
10 over the years our child protection training to include
11 people at every level, so from GAP year student to
12 governors and everybody in between and there will be
13 different levels depending on the level of
14 responsibility you might have.

15 And the associations, I think if I'm correct all but
16 one of the schools that have come in front of this
17 Inquiry are a member, for instance, of HMC so they in
18 headship terms will be mentored by another head in the
19 personal aspects of headship and leadership.

20 But, yes, we're acutely aware of the enormous
21 pressure on individuals to do the job they have to do.
22 You know, Covid aside, just the day-to-day
23 responsibility towards the people in their care.

24 As we've heard, it's not just the pupils. It's the
25 staff as well.

1 Q. Yes. But is there more to be done?

2 A. There's always more to be done. Any person who sits in
3 this chair anywhere else and says, "We've got this
4 cracked" is either misguided or lying. This is not
5 an area that stops or starts. There is always more to
6 be done. This is -- this Inquiry is -- there have been
7 days when it's been too much to listen to, but there's
8 never been too much of it and there can't be too much of
9 it.

10 Q. Is mentoring -- we've heard Andrew Hunter championing
11 it, we've talked about HMC. Just forgive my ignorance,
12 as between 2015 and now has mentoring become routine in
13 a way it wasn't?

14 A. Yes, certainly if you're an HMC school, and not every
15 school is, if you're appointed to a head's position of
16 an HMC school you will be allocated a mentor by HMC.

17 Difficult for us to do because we are a -- we
18 represent the whole school. I like to think we
19 represent the parents and the pupils as well as the
20 staff and the non-teaching staff and the groundsmen and
21 everybody else, if there's an issue there that needs to
22 be covered. So the issue of how to be a head I think is
23 rightly in part looked at by heads' bodies and they try
24 and pick mentors who best reflect the experience of what
25 the new heads are coming into. But it is much more

1 understood. There is an association that works just for
2 governing boards, AGBIS, the Association of Governing
3 Boards of Independent Schools.

4 They look a lot now at the responsibility of the
5 chair to their head and vice versa. You know, their
6 duty of care as an employer.

7 Q. AGBIS is a UK-wide --

8 A. Yes.

9 Q. Thank you.

10 One final practical question. We've heard again
11 about the transition to restorative practice as a way of
12 dealing with children.

13 A. Mm.

14 Q. As distinct from a lot of the more traditional
15 approaches we've heard so much about.

16 A. Yeah.

17 Q. Is it an improvement, from what SCIS sees?

18 A. Yes. I mean, as I say, I didn't, nor would I, have come
19 into this sector if I thought this sector was a mess or
20 behind the times, but every day there is improvement,
21 there is different thinking. Even if I think of myself
22 as a 53-year-old former pupil who got bullied a bit at
23 school, schools to me now, going round these schools,
24 are nothing like what I expected as an outsider for them
25 to be.

1 So I think -- you know, we have -- I've been to
2 schools across Scotland where issues of minor discipline
3 are dealt entirely by pupils, in entirely not the way
4 you've talked about in the Inquiry, so it's not senior
5 boys or senior -- well, never girls, thrashing others.
6 It's senior boys and girls taking on the responsibility
7 of the pastoral care of younger people: why did this
8 bullying happen? What was the issue being raised?
9 Rather than have an adult be the one who has to step in.

10 So the restorative side -- for instance, even just
11 on a basic level, the people that are picked to be
12 prefects and the people that are picked to be, you know,
13 the representatives of the school, they're not -- they
14 don't tend now to be the captain of the First XV and the
15 captain of the First XI and the one with the most badges
16 down their lapels. Quite often it's the people who they
17 think are the best pastoral leaders in the pupil body
18 and they will be -- I can think of at least one college
19 in the west where they are effectively asked: our
20 bullying policy is something you need to help write and
21 need to implement.

22 So I think, yeah, it is -- as I said, so many
23 practices have died a death, thankfully, just through
24 people's understanding of child welfare and mental
25 health. But on top of that there's a sense that it is

1 isn't just an "us and them" relationship between pupils
2 and teachers any more.

3 MR BROWN: John, thank you very much indeed.

4 Is there anything else you wish to say?

5 A. Just to say, as I say, I think we've sat here for every
6 61 or 62 days of evidence. It has been, as I said,
7 enormously difficult to listen to but enormously
8 important to be here.

9 I'm glad that we have been here, if nothing else, to
10 bear witness. There have been times when myself and my
11 colleague have been the only person in the public
12 gallery and I am just so grateful that we have been
13 there to hear what has been said, knowing full well that
14 the world we are in now may be different from the world
15 that some of the situations were in before, but that
16 those people who came to the Inquiry and were able to do
17 so, I see it to a certain extent they came into this
18 room to unburden themselves, perhaps for the first time
19 ever.

20 I mentioned being bullied at school. I'm not sure
21 at the age of 53 I have even forgiven the people who did
22 that to me 40 years ago, and that was a minor, minor
23 issue, so what that must have meant for those people to
24 come and talk about that in this room.

25 If anything, I see being here, watching them

1 MR BROWN: In terms of the other leave to appear groups, it
2 may be that we will be able to contain all the
3 submissions in one day, but that will hopefully clarify
4 swiftly.

5 LADY SMITH: Very good.

6 Thank you very much for that and thank you to
7 everybody who came today. I'll rise now and be sitting
8 again on the 17th in this case study.

9 Thank you.

10 (1.14 pm)

11 (The Inquiry adjourned until 10.00 am on
12 Thursday, 17 February 2022)

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