

Friday, 19 March 2021

(10.00 am)

LADY SMITH: Good morning. On this fourth day of this phase of our case study into boarding schools, I think as was detailed last night we move to another regulator, GTCS. I think we have a witness ready, is that right, Mr Brown?

MR BROWN: My Lady, the witness is Jennifer MacDonald, who is the Director of Regulation and Legal for the General Teaching Council for Scotland.

LADY SMITH: Thank you.

Good morning. Please could we begin by you raising your right hand.

MRS JENNIFER MACDONALD (affirmed)

LADY SMITH: Please do sit down and make yourself comfortable. Firstly, how would you like me to address you, Jennifer or --

A. Jennifer. Mrs MacDonald is my ...

LADY SMITH: Thank you, Jennifer. If you are opening your laptop for the sake of pulling up documents, you may find you don't need to do that.

A. It's just for some help to have that beside me.

LADY SMITH: We will be displaying any documents we want to look at on screen, and you have your report in the red folder that is beside you there. But if you have notes



1 Q. Having been there now for some time by the sound of it,  
2 did you start as Director of Regulation or have you  
3 worked up through the system?

4 A. Yes, I was employed as the first solicitor, in actual  
5 fact, that the GTCS had, so my role initially was legal  
6 adviser. There has been a lot of change in the  
7 organisation over that period. Particularly in terms of  
8 how we regulate our legislation changed not long after  
9 that 2009 date --

10 Q. Yes.

11 A. -- the timeline out. So I was recruited recognising  
12 that there was a lot going to change around the  
13 legislative frameworks for GTCS and that it was  
14 appropriate to employ a solicitor. So, yes, that is  
15 where I started.

16 Q. So on a practical level you are now manager, but in  
17 terms -- and we will talk about obviously the various  
18 things that the GTCS does, have you practically had  
19 experience of registration, how applications are dealt  
20 with, fitness to practise hearings, have you conducted  
21 such hearings?

22 A. I have been more involved in fitness to teach hearings  
23 and that side than the registration processes, but my  
24 role involves setting the criteria and being involved in  
25 the writing of the criteria for our registration rules.

1           So that is where my involvement has been, on the policy  
2           side, not on the operational, you know, actual  
3           processing of applications, if that makes.

4           Q. It does, thank you. Could we turn, please, and as you  
5           have heard, a copy of your report is in the red folder  
6           but it will also come up on the screen. It's  
7           GTC-000000078.

8           LADY SMITH: Before that comes up, I am sorry to interrupt,  
9           but I am not seeing any transcript appearing. Could we  
10          just investigate with the stenographers, please, and  
11          find out if they have a problem.

12          Jennifer, you may appreciate our stenographers are  
13          working remotely, but I should be seeing a transcript  
14          appearing live and it is not.

15          (Pause)

16          Yes, I have it now. Thank you.

17          MR BROWN: Jennifer, we can see your report. You can see it  
18          in front of you, I can see it behind you, and we have  
19          our own copies. A little bit of history and  
20          scene-setting. Obviously you explain that the GTCS  
21          began life as a professional regulator of the teaching  
22          profession following the Teaching Council (Scotland) Act  
23          in 1965, and you explain that the GTCS was established  
24          following concerns largely raised by the profession  
25          itself regarding unqualified teachers working in

1 Scottish schools following the Second World War. We  
2 have heard evidence obviously already -- I gather you  
3 have been following some of the Inquiry. You may have  
4 seen reference to a Fettes teacher who was killed in  
5 active service, and lots of teachers had left the  
6 profession to join the armed forces.

7 Is that something -- you have obviously written  
8 about it. Where did you gather that information from  
9 about why the GTCS was set up?

10 A. We had -- a previous employee, Ian Matheson, has written  
11 a historical account basically of GTCS, which is  
12 available on our website in actual fact. So he was  
13 a historian, is a historian, and he, before leaving the  
14 Teaching Council to retire, wanted to pull together the  
15 story as he felt it was an interesting story. Teachers  
16 especially are interested in the story of GTCS, other  
17 countries are interested in how we have come about. So,  
18 yes, it came from the information that he researched,  
19 principally.

20 Q. So as an institution, you have some institutional memory  
21 because of that. Is that considered a good thing?

22 A. Yes, I think it is very important to know where you come  
23 from as an organisation, to know where you might go and  
24 why you are here and your purpose. So I think for all  
25 of us at GTCS it is really important, yes.

1 Q. What about life before 1965? Obviously we, as  
2 an Inquiry, have recovered records from a number of  
3 schools and, speaking broadly, the position seems to  
4 have been teachers were expected to have a good  
5 university education, but in terms of teaching  
6 qualifications, they may not have existed in the past.  
7 Prior to 1965, was there any regulation, so far as you  
8 are aware, in Scotland, of the teaching profession?

9 A. No, my understanding is that there wasn't, that it was  
10 the employer -- it was up to employers to determine who  
11 to employ at that time.

12 Q. Okay. But obviously post-65 the position changes. And  
13 as you go on to set out in terms of the 65 Act, the  
14 remit of the GTCS was to register teachers, regulate  
15 their professional training and cancel registration in  
16 cases of misconduct.

17 So obviously there was a desire to know who teachers  
18 were and have them on a central register, to focus on  
19 professional training and regulate that, presumably,  
20 because I take it that had been lacking as well?

21 A. Yes. Yes, that is my understanding.

22 Q. And then obviously to deal with perhaps what we are most  
23 interested in, if there were issues of misconduct, to  
24 deal with that as appropriate?

25 A. Yes. Although I would add to that that at the time that

1           GTCS was established there was not the same public  
2           protection concern around teachers and what employers  
3           were or were not doing, if that makes sense. So my  
4           reading of the historical perspective was that the  
5           driver was about the quality of teaching, as in delivery  
6           and the qualifications, and that is -- you can see that  
7           threaded through the fact that it was teachers that were  
8           themselves initiating this, and their concern was about  
9           how teaching was being delivered. The safeguarding and  
10          public protection regulation aspects weren't, as  
11          I understand it, the driver at that time.

12          Q. Indeed. And that may be reflected perhaps in some of  
13          the other state bodies and how they have approached --  
14          how child protection safeguarding has developed perhaps  
15          most clearly in the last 20 years. But going back to  
16          the 60s and the rest of the 20th century, that was much  
17          less the focus. It was education that was being  
18          principally looked at?

19          A. Yes, absolutely.

20          Q. You talk in essence, going back to 1965, that if  
21          a teacher was alleged to have committed:

22                 "... serious professional misconduct, a serious  
23                 criminal offence or obtained registration through  
24                 fraudulent representation ..."

25                 That would be the sort of thing that would affect

1 registration. You have chosen to use the word "serious"  
2 twice. What, if you can assist us, was meant by  
3 "serious"?

4 A. I have taken that directly from the legislation, the  
5 legislation uses the word "serious", and I think it is  
6 important again in terms of where the role was being  
7 placed in terms of GTCS that it was to look at serious  
8 cases. There was no definition in the legislation of  
9 what that meant, but I think, and my reflection in  
10 preparing for the hearing and considering what our  
11 perspective on this is that it has framed where GTCS has  
12 been fitted into the landscape, that there is a level at  
13 which GTCS should be involved.

14 Q. All right. The 1965 Act then rolled along for many  
15 years without change, is that fair?

16 A. Yes.

17 Q. I think, as you say, we don't perhaps need to go into  
18 particular detail about changes the Teaching and Higher  
19 Education Act 1998 and the Standards in Scotland's  
20 Schools Etc Act 2000 did introduce, and you set out the  
21 background on page 2 of the report of what those Acts  
22 did. The 2000 Act was perhaps more significant because  
23 statutory aims were established for the GTCS for the  
24 first time to set teaching standards and contribute to  
25 improve the quality of teaching and learning, again the



1 focus being primarily on the educational side, is that  
2 fair?

3 A. Uh-huh.

4 Q. There was also change to the constitution of the GTCS  
5 which has a governing council, which is effectively the  
6 board, and I think that now has 37 members, is that  
7 right?

8 A. Yes, that is right.

9 Q. And it is set out in regulation now how that is to be  
10 formed?

11 A. Yes.

12 Q. And for the first time, I think, as you say, it was  
13 no longer majority teachers, it was much more input from  
14 other bodies?

15 A. No, there has remained a majority of teachers on the  
16 board. What happened in 2000 was that the majority was  
17 reduced.

18 Q. I see.

19 A. So the level of that majority was changed but not the  
20 fact that there is a majority, there still is  
21 a majority.

22 Q. Thank you. You have input, for example, from SCIS,  
23 Scottish Council of Independent Schools?

24 A. Uh-huh.

25 Q. Was that something that was introduced in 2000 or had

1           they been involved --

2           A. I would need to double-check, but I believe it was  
3           introduced in 2000 and it is replicated now.

4           Q. Yes. We are hearing from SCIS this afternoon so we can  
5           ask them too.

6                   And also Church involvement from the Church of  
7           Scotland Catholic Church. Were they always involved or  
8           were they added in 2000?

9           A. Again I would have to look back at the composition over  
10          time.

11          Q. Okay. But then of course there is wholesale -- more  
12          significant perhaps -- reform in 2011, which is why you  
13          were brought into the organisation, and which you  
14          no doubt lived through. Having worked before it came  
15          into place, was this legislation change something driven  
16          by GTCS or desired by GTCS?

17          A. Yes, it was desired by GTCS, and there was an excitement  
18          about having reframed legislation. The 1965 Act was  
19          quite limiting and, in some cases, quite prescriptive  
20          around how certain functions were discharged, including  
21          what was at that point a disciplinary and investigation  
22          process rather than a fitness to teach process, so the  
23          legislation stipulated and went into a lot more detail  
24          around how that could be fulfilled. So that is  
25          an example of how the legislation that was to be

1 introduced in 2011 was going to open up a lot more  
2 opportunities for GTCS to determine itself how to  
3 structure its committees, for example, and organise its  
4 working differently.

5 Q. Self-regulation --

6 A. Yes.

7 Q. -- in many ways would appear the essence of it?

8 A. Uh-huh.

9 Q. And it became an independent self-regulating  
10 professional body and, importantly, I suppose, from the  
11 Government's point of view, self-funding?

12 A. The funding model didn't alter. That is always what has  
13 been unusual, I suppose, about GTCS. By far the  
14 majority of our income is registrant fees and that is  
15 where the income has always come from, so teachers have  
16 paid an annual fee for the registration and that has  
17 funded our activities.

18 Q. Thank you. Again, having been there before this change  
19 took place, I'm thinking about what is now fitness of  
20 teachers to practise, how much discipline did the GTCS  
21 engage in prior to 2011? How many cases?

22 A. Case volumes were relatively -- were smaller at that  
23 point in time, the numbers were smaller. I would need  
24 to look back at the statistics and give an insight into  
25 exactly how much they increased, and the changes over

1 a period of time. But the referral levels were lower  
2 before 2011. The profile of the organisation has  
3 changed to some extent over that period of time, numbers  
4 in GTCS have grown, so that has impacted and affected  
5 us.

6 There have also been other factors that, when you  
7 look back at statistics over time, have had an impact.  
8 So, for example, the introduction of the PVG scheme,  
9 Protecting Vulnerable Groups. There was a process of  
10 retrospective checking, so in effect teachers who  
11 existed on the register and were registered at that  
12 point in time had to be placed into the scheme through  
13 their employers principally, and as a result of that  
14 there were a lot of referrals that came through,  
15 notifications of information that was in their  
16 background that came through, so we had a period between  
17 2012 and 2016 where we had hundreds and hundreds of  
18 referrals.

19 Yes, so what I am trying to explain is that there  
20 are events that have happened over the last sort of ten  
21 years or so that have contributed to a change and a  
22 varying picture in our referral volumes.

23 Q. One can understand, for example, as the PVG scheme came  
24 online, that that would throw up a lot of material you  
25 would have to consider. Did it have any significant

1 impact on the number of teachers registered?

2 A. No, our registrant numbers have remained relatively  
3 static and have actually increased over the last few  
4 years, partly as a result of the registration of  
5 independent schoolteachers which has increased the  
6 base --

7 Q. We will come to that, if we may. The point I was making  
8 was that the PVG scheme would throw up a lot of  
9 background material that you presumably weren't  
10 previously aware of. Did that lead to loss of  
11 registration on a grand scale, or was it ...

12 A. No, there wasn't a lot that came out of that in terms of  
13 case volumes relatively. There was a lot of very  
14 historic information that didn't have a material impact,  
15 is how I would describe it.

16 Q. Because I think you go on to say the whole point about  
17 the fitness assessment is looking at the state of play  
18 now?

19 A. Yes.

20 Q. So historical matters, if they are well in the past,  
21 presumably aren't of the greatest concern.

22 LADY SMITH: Jennifer, could I just ask you to pull that  
23 microphone a little closer to you. The volume is  
24 sometimes dropping off at the end of what you are  
25 telling us. That should be better, thank you.

1 MR BROWN: Thank you. If it drops again I will ask you to  
2 speak up.

3 Again going to page 3 of your report, we see that  
4 the principal aims, and this is after the changes  
5 effected in 2011, remained:

6 "Contributing to improving the quality of teaching  
7 and learning and to maintain and improve teachers'  
8 professional standards."

9 So still the principal focus of GTCS is education,  
10 which I suppose makes sense. But there are general  
11 functions between the Registrar establishing standards  
12 of education and training that is necessary and the  
13 standards of conduct and professional competence  
14 expected of a registered teacher. General professional  
15 competence presumably is really nothing to do with the  
16 Inquiry's concerns about potential abuse. Abuse would  
17 follow under conduct, is that correct?

18 A. Yes.

19 Q. The wording is lacking obviously "serious". So it is  
20 simply "conduct". And conduct I suppose -- is that  
21 decided in terms of codes of practice, whether conduct  
22 falls within limits that you are concerned about?

23 A. Yes, we have a code of professionalism and conduct,  
24 effectively a professional code.

25 Q. I think if we could go briefly to GTC-000000087. That

1 is the document you are talking about?

2 A. Yes.

3 Q. Which I think sets out a number -- if we go to the  
4 second page -- sorry, the third page, it sets out the  
5 background. And if we go down from the picture, you set  
6 the context. Obviously it is talking about teachers,  
7 and the public interest is mentioned specifically:

8 "... maintaining standards, ensuring teachers are  
9 fit to teach."

10 And then:

11 "The protection of children and young people and  
12 their educational wellbeing, along with the reputation  
13 of and the public's trust in the teaching profession,  
14 sits at the heart of GTC Scotland's fitness to teach  
15 regulations. Therefore, regulatory measures which may  
16 be seen to be punitive in effect should always be viewed  
17 within the context of what is considered necessary to  
18 protect."

19 That makes the point very clearly that the emphasis  
20 is public protection, or protection of children. And  
21 that is -- was that in many ways one of the major  
22 changes in 2011, regulations introduced as a concept, or  
23 focused it much more clearly?

24 A. Yes, because of the change in language. So we moved  
25 away from a disciplinary and investigation process to

1 a fitness to teach process.

2 Q. Yes. Okay. As I think is said on page 5, looking at  
3 the right-hand column:

4 "This is guidance and not a statutory code,  
5 therefore teachers must use their own judgment and  
6 common sense in applying the principles to the various  
7 situations in which they may find themselves."

8 That presumably is reflected in the approach of GTCS  
9 because it must, I suppose, be subjective?

10 A. Yes. Yes, there is an element of that I think in any --  
11 what is in effect an ethical framework, to some extent.

12 Q. So there is a fair amount of flexibility and recognition  
13 of the case-by-case circumstances?

14 A. Uh-huh, yes.

15 Q. Okay. I think if we go back to your report, please, and  
16 page 3 at the foot:

17 "In accordance with the 2011 order, GTCS established  
18 a new fitness to teach process which commenced in 2012  
19 replacing the previous 'investigation and disciplinary'  
20 regime ..."

21 As you have said.

22 Moving on to page 4, halfway down, if we can talk  
23 about the registration process itself and the register  
24 before we come on to the fitness aspect.

25 Obviously to become a teacher you have to meet the



1 criteria for registration, and principal amongst that is  
2 that you are qualified, is that a fair summary?

3 A. Yes.

4 Q. And qualification presumably has been a slightly live  
5 issue because of Brexit. You have Scottish  
6 qualifications and you have European qualifications, is  
7 that fair? And you are now having to revisit ...

8 A. There has been a bit of -- GTCS has always registered  
9 individuals from all over the world, so we have  
10 a process by which we assess and determine whether  
11 qualifications are equivalent to what would be required  
12 in Scotland if you qualified as a teacher here. That is  
13 not the case everywhere in the UK. England does not  
14 have that sort of process.

15 So when we were considering the impact of Brexit and  
16 the fact that the European framework would potentially  
17 go around professional recognition and almost the  
18 automatic recognition of professional qualifications  
19 where they have been gained in the EC, we had a process  
20 by which we could assess on a case-by-case basis and  
21 look at qualifications nonetheless. If that makes  
22 sense.

23 Q. It does.

24 A. It is not a framework that all professional regulators  
25 have. Some professional regulators limit and only

1 recognise qualifications and have mutual recognition  
2 frameworks in place.

3 Q. Okay. So again the GTCS had a fairly case-by-case  
4 approach. If you could satisfy that you had a relevant,  
5 presumably, and adequate qualification from wherever,  
6 and it married up with what would be expected from  
7 a Scottish qualification, you could be registered?

8 A. Yes. We have a team of case assessors who look at  
9 qualifications and consider whether they are equivalent  
10 with a set of criteria, yes.

11 Q. And does that remain the position? And you understand  
12 why I ask this. At the second paragraph of page 5, you  
13 say:

14 "Please note we are currently actively considering  
15 the implications of the Internal Market Bill on our  
16 requirements for registration. We have been asked to  
17 participate in UK-wide work to establish mutual  
18 recognition frameworks."

19 Has that progressed?

20 A. We lobbied to achieve an exemption for the teaching  
21 profession in Scotland from the Internal Market Bill and  
22 that was successful. So the teaching profession is  
23 not subject to the terms of that Bill.

24 Q. Okay.

25 A. So our case-by-case assessment applies --

1 Q. It's (inaudible).

2 A. Uh-huh. So it has not had the effect that we thought  
3 potentially it might as a result of that exemption.

4 Q. All right. But obviously, as well as having appropriate  
5 qualification, there is fitness to teach suitability.  
6 In other words, are you fit and proper, I suppose, to  
7 use other language, to teach? And you have mentioned  
8 that joining the register involves getting through  
9 Disclosure Scotland's PVG scheme?

10 A. Uh-huh.

11 Q. Your application presumably triggers that process, and a  
12 form, an online form I would understand, requires you to  
13 confirm. And presumably there is liaison between  
14 Disclosure Scotland and you? Or is it the applicant who  
15 provides you with proof that they are members of the  
16 scheme?

17 A. No, there is a direct exchange basically between GTCS  
18 and Disclosure Scotland, and where somebody is already  
19 in the scheme we would, as part of our process, get what  
20 is called a short scheme record check, so in effect we  
21 would get information about what is in -- the vetting  
22 information would come to us direct from  
23 Disclosure Scotland.

24 Q. And if it throws something up that is a matter of  
25 concern, presumably that is a matter of assessment for

1 the relevant team within GTCS?

2 A. Yes, we have a regulation team, yes.

3 Q. You have mentioned it before.

4 Can someone get on the register without confirmation  
5 of the PVG scheme membership?

6 A. No.

7 Q. So it is a given before you are registered?

8 A. Yes, you --

9 Q. There can't be prospective registration whilst you  
10 await?

11 A. No.

12 Q. Thank you. You helpfully say on page 5, you illustrate  
13 the sorts of behaviour that would be subject to fitness  
14 to teach proceedings at the registration stage,  
15 potentially: abuse of trust, position of trust for  
16 personal gain, sexual misconduct or indecency, child  
17 pornography. In real terms can you conceive of a  
18 situation, where something like that was thrown up, that  
19 registration would follow?

20 A. No.

21 Q. But you do talk about conditional and provisional  
22 registration. Is that in relation to qualification and  
23 experience rather than perhaps the protection side of  
24 things?

25 A. Yes. In that context, yes, we have a form of

1 conditional registration that is used, so conditions can  
2 be placed as a result of an outcome of a fitness to  
3 teach case, so somebody can be restricted in  
4 certain -- to use other language, in terms of what they  
5 have to do as an outcome of fitness to teach, that is  
6 conditional registration. But in this context,  
7 professional conditional registration, that is talking  
8 about qualifications or standards shortfalls in terms of  
9 skills, knowledge.

10 Q. So can you have provisional registration whilst you are  
11 awaiting the outcome of some professional qualification  
12 and, if you get it, it converts to full registration?

13 A. Provisional registration -- it's perhaps best explaining  
14 them as distinct. So provisional registration would  
15 apply in any case where an individual has their teaching  
16 qualification but they don't yet have teaching service.  
17 So newly qualified teachers are given provisional  
18 registration, and then they have a period of time when  
19 they have to complete probationary service, as we call  
20 it, and have teaching experience, and it has to be  
21 confirmed that they meet the standard for full  
22 registration at the end of that period, and then their  
23 registration becomes what we call full registration.

24 Provisional conditional is -- it has that aspect  
25 potentially in terms of experience to some extent, but

1           it is usually used where there is a slight shortfall or  
2           gap in terms of what somebody has by way of  
3           qualifications. So quite often it is used in  
4           circumstances where it is an individual who has  
5           qualified elsewhere, beyond Scotland, and has  
6           for example -- so they have a teaching qualification in  
7           secondary education, they may be a maths teacher, but  
8           they are short of meeting what we would expect in terms  
9           of their academic background in maths, so they maybe  
10          have 60 -- the equivalent of 60 SCQF points in  
11          mathematics, or they are missing an element of what we  
12          would require in terms of that, if that makes sense.

13         Q. I think I follow that.

14         LADY SMITH: Sorry, did you say SCQF?

15         A. Yes, the Scottish Credit and Qualifications Framework.

16         LADY SMITH: Thank you.

17         MR BROWN: Education, like all areas of life, has its  
18          acronym bank and special language.

19         A. Yes.

20         Q. Thank you.

21                 Continuing with registration perhaps in a way that  
22                 is more relevant to the Inquiry, registration obviously  
23                 was for teachers in public schools but the private  
24                 sector was not included in the registration  
25                 requirements, and you say very straightforwardly you

1 can't comment on why it wasn't a mandatory requirement  
2 in the independent school sector earlier. You make the  
3 point you have always -- or long thought that  
4 the teachers in the independent sector should be  
5 registered. Is that fair?

6 A. Yes. And I think it is an interesting reflection, when  
7 you look at the make-up of the council of GTCS, that  
8 there has always been -- for a long time there has been  
9 an independent schoolteacher aspect to the board,  
10 in effect.

11 Q. Yes. But I think we also understand from your report  
12 that SCIS, Scottish Council of Independent Schools, who  
13 would sit on the board as a matter of routine, have  
14 always been pushing for this too?

15 A. Yes, they would need to comment on that obviously. But,  
16 yes, we have always considered that it would be  
17 appropriate for registration.

18 Q. You say in your report that for many years, they  
19 promoted and encouraged GTCS registration in the sector.  
20 And I think we will hear in due course that that is  
21 something that they encouraged their members to do?

22 A. Uh-huh.

23 Q. And we will come on to how successful that was in  
24 individual cases in a little while.

25 But obviously matters have changed because of the

1 Registration of Independent Schools (Prescribed Person)  
2 (Scotland) Regulations of 2017, which meant that from  
3 1 October 2017, any new teacher employed by  
4 an independent school had to be registered. And then  
5 there are obviously the traditional provisions which  
6 close on 1 June 2021, at which point all independent  
7 schoolteachers have to be on the register. So there has  
8 been a period of transition to recognise that there may  
9 be a number of teachers who wouldn't necessarily easily  
10 fit within the registration scheme. Why is that? What  
11 is the problem for these teachers?

12 A. It's generally an issue around qualifications, what  
13 qualifications they have and what they are teaching.

14 Q. We have talked earlier, and this is one of the reasons  
15 I ask, it is dealt with on a case-by-case basis. Is  
16 there a degree of leeway to try and accommodate someone  
17 who has perhaps been in the teaching profession for  
18 decades and yet doesn't have adequate, as now,  
19 qualifications for registration?

20 A. We have used -- so I think the SSSC actually talked  
21 yesterday about how they have had challenges. When you  
22 have to register and bring an existing workforce into  
23 registration, you have to accept that there will be  
24 challenges I think around this. So we have used  
25 provisional conditional registration in some cases in



1 terms of shortfalls, and then given individuals a period  
2 of time within which to gain the appropriate  
3 qualifications.

4 We have also used in a small number of cases  
5 a category of registration which we have called "Named  
6 School Only", so we have establishment-limited where  
7 individuals could in effect teach, and also applied  
8 conditions around what qualifications they need to get  
9 and we would expect them to get within a period of time,  
10 so we have used that for individuals who were employed  
11 in the sector pre-2017. So it should be a reducing  
12 number of people that we will be managing to eliminate,  
13 in effect, so that everyone on the register has  
14 a teaching qualification and the appropriate degree.

15 Q. By the sounds of it there has been a fair amount  
16 of pragmatism on your part, but also an expectation of  
17 compliance to match that pragmatism on individual  
18 teachers' parts, is that fair?

19 A. Yes.

20 Q. If we go to page 7 we can see how the world has been  
21 changing. You set a table of the various schools that  
22 are of particular interest to this Inquiry. Obviously  
23 Keil doesn't feature because it closed in 2000 before  
24 any of this came into play. Morrison's in a sense for  
25 this period is less relevant because it stopped boarding

1 in 2007, but in any event, it would appear that all  
2 their teachers were registered already, is that fair?

3 But in relation to the other five, QVS seems to be  
4 static, perhaps for its own reasons, as between end-17  
5 and end-19. But in relation to Fettes, Gordonstoun,  
6 Loretto and Merchiston, having had numbers of teachers  
7 in double figures, only Loretto was left with 16, but it  
8 has almost halved the numbers of teachers who weren't  
9 registered, and the remaining four have cut the numbers  
10 below five. So as an issue it has been waning  
11 significantly, is that correct?

12 A. Yes, we got updated figures this week that indicate  
13 there has been some change around those. So as at the  
14 end of 2020, and this is -- we determine this in liaison  
15 with the Registrar of Independent Schools, because the  
16 Registrar seeks an annual census to establish how many  
17 teaching posts there are. So based on the information  
18 that has been provided, Fettes actually have 12  
19 unregistered teachers, so the number has gone up from  
20 two. And Gordonstoun has one, Loretto have 14,  
21 Merchiston two, Morrison's one, and Queen Victoria  
22 School one.

23 That is the most up-to-date position, so we --  
24 I have checked and we currently, in terms of  
25 cumulatively across the independent sector, we now have

1 registration of roughly 90%.

2 Q. Okay.

3 A. So we still have a portion to register, around 294.

4 Q. Thank you very much indeed for the update.

5 Continuing briefly with the register, and we will  
6 obviously come on to fitness of the regulatory framework  
7 and the fitness to teach and what may happen to  
8 registration because of that process. Can I just be  
9 clear though, largely you said you are self-funding paid  
10 by the annual fees. How does a teacher, forgetting the  
11 regulatory side, come off the register?

12 A. So if they don't pay their fee. So there is a process  
13 of collecting the fee on an annual basis and there is  
14 a process, if that fee is not paid, of following up to  
15 collect that fee, and then a period of lapsing -- what  
16 we call lapsing individuals off. So that is one  
17 mechanism, and then the other would be fitness, fitness  
18 to teach or -- and usually it is very rare for  
19 individuals to come forward and ask to be removed from  
20 the register, because they have paid their fee, and you  
21 don't get a refund, we don't apportion refunds of fees  
22 if you come off part-way through a year, for example.  
23 So it is unusual for any individual to come forward and  
24 ask to proactively be removed from the register, so  
25 lapsing is the key means by which, other than fitness to

1 teach removal, that an individual would be removed.

2 Q. So the teaching profession would assume: if I don't pay  
3 my dues I will come off the register?

4 A. Yes.

5 Q. The reason I ask this, and this is thinking obviously  
6 between lapsing and fitness to teach, we do have  
7 papers -- details at this stage perhaps are irrelevant  
8 about whom -- of a teacher who was being pursued for  
9 fitness to teach, having been jailed for child abuse,  
10 who was advised that he was being investigated on the  
11 basis that he hadn't paid his dues for two years and  
12 therefore wasn't on the register. Was he right?

13 A. I don't know what the specific circumstances of that  
14 were. If we have opened -- we retain an individual on  
15 the register if we have opened a fitness to teach  
16 investigation, so we do not lapse individuals for  
17 non-payment of their fee obviously where a fitness to  
18 teach investigation is open --

19 Q. Indeed, I think his point was that he had lapsed for  
20 some years and therefore shouldn't have been on the  
21 register to be assessed for fitness to teach.

22 A. We have a provision in the registration rules that  
23 enables us to reinstate, within a finite period of time,  
24 to enable us in the public interest to pursue a fitness  
25 to teach investigation. But I do think that there is

1 a potential issue in this that links to  
2 information-sharing and roles and responsibilities of  
3 bodies across the piece, really. Because where you have  
4 an individual who comes off our register, and then it is  
5 a number of years later that something transpires that  
6 related to what they did when they were on the register,  
7 there is no way in which we could regulate.

8 Q. Why would you have to regulate that? What is the point?  
9 If they are off the register because they have lapsed,  
10 they have been jailed, for the sake of argument, they  
11 are hardly likely to get back on the register, are they?

12 A. Well, the issue is that if they apply to re-register, it  
13 is what evidence or information is available at that  
14 point in time if no determination has been made on that  
15 activity that took place.

16 Q. Would you not expect, if someone has been off the  
17 register and wishes to rejoin, that the PVG scheme is  
18 there to highlight exactly the fact that there has been  
19 a conviction and a jail sentence?

20 A. If there is a conviction it makes it much more  
21 straightforward. If there haven't been criminal  
22 proceedings taken forward that have led to a conviction,  
23 that is a potential issue.

24 LADY SMITH: I suppose then it depends what has gone on to  
25 the PVG check in terms of enhanced disclosure. Because

1 teachers would have to have enhanced disclosure carried  
2 out, am I right?

3 A. It is not called an enhanced disclosure --

4 LADY SMITH: I'm sorry, it's old language I'm using. It is  
5 information that is available that hasn't led to  
6 criminal proceedings --

7 A. The "ORI" I think they call it, the "Other Relevant  
8 Information", and that is discretionary as to what  
9 the police -- as I understand it, there is a discretion  
10 around what is recorded there, and Disclosure Scotland  
11 would need to speak about their arrangements around  
12 that. I have questions around who gathers information,  
13 who investigates those events around -- if something  
14 like that arises, and then --

15 MR BROWN: Yes. Jennifer, you can take it that we know  
16 about your concerns because you voiced them in your  
17 report. You don't have to repeat them, we will come to  
18 them later.

19 Going back to the disciplinary side of things. You  
20 set out at the foot of page 7 that the fitness to teach  
21 procedures are carried out in the public interest, and  
22 this is repeating the language obviously of your report.

23 You go on to say on page 8:

24 "The procedures are about managing the risk that the  
25 teacher poses now and in the future, they are not about

1           punishing teachers for past events. GTCS is required to  
2           carry out procedures to ensure that any action taken is  
3           proportionate, transparent, consistent and targeted only  
4           where action is needed."

5           What do you mean by "proportionate"?

6           A. It links to "targeted". So where there is a purpose,  
7           and -- yes, a purpose of our process, and balancing and  
8           managing a risk.

9           Q. So to go back to the example I gave you, a teacher is  
10          jailed, in this case it was for six years, who has been  
11          off the register for a number of years prior to the jail  
12          sentence, is that action -- is that fitness to teach  
13          inquiry needed? Proportionate?

14          A. It depends. If the individual was on the register, then  
15          yes, I think there is a need to have a fitness to teach  
16          process around --

17          Q. If it should lapse because he hadn't paid his dues, no?

18          A. No, I think that there has to be a determination.

19          A fitness to teach process is not just about dealing  
20          with an individual circumstance, you have to also  
21          consider about the role of regulation in terms of  
22          sending messages to the profession and to the public  
23          about what is and isn't acceptable.

24          Q. It is just your choice of words, that it's "about  
25          managing the risk a teacher poses now", which may not be

1           particularly obvious in the example I have given, but  
2           I suppose it's a case-by-case basis?

3           A. Yes. I think though if an individual is in jail for six  
4           years, what happens when they come out?

5           Q. I would have thought the likelihood is they wouldn't  
6           return to teaching because you wouldn't allow them to?

7           A. But even if they -- if they applied to re-register, we  
8           would have to follow a fitness to teach process at that  
9           point in time.

10          Q. Would that not be the appropriate "now" to address the  
11          question?

12          A. I'm not quite sure I follow what you are meaning in  
13          terms of we would just let all teachers who are subject  
14          to the fitness to teach process lapse from the register  
15          when they don't pay their fee, and then just  
16          speculatively presume that they won't apply to  
17          re-register.

18          Q. What I am asking you about is what you said, that your  
19          fitness to teach procedures:

20                 "... are about managing the risk that the teacher  
21                 poses now and in the future, they are not about  
22                 punishing teachers for past events. GTCS is required to  
23                 carry out procedures to ensure that any action taken is  
24                 proportionate, transparent, consistent and targeted only  
25                 where action is needed."



1           I am simply questioning whether it would be needed  
2           at that stage. The time it would be needed is if  
3           anyone, in the circumstance we are talking about, sought  
4           to re-register.

5           A. I think there is a public interest question around that,  
6           taking that approach.

7           LADY SMITH: Sorry, Jennifer, I am not following this.

8           Let's take the hypothesis of somebody who has been  
9           in prison having been convicted of abusing children, or  
10          any vulnerable person because that would be relevant.  
11          Their sentence comes to an end and they apply to  
12          re-register as a teacher. At that stage the existence  
13          of their conviction and sentence is public knowledge,  
14          they would have to declare it. And it would be known to  
15          Disclosure Scotland. So to get up-to-date PVG  
16          clearance, that would be known.

17          Now, when they apply to re-register, that would  
18          surely be highly relevant to your considerations as to  
19          whether or not you allow them to re-register. Are you  
20          telling me at that stage -- sorry, I can't remember what  
21          your procedures required. Do you actually have to go  
22          through a fitness to teach procedure, or can you simply  
23          refuse re-registration on the basis of a very  
24          significant relevant conviction?

25          A. No, there is a fitness to teach process that would be

1 followed.

2 LADY SMITH: So you could do it then?

3 A. Yes, but it depends. If an individual was on the  
4 register at the time that they were convicted --

5 LADY SMITH: Yes.

6 A. -- we would take forward a fitness to teach process at  
7 that point to remove them from the register in that kind  
8 of circumstance. If it was a child protection --  
9 child-related offence, say, they would be removed, the  
10 decision would be made, a period of prohibition would be  
11 set around when they were prohibited from applying to  
12 re-register. And then theoretically, if they wanted to,  
13 they could apply to re-register again, it would come to  
14 a fitness to teach panel process again, and they would  
15 consider whether the person should be re-registered or  
16 not.

17 We don't have a blanket -- we don't -- but another  
18 question is whether, if they were PVG scheme-barred, and  
19 there is a point about order of process in this, if  
20 somebody is PVG scheme-barred they automatically come  
21 off our register, because our legislation says we remove  
22 them immediately if that takes place. So there are  
23 different ways that events could --

24 LADY SMITH: The PVG scheme active membership is key.

25 Without you looking at anything else, if they cannot

1           satisfy you they have current PVG membership they can't  
2           be a teacher, is that not right?

3           A. Yes. But also on top of that if they are barred from  
4           the PVG scheme then they cannot be on our register --

5           LADY SMITH: That is the same thing, because they are not  
6           going to be able to satisfy you that they have got PVG  
7           membership.

8           A. So if --

9           LADY SMITH: Sorry, can I just rewind. Going back to what  
10          you were saying. If you do do a fitness to teach  
11          investigation and disciplinary procedure at the time the  
12          person is convicted, even although they haven't paid  
13          their fees, much will then turn, I think, from what you  
14          said, on whether there is a period during which they  
15          will not be permitted to apply for re-registration and  
16          how long that period is. Is that right?

17          A. So if they were to have a barring decision lifted, so  
18          they would have to come off a barred list and be able to  
19          have PVG scheme membership to apply at all.

20          LADY SMITH: Yes. Let's just put the PVG scheme membership  
21          to one side for the moment, I am looking purely at your  
22          processes. You may not look at this case, this person,  
23          again for many years, depending on whether they have  
24          been barred by you in your fitness to teach procedure,  
25          because you have provided a period during which they

1           cannot apply to re-register, and how long that period  
2           is, yes?

3           A. I'm not sure that I am -- so what -- are we talking  
4           about an individual now who ...

5           LADY SMITH: I am trying to follow through what you were  
6           telling us about the possibility of a fitness to teach  
7           procedure going ahead even although the person hasn't  
8           paid their fees, and they have been convicted and  
9           imprisoned. I think you told me that the outcome -- it  
10          seems as though the outcome would be likely to be they  
11          would be removed from the register, also, in addition to  
12          not having paid their fee, also because of the  
13          misconduct, which would be criminal misconduct. And  
14          a decision would be made as to whether or not also to  
15          impose a period during which they cannot apply for  
16          re-registration.

17          A. (Witness nods).

18          LADY SMITH: That could be a long period?

19          A. Up to two years is what we have got in our rules.

20          LADY SMITH: Ah, right. So if it is, in Mr Brown's example,  
21          a six-year sentence, it will be beyond that that the  
22          person would be in a position of being able to re-apply.

23          A. Uh-huh.

24          LADY SMITH: But at that stage they are not going to get  
25          anywhere with their application for re-registering if

1           they can't produce a PVG certificate?

2           A. Yes. And more than that, we would -- yes, because if  
3           they were barred then we couldn't re-register them.

4           LADY SMITH: So what would have been the point of going  
5           through the fitness to teach procedure at the early  
6           stage?

7           A. So we won't need to have a fitness to teach procedure if  
8           the barring decision has been made.

9           LADY SMITH: All right.

10          MR BROWN: What would be the point of having a fitness to  
11          teach procedure if registration has lapsed, and the jail  
12          sentence is some years later?

13          A. In that circumstance are you meaning that the conviction  
14          has not been --

15          Q. It's the scenario you raised of something being  
16          discovered some years later and leading to a conviction.  
17          Again, at that point, there would seem to be little  
18          point of having a fitness to teach because the  
19          conviction itself would be adequate to prevent  
20          re-registration in the future.

21          A. But then there is a question about -- so if the  
22          individual is on the register, if we have an individual  
23          registered they have to be fit to teach.

24          Q. I think I follow that, Jennifer. But I am talking about  
25          the scenario where registration has lapsed because they

1           haven't paid and they are off the register, is what you  
2           have told us.

3           A. Yes, if registration has lapsed we wouldn't be in  
4           a position to take forward a fitness to teach process  
5           ordinarily. We wouldn't be able to because the person  
6           is not registered. There is an issue I think if  
7           an individual is not convicted, and that comes back to  
8           what is in the PVG scheme record, if they seek to  
9           re-register at a future point.

10          Q. Because you are not content that Disclosure Scotland, to  
11          put it at its simplest, will do their job properly?

12          A. You would need to ask Disclosure Scotland, in those  
13          circumstances, where somebody is not convicted, what  
14          other information -- and it comes down to  
15          Police Scotland as well -- what other information could  
16          or would be available in a PVG scheme check.

17          Q. All right, now you introduce Police Scotland. The point  
18          you are really making is you want to, yourselves, be  
19          satisfied, because you are not entirely satisfied that  
20          they will get it right?

21          A. If somebody was to re-register or to seek  
22          re-registration, and had been investigated but not  
23          prosecuted and not convicted for an allegation related  
24          to some kind of child abuse, I think it would be  
25          a matter of concern to the public that GTCS could

1 register an individual like that and not have  
2 information in a PVG scheme check.

3 Q. Is the GTCS not entitled to rely on Disclosure Scotland  
4 doing their job?

5 A. Yes, so if that is the view, that even though  
6 a professional regulator has a different standard of  
7 proof and operates regulatory proceedings in a different  
8 context than criminal police processes, then we can only  
9 act on the information that is available to us. So if  
10 a decision is made elsewhere that that information is  
11 not relevant to be known for an individual to be  
12 registered, and the view has been taken that it does not  
13 have an impact on that person being eligible for  
14 regulated work, I think we are placed in a position that  
15 is a bit invidious around that.

16 Q. Well, are you not in a position that you can only do  
17 what you are empowered to do?

18 A. Yes, and we can only deal with information that we have  
19 placed in front of us.

20 Q. Yes, which again is determined by regulation.

21 Perhaps if we can move on to what that regulation  
22 is, what the requirements of notification to GTCS are,  
23 because we are now moving into the fitness to teach  
24 area.

25 Cases are referred to you. Now obviously referrals

1 can come in a number of senses. There are referrals,  
2 I would imagine, in terms of competence, which are  
3 outwith our interest, and then there are issues about  
4 conduct which are.

5 As you say on page 9 at the foot:

6 "Fitness to teach referrals may come from a range of  
7 sources although referrals on competent grounds will  
8 only be accepted from teachers' employers."

9 For the reasons you explain earlier.

10 "In accordance with Article 25 of the Order which  
11 governs procedure, a person who employs a registered  
12 teacher to work in an educational establishment must  
13 [it's imperative] notify GTCS if they dismiss the  
14 registered teacher on grounds of misconduct or  
15 incompetence, or the registered teacher resigns or  
16 otherwise stops working for the person in circumstances  
17 in which the person, but for that fact, would or might  
18 have dismissed the registered teacher on such grounds.  
19 No other person, agency or body is obliged by law to  
20 make a fitness to teach referral to GTCS."

21 The way the GTCS is set up, in other words, is it is  
22 teachers' employers that refer you to. You can find out  
23 about things other ways, but these are the only people  
24 that must tell you?

25 A. Uh-huh.



1 Q. Looking at the language of (b), the scenario of  
2 a teacher trying to:

3 "... evade responsibility by resigning or otherwise  
4 stopping work for the person in circumstances in which  
5 the person ..."

6 Et cetera. Obviously it is meant to catch people  
7 who are trying to get away from the problem, in simple  
8 language. Does that include suspension?

9 A. No, not in the interpretation that we have taken or that  
10 employers take.

11 Q. It is just because of "or otherwise stopping work",  
12 I wondered whether that would incorporate suspension.  
13 Do you think that would be an appropriate addition to  
14 that language?

15 A. Yes, I think the referral obligation as a whole would  
16 helpfully be reviewed.

17 Q. Because that is potentially a get-out for someone who is  
18 suspended. But it might be appropriate, going back to  
19 the principles you have been talking about, at that  
20 stage to look at registration?

21 A. Yes. There is also circumstances where individuals are  
22 moved to other posts.

23 Q. But as your article set out, there is a framework which  
24 employers are bound to follow and which reflects what  
25 you must do?

1 A. Uh-huh.

2 Q. Do employers comply with that?

3 A. We do receive referrals from employers, so they do  
4 comply with it. It is difficult for us to know, without  
5 having any ability to go in and audit employers around  
6 this, to know whether they have referred in all of the  
7 circumstances that this would require.

8 Q. Yes.

9 LADY SMITH: What do you have in mind when you refer to  
10 going into audit? Do you mean going into the school and  
11 having the power to demand sight of paperwork? That is  
12 a very old-fashioned way to refer to it. To demand  
13 access to their records, which are probably all  
14 electronic, yes?

15 A. I didn't have a specific concept in mind. What I am  
16 meaning is: is there any kind of check to ensure or  
17 verify that employers have referred when they should  
18 have?

19 LADY SMITH: How do you think you could do that?

20 A. I think there is a question of whether employers could  
21 be asked at a certain point, in a year or regularly, to  
22 confirm and declare that they have done this. There is  
23 a question about whether that could be of assistance in  
24 cases where it is not an intentional lack of referral,  
25 it has just been human error, something has been missed.

1           We have seen issues sometimes in cases where you  
2           have had change in personnel, for example, in  
3           an employer, and I am talking generally across -- this  
4           is not specific to the independent sector but, yes,  
5           where people have not been appraised of the requirement  
6           to refer. An HR department, for example, has been  
7           involved, somebody has changed, and they aren't aware  
8           there is a requirement to refer to GTCS and it has been  
9           missed.

10       LADY SMITH: Okay.

11       A. So it could address that, my Lady. I don't know  
12       whether ... The issue is whether, if there is  
13       an intentional avoidance of making a referral, how that  
14       could ...

15       LADY SMITH: Thank you.

16       MR BROWN: I think, as we know from the totality of your  
17       report, GTCS reads the press, discovers that teachers  
18       have been in court for things. I suppose that is a very  
19       obvious way of being able to audit, because you should,  
20       one would assume, know about these teachers already from  
21       the employer if we are getting to the stage of a court  
22       process.

23                Have you ever had experience of discovering  
24       a teacher is in the press for doing something that would  
25       amount to misconduct but you have not known about it?

1 A. Yes, I think we have experienced that. Yes.

2 Q. What steps have GTCS taken to remedy that?

3 A. We have written to employers in the past to remind them  
4 of the fact that they have not met the referral  
5 obligation.

6 LADY SMITH: Can you keep your voice up? It is dropping.

7 A. Sorry.

8 LADY SMITH: Thank you. Can you just say that again,  
9 because I missed the end of it.

10 A. We have written or we have communicated with employers.  
11 It has not happened that often, but in instances when it  
12 has happened, that is what we have done. We have  
13 followed up and asked why the referral wasn't made and  
14 taken steps to ensure, effectively, that the institution  
15 or the employer is aware of what the requirement is and  
16 addresses it going forward.

17 MR BROWN: Presumably that would be quite extraordinary.  
18 How often has it happened?

19 A. I couldn't say, we have not collected statistics on  
20 that. I just know -- because I have worked for GTCS for  
21 a long time I know it has happened. It has been  
22 extraordinary.

23 Q. So not on many occasions?

24 A. No.

25 Q. The point you then talked about, going to the employer

1 and making the point that they have not complied as they  
2 ought to. Is that not something that is taken up  
3 profession-wide to reinforce?

4 A. We do regularly remind and there is ongoing work. A lot  
5 has changed in GTCS over the past sort of ten years. We  
6 now have two development officers who focus specifically  
7 on work related to fitness to teach. One of them has  
8 a set focus on working with employers and giving  
9 information to employers and having an ongoing liaison  
10 with them, but that principally is focused on Local  
11 Authority employers at the moment, I have mentioned that  
12 in my statement as well, and in liaising with SCIS  
13 rather than going to each individual independent school.

14 Q. Is this a problem you have had with any independent  
15 school or is it a public sector issue?

16 A. I would have to see whether I could check and find out  
17 if there has been an issue with an independent school.

18 Q. Thank you. Perhaps you could.

19 At page 10 of your report you talk about records,  
20 although this may be part and parcel of the same area,  
21 which is how you hold records. You say:

22 "Records of fitness to teach cases are held  
23 electronically, they are held in individual files that  
24 are labelled by teacher name. Case files are not held  
25 in the database that forms the register, they are held

1           separately with restricted access ... We do not file  
2           cases or group them together by school or institution  
3           and would see no reason to do so, taking account of our  
4           current role and purpose. It has never been  
5           a requirement that the registrants provide GTCS with  
6           their current employment information. This information  
7           is provided on a voluntary basis and there are  
8           challenges in ensuring it remains up-to-date."

9           Is that a deficiency?

10          A. It is an area that we are looking to address. I think  
11          that because it is -- it helps to know who the employer  
12          is, obviously, of a teacher, for us to fulfil our  
13          functions around regulation, and we have identified it  
14          would be better to gather the employer information and  
15          ensure that that is up-to-date, by which I mean it is  
16          a compulsory requirement for a teacher to give that  
17          information to GTCS.

18          Q. I think you say at the foot of that paragraph:

19                 "We will shortly be reviewing our registration  
20                 requirements whether registrants should be compelled to  
21                 notify current employer details as a condition."

22                 And that is something you will be exploring. What  
23                 stage have you got to?

24          A. We will be reviewing and revising registration rules  
25          over the course of this year, so the intention is that

1 we introduce revised registration rules in April 22.

2 Q. The other thing which caught my eye is I think you  
3 express some concerns about the ability to search the  
4 register where you say, halfway down that paragraph:

5 "Since 2017, we have refined our system for tracking  
6 fitness to teach cases so that the relevant employer or  
7 school is captured within the key case information  
8 (meaning we can identify cases by school/employer  
9 easily) but there is nothing equivalent for more  
10 historic cases. For more historic fitness to teach  
11 cases, to identify whether any case (or cases) had  
12 arisen in a particular school, we would have to search  
13 the Register of Teachers for teachers that had  
14 identified that particular school as an employer  
15 (current or previous) and then manually check whether  
16 any of those individuals had a fitness to teach file.  
17 The alternative method would be to go through every  
18 fitness to teach file held (which number in the  
19 thousands) and identify whether the case involved the  
20 particular school identified."

21 And you are working to identify a case management  
22 system. Is your register, by the sounds of it, on a  
23 management and search basis, really not as up-to-date as  
24 you might like it to be?

25 A. It is not the register as such, it is the information

1           that because the fitness to teach cases and records are  
2           held separately, it's the integration between the  
3           register, the information we capture and how that is  
4           pulled together. So that is an area of work that we  
5           have been doing to introduce one system, effectively,  
6           that will --

7           Q. Talk to the other.

8           A. Our register has moved over to a new platform recently  
9           and there is a project ongoing at the moment to move our  
10          fitness to teach process into that same system, if this  
11          makes sense, so that it joins up and automates our  
12          workflow around cases, et cetera.

13          Q. And presumably that would make life a great deal  
14          simpler, and also in terms of the register. Because for  
15          an individual teacher, hypothetically, the register  
16          presumably will contain their name, when they  
17          registered, and if nothing untoward is found, it will  
18          then presumably just remain pretty much with that  
19          information until they come off the register. The  
20          register won't change. So for most teachers, presumably  
21          it is just personal details and that is it?

22          A. And qualifications. So teachers can add to  
23          qualifications --

24          Q. Yes.

25          A. -- over the course of their career, yes.



1 Q. My point is essentially you register and it then remains  
2 static until you come off the register unless, as you  
3 say, you do qualifications. Or there is some link,  
4 which currently isn't perhaps that easy, with the  
5 fitness to teach side.

6 A. Yes.

7 Q. Is that correct?

8 A. Yes. There could be probationary service information,  
9 those kinds of things, but it all relates to  
10 qualification development.

11 Q. I think the point of this might be the concern from the  
12 public viewpoint, the register itself doesn't  
13 necessarily tell you anything helpful about a teacher  
14 who may have behaved badly, because the link isn't  
15 currently pretty obvious, because you have to search  
16 through, from what you have been saying, a different  
17 system?

18 A. But that is for us internally to pull out records. The  
19 public-facing register will have the fitness to teach  
20 information that we publish.

21 Q. Oh, indeed.

22 A. So that is in place, so you can search as a member of  
23 the public --

24 Q. Absolutely. Sorry, I haven't made myself clear. Just  
25 from a public standpoint, the concern might be that

1           because your two systems are not integrated, it may not  
2           be easy for you, the register, to be as up-to-date as  
3           you would like to be, so therefore it would be a public  
4           concern as things stand currently because of your  
5           systems?

6           A. I think it -- I wouldn't put it that way. It's not that  
7           we can't -- it is about us being able to pull out  
8           statistical information and data in some respects. So  
9           this was explained specifically because of what the  
10          Inquiry had asked for and to put the context into why it  
11          was difficult for us to just look at schools. Because  
12          we register and regulate the individual teacher, that is  
13          how our record-keeping has been structured, things sit  
14          with individual teachers, not as parts of schools. So  
15          it is for that purpose.

16                 In terms of what information we are able to access  
17                 and what we are able to do with it, I don't think it has  
18                 had an adverse impact, but it will be very beneficial to  
19                 have a better system and an automated workflow around  
20                 cases, for example.

21          Q. It is simply that I think elsewhere in your report you  
22          talk about being able to see trends or themes  
23          developing, and presumably the easiest way to do that is  
24          to have access to a database where you can look not just  
25          at the individual or potentially at a school, but at

1 someone's progress through a number of schools, so the  
2 themes and trends you want to discover are obviously  
3 visible. And it is simply -- the point is that from  
4 what you have been saying, manual searches would be  
5 laborious, as things currently stand, to achieve that  
6 sort of trend finding?

7 A. Yes. We have created a database, in effect, though, in  
8 terms of since 2017, so that we can -- and even before  
9 that we have had a database that has provided  
10 information, key information, around fitness to teach  
11 cases that has helped us to some extent identify trends  
12 and themes. And from 2017 we can -- I could tell you  
13 the breakdown of cases that are currently open by  
14 employer, by school, it is just that more historically  
15 we haven't put that structure in place. And absolutely,  
16 the improvements that we will be making will really help  
17 in terms of how we can report and what we can analyse in  
18 future.

19 Q. So progress has already been made?

20 A. Yes.

21 Q. Thank you.

22 Just very briefly looking at the fitness to teach  
23 process, and this is on page 9 in the body of that page.  
24 When you receive a referral, there is effectively  
25 a sifting process where you decide whether or not a case

1           should be investigated or not, whether it should move  
2           forward to a fitness to teach panel, and with the  
3           proviso that at any stage in the fitness to teach,  
4           matters can be brought to an end if it is thought there  
5           is an insufficiency or otherwise. Presumably if it is  
6           not actually thought to be necessary or proportionate?

7           A. (Witness nods).

8           Q. Okay. Obviously cases do conclude at the end of the  
9           full process, and at that stage you have helpfully set  
10          out in ascending order the seriousness of the outcomes:  
11          no further action, reprimand, conditional registration,  
12          combined reprimand, conditional registration order, and  
13          removal/refusal of registration, which would presumably  
14          be in the misconduct arena. But you get at the upper  
15          end of the outcome, if there is a case of misconduct,  
16          presumably removal and refusal are the likely outcomes?

17          A. Not necessarily. It depends on the nature of the  
18          conduct.

19          Q. All right. Again, there is a degree of subjectivity --

20          A. Uh-huh.

21          Q. -- case-by-case.

22                 You talked about standards of proof. What standard  
23          of proof is used?

24          A. Balance of probabilities.

25          Q. And yet you still have a requirement for a sufficiency?

1 A. Yes, there needs to be evidence for a panel to make  
2 a determination. You mean at the earlier stage in terms  
3 of sufficiency of evidence? Yes, there is a sufficiency  
4 of evidence assessment but it is considered with  
5 reference to balance of probabilities, not beyond  
6 reasonable doubt-type standard.

7 Q. It's just in terms of corroboration. Are you looking  
8 for corroboration to be clear or not?

9 A. No, no, just sufficient evidence to be able to prove to  
10 that standard.

11 LADY SMITH: So you are not using sufficiency in the same  
12 way it would be used in the criminal sphere?

13 A. No.

14 LADY SMITH: Right. A single source of evidence would be  
15 enough, would it?

16 A. Yes, it could be.

17 LADY SMITH: Thank you.

18 MR BROWN: Just on that analysis, would there ever be a lack  
19 of sufficiency? Because you wouldn't have a process,  
20 unless there had been a referral, which presumably makes  
21 the complaint. Surely the complaint is enough?

22 A. There can be circumstances where a referral is made and  
23 when an investigation is embarked upon, there can be  
24 a range of scenarios that arise, circumstances where  
25 referrer witnesses decide they don't want to give

1 evidence for whatever reason. So, yes.

2 Q. At that point the case effectively dies?

3 A. Yes.

4 Q. Or withers. One aspect that is obviously a concern from  
5 a teacher's perspective in all of this is anonymity.  
6 Where does that fit into the GTCS's outlook in terms of  
7 an allegation being made which is yet to be,  
8 for example, tested in a criminal court?

9 A. Up until the point of -- so everything will remain  
10 confidential, basically, until a fitness to teach  
11 hearing. So we have a portion of cases that obviously  
12 do not reach the fitness to teach hearing point but that  
13 are investigated or are sifted out, so nothing is  
14 obviously released into the public domain about cases  
15 that do not reach a fitness to teach hearing stage.

16 Fitness to teach hearings are held in public. We  
17 have a publication policy that sets out what is made  
18 public in advance of fitness to teach hearings actually  
19 starting. So the teacher's name is not published in  
20 advance of a fitness to teach hearing, and we have  
21 explained the reasons for that in our publication  
22 policy, and it is around if -- so we just publish the  
23 allegations that are going to be considered at the  
24 hearing, or, if it's a procedural matter, what the  
25 nature of the procedural matter is that is to be

1           determined.

2           In some circumstances we were seeing that  
3           allegations were sometimes changing at the start of  
4           a hearing, for example, so we were concerned as to  
5           whether it was necessary to publish a teacher's name in  
6           advance of the hearing. Once the hearing is in course,  
7           obviously the individual teacher's name would be part of  
8           that process, unless they had successfully sought for an  
9           anonymity order and privacy to be granted to them.  
10          Fitness to teach panels adjudicate and determine on  
11          that, depending on the circumstances. So there have  
12          been cases where teachers have successfully argued that  
13          their case should be considered in private.

14       LADY SMITH: How often does that happen?

15       A. I would need to look at specific statistics. It has  
16       been happening more, I would say, over the last few  
17       years, principally because of health issues, that there  
18       have been more cases where teachers have successfully  
19       argued that their health is a factor around it. But it  
20       is not -- it is not a majority; the huge majority of our  
21       cases take place in public.

22       LADY SMITH: Thank you.

23       MR BROWN: You talked about numbers of such cases. Looking  
24       more widely and thinking of misconduct rather than  
25       competence, how many cases, roughly, would you expect

1 a year to be referred for conduct?

2 A. Conduct is by huge -- the huge majority of our cases  
3 relates to conduct. We don't have a huge volume of  
4 competence cases. So conduct cases would amount to --  
5 do you mean in terms of the entirety of the referral  
6 process, what is investigated or what goes to the  
7 hearing stage?

8 Q. I would be interested in both.

9 A. So broadly speaking, I have looked at the statistics  
10 over the past few years in this context, so we received  
11 228 referrals last year, so that was an increase --

12 LADY SMITH: Did you say 220 or 228?

13 A. 228.

14 LADY SMITH: Thank you.

15 A. And that was higher than the 160, 162 and 181 cases in  
16 the previous years. In terms of where those cases go,  
17 around 40% are screened out at initial consideration,  
18 they don't meet the threshold for investigation. Around  
19 20 to 25% of cases are officer reviewed, we call it, so  
20 basically the investigation concludes there is not  
21 sufficiency of evidence or that there is not a realistic  
22 prospect of fitness to teach impairment being found.

23 Around 5% of cases at panel consideration stage, so  
24 after investigation a case -- if the officer that is  
25 investigating is of the view that there is a sufficiency



1 of evidence in the case, there is a realistic prospect,  
2 effectively, that the case would go on to the panel,  
3 a fitness to teach panel, to determine what should  
4 happen next, and around 5% of cases at that stage are --  
5 no further action is taken, so the panel takes the view  
6 that there actually isn't a realistic prospect of  
7 an impairment finding, in effect, usually.

8 Then we have a small -- around 1% of cases have  
9 outcomes of consent orders, reprimands or conditions  
10 being imposed by a consensual process, and around 5 to  
11 10% are removals with consent. So we have a process by  
12 which a teacher can accept the allegations and accept  
13 that they should be removed as an administrative  
14 process, in effect. That was introduced in 2012.

15 Then 15 -- between 15 and 20% go on to the hearing  
16 stage. Hearing outcomes: 50% are removals or refusals,  
17 so -- and 30% broadly are reprimands or conditions or  
18 a combination of a reprimand and a condition. And then  
19 we are into facts not found proved, as happens in around  
20 5% of cases. No impairment in around 15%.

21 MR BROWN: Right.

22 I have the disadvantage of not having a screen with  
23 the transcript, so the percentages -- I think I'm above  
24 600 now, which obviously causes --

25 A. Sorry.

1 Q. Sorry, I am being flippant, but it would be very useful  
2 perhaps for the Inquiry if you could provide that detail  
3 in tabular form just for ease of understanding. I am  
4 very grateful.

5 I suppose the numbers that I will understand with or  
6 without transcription: how many teachers are there on  
7 the register in total? How many on an annual basis are  
8 found to have acted badly?

9 A. So our total register figure fluctuates, sometimes  
10 depending on the particular point in the year. The  
11 lapsing process is principally responsible for that, and  
12 then new teachers coming on to the register, and there  
13 are sometimes changes in how many teachers are going  
14 through teaching qualifications because there is  
15 a consideration of national supply and all that. But it  
16 is broadly -- having caveated it in that way, it's  
17 broadly 70,000. Somewhere between 70,000 and 73,000 is  
18 our general registrant base.

19 In terms of the number of cases that we would have  
20 that would reach the hearing stage, broadly speaking  
21 there is somewhere between 30 and 40 cases, or  
22 thereabouts, that reach a hearing stage. It is  
23 difficult because you need to look at -- because cases  
24 can take periods of time, there can be disparities from  
25 one year to the next as to exactly how many individuals

1 are subject to a hearing process. Our hearings can  
2 take -- it's like any tribunal process, you can have  
3 cases that take half a day and cases that have taken  
4 over 20. So broadly speaking, we consider about 30 to  
5 40 hearings that relate to conduct a year. And then in  
6 terms of that you can break it down, so it would be 15  
7 to 20 removals, broadly speaking, in terms of conduct.

8 Q. So a very tiny proportion?

9 A. Yes. And in terms of -- so around 0.2% of registrants  
10 are referred into the process.

11 Q. Do you have the data to set out on an annual basis the  
12 sorts of conduct that have led to removal from the  
13 register? Is that something that is recorded and  
14 published?

15 A. We don't -- we publish decisions.

16 Q. Yes.

17 A. We have guidance obviously in the Code of  
18 Professionalism and Conduct that indicates where the  
19 standard sits, and also we have the threshold policy  
20 that talks about -- and we have got indicative outcomes  
21 guidance as well that sets out what sorts of behaviours  
22 are likely to be fundamentally incompatible with being  
23 a registered teacher that are at the most serious end.

24 Q. I follow that. But from what you have been saying, and  
25 I make no criticism of this, please understand this,

1 everything is done case-by-case. Particular facts and  
2 circumstances of an individual case will guide what  
3 happens. It is simply when you have codes and guidance  
4 which are general in nature, is there sharing with the  
5 profession results that someone has been struck off the  
6 register coming out publicly? Just to be clear, is  
7 there guidance, for example, to the profession on  
8 an annual basis, saying: you are on the register.  
9 Understand these are the sorts of behaviours that this  
10 year have led to people coming off the register for  
11 misconduct. So teachers -- there is an informing, in  
12 other words, of the rest of the profession, the vast  
13 majority who don't do things, just so they know what  
14 sort of conduct is causing loss of registration?

15 A. We haven't pulled it together and presented it in that  
16 kind of way. We have produced articles in the past  
17 around our fitness to teach process. We have a Teaching  
18 Scotland magazine which goes out to all our registered  
19 teachers, and there are a range of articles, you can  
20 imagine, that are in that. They are all of professional  
21 interest. So I have written articles for that, our  
22 developing officer has written articles for that in the  
23 past, talking about what comes through the fitness to  
24 teach process.

25 I think it would be -- it could be something for us

1 to consider, whether we should have an annual summary.  
2 It is something we could consider.

3 LADY SMITH: Do you have separate data for cases that have  
4 come from boarding provision as opposed to day school?

5 A. No. Our approach on this would be, because we don't  
6 have a remit, we don't distinguish somebody who would  
7 teach in a boarding school from other --

8 LADY SMITH: I can understand that. It is really following  
9 up the same line of inquiry that Mr Brown was interested  
10 in. It may be of great utility to understand not just  
11 the types of problem that are happening, but whether  
12 there is a problem that is particular to a particular  
13 type of school, for instance where the children are  
14 residing there as opposed to going home every day.

15 A. Yes, it is something that could be considered. I think  
16 in terms of preparing for today I looked at the number  
17 of cases that we have had referred from the independent  
18 school sector, I have not broken it down to boarding  
19 school beyond that, but over a period of sort of some  
20 four years we have received 43 cases that relate to the  
21 independent school sector. So that is another  
22 challenge, is kind of what I am trying to indicate here,  
23 that there is quite a small volume. So it's where you  
24 can -- there has not necessarily been an emergence of  
25 themes.

1 MR BROWN: No. But by the sounds of it, and again I am not  
2 making criticism, it is not something that has perhaps  
3 been in the forefront of your mind, and it might benefit  
4 from some reflection, perhaps.

5 A. Yes. Definitely.

6 Q. And if the statistics can be found, I think the Inquiry  
7 would be very grateful to know, specifically in relation  
8 to the boarding school arena?

9 LADY SMITH: Yes. You will appreciate, whilst this case  
10 study is looking at independent schools, we are doing it  
11 because the ones we are looking at are boarding schools.  
12 My terms of reference are to look at the circumstances  
13 of children in care, and that includes children at  
14 boarding schools.

15 Mr Brown, it's 11.30 am. Is that a good time to  
16 break?

17 MR BROWN: It is entirely a matter for your Ladyship. The  
18 only area I would wish to touch on that remains is the  
19 issue of information-sharing, where a great deal of  
20 material has been produced which needs to be considered,  
21 but I don't think is really something to be drilled  
22 into.

23 LADY SMITH: Nonetheless, we would normally take a break at  
24 this point in the morning, Jennifer. If it would work  
25 for you, I would normally take a break about now. So is



1 produced.

2 You will also be aware, because obviously regulators  
3 talk to one another, that the SSSC raised the issue of  
4 recovering documents from the police, in other words,  
5 really the same points that you raised in your document  
6 yesterday before her Ladyship. And I think, as you will  
7 be aware, it was explained by Maree from the SSSC that  
8 this is an ongoing problem. The police feel, having  
9 taken advice from the Information Commissioner, that  
10 they cannot simply release information without a court  
11 order. Putting it short, that means court actions have  
12 to be raised, which costs. They are then not defended  
13 and documents, if the court can be satisfied, are  
14 released, and that this perhaps is not the most  
15 efficient way forward. What she said yesterday was that  
16 discussions are ongoing, and should we understand that  
17 that would be your understanding too? Or at least from  
18 what we see from the police there is a willingness to  
19 take matters forward?

20 A. Yes. I think there is a question about how far  
21 discussions might take us, given the issues that the  
22 police see.

23 Q. Yes. I think the point I make from the Inquiry's  
24 perspective is you have raised issues, the police have  
25 responded with a reasoned basis for explaining their



1 position, but I think, reading the matter at large,  
2 there is clearly a willingness, looking at the  
3 conclusion on page 7 -- sorry, this is PSS-000000935,  
4 the final page, page 7. They say:

5 "All information-sharing must be undertaken within the  
6 confines of the law. Police Scotland's current approach  
7 in respect of information-sharing with regulatory bodies  
8 has been supported by the Information Commissioner's  
9 office. As stated, Police Scotland has been involved in  
10 discussions with GTCS and others regarding the issues  
11 raised and it is Police Scotland's opinion that a change  
12 in legislation is required to resolve the issues  
13 highlighted."

14 That is obviously well beyond the remit of this  
15 Inquiry. So, so far as the police are concerned, we  
16 note what you say and obviously we have the  
17 Police Scotland response which will be taken account of.

18 Likewise SCTS, who I think come next in the order,  
19 have responded and indicated in particular -- this is  
20 SCT-000000001 -- where you were concerned about what  
21 information was being provided to you in terms of  
22 extracts and copy indictments and the like. From what  
23 they say, third paragraph down:

24 "Where a request is submitted by the GTCS and  
25 disclosure is justified and in compliance with these

1 principles ..."

2 And that is GDPR legislation and data protection,  
3 which obviously they have to comply with:

4 "... the SCTS will provide the GTCS with a full  
5 extract conviction rather than an extract conviction and  
6 copy complaint/indictment. A full extraction conviction  
7 provides information contained in an extract  
8 conviction as well as the full narration of the offence  
9 found in a copy complaint/indictment which is all the  
10 information requested by the GTCS."

11 They recognise, going to the final paragraph:

12 "Practices can vary across courts and current  
13 guidance in responding to requests is currently being  
14 updated and will be published shortly."

15 So like you, things evolve. But again they make the  
16 point on the following page that:

17 "The SCTS's Governance and Correspondence  
18 team has been working directly with [you]  
19 since August 2020 ..."

20 So again I think the point that can be fairly made  
21 is communication continues, hopefully to a shared  
22 outcome?

23 A. (Witness nods).

24 LADY SMITH: Could I just check whether SCTS have directed  
25 you to that part of the judiciary of Scotland website

1           where the text of all sentencing statements can be  
2           found?

3           A. No. But, my Lady, you have.

4           LADY SMITH: So you know where to look. Routinely,  
5           certainly at High Court level and some sheriffs do it  
6           now, you will find all the details in a narrative form  
7           of what a person is being sentenced for in the  
8           sentencing statements. There certainly was a time that  
9           didn't happen, but it has been happening for many years.  
10          Quite apart from anything else, I think the press find  
11          it very helpful because it is all there and they don't  
12          have to pick it up separately. But that might be  
13          a useful resource for you.

14          MR BROWN: And it may also, as a matter of observation,  
15          reflect what people will actually want to read. Going  
16          back to the issue of sharing information with teachers.  
17          One thinks of the number of reports one gets from  
18          bodies. There are certain parts one reads and other  
19          parts one doesn't, and it might be, in terms of  
20          reflection, details of what actually happens is the sort  
21          of material which is of interest rather than  
22          generalities. But that is obviously a matter for you.

23                 The other response is from the COPFS, whose document  
24                 is CFS-000005544. Again, they respond to the various  
25                 issues that have been raised by you, emphasising that

1           they perform their function carefully, involving robust  
2           decision-making and particular challenges, looking at  
3           the foot of page 1:

4           "Internal COPFS guidance takes account of specific  
5           challenges involved in dealing with allegations against  
6           teachers. COPFS is aware that accused persons in such  
7           cases are often suspended from employment pending the  
8           outcome of criminal proceedings and, as such, the work  
9           is carried out with priority timescales. In addition,  
10          most cases involve child witnesses."

11          I highlight that because of course the Crown are  
12          making reference to the fact that suspension may be  
13          a relevant factors and that perhaps ties back in with  
14          the issue of when employers should be making referral to  
15          you, and that may be achieved by tinkering with the  
16          wording --

17          A. Yes.

18          Q. -- to accommodate referrals to you. They then go on on  
19          the second page to talk about liaison with the GTCS.  
20          They make the point in relation to your submissions  
21          about the police that:

22          "COPFS was never a party to the Notifiable  
23          Occupation Scheme (inaudible) in 2017."

24          That was discretionary, they say. In their view, it  
25          was between you and the police and that things have been

1           overtaken by the PVG scheme. They reinforce again their  
2           responsibilities in terms of the Data Protection Act and  
3           the fact that court orders could be obtained where  
4           necessary, although again they point to the SCTS as the  
5           post-conviction guardians of court records and suggest  
6           obviously that that is perhaps where you should be  
7           looking, rather than COPFS. But, and I think this is  
8           the relevant point, they will continue to consider  
9           requests for information properly directed to it by you:

10           "The information which COPFS may be able to provide  
11           if requested by you which other organisations probably  
12           cannot is the status of any case with COPFS and if  
13           marked 'no action' or 'no further action' the headline  
14           reasons for the decision. For example, if there is  
15           insufficient admissible evidence. COPFS routinely  
16           provides this information to the GTCS and will continue  
17           to do so."

18           But as importantly in relation, in common with the  
19           previous two:

20           "If the GTCS wishes to consider progressing  
21           a multiparty information-sharing agreement with  
22           Police Scotland, SCTS, Disclosure Scotland and COPFS,  
23           making clear the proper direction of routine inquiries  
24           and provision of information, COPFS would be happy to  
25           participate in the development of such a programme and

1 would also be happy to discuss with [you] any  
2 difficulties routinely experienced."

3 In that regard I do understand, because of emails  
4 received from Crown counsel, that COPFS's information  
5 governance unit has recently been in touch with one of  
6 the legal advisers at the GTCS, which they recognise  
7 follows an approach by you last year. There has  
8 obviously, it would appear, been delay because of COVID  
9 and other responsibilities, but it would appear that  
10 communication is back at the forefront of their minds.  
11 So, again, there would appear to be scope to talk. Is  
12 that fair?

13 A. Yes. There has been contact last week, yes.

14 Q. Yes. Okay. Finally, in terms of Disclosure Scotland,  
15 SGV-00000868, this is a lengthy response from  
16 Disclosure Scotland which addresses all the issues that  
17 you have raised and which obviously we can read. They  
18 obviously make the point that they are governed, reading  
19 short, by their provisions and they also note that in  
20 terms of the Disclosure (Scotland) Act 2020 which  
21 received royal assent last year, GTCS made submissions  
22 about some of the matters that you are raising before us  
23 now with the Parliament, but it would appear that they  
24 weren't reflected ultimately as you would have hoped in  
25 legislation, is that fair? To some degree?

1 A. Yes, to some degree, yes.

2 Q. Yes. But, again, and this may be relevant to all  
3 parties to the Inquiry, they set out the background of  
4 their approach to disclosure and the PVG scheme. But  
5 again end at paragraph 55 on the last page of the report  
6 saying:

7 "Disclosure Scotland is keen to work with all  
8 regulatory bodies to determine how it can collaborate  
9 with them to ensure that its actions as a safeguarding  
10 body under existing powers in the PVG Act and new powers  
11 under the 2020 Act when they come into force protect  
12 children and young people from harm in a joined up and  
13 collaborative manner, complementing the existing powers  
14 of regulators."

15 So it would appear that, by raising the issues in  
16 your response to us and the Inquiry sharing those  
17 concerns with the relevant bodies that you have  
18 highlighted, that this has brought the issues you raise  
19 into the front of the respective minds of these bodies  
20 and broadly it would appear there is a general  
21 willingness to try and take matters forward, which  
22 I take it you would find a useful result?

23 A. Yes. I am not sure without legislative change, as  
24 recognised earlier, how much will change. But we will  
25 engage with a view to improving things.

1 Q. Perhaps progress has been achieved in the sense that  
2 there is a recognition, particularly in some areas, that  
3 there are issues and that, as you have just recognised,  
4 resolution of those issues is perhaps not for the Child  
5 Abuse Inquiry but it may be considered elsewhere  
6 following discussion.

7 We have talked about a number of matters where you  
8 may reflect whether your processes, which is obviously  
9 what you can address, might benefit from some review as  
10 well in terms of updating and also data for the Inquiry.  
11 If there is progress in relation to these issues, as  
12 between your relationship with other bodies, perhaps you  
13 could update the Inquiry should that happen?

14 A. Yes. Yes.

15 LADY SMITH: Generally speaking, Jennifer, it is obviously  
16 going to be very beneficial for conversations to keep  
17 happening so that these regulatory bodies can understand  
18 each other and work out what can and can't properly be  
19 done. If you take, for example, the police and the  
20 Crown, I am sure there will be occasions when it will  
21 all be a matter of timing of each of your procedures.  
22 I would have thought that is the sort of thing that you  
23 may be able to sort out between them. But any updates  
24 would be welcome. Thank you for that.

25 MR BROWN: My Lady, that concludes my questions.



1 LADY SMITH: Thank you. Could I check whether there are any  
2 outstanding applications for questions? (Pause). I am  
3 not hearing any.

4 Jennifer, thank you very much for coming along today  
5 and for your very detailed, thoughtful report, I do  
6 appreciate the work that has gone into that, and for  
7 pulling up the statistics that you rightly foresaw would  
8 be helpful today. Thank you for that. I am now able to  
9 let you go.

10 (The witness withdrew)

11 LADY SMITH: Mr Brown.

12 MR BROWN: My Lady, the next witness is John Edward,  
13 Director of SCIS, who will be giving evidence at  
14 2 o'clock.

15 LADY SMITH: At 2 o'clock this afternoon. I will rise now  
16 and break until 2 o'clock this afternoon when we will  
17 hear from Mr Edward.

18 (12.07 pm)

19 (The short adjournment)

20 (2.00 pm)

21 LADY SMITH: Good afternoon. Mr Brown.

22 MR BROWN: My Lady, we conclude this week's evidence with  
23 the Scottish Council of Independent Schools and  
24 John Edward.

25 LADY SMITH: Thank you.

1           Good afternoon. Could we begin by you raising your  
2           right hand.

3                           MR JOHN EDWARD (affirmed)

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

5           Now, before we begin, would you like me to address you  
6           as Mr Edward or John?

7           A. John is fine, absolutely.

8           LADY SMITH: Very well, John. You will see there is a red  
9           folder there that has the report that SCIS has provided  
10          to us in it. Thank you very much for that. Other  
11          documents, if we need them, will come up on the screen,  
12          as no doubt will sections of your report as we go  
13          through your evidence.

14          Do let me know if there are any questions or any  
15          queries you have. If you want to take notes or refer to  
16          your own notes, feel free to do that. What works for  
17          you will work for me.

18          I will hand over to Mr Brown.

19                           Questions from MR BROWN

20          MR BROWN: My Lady, thank you.

21          John, good afternoon. You are the Director of the  
22          Scottish Council of Independent Schools.

23          A. That is correct, yes.

24          Q. How long have you held that post?

25          A. Gosh, ten and -- ten years and seven/eight months.

1           Coming up for eleven years.

2           Q. Just over a decade. Prior to taking over SCIS, did you  
3           have a background in education?

4           A. None whatsoever. I am a product of it, but otherwise  
5           no.

6           Q. Did you go to one the seven schools we are interested  
7           in, by any chance?

8           A. No.

9           Q. So what is your history prior to SCIS?

10          A. I worked in Brussels for eight years both for the  
11          Scottish Government and for Scottish Enterprise and in  
12          other policy bodies. Then I came back to Scotland at  
13          the beginning of the century, worked briefly for  
14          Scottish Enterprise, and then was head of the European  
15          Parliament's office for six years in Scotland.

16          Q. So why SCIS after that background?

17          A. Because it is a fascinating place to be. It is an  
18          interaction between a sector, a world that I am  
19          interested in and a wider world, and it is one  
20          that I think is probably often misunderstood, and so my  
21          interest was primarily being a kind of interlocutor  
22          between the two.

23          Q. You have just said it is a world that interests you.  
24          Why?

25          A. I just -- I find it interesting in public policy terms

1           that there is a sector providing, effectively, a public  
2           service that sits outside of the normal public service  
3           role, and how that is -- how it affects the State system  
4           and vice versa.

5           Q. Thank you. Her Ladyship has referred to a report you  
6           produced, which is SCI-000000036, and it will dutifully  
7           appear in front of you on the screen. The Inquiry is  
8           very grateful for its preparation and its contents. Did  
9           you prepare this alone?

10          A. Pretty much entirely.

11          Q. Again so we understand, the Scottish Council of  
12          Independent Schools based in Edinburgh, what sort of  
13          scale of operation is it?

14          A. I am one of the standing staff of effectively  
15          four and a half, so we have one part-time employee and  
16          four, including myself, full-time employees. And then  
17          we are a registered charity in Scotland, so we answer to  
18          a governing board.

19          Q. The background is set out in your report. The register  
20          was set up when?

21          A. In 1980 I think was the first -- in the Education Act  
22          was the first requirement for there to be a register of  
23          independent schools.

24          Q. Who or what was the driver for setting it up?

25          A. I think because it was the Education Act that

1 effectively placed all other schools directly under  
2 Local Authority control, after various reforms in the  
3 70s it was decided there had been some way of, if you  
4 like, corralling those non-Local Authority schools into  
5 some kind of recognised sector, and therefore a register  
6 was agreed. A similar model was taken down south as  
7 well.

8 Q. But was it the schools themselves who felt this would  
9 be ...

10 A. In part, yes. There had been a body down south, an  
11 independent schools joint council, for a few years  
12 before, and a group with the now interesting acronym of  
13 ISIS, which was Independent Schools Information Service,  
14 and there had been a body set up to cover that in  
15 Scotland. Because of the nature, education had always  
16 been effectively devolved in Scotland.

17 So they saw there was a value in having a body that  
18 represented their interests but also spoke to the key  
19 officials, in this case the Scottish Office, in terms of  
20 education reform.

21 Q. Okay. But we should understand in this instance south  
22 of the border there were existing bodies?

23 A. Yes. It was relatively new, the independent schools  
24 council. I think it was formed in the mid-70s. Prior  
25 to that, the only formulation was really the traditional

1 heads bodies, rather than school bodies, which were  
2 things like the Headmasters' and Headmistresses'  
3 Conference or the Girls' Schools Association.

4 Q. Had they been in existence for decades prior to that?

5 A. I think HMC has been in existence for at least  
6 100 years, if not 150, yes.

7 Q. Was the Headmasters' Conference a body that Scottish  
8 independent schools had access to?

9 A. Yes, yes, so there are still 21 Scottish schools,  
10 including all of the ones you are addressing, apart from  
11 Queen Victoria School, I remember.

12 Q. Thank you. On the first page of your report, the last  
13 paragraph, you talk about the numbers of schools that  
14 are extant in Scotland. And if we go to the bottom,  
15 there are 95 schools currently on the register, of which  
16 71 are currently SCIS members, although others obviously  
17 rely on you --

18 A. Yes.

19 Q. -- and your knowledge, you say.

20 The maximum permitted roll of all registered schools  
21 is currently 36,336, of which you represent just over  
22 35,000. These numbers I imagine are constantly  
23 shifting?

24 A. Yes.

25 Q. The maximum pupil number capacity is provided by schools

1 on initial registration. We have heard about that,  
2 obviously.

3 Alteration of registration takes account of upping  
4 or lowering numbers --

5 A. Yes.

6 Q. -- and prior to inspection and entry on the register.

7 The current roll of SCIS schools is 29,225, of which  
8 2,272 are boarding pupils, and that is as of  
9 November 2020?

10 A. That is correct.

11 Q. In terms of the number of boarding schools, should we  
12 understand that the number of boarding school places has  
13 been dropping over the years?

14 A. Yes, it has been falling steadily. I think that is  
15 partly historical, fewer people being sent overseas for  
16 diplomatic or military service and so on. And there has  
17 predominantly been a drop in junior boarding, there is  
18 I think just a societal change in terms of sending  
19 children below the age of 13 away to board.

20 Q. You make the point at the top of page 2 that all  
21 mainstream independent schools in membership of SCIS --  
22 this is the point her Ladyship reminded me of during the  
23 week -- are currently registered charities?

24 A. Yes.

25 Q. Operating as not for profit?

1 A. Yes.

2 Q. Okay. And charitable status is important, no doubt, on  
3 a number of levels, including financial?

4 A. Actually less so financial. I think these days, because  
5 you can operate as a not-for-profit in various forms,  
6 obviously there was until very recently financial  
7 support, such as a reduction in non-domestic business  
8 rates, but primarily it is -- I think the not-for-profit  
9 status is part of the ethos of the schools. Most of the  
10 school have their history in individual philanthropist's  
11 or some merchant organisation.

12 Q. Indeed so, and we will come on to that next week,  
13 speaking to the histories of the individual schools.  
14 But on a practical level, if you are an educational  
15 charity, for example, you can reclaim VAT?

16 A. Yes, partially, partially.

17 Q. The requirement to be an educational charity has perhaps  
18 been toughened up?

19 A. Oh, very substantially, yes.

20 Q. And that is reflected in the behaviour of the schools.  
21 As you helpfully set out, there's a threefold increase  
22 in means-tested fee assistance to widen participation as  
23 possible. And this is across sectors --

24 A. Yes, and very specific to the sector. It was a measure  
25 specifically put into the Charities and Trustee



1 Investment Act 2005.

2 Q. Yes, and widening facilities for non-school users, and  
3 also giving teaching opportunities to pupils from other  
4 schools --

5 A. Yes --

6 Q. -- for subjects that aren't met there, and you set out a  
7 variety.

8 Obviously all the schools that we are looking at  
9 engage with SCIS and are members, but obviously equally  
10 they are independent charities. Traditionally, and this  
11 is over your ten years of experience, has there been  
12 progressively greater interaction between all the  
13 schools and SCIS?

14 A. I think in the case of the schools we are talking about,  
15 I think it has always been high. If any, the growth in  
16 interaction has probably come from different types of  
17 schools that previously were very much standalone:  
18 Steiner and Montessori, additional support needs  
19 schools. But I think the key schools, particularly the  
20 boarding schools, because there were so many aspects of  
21 regulation that affected them, have always been fairly  
22 engaged members.

23 Q. Going back to the purpose of SCIS, you set out that when  
24 it was originally formed its aims were:

25 "... to support member schools on matters of policy,

1 to gather and represent the views of members, to frame  
2 advice and to work with other bodies."

3 Is this effectively, as you have said, being  
4 an interlocutor, or the sector one interlocutor with  
5 everybody else?

6 A. Yes. And to a certain extent we are a filter in terms  
7 of information, of what comes out of Government or other  
8 regulators that schools do or don't need to know,  
9 because there is a lot that doesn't apply to them. That  
10 is true in a UK context as well. But also there's  
11 an opportunity feed back in, because inevitably when you  
12 only represent at best 5% of the school education  
13 sector, Government's and regulators' concerns are  
14 primarily focused on the other 95%.

15 Q. Of course. But I think as well as assisting the  
16 schools, you also exist to assist parents?

17 A. Yes.

18 Q. Giving them advice and guidance and information about  
19 legislative change should they wish it? Or is this  
20 something that is offered just as a matter of course to  
21 all parents?

22 A. I think that comes from us seeing ourselves not as  
23 a heads association or a bursars association but as  
24 a schools association. So effectively the pupils, the  
25 parents, the non-teaching staff and the teaching staff,

1 the governors, are all effectively members. So if there  
2 are questions that parents have, which they have, about,  
3 well, particularly in the last twelve months about  
4 school closures or exam cancellations, but about  
5 vaccinations, about financial measures, or just  
6 accessing a school or the complaints system or whatever,  
7 then we provide I suppose an independent voice for them  
8 to come to if there is something they want to test with  
9 us. Because there is no formal single ombudsman, if you  
10 like, for the independent schools sector by definition.

11 Q. Yes. You also lead for the schools in terms of policy,  
12 is that fair?

13 A. Yes.

14 Q. Because obviously, as you say, you engage and  
15 communicate with Government, Parliament, other public  
16 bodies, and I think all the witnesses we have heard from  
17 this week in terms of regulators have spoken about  
18 positive engagement with SCIS. That is part and parcel  
19 of your job?

20 A. Yes, certainly of the -- of our members of staff, we  
21 divide our activities partly -- some focus towards the  
22 schools in terms of professional training, some in terms  
23 of the financial and other aspects, marketing aspects.  
24 Probably, in my case, the predominant amount of my time  
25 is spent dealing with Government Care Inspectorate,

1 Education Scotland in terms of proposals that may affect  
2 us disproportionately or unwittingly or indeed something  
3 that specifically needs to be changed.

4 Q. And obviously this week -- over the course of this week  
5 we have all heard how regulation, so far as the  
6 independent schools, has changed one might say radically  
7 over the last 25 years?

8 A. Yes. On the child protection side there was a strong  
9 movement there anyway I think from -- particularly from  
10 the mid-1990s from Dunblane, and the case in Welsh care  
11 homes, right through to the deaths in Soham in the early  
12 2000s. But I think the biggest change obviously was  
13 devolution itself, where you had all the mechanism of  
14 Government brought closer to hand, and therefore looking  
15 at the governance of schools, the proprietors of  
16 schools, child protection, the charitable status of  
17 schools, and the pace of regulation and of scrutiny  
18 I think has increased very substantially since 1999.

19 Q. Indeed so. And in that regard, I think we were speaking  
20 with Education Scotland and the Care Inspectorate,  
21 reference was made obviously, and you just confirmed it,  
22 in the mid-1990s, it was at that stage  
23 Education Scotland began to look not just at education  
24 but care --

25 A. Yes.

1 Q. -- within the boarding sector.

2 May I just say, my Lady, I am grateful both to SCIS  
3 but also Fettes, who are obviously listening in, for  
4 providing a copy of a document produced by the Scottish  
5 Office using support materials for HM Inspectors of  
6 Schools about improving the care and welfare of  
7 residential pupils that the Inquiry did not have, but  
8 now does.

9 LADY SMITH: Thank you.

10 MR BROWN: And again what may be of relevance today, without  
11 going to the document, is you obviously, or your  
12 predecessor, had input at that stage. And that makes  
13 the point that at this sort of level of policy change a,  
14 your word, "interlocutor" between the schools and the  
15 Government only assists?

16 A. Yes.

17 Q. Thank you. We will come to that quarter century in  
18 a moment. One of the big things, and this will feature  
19 in future hearings, or parts of it, but a big change  
20 that occurred within the educational sector but  
21 particularly later on with the private sector was  
22 corporal punishment?

23 A. Yes.

24 Q. Again we should understand that is a good example of  
25 SCIS leading. Is that fair?

1       A. Yes, I think it is a good example where you could see in  
2       public terms the likely outcome of public policy, and  
3       therefore it was important, one, to prepare schools for  
4       that, and, two, I don't want to put words in their  
5       mouth, or indeed my predecessor's, but also to perhaps  
6       encourage them down that road, not that I think any of  
7       them needed any encouragement on this particular issue,  
8       but just to get ahead of the issue so that when  
9       approached, as we were, by the Scotland Office at the  
10      time, we could say, yes, we have already looked at this,  
11      we have audited what schools are doing in this area.

12             And there was -- I think we copied our entire file  
13      to the Inquiry and there was no resistance from the  
14      schools at all.

15      Q. No. I think it is fair to say, you are quite right, we  
16      have all the information, but it is instructive that  
17      within the public sector there was a perhaps more  
18      unified approach to the abolition?

19      A. Yes. And reviewing that file myself, I don't know --  
20      the Government of the time would have to speak as to why  
21      they didn't feel it appropriate to regulate, because  
22      certainly there was no reluctance on the part of the  
23      schools themselves to fall in line with the European  
24      judgment.

25      Q. Indeed. I think just two documents perhaps paint a

1           useful picture which you have produced. The first one  
2           is SCI-000000038, which should appear on the screen.

3           LADY SMITH: While the document is coming up, and to fill in  
4           for those who aren't so immersed in this area of the law  
5           as some of us. Of course when the changes occurred  
6           as a result of the European judgment, the independent  
7           sector was not affected in the way the public sector  
8           was.

9           A. Yes.

10          LADY SMITH: So the independent sector was left, to use  
11          a colloquialism, to do their own thing still.

12          MR BROWN: I am obliged, my Lady.

13                 But against that background SCIS, and this is  
14                 perhaps the important point from your perspective, SCIS  
15                 was leading the charge, if you like, because it  
16                 recognised the world was changing, and it was better to  
17                 be ahead of the curve rather than --

18          A. Absolutely. And indeed I imagine there was  
19                 encouragement for individual heads to do that too. And  
20                 if you look at the file, certainly the  
21                 Secretary of State more than once in Westminster  
22                 referred to engagement with us as a means to take the  
23                 issue forward.

24          Q. I was going to pick up on that point. Because of course  
25                 perhaps more so then, thinking in the 1980s, boarding

1 schools were very -- were obviously individual  
2 organisations, but at that stage did they operate in  
3 a much more insular fashion?

4 A. Hard to say, really. I mean the Boarding Schools'  
5 Association, which is a very specific body, UK-wide for  
6 them, only came into creation at the beginning of this  
7 century, so apart from those where the heads were in  
8 an association such as HMC, they would have been  
9 predominantly, except through the auspices of SCIS,  
10 pretty much on their own in areas. Which is why, with  
11 something like this, they will have needed somebody to  
12 point out --

13 Q. That perhaps is the point. Other than the Headmasters'  
14 Conference prior to SCIS's inception in 1978, they would  
15 operate in isolation. And that is not a criticism, it  
16 is just that was the way things were?

17 A. Yes.

18 Q. It was a separate world from other schools, but now  
19 there is more umbrella, if you like, provided by SCIS?

20 A. Yes. I am struck for something like corporal punishment  
21 that, although they were excluded, as I say, for reasons  
22 I don't know from the original legislation, maybe the  
23 Government didn't see it was their remit. If you go  
24 further back, I know that schools are aware from I think  
25 1937 onwards that the Children and Young People Act then



1           said adults have a responsibility not to ill-treat  
2           children, so there was awareness that was -- and that is  
3           actually where the Schools Information Service, that was  
4           its initial role was to just: this is what is coming up,  
5           this is what is coming through Westminster, this is what  
6           is being proposed.

7           Q. Thank you. Looking at the document which is on the  
8           screen in front of you, obviously this is 1984, in  
9           manuscript at the top. There are three columns, "No  
10          corporal punishment", "Corporal punishment but abolition  
11          considered", and then those schools that were  
12          maintaining corporal punishment and they weren't  
13          considering abolition.

14                 If we scroll down, the longest list by far is "No  
15          corporal punishment", and we see that Fettes Junior, of  
16          the seven schools that the Inquiry is looking at in  
17          particular, is the one school in that.

18                 Then looking in the middle, "Corporal punishment but  
19          abolition considered", Merchiston, Keil, Fettes,  
20          Morrison's are all considering abolition, and it is  
21          Loretto and Gordonstoun that at that stage were still  
22          using corporal punishment and clearly not --

23          A. Well --

24          Q. -- to this list?

25          A. -- certainly my reading of the individual correspondence

1 with the schools is that, in most cases, what this meant  
2 was that corporal punishment had not been removed from  
3 the school rules as a potential sanction. But I think  
4 in almost every case, when my predecessor wrote to the  
5 schools, it was said it was no longer employed.

6 Q. I think if we then go to SCI-000000039, this is 1988, and  
7 at that stage there are only a very limited number of  
8 schools still officially retaining. At this stage some  
9 have unofficially abolished it or are phasing it out?

10 A. Yes. And indeed I remember further in the file it does  
11 point out that Loretto, once followed up with, said "Oh  
12 yes, we are not using it". It was -- maybe it hadn't  
13 been responded to at the time of the survey, I am not  
14 sure.

15 Q. Yes, you've saved me the task. We can take it all the  
16 seven in fact had stopped by that stage?

17 A. Yes.

18 Q. Because this is something you were following up. But  
19 again, just to use an example, before we get to a much  
20 more policy-driven and child protection era, 96 onwards,  
21 there was an important function for SCIS and it led on  
22 such matters even then?

23 A. Yes.

24 Q. If we can go back to the report, please. And go to  
25 page 5. If we go to the bottom, please, the paragraph

1           headed "SCIS Support". It sets out the variety of ways  
2           that you can assist: professional advice on all aspects  
3           of governance, management and operation, professional  
4           accreditation, development of advanced regulatory and  
5           legal changes, financial and HR issues, et cetera.  
6           Parental issues is one of them.

7           Just out of interest from a schools' point of view,  
8           are parental issues an area that is growing?

9           A. I wouldn't say so. It's a steady but not substantial  
10          flow. And as I say, in some cases that is simply  
11          parents asking about which schools may have available  
12          places, parents moving back to the United Kingdom,  
13          for instance. It might be parents asking about  
14          financial support. It might be parents who require  
15          financial support, but are currently at a school, whose  
16          circumstances have changed. And in some cases it will  
17          be a complaint that a parent has about how they consider  
18          their child is being treated academically or in other  
19          ways or -- you know. For example, I received  
20          a complaint this morning from a parent objecting to  
21          their child being required to wear a face covering in  
22          schools. So you get all sorts of things coming your  
23          way.

24          Q. I am sure you do. Do you get complaints about the sort  
25          of things that the Inquiry is focusing on, in other

1 words, abuse?

2 A. Abuse? No. In my ten and a half years, I think I have  
3 had a couple of phone calls with unidentified parents  
4 who have an issue they want to raise, which at least in  
5 one case I know has subsequently developed into a more  
6 complex complaint with the school. But in both cases  
7 what they were seeking first was to understand the  
8 procedure for complaints through a school, through the  
9 governing board, and then whether to go to the GTCS or  
10 the Registrar.

11 Q. Okay. So just practical advice?

12 A. Yes.

13 Q. You set out the number of bodies that SCIS works with,  
14 and it is a very lengthy list and informs I think what I  
15 was suggesting a moment ago, and you agreed there was  
16 a great deal of working alongside collaboratively with  
17 regulators, Government bodies, the whole plethora, if  
18 you like.

19 The list starts off with the City of Edinburgh  
20 Council Child Protection Committee. Why the city of  
21 Edinburgh particularly?

22 A. It is a good question. I think apart from Perth and  
23 Kinross, where the schools individually liaise with the  
24 Council on child protection issues, this is the only  
25 other one where there is a formal link, and that is

1            simply I think because Edinburgh City Council realised,  
2            particularly at a senior phase, when one-quarter of the  
3            children in Edinburgh are being educated outside of  
4            Local Authority control, they needed to have again  
5            an interlocutor with that sector. Because Edinburgh is  
6            unique probably in the English-speaking world in terms  
7            of that percentage of pupils.

8            Q. Does that relate primarily to, as it suggests, child  
9            protection?

10          A. Yes. And our engagement with that is a watching brief,  
11          more than anything else, to see when policy changes.  
12          Because in reality the vast majority of what they deal  
13          with is, if you like, more acute issues to do with FGM  
14          or child abduction or all sorts of issues that so far,  
15          thankfully, have never come to us.

16          Q. Female genital ...

17          A. Mutilation, yes.

18          Q. The rest of your report goes through a number of  
19          specific issues, and we will come to them. But you have  
20          touched on this as well, the Boarding Schools'  
21          Association, which is a UK-wide ...

22          A. Yes.

23          Q. That was incorporated, as your report says, in 2003, to  
24          support the development of boarding education in  
25          schools, so duplicating what you were already doing?

1 A. Only in the sense that the Scottish boarding schools had  
2 that presence through us already, but there wasn't  
3 a body in England which specifically -- and Wales for  
4 that matter, that specifically addressed boarding issues  
5 as opposed to the wider education. Boarding is a very  
6 big sector down south.

7 Q. Indeed. And should we understand that membership of the  
8 BSA is common amongst the private sector in Scotland?

9 A. I am pretty certain all 21 boarding schools that we have  
10 as members are -- that there are in Scotland are also  
11 members of the BSA.

12 Q. It is not obligatory, obviously?

13 A. No.

14 Q. And do the BSA, much as you do, provide assistance and  
15 information about policy and, in particular, child  
16 protection?

17 A. Yes. Obviously they are very aware that it's  
18 a different regime in Scotland, so we will do joint  
19 events and joint training courses with them, but there  
20 will be issues such as currently now with quarantine for  
21 children returning to the UK under COVID, where they  
22 will be the interlocutor with the UK Government at  
23 a level we don't normally operate at. So it's a very  
24 happy, dynamic relationship.

25 Q. Yes. And presumably you rely on them, and on occasion

1           they will rely on you?

2           A. Absolutely.

3           Q. Just again for completeness, BSA-000000004, Boarding  
4           Schools' Association Fellowship Report. If we scroll  
5           down, this was a report by Delyth Lynch in January 2019  
6           about abuse in boarding schools, obviously looking at  
7           material from English boarding schools, but presumably  
8           shared with you? I take it you have seen it before?

9           A. Yes, I have seen it before. As I say, this was on the  
10          back of the IICSA -- I forget the acronym exactly, but  
11          the equivalent Inquiry down south, yes.

12          Q. But this is the sort of material that I think we know  
13          from BSA schools we are interested in are connected  
14          with --

15          A. Yes.

16          Q. -- broadly speaking, so they may get this sort of  
17          information direct from BSA. But should we understand  
18          you would be copying it, if it is highly relevant, to  
19          the boarding school --

20          A. And indeed BSA and Independent Schools Council  
21          themselves have followed the Inquiry very closely,  
22          indeed BSA appeared in front of it, and they would feed  
23          back the experience of that. And as we have engaged  
24          with schools who have been in front of IICSA themselves,  
25          and associations, to know just best practice in terms of

1 making sure your records are complete or whatever it  
2 might be.

3 Q. By the sounds of it, as of now, 2021, there is quite  
4 a wide range of assistance open to boarding schools to  
5 get guidance from SCIS, from BSA, and such matters like  
6 child protection and abuse are very current, is that  
7 fair?

8 A. Yes, I think it's true of our professional learning  
9 programme, just as it is true of probably everything  
10 else we do, that child protection and welfare is  
11 probably the number one issue for any of the school  
12 associations.

13 Q. When did it become the number one?

14 A. I think it probably always was -- I assume it always was  
15 in an unspoken way.

16 Q. Yes.

17 A. But as the language of child protection has developed as  
18 people understand it, then I think schools are more --  
19 well, associations like ourselves are more clear about  
20 that. But people like myself would have no motivation  
21 to work in a sector that didn't put child protection  
22 absolutely at the centre of it.

23 Q. Thank you.

24 Could we return to the SCIS report, please, at  
25 page 7. I think, moving down the page, we come to one



1 of obviously the topics you considered relevant, which  
2 is child protection. You make the point that:

3 "Staff training and professional development began  
4 at an early stage following the inception of SCIS in  
5 1978, in recognition of the core importance of child  
6 safety and wellbeing in schools."

7 As you just said, it was probably always understood  
8 but perhaps talked about in simpler ways, is that fair?

9 A. Yes. And I think also not until you had the first child  
10 protection national guidance, which I think was in 2010  
11 in Scotland, you probably didn't have a single focus for  
12 all the different responsibilities that schools and  
13 teachers would have in terms of child protection.

14 Q. One of the points you make is:

15 "Up to and including the 1990s, the Scottish Office,  
16 as it then was, provided SCIS schools with detailed  
17 guidance on, amongst other issues, the checking of  
18 members of staff."

19 And we will come back to the recruitment as a  
20 distinct or discrete issue in a moment and the checking  
21 of members of staff.

22 "Schools were advised to use List 99."

23 Which is a phrase one hears. That is an English  
24 construct --

25 A. Yes.

1 Q. -- as you say, which had been used since 1955 of those  
2 barred from working. So schools here would check with  
3 List 99 to see if an applicant --

4 A. Absolutely.

5 Q. -- was on the list.

6 A. But particularly in the boarding sector where, partly  
7 through the examinations that boarding schools  
8 traditionally sat, which were predominantly GCSE and  
9 A Level equivalent, but also that boarding staff,  
10 because of the large boarding sector in England, that  
11 was a major recruiting place.

12 Q. Because that is one of the things that distinguishes the  
13 boarding sector, perhaps to state the obvious, the  
14 transfer of teaching staff both north and south of the  
15 border, and that was quite normal?

16 A. Yes, and still is.

17 Q. And still is?

18 A. Certainly in senior management, yes.

19 Q. I think we can hear about that again from the schools  
20 and see that in action.

21 List 99 was replaced, as you say, by the Children's  
22 Barred List, then the Disclosure and Barring Service and  
23 List 1R in Scotland. When did List 1R in Scotland take  
24 effect?

25 A. When it took effect? I honestly don't know.

1 Q. But it is now covered by Disclosure Scotland --

2 A. It is now under Disclosure Scotland.

3 Q. -- and the Protection of Vulnerable Groups scheme.

4 And again we shall come back to that.

5 Going on to the page over, page 10, you have  
6 mentioned the Cullen Report and the Kent Review  
7 following issues in North Wales.

8 The next paragraph talks about the SCIS child  
9 protection guidelines, first being compiled into one  
10 document written with Professor Kathleen Marshall and  
11 first published in 1997. Within the Scottish context,  
12 presumably that was groundbreaking to have a document  
13 where guidance was provided in one place?

14 A. Yes, it was an entirely bespoke set of guidance for  
15 those specific schools in membership of SCIS.

16 Q. Yes, and that has been updated semi-regularly since?

17 A. Yes, it has always been under review. Until 2015 it was  
18 printed out in huge numbers and sent around to  
19 everybody. Now what we simply do is update chapters  
20 online and then we will tell schools when there has been  
21 an amendment.

22 Q. So essentially it's a living document with updates  
23 saying: things have changed. So as soon as it has  
24 changed, an email will tell all schools, all members:  
25 you need to check this.

1 A. That is right. And actually in the last couple of years  
2 it has also been split between specifically child  
3 protection and wellbeing, because there are aspects that  
4 don't necessarily -- they are not quite the same thing  
5 in some cases, so we have made it more distinct.

6 Q. Professor Kathleen Marshall?

7 A. She was then I think the Children's ...

8 LADY SMITH: She had become the Children's Commissioner I  
9 think by then.

10 A. That is right.

11 MR BROWN: How long did she continue?

12 A. I think she was involved in two iterations of the  
13 guidelines. Her successor, I don't know if he was  
14 approached, or whether somebody else in the Children's  
15 Commissioner's office oversaw it. But certainly up  
16 until the last published version of the child protection  
17 guidelines we always had somebody in a role, either in  
18 Government or in a body like the Children's  
19 Commissioner, to see over the document and indeed to  
20 endorse it.

21 Q. I think if we put up briefly SCI-000000005 this is the  
22 last published iteration. And if we go over the page to  
23 page 2 at the foot, that version was written by  
24 Dr Susan Hamilton, child protection consultant, in  
25 conjunction with SCIS.

1           And if we go back up the page just to the main body  
2           of the text, it is indicating that this is reflecting  
3           considerable change that was taking place around this  
4           time --

5           A. Yes.

6           Q. -- Children and Young People (Scotland) Act 2014?

7           A. Predominantly then.

8           Q. It makes the point it is a responsive document --

9           A. Yes.

10          Q. -- to policy.

11                   As a broad question, and you will have heard  
12           exchanges about this with both Education Scotland and  
13           the Care Inspectorate, clearly in the last decade there  
14           have been very significant changes and one of -- again  
15           the world of acronyms -- GIRFEC and SHANARRI, Getting It  
16           Right For Every Child, and SHANARRI sets out the terms  
17           that are relevant: safety, health, achieving, nurtured,  
18           active, respected, responsible and included. That  
19           introduced, I suppose, a whole new landscape so far as  
20           the wellbeing of children is concerned.

21          A. A new landscape in the way it was framed in some cases.  
22           A lot of it will have been very familiar to schools, but  
23           the idea that it was putting the child completely at the  
24           centre as national policy was slightly different, so we  
25           needed to make sure that that was reflected through

1 schools.

2 So if you look back, a lot of our professional  
3 learning and development training at that time was  
4 speaking to schools at different levels about their  
5 requirements of the Children and Young People Act, which  
6 included things like named person, which ultimately  
7 never came to pass.

8 Q. And you have brought it up now so it may be as well to  
9 touch on it: training. That is very much something you  
10 do?

11 A. I would -- I think if you asked our schools, some of  
12 them would say that is absolutely the core of what we do  
13 for them.

14 Q. And you have set out in your report, and we needn't look  
15 at it because we have it to refer to, that there has  
16 been attendance by all seven schools in differing  
17 numbers but presumably reflecting a number of variables,  
18 both school size, availability --

19 A. Turnover of staff.

20 Q. Yes. How often does SCIS organise training?

21 A. Well, until a certain pandemic struck we would probably  
22 have had in the course of the academic year something  
23 like 80 live courses and live events. Some of those are  
24 one-off, just updates every year of child protection for  
25 governors or child protection for probationers, some of

1           which will be modular events, such as leadership modules  
2           which go on for more than two or three days. Indeed we  
3           have a mental health pathway now which goes on for  
4           several days. But over the course of your average  
5           academic year, it would be in the region of 80 courses,  
6           and then at least 1,500 staff coming through.

7           Q. How many staff are there in the private sector?

8           A. There's about 3,500 teachers, and the same again in  
9           non-teaching staff, everything from accountants to  
10          groundkeepers.

11          Q. So roughly speaking 7,000?

12          A. Yes.

13          Q. And per year you are giving access to training for  
14          1,500?

15          A. Yes.

16          Q. In terms of what is selected for training, is that  
17          selected by you or with input from the schools telling  
18          you what they would like to be trained on?

19          A. It's a bit of both. Part is us, and our last three  
20          deputy directors for professional learning have been  
21          heads or deputy heads from schools both in the state and  
22          independent sector, so very much with the thinking of  
23          schools in terms of pastoral care and academic  
24          advancement.

25                 There will be some issues that schools raise with

1 us: we have never quite understood, for instance,  
2 disclosure, could you get somebody in to talk about it.  
3 Data protection, GDPR, things like this. Retirement,  
4 pensions, all sorts of issues. And then there will be  
5 issues where specific bodies, including the Government,  
6 including the other bodies you have heard from this  
7 week, saying there is something we particularly want to  
8 engage with you on, whether it be the Children and Young  
9 People Act -- I would imagine the passing of the Bill  
10 for the UN Convention on the Rights of the Child will  
11 probably have something similar like that in the weeks  
12 to come.

13 LADY SMITH: John, just going back to the numbers, 7,000 or  
14 so staff in total, 1,500 or so members of staff  
15 attending a SCIS course each year. Do I have to  
16 remember to factor into that that that doesn't mean that  
17 5,500 people are not up-to-date and are not trained  
18 because, by their very nature, a pretty good proportion  
19 of that 1,500 are teachers and so ought to be able to be  
20 relied on to disseminate learning they gain from your  
21 courses to people at their school.

22 A. Indeed, my Lady. So predominantly it will be teaching  
23 staff. In some cases there will be a little bit of  
24 non-teaching, whether it's extra curricular or whatever,  
25 but in most cases there are other bodies that can deal



1 with employment law or whatever. So, yes, there would  
2 be the expectation to cascade, but also that would be  
3 followed up by regular bulletins from SCIS.

4 LADY SMITH: Of course.

5 MR BROWN: Is that 1,500 actual attendees at training --

6 A. That would be physical attendees over the course of the  
7 year.

8 Q. Presumably, and not just because of COVID, because of  
9 the advance of technology there is a great deal of  
10 training available online?

11 A. Interestingly, until this past year it was almost all in  
12 person because that was what the schools preferred.  
13 They found it -- and I think, as much as the exchange of  
14 best practice in the coffee breaks, the events  
15 themselves gave them an opportunity to meet which they  
16 wouldn't normally do. But since then, my colleagues  
17 have very successfully managed to repurpose that into  
18 an online offer, which I assume will stay that way for  
19 the time being. We just don't know what nature the  
20 learning will take from now on.

21 Q. Of course. One of the themes that may have been of  
22 interest to you, listening to the evidence this week,  
23 was the importance of language and keeping it simple.  
24 Would you agree that there is an educational sector  
25 language that is sometimes perhaps not the most easy to

1 follow?

2 A. Absolutely categorically, both in terms of  
3 qualifications, in terms of classroom assessment, in  
4 terms of child protection, in terms of governance, there  
5 are all sorts -- having worked in European Union matters  
6 for more than a decade, I am more than used to  
7 unintelligible terms and the education sector is no  
8 stranger to them.

9 Q. To be blunt, is one of the functions of SCIS to  
10 translate it into --

11 A. Yes.

12 Q. -- understandable language?

13 A. Yes, certainly for non-teaching staff, for parents to  
14 a certain extent as well, and indeed for governors, yes.

15 Q. Coming back to governors. If we could look at page 9 of  
16 the document that is on screen at the moment. I think,  
17 for example, this is the 2015 iteration, and this is the  
18 introduction talking about:

19 "The welfare of all children and young people is at  
20 the heart of Getting It Right For Every Child and is  
21 enshrined in the Act. Wellbeing under the Act is  
22 defined ..."

23 Et cetera.

24 Is this a sort of example of trying to make it  
25 intelligible?

1 A. Yes. So, for example, spelling out what SHANARRI  
2 actually stands for rather than simply putting a picture  
3 of a wheel.

4 Q. Indeed --

5 A. I think the wheel might be there as well.

6 Q. If one goes on, the wheel is at page 17. And if we look  
7 at page 18 and go down, we have the "My World Triangle",  
8 which certainly to a lawyer doesn't perhaps make the  
9 easiest of understanding.

10 In any event, you have told us that this is a living  
11 document. But if we can go to page 24 as well, and  
12 acknowledging that obviously it will have changed, its  
13 current iteration will be different, at its most  
14 straightforward you are setting out here what is child  
15 abuse and child neglect and you give a definition. You  
16 talk about physical abuse, emotional abuse, sexual  
17 abuse, neglect, and then child protection. So it's  
18 really laying it out in a very straightforward fashion  
19 so that people will understand?

20 A. Absolutely. And this is one area where starkness helps,  
21 not that there is any resistance or lack of  
22 understanding in schools, but certainly -- it changed  
23 slightly in recent years, but previously our training  
24 used to lay out a series of case studies and simply ask  
25 the question: do you consider this to be a child

1 protection issue or not? Just to get people into the  
2 mindset, especially if they have come from outside. And  
3 of course if you have -- it happens less in Scotland --  
4 people coming in through programmes like Teach First,  
5 who are teaching for the first time ever, having a sense  
6 of being able to immediately understand what we are  
7 talking about is important.

8 Q. Okay. I am using this as an example of some of the  
9 subjects that were live in 2015, so I will be making  
10 reference to a document that is now six years old, so  
11 please as appropriate update if you wish to.

12 One issue that has obviously been live for the  
13 Inquiry has been storage and retention of records. If  
14 we could go, please, to page 32 and the bottom of the  
15 page. Again it might seem self-evident but it is put  
16 out starkly:

17 "Good information-sharing depends on the quality of  
18 record-keeping and on robust processes for storing  
19 information."

20 Is that something you can comment on? From your  
21 knowledge of ten years or the institutional knowledge of  
22 SCIS, is that something that has improved?

23 A. I think inevitably with increased digitisation it has  
24 become easier. Also you have had schools having to go  
25 back into early founding documents as part of their

1 charity test in amending their constitution and updating  
2 it, so there has been a need to bring information  
3 together in one place in a way that perhaps it wasn't.

4 And of course if you go back to the very beginning,  
5 our point about the amount of schools that merged and  
6 acquired each other, you are always inheriting different  
7 sets of paperwork and different sets of constitutions.

8 Q. Yes. I think as we heard in the opening statement from  
9 Keil, if you close there is a dilemma what you do with  
10 documents. And as we may hear more detail of, it is  
11 really the goodwill of individuals that results in  
12 retention?

13 A. Yes.

14 Q. If we move on to the next page and paragraph 4.10,  
15 disposal of records. If we go down, stop there.

16 "Education Records of Pupils":

17 "Education records should be kept for a period of  
18 five years after the pupil leaves school."

19 And it makes reference to the Pupils' Educational  
20 Records (Scotland) Regulations 2003. Is that advice  
21 current?

22 A. I think it is. We always check this with the  
23 Information Commissioner's office and others when we do  
24 it --

25 Q. The world has obviously moved on in terms of further

1           legislation?

2           A. Yes. So I wouldn't want to swear that it is, but the  
3           most recent copy of this document will have the most  
4           recent version.

5           Q. Thank you.

6                     Going further down "Child Protection Records".  
7           I think footnote number 8 makes the point that because  
8           of this Inquiry, a request was put out to schools to  
9           hold on to materials. It is presumably quite  
10          a difficult balance knowing what to keep?

11          A. It is, but we actually took the view I think before this  
12          Inquiry was in place, but I think IICSA in England had  
13          already started and they had put out a similar document  
14          requesting schools to hold on to what they had. So we  
15          sent that to schools saying: if and when such an inquiry  
16          comes and covers schools in Scotland, you would be  
17          expected to do this, we imagine. Therefore it's  
18          probably good to think about it now. And low and  
19          behold, I can't remember how many months afterwards, the  
20          same request came from Scotland.

21          LADY SMITH: I see in footnote 8 the provisional suggestion  
22          was to treat a period over which we would be wanting to  
23          recover records as starting in 1945.

24                     You may be interested to know, John, that yesterday,  
25          two days ago -- I lose track -- we were looking at some

1 documents from the 1920s and 1930s which were very  
2 helpful, actually.

3 A. Absolutely. So I'm not sure if that year was given to  
4 us by the Inquiry in the very early days or whether it  
5 was --

6 LADY SMITH: Possibly. But it was obviously helpful that  
7 the school concerned had gone beyond that guidance.

8 MR BROWN: The difficulty I suppose, looking over the page,  
9 is you say:

10 "There may be individual cases where a school would  
11 wish to retain child protection records beyond the five  
12 years advised."

13 Again I suppose the difficulty, as time passes, is  
14 identifying what is a child protection record without  
15 going into it?

16 A. Yes.

17 Q. And also knowing at the time that it may become one?

18 A. Indeed. And if you have a pupil leaving one school and  
19 going to another, what is the responsibility of both  
20 schools in terms of that child once they become  
21 an adult?

22 Q. Yes, certainly.

23 LADY SMITH: Have you had any schools being concerned about  
24 a clash between that advice and their data protection  
25 responsibilities only to old data, processed data, for

1 as short a time as is reasonable?

2 A. Yes, my Lady, that was a very big question for a lot of  
3 schools at the time when we were pointing out what the  
4 Inquiry was asking. They were saying: we have been told  
5 for the last five years, not least by SCIS, that we must  
6 get rid of records we shouldn't have control of. And we  
7 made the point at the time, as indeed did the English  
8 Inquiry and this one, that this effectively trumped that  
9 for the time being, so just hang to what you've got.  
10 Now is not the time to start getting rid of records.

11 So although we have spent a lot of time and effort  
12 on information issues, data protection issues, yes,  
13 there was a slightly different message for them to get  
14 their heads around.

15 LADY SMITH: The other factor to consider of course, and we  
16 have come across this, not with independent schools but  
17 with other providers, are people who now are quite  
18 advanced in years and still trying for the first time to  
19 get hold of records of when they were in institutional  
20 care, and some of them being able to do so and only  
21 discovering about their own lives now.

22 A. Yes.

23 LADY SMITH: I can think acutely of one man in his 80s who  
24 discovered for the first time something about himself  
25 that made a huge difference to him.



1 A. Yes, so we -- I can think, for instance, of two schools  
2 that have had very substantial fires since the Second  
3 World War, so there are all sorts of things that will  
4 affect ...

5 MR BROWN: Thank you, my Lady.

6 Was there any resistance from boarding schools to  
7 the advice?

8 A. No, none at all, just -- what schools always want  
9 understandably is clarity, to know they are on the right  
10 side of the law, and if the law has changed, or at least  
11 legal advice has changed, then to make sure they are  
12 doing the right thing. And to be told you should err on  
13 the side of caution and not get rid of anything was  
14 perfectly clear to them.

15 Q. Thank you. Could we go to page 38. Again it is just  
16 talking about change, because the concept of a child  
17 protection co-ordinator ... Is that something that  
18 developed in the ten years or so that you have been  
19 working with SCIS or did it already exist?

20 A. I think it already existed, it may not have been called  
21 this, but there would be always be somebody in a senior  
22 management position who would have lead responsibility  
23 for pastoral or welfare concerns, yes.

24 Q. So pastoral would be perhaps the more traditional word  
25 for what is now CPC?

1 A. Yes.

2 Q. Thank you. But again is it that something that has been  
3 consistently changing in line with national guidelines  
4 and is it something that you are regularly giving  
5 further advice on?

6 A. Yes. The equivalent would be a data protection officer.  
7 There would have been somebody who did that job but they  
8 wouldn't have called themselves that.

9 Q. If we can move to page 40 and just touch briefly on  
10 governance at 5.5. Again, and we can see this from  
11 individual schools, how the board of individual schools,  
12 because there will be a board or, in the case of QVS,  
13 a board of commissioners, to use the language special to  
14 QVS. Governance, if I can describe it, was traditional  
15 for a long period, is that fair?

16 A. Yes.

17 Q. It tended to be old boys and those connected with  
18 a school and loyal to the school?

19 A. I think loyalty is the important thing. It was easy to  
20 get the energies and activities of people if they had  
21 a connection to the institution.

22 Q. Yes. You have touched on the energy and the activity.  
23 Again, is that energy and activity something that has  
24 developed over the last few decades, perhaps?

25 A. Very much so, for a variety of reasons. I think the

1 Charities Act in 2005 was a large part of that, so that  
2 the very specific responsibilities of charity trustees,  
3 which almost all of our school governors are, plus the  
4 Nolan Standards in Public Life, and all sorts of other  
5 areas where there is an expectation.

6 Q. And the Charity Commission advice as well?

7 A. Absolutely. So now you have, probably updated every one  
8 or two years from the charity regulator, their guidance  
9 for charity trustees.

10 Q. Because there may be personal liability in being  
11 a governor and a trustee?

12 A. Yes. In most cases schools, like any other of the  
13 24,000 charities in Scotland, will have insurance that  
14 looks at that.

15 Q. Absolutely.

16 A. And also I think the other big change, which is partly  
17 due I think to the charity test, but also it's just  
18 a more complex world, is boards will more actively seek  
19 to identify needs and skills that they want to have on  
20 the board, whether it's a chartered surveyor if they  
21 have a property project, or they will all have a child  
22 protection lead. Almost all governing boards likely  
23 will have somebody with some medical connection, it  
24 could be the NHS or elsewhere. So, if you like, there  
25 is a professionalisation of boards that has happened as

1 well.

2 Q. That was the point I was coming to. Particularly in  
3 relation to child protection, you will now tend to have  
4 on a board -- or would you just say this just happens as  
5 a matter of course -- some governor who has  
6 responsibility for child protection?

7 A. Yes. And that is not to say that they are a child  
8 protection expert, but they will bear responsibility.  
9 so there is a procedure to be followed through a  
10 governing board.

11 Q. That, presumably, is a very significant change from the  
12 world of 25 years ago?

13 A. Again, in some cases it's a significant change, in some  
14 cases it's a change of denomination, that that person is  
15 more readily identified, rather than being the person  
16 that you would go to for those sorts of issues.

17 Q. Is it not fair to say that perhaps there would always,  
18 in the past, have been an assumption that all was well,  
19 whereas now there is a questioning of whether all is  
20 well?

21 A. I don't think it would have been that lax, I just think,  
22 because there always would have been people who had  
23 an understanding of education and child welfare issues,  
24 but they might not have been designated -- going back to  
25 the issue of a CPC, you might not have been designated

1 as the go-to person. And there may not have been  
2 a formal board structure that said: should we have  
3 a child protection case, this person will automatically  
4 be involved.

5 Q. Is another change in governance that boards tend to  
6 change, in terms of membership, more regularly than they  
7 once did?

8 A. Yes. If you look at any guidance, including that from  
9 the charity regulator, there is -- we ourselves  
10 undertook a governance review ten years ago that  
11 introduced a term limit for the first time. So I think  
12 you would see in almost every organisation a shortening  
13 of the time of anybody on board, just for the sake of  
14 renewal and good governance.

15 Q. Yes, to prevent them from becoming stale or static.

16 A. Yes.

17 LADY SMITH: Just going back to responsibility for child  
18 protection, do any schools now routinely have  
19 a subcommittee of their board of governors that is their  
20 child protection subcommittee or something similar to  
21 that?

22 A. Yes.

23 LADY SMITH: That didn't use to be the case, did it?

24 A. Not comprehensively, my Lady. It would depend partly on  
25 the size of the school, because some of our schools with

1 over 2,000 pupils will have a much more complex  
2 governance system. But there may be -- there are  
3 schools where they will have a specific subcommittee  
4 that will take issues like that off-line, partly so that  
5 other governors don't need to be involved in very  
6 sensitive issues that don't need to be explored in more  
7 public ...

8 It is the same with audit committees or construction  
9 committees or whatever it might be, but in most cases  
10 there will be a very formalised structure now for child  
11 protections in some cases.

12 LADY SMITH: Thank you.

13 MR BROWN: Returning briefly. One further change, I think  
14 you touched on this earlier, the training you provide is  
15 not just for teachers, it's for governors too?

16 A. Yes. It is a session I always take part in every year,  
17 reminding governors, trustees, directors, whatever they  
18 are called in an individual school, that they have all  
19 these responsibilities in terms of being the proprietors  
20 of the school, effectively. But in terms of child  
21 protection, in terms of the "prevent" duties in the most  
22 recent one, you have a legal responsibility to make sure  
23 your children are not lured into extremist action.

24 And you can see it is an important thing I think for  
25 people -- not that I think it happens anymore, if it



1           You will recall her Ladyship asked one of the  
2 witnesses about foreign students and the particular  
3 difficulties -- that it was difficult, putting it short,  
4 for English speakers to understand some of the policy  
5 language of statute and so forth. Is the issue of  
6 having to explain all this to foreign students something  
7 you have come across?

8           A. Never once.

9           Q. Never once.

10          A. I think the interview and recruitment process itself  
11 picks up any issues of language that might be an issue,  
12 and therefore the expectation would be that, obviously,  
13 if you are coming to teach in an English-speaking  
14 country, you are sufficiently fluent.

15          Q. But pupils?

16          A. Pupils, no. Obviously the language used is different in  
17 some cases, and in certain cultures the understanding of  
18 what is wellbeing and what is child protection will be  
19 different. But we have never had to deal with a broader  
20 issue for the sector about a failure to grasp the basic  
21 concepts of what is expected.

22          Q. Thank you.

23                 Turning then to recruitment. I know from your  
24 report that SCIS does not take an active role in school  
25 recruitment, but obviously you provide advice on



1 regulations, PVG, best practice. If we can start with  
2 best practice. Is that something that has changed in  
3 your lifetime in SCIS or is it a change that you know  
4 has taken place prior to that?

5 A. I think the biggest obvious change would be probably at  
6 a more senior level. But it is genuinely a global  
7 business in terms of recruiting senior management and  
8 heads of schools, so therefore there is more involvement  
9 of professional headhunting or recruitment  
10 organisations. There is inevitably a wider net,  
11 therefore, in terms of taking up references and  
12 disclosure checks and things like this.

13 In terms of recruitment within the United Kingdom,  
14 I think probably the single biggest issue is the  
15 requirements for teacher registration, so that you can  
16 be an experienced teacher in England for 20 years and  
17 then come here and be told by the GTCS that you may not  
18 be eligible for registration, which is a -- it is  
19 something that some professional teachers find difficult  
20 to understand.

21 Q. You obviously heard, I take it, the evidence from GTCS  
22 this morning, and it would appear that the numbers of  
23 unregistered teachers in the year running up to the end  
24 of the transition period, if anything, has gone up.

25 A. Yes. This is perhaps a better question for the schools

1 next week, but I understand that actually the figures  
2 that were quoted this morning themselves have already  
3 changed so that, in most cases, any remaining  
4 non-registered teachers will either be as a result of  
5 COVID disruptions, or may be people like sports tutors  
6 who would not normally be expected to be fully  
7 registered in that way.

8 Q. Okay. But the suggestion from this morning's evidence  
9 was there was a degree of flexibility and pragmatism in  
10 GTCS's approach. Was that something that made sense to  
11 you, from your knowledge?

12 A. Yes. I think we could -- we would probably always argue  
13 for more pragmatism, not any easier circumstances, but  
14 there are cases where simply an entirely Scottish system  
15 created for a Scottish profession doesn't always match,  
16 particularly in the boarding sector where you have  
17 people coming in who may combine extracurricular  
18 academic and pastoral roles.

19 There are eccentricities such as -- photography  
20 comes to mind, that you can't take a teaching  
21 qualification in photography in Scotland, so to be  
22 a qualified photography teacher you won't be recognised  
23 in the same way. We have business studies teachers  
24 whose degree in economics is not recognised. So there  
25 are eccentricities in people who have -- in junior

1 schools or schools and vice versa, we have teachers who  
2 are native Spanish speakers who can teach in French,  
3 because they have a degree in French, but can't teach  
4 Spanish. So there are areas where we would like more  
5 pragmatism, it is fair to say.

6 Q. Obviously one of the themes of this week has been  
7 communication between bodies. Are these matters you are  
8 in discussion with GTCS about?

9 A. All the time. So ever since -- and as you know from our  
10 documents, we have been discussing full registration of  
11 the GTC for at least 20 years. But since the Act came  
12 in about prescribed persons in 2014, if I am correct,  
13 obviously we have been working to the timetable as then  
14 was to make sure there was full registration, and the  
15 number, which was never that big to start with, has  
16 reduced at least by half. And in most cases, at least  
17 the ones that make their way up to us, or make their way  
18 through to us, rather, are ones that are best dealt with  
19 in an individual conversation with the GTCS about  
20 the individual circumstances of a particular teacher,  
21 rather than: you don't meet a category and therefore the  
22 system says no.

23 Q. As a first (inaudible), are there going to be teachers  
24 who will suddenly lose employment?

25 A. Interestingly, that was one of our biggest worries at

1 the time. We had obviously no objection to the idea of  
2 full registration. But one of the things, which I think  
3 actually the GTCS did formally say itself, was that this  
4 would not lead to the loss of employment by anybody,  
5 unless of course they were unsuitable to teach in the  
6 first place which wouldn't be the case. So that was  
7 a principle that we have been working to ever since the  
8 means was brought in. But of course, our schools would  
9 never have seen registration in itself as being  
10 a primary guarantee of child protection.

11 Q. Why not?

12 A. Because, one, they would always have been PVG-checked  
13 anyway. There is no child in any of our schools who  
14 would be -- there's no member of school staff who would  
15 be left unaccompanied with a child, unless they were  
16 either registered with SSSC or another professional body  
17 like a nurse, or a teacher who had been PVG-checked, or  
18 indeed a governor, so that simply wouldn't happen.

19 And if you look at the example of England where the  
20 GTCS equivalent was abolished, there is no obvious spike  
21 in child protection issues when there is no formal body.  
22 GTCS registration was -- at the time it was proposed by  
23 the Scottish Government for registration, it was about  
24 accreditation and re-accreditation of teachers, and  
25 that, by definition, doesn't necessarily give you the

1           guarantee you might want in terms of child protection.

2           Q. But from what you have been saying, the PVG scheme does?

3           A. Absolutely.

4           Q. You heard this morning what might be termed "anxieties"  
5           on the part of GTCS. Do you share any of those  
6           anxieties?

7           A. Not on behalf of the schools, no. They would take --  
8           PVG is an absolute essential for all schools. Their  
9           concerns about PVG, or our concerns about PVG when we  
10          sat on working groups for the recent amendment to the  
11          disclosure and legislation are more about how it  
12          applies. For instance, the schools generally would be  
13          keen on a more rolling update of PVG rather than sort of  
14          a three-year period. And there are issues we had to  
15          raise again, because we are often the exception to the  
16          rule: spouses of houseparents, should they be  
17          PVG-checked if children are moving in and around, you  
18          know, domestic ...

19                 So there are things that could be tightened up for  
20          PVG for our purposes, but in terms of the principle of  
21          it, none whatsoever.

22          Q. You heard obviously the exchange with SSSC about  
23          guardians, and the change that has taken place quite  
24          recently in terms of the requirements that they put on  
25          the school. And the point was made that it is only the

1 guardian that would have to be in the PVG scheme, anyone  
2 else in the house would be just a Disclosure Scotland  
3 matter. Is that, for example, an issue that causes you  
4 some concern?

5 A. That was an issue we raised very specifically at the  
6 time the Disclosure Act was being discussed for  
7 revision.

8 Q. But ...

9 A. Well, we will see how the implementation works out. But  
10 at the moment, our schools would not be putting anybody  
11 in guardianship, just as they wouldn't be putting  
12 anybody in a boarding house staff role who didn't have  
13 a PVG check.

14 Q. Last thing about the GTCS. Obviously, and it's just to  
15 reinforce what you have put on paper, you have been  
16 pressing as an organisation for registration for some  
17 time, well in advance of the requirements you have  
18 talked about that closed the gap, as it were?

19 A. Yes, so my predecessor signed a memorandum -- or our  
20 Chair's predecessor signed a memorandum of understanding  
21 I think back in 2000 with the GTCS then, recognising  
22 always that the movement was probably inevitably towards  
23 full registration. Certainly as long as I have been in  
24 SCIS, all the day schools have made it a requirement of  
25 employment. So if you look in the back of the Times

1 Educational Supplement, any job there will have been  
2 advertised as: must be eligible for GTCS registration.

3 The real issue has been boarding and prep schools  
4 where there is this -- you know, you might have a man of  
5 the cloth who comes to teach a particular subject but  
6 would also be a sports teacher or whatever. And there  
7 are exceptions not to the standards, but just to the  
8 profiles of the people involved.

9 And of course in boarding schools, just as with  
10 senior management in independent schools, there are  
11 other responsibilities that teaching qualifications in  
12 the State sector won't cover. So there will be  
13 management responsibilities, there may even be budgeting  
14 responsibilities and there will be pastoral  
15 responsibilities.

16 Q. Could we go back then to the 2015 document, which is  
17 SCI-000000005 at page 64. This is simply -- putting PVG  
18 aside and registration aside -- this is simply the issue  
19 of how you recruit staff, simpliciter.

20 "Schools need to ensure their policies and  
21 procedures are robust alongside the PVG scheme to ensure  
22 best practice is in place to safeguard and protect  
23 children and vulnerable adults. Schools' recruitment  
24 and selection procedures should include ..."

25 Before we go into what in 2015 and any update that

1           you care to give, would you agree that, going back  
2           perhaps certainly to the pre-SCIS era, if you know about  
3           this, recruitment was a rather more opaque process than  
4           it now is?

5           A. Pre-1978, I couldn't speculate. But as I say, there was  
6           legislation in place since, as I understand it, at least  
7           the 1930s, that would have put an expectation on those  
8           employing adults to work with children, that they were  
9           at least being scrutinised in an appropriate way in  
10          terms of their employment.

11          Q. We may hear, for example, that teachers were  
12          transferring from one school to another --

13          A. Yes.

14          Q. -- and what would now be considered entirely relevant  
15          information was not being shared, going back in time.  
16          If you have any knowledge, would that surprise you, or  
17          did you simply not know?

18          A. I think in the lack of a -- as I understand it, PVG and  
19          vetting and barring down south came at least in part  
20          from the Soham murders in 2002. Prior to that point,  
21          there was no national system to check people in that  
22          respect, and in every walk of life I would consider it  
23          to be an oversight, yes.

24          Q. But as well as that, how you go through your procedures,  
25          how well they are actually implemented even if they



1           exist, laxity can breed problems?

2           A. Certainly if there is a responsibility left on the  
3           member of staff themselves, the applicant --

4           Q. Yes.

5           A. -- then inevitably if you have something to hide, then  
6           you will be the one who wants to hide it.

7           Q. Or if you get a reference and you just accept it without  
8           question?

9           A. Yes. And that -- again I can't speak for the past, but  
10          for instance I think I quoted in my paper one example  
11          where a school rang me up, more because they were  
12          uncertain who else to turn to, saying they had followed  
13          up a reference that came from Australia, I think it was,  
14          and they didn't know who else to take this to, because  
15          they were concerned that the reference was negative, but  
16          there was nothing in terms of British legislation that  
17          said that this person needed to be controlled, because  
18          they had committed no crime and nothing had been  
19          registered on disclosure or indeed the English system.

20          In the event, I took that eventually to the police  
21          and said that this is somebody that the school is  
22          concerned about. They have not taken up the -- well,  
23          they have taken up the reference and therefore not  
24          offered the post. But I was concerned that in those  
25          days, somebody could simply move elsewhere and the same

1 process could happen again. So I wanted to make sure  
2 that if this was somebody who had been accused of  
3 something in the past, which they were, that that was in  
4 some way book-marked.

5 Q. Yes. The point there I suppose is that you are  
6 following up thinking ahead to try and prevent things.

7 A. As was the head who followed up with me.

8 Q. Absolutely. The point was though, perhaps for our  
9 purposes, a negative reference had the desired effect --

10 A. Absolutely.

11 Q. -- because it was taken and raised in the mind of the  
12 person who was employing?

13 A. Yes. But it showed one aspect of relying solely on PVG,  
14 in that PVG would not have picked up that issue. And  
15 I think Brexit was mentioned this morning. The  
16 breakdown in systems of checking background potentially  
17 from any one country to another is always going to be  
18 a problem.

19 Q. All right. But looking back to the guidance that you  
20 have in front of you:

21 "Schools' recruitment and selection procedures  
22 should include detailed job descriptions. They should  
23 be specifically designed for the posts in question.  
24 Clear, detailed job and role descriptions and  
25 responsibilities ..."

1 Et cetera.

2 "The job description should contain a clear remit  
3 against which candidates' qualifications can be checked.

4 "Identity checks and verification of documents ..."

5 At the end of that:

6 "The overriding responsibility for schools is to  
7 protect children or vulnerable adults in their care and  
8 genuine applicants should not be deferred by being  
9 scrutinised."

10 So it's emphasising not to take things at face  
11 value, perhaps?

12 A. Absolutely, and when it comes onto the self-declaration,  
13 making the point that, if your circumstances change in  
14 any way that may not be immediately germane to the  
15 school -- I can't speak for every school off the top of  
16 my head in terms of their application procedure, but  
17 most will have some form of words that says "If you are  
18 convicted or charged or cautioned, that is something you  
19 need to notify the school about."

20 Q. Then we move on to references:

21 "Candidates should provide full employment and  
22 unemployment histories, with names and address of  
23 present and past employers. Candidates should provide  
24 the names and addresses of at least two referees, of  
25 which one must be their current employer. Employers

1 should always approach an applicant's present employer  
2 and should reserve the right to approach any previous  
3 employer (or line manager) about a shortlisted  
4 candidate's character and performance before interview."

5 All of that of course is talking about previous  
6 employment. What about references away from employment  
7 history, what might be described as non-employment  
8 history or character?

9 A. For instance, if somebody is applying with knowledge or  
10 experience in a particular sport or a particular  
11 extracurricular activity which they are making a claim  
12 about, that is something that would be obviously  
13 followed up, whether it was through the regulatory body  
14 for that sport or through whichever organisation,  
15 whether it is the SCAD team or whatever it might have  
16 been. Hence the point about unemployment histories;  
17 gaps or non-employment parts of CVs will also be  
18 scrutinised.

19 Q. Is that why you go on to say:

20 "Written references should be requested on the basis  
21 that referees have the job description and personal  
22 specification and they are encouraged to comment frankly  
23 on the shortlisted candidate's strengths and weaknesses  
24 in relation to their suitability to work with children  
25 as distinct from their ability to teach English."

1 A. Absolutely, and this was in part put together on  
2 national child protection guidance but also on  
3 employment law provision, so that we made sure the two  
4 fitted.

5 Q. That was what I was coming on to. Is there a tension  
6 about what you can ask?

7 A. I haven't come across that tension, no. I think there  
8 is expectation that schools have the right to ask frank  
9 questions of people who are going to be put in a  
10 position of responsibility.

11 Q. So far as SCIS is concerned, are there any limitations  
12 on what could be asked?

13 A. I think there are protected characteristics which it  
14 wouldn't be appropriate to ask about. But, beyond that,  
15 if you are asking somebody -- or if somebody is asking  
16 to be put in a position of responsibility for children  
17 under 16 at least, then I don't think there is -- within  
18 what would be considered reasonable questions, I don't  
19 think there are any boundaries to that.

20 Q. Then it goes on:

21 "Where necessary employers should ..."

22 Rather than "must":

23 "... explore any aspects of references by telephone  
24 with a current or past employer."

25 Has that changed at all?

1 A. Not to my recollection, no. Again, that was more just  
2 making the point that simply getting a one-line  
3 reference from somebody and saying, "Yes, they used to  
4 work here" is not necessarily always what you want, and  
5 recognising, not least through employment law, that some  
6 employers don't always want to put down on paper what  
7 they have to say and, therefore, a phone call might be  
8 a more convenient way of doing that.

9 Q. That is what I was wondering. Because it may be that  
10 that very thing should be a matter of concern?

11 A. Absolutely, and this is again the problem. If you have  
12 a total reliance on PVG but there is no conviction there  
13 but there is a concern or an issue that has been raised,  
14 then it is understandable that schools should be able to  
15 ask those kinds of questions.

16 Q. I asked you if you were content with the PVG scheme and  
17 you indicated that you were.

18 A. I said I was content with its existence. As I say,  
19 I think there are things that could be increased.  
20 I think it could be extended in terms of who is brought  
21 into it, but also I think it is -- and this will change  
22 in part through the digitisation of the process at the  
23 moment, but it needs to be a more responsive programme  
24 I think rather than simply being a snapshot of any one  
25 person's life history at any one point. It needs to be

1 something that is more regularly updated.

2 Q. It may be, and I think this may reflect -- because you  
3 don't have leave to appear status, is that correct?

4 A. Yes.

5 Q. You may not have seen some of the documents that we have  
6 seen, in particular the response from Disclosure  
7 Scotland, which may address some of these issues.

8 LADY SMITH: Just to tease that out a bit, John. What we  
9 have at the moment is the "snapshot", as you call it,  
10 and that is taken once every three years, is it?

11 A. Three years.

12 LADY SMITH: Three years your current membership lasts. But  
13 obviously all sorts of things could happen in that  
14 three-year period, and what you are looking to is  
15 finding a way of the system being updated if anything  
16 occurs that is relevant. How do you see that happening?

17 A. My Lady, I don't know exactly how it could work but it  
18 ought not to be beyond the wit of society to be able  
19 to -- if there are formal charges or convictions, for  
20 those in some way to be entered onto the record and that  
21 to trigger a notification to the current employer,  
22 rather than leaving it up to that employee, although  
23 that is covered also in their contract, to walk in and  
24 say, "This happened at the weekend and I'm now under  
25 caution", or whatever.

1 MR BROWN: Are you aware of the listing and barring option?

2 A. Yes.

3 Q. Is that not perhaps the ongoing assessment by

4 Disclosure Scotland that, if material is revealed to

5 them, presumably in all likelihood from the police,

6 including non-conviction material, that that, if

7 appropriate, may lead to listing and barring, at which

8 point there would be a triggering of sharing?

9 A. Yes. I think in a lot of these sort of cases if schools

10 have any reticence at all it is a reticence about being

11 discouraged almost to report simply because they find

12 the process difficult and not necessarily always

13 responsive. So you could have the situation where

14 a report was made to the police about a situation with

15 a minor which actually resulted in no action, but the

16 discouragement for the school, indeed for the parents

17 there, is that you may end up with a child in

18 a situation where they are being asked questions which

19 perhaps weren't appropriate to the allegation made by

20 another pupil or whatever. So it's a matter of the

21 responsiveness of the system. We have had situations

22 where -- and this is no comment on Police Scotland, but

23 we've had situations where vulnerable people have

24 been -- their identity has been revealed to newspapers

25 before their classmates have been informed of something



1           that might have happened. There are things that need to  
2           be controlled in that respect.

3           LADY SMITH: There is also the issue of identification of  
4           the person against whom allegations are being made  
5           where, at the end of the day, the allegations are  
6           withdrawn or are not taken any further and yet their  
7           name has been in the media in the meantime.

8           A. Indeed, and we have worked with Education Scotland over  
9           the years and their reform of the framework of  
10          inspections and they have resisted every time the  
11          encouragement of some organisations to put the right to  
12          individual complaint in there because their view was the  
13          GTCS is there to look at fitness to teach and the  
14          Care Inspectorate is there to look -- or the SSSC is  
15          there to look at other issues. But if you go back to  
16          the BSA Charter and one of the things they proposed,  
17          which I think all of our schools openly support, is  
18          mandatory reporting, but the problem with mandatory  
19          reporting, if it is not done in a sensitive way, is  
20          names are out there before things -- and there is a case  
21          I can refer to, it's public knowledge, of a teacher who  
22          was suspended without prejudice on the basis of a single  
23          allegation and, before the school had the chance to even  
24          begin to investigate, that teacher had taken their own  
25          life. And was subsequently proved completely innocent.

1 LADY SMITH: Yes, it could be devastating. But it must be  
2 very hard at the end of the day to devise a system that  
3 doesn't involve an element of judgment at some point;  
4 judgment on the part of the school, judgment on the part  
5 of somebody who is running an extracurricular  
6 organisation, persons involved -- or judgment by the  
7 person themselves as to whether the circumstances are  
8 such that they ought to bring it to their employer's  
9 attention.

10 A. Yes.

11 LADY SMITH: I don't see how you can devise black and white  
12 rules, or at least at the moment I don't. It is very  
13 difficult.

14 A. No, my Lady, it is still an employment situation in the  
15 way that teachers are brought on board. As I say, the  
16 schools' ultimate priority is what keeps children safe  
17 ultimately, more than what results did they get in their  
18 exams or anything like that. But, as history  
19 demonstrates, you can have all the prescriptions  
20 in place and that still may not quite prevent something  
21 awful happening. But the schools know where they start  
22 and where they finish in terms of their  
23 responsibilities, both to the children but also to their  
24 employees.

25 MR BROWN: A common theme in what you have been discussing

1           seems to be there should be processes that maintain  
2           anonymity for all concerned?

3           A. I think up to a certain point. I think it is inevitable --

4           Q. At the initial stages --

5           A. Yes.

6           Q. -- until when one gets to a rather more positive --

7           A. And that would -- anonymity both in terms of names but  
8           also in terms of situation. I can think of another  
9           example of a school where allegations were made against  
10          a group of children, all under 16, all of which turned  
11          out to be very minor but were on the front page of  
12          a tabloid newspaper before any action was taken. There  
13          needs to be a protection -- if you are talking about  
14          child protection, child protection needs to be  
15          preventing children from being effectively criminalised  
16          in the eyes of the public before a process has even  
17          begun.

18          Q. A common theme, taking it on then, is both anonymity and  
19          the press?

20          A. Yes, and inevitably our schools recognise that their  
21          profile is perhaps not the same profile as every other  
22          school in Scotland. You will never see a press article,  
23          indeed there were ones earlier this week, that are not  
24          prefaced by "so and so's former school". That is just  
25          the nature of things.

1 LADY SMITH: Mr Brown.

2 MR BROWN: I am obliged, my Lady. You have also heard me  
3 this week asking all the witnesses broadly what they  
4 would wish to change if it could be changed. You have  
5 perhaps touched on some of that now. You are perhaps in  
6 a unique position to tell us what you think about what  
7 might be done to improve.

8 A. I think in a way it has been brought up by somebody else  
9 last year. James Martin did a report into the New  
10 School Butterstone, which was an additional support  
11 needs school, independent school, that closed two years  
12 ago and one of his recommendations -- there were two  
13 recommendations: one that all the bodies involved in  
14 a school like that, which is pretty much the same bodies  
15 that would be involved in any school, should speak to  
16 each other more regularly. There should be a more clear  
17 line of delineation of who did what. The GTCs is not  
18 a Schools Inspectorate. The Education Scotland is not  
19 an employment organisation. But also that there should  
20 be an understanding for people on the outside of how  
21 these all fit together, and I think he suggested  
22 something that we have done for ourselves for the  
23 complaints procedure within independent schools.  
24 Effectively a flowchart; how do people on the outside  
25 understand who is responsible for these different areas?

1           Because for much as we have a very, very active and  
2           useful relationship with Alec O'Neill, he is, as you  
3           have heard, one person and it is a difficult task to be  
4           the ombudsman, barring all others. Nowadays people, if  
5           they do not entirely understand what is expected of  
6           them, will as a result go to everybody. So quite often  
7           we have a situation where a parent or somebody may  
8           contact the GTCS, Education Scotland, the  
9           Care Inspectorate, possibly the SSSC, certainly OSCAR,  
10          and conceivably their MSP and MP as well, and the  
11          Registrar. So there ought to be a situation where it is  
12          a more obvious line of responsibility there. I think  
13          that is probably the obvious one.

14                 In terms of the bilateral relations, I don't see any  
15          primary issues there. We appreciate that for bodies  
16          like the Care Inspectorate, especially in the last  
17          12 months, they have a responsibility that is far beyond  
18          boarding schools. But that is why it's important to  
19          have, as Education Scotland talked about earlier this  
20          week, link inspectors who have an understanding of how  
21          these schools operate, or Care Inspectorate inspectors  
22          who have an understanding of how the boarding world  
23          operates, which is different from secure units or  
24          something like this. So that level of -- I think  
25          Mr Martin captured that quite well in his submission.

1 Q. Communication, collaboration, and also a recognition,  
2 because I am interested about the scattergun approach of  
3 issues being raised, the tone of some of the evidence  
4 this week is people are determined to know things. They  
5 want to be told. Do you think some bodies don't need to  
6 be told as much as they think they do?

7 A. Yes, I think there is the -- I don't mean over-reporting  
8 in terms of reporting issues, but there is a danger of  
9 over-reporting to too many organisations, and that runs  
10 the risk that people might back off. As I said, there  
11 may be a reluctance to report simply because it is too  
12 involved a process and too many people get involved.  
13 Because on paper at least for us, if we are explaining  
14 things -- if I have an applicant for a headship who  
15 phones me up and says, "Explain the system in Scotland  
16 to me", it is quite easy for me to do, but it may not  
17 necessarily look like that once they are in the chair.

18 So that would be I think probably the key part. But  
19 I stand on the shoulders of my predecessors in terms of  
20 getting a foot in the door of all the key bodies in  
21 Scotland, and COVID has demonstrated this; we have all  
22 the engagement we need, the problem with the sector, if  
23 it's a problem, and it's not a problem, is that, by  
24 being only 4% or 5% of the school sector, it is  
25 inevitable that it is overlooked in certain ways and,

1 unlike down south, there is no state boarding. There  
2 are state hostels, a small number, but there is no  
3 understanding of that as a mainstream pastoral issue.

4 Q. So the information you have just been talking about,  
5 a flowchart of what one does in certain circumstances,  
6 who one contacts, presumably that would need agreement  
7 from everyone?

8 A. Yes, but I would like to think that most of that  
9 information should be clear at the moment. It is just  
10 a case of making sure that the distinctions are there in  
11 terms of -- there will be people who don't know what the  
12 SSSC is. There will be people who don't appreciate  
13 that, to be a teacher in any of our schools, you have to  
14 be PVG checked, and quite often we have to talk people  
15 through that just so they understand.

16 Q. Are you the person to prepare the flowchart?

17 A. I think we have one partially prepared already, but --

18 Q. I am being quite serious. Consistently people speak  
19 positively about the engagement of SCIS. You seem  
20 to be on one view the centre of -- going back to the  
21 circle ...

22 A. I suppose it is true that, if we didn't exist, you would  
23 probably have to create us to a certain extent, in that  
24 state schools, if you look at Local Authority schools --  
25 again look at the COVID situation, they have local

1 authorities to fall back on, on HR issues, on child  
2 protection issues, on public health issues. Our  
3 schools -- the reason they have stressed the word  
4 "independent" rather than "private" is they are not  
5 private businesses, they are autonomous schools. The  
6 upside of autonomy is all the changes you can have in  
7 curriculum and extracurricular activity, focused  
8 learning, whatever it might be, but the downside is you  
9 are autonomous and ultimately all of this falls to you.  
10 So in every respect we serve at the pleasure of the  
11 schools to try and help them through that process.

12 LADY SMITH: Are you also a safe place for them to take  
13 their anxieties, their worries, their confessed  
14 ignorance that they may not want otherwise to publicise?

15 A. At times, yes. Inevitably, as with any professional  
16 world, there are certain issues that people like to  
17 communicate or question or just double-check in their  
18 own right, and asking their equivalent in other schools  
19 might be seen -- not as a weakness but there is  
20 inevitably an awkwardness when the schools are, to one  
21 extent, not entirely but to one extent, in competition  
22 with each other. So, yes, I have been a listening post  
23 for a few cases, whether recruitment, whether parental  
24 concerns or whether just school strategy, "Where do we  
25 go from here?"



1 LADY SMITH: Thank you.

2 MR BROWN: Presumably in that sort of scenario, if, having  
3 been the listener, something relevant is -- I take it  
4 you would then share more broadly, using them as a good  
5 example -- we have heard about using schools as  
6 exemplars of good practice, presumably you do the same  
7 in terms of exemplars of problems.

8 A. As I have this afternoon with those cases to do with  
9 anonymity. Absolutely. And they are very few and far  
10 between but, as with most things, they are not issues  
11 that haven't been experienced by somebody before. But  
12 it is -- in the same way I will get phoned up by  
13 recruitment firms saying, "Who could you suggest to be  
14 a good new head of X school?" or "Who would be a good  
15 bursar?" quite often I will have the existing head  
16 saying "I am interested in this" or whatever. And we  
17 have at times offered references for heads as well. So  
18 there is very much a listening and advisory role there.  
19 But, again, just as with parents, just as with teachers,  
20 just as with support staff, if a member of senior  
21 management came to us with an issue, we will always go  
22 through where appropriate "You need to report this today  
23 to ..." Police Scotland and/or the Registrar and/or  
24 the GTCS or whoever, just to double-check that that is  
25 what is happening, which it usually is.

1 Q. We are back to the flowchart?

2 A. Back to the flowchart.

3 Q. When will it be finished?

4 A. 5 o'clock by the sound of it.

5 MR BROWN: When it's finished, perhaps you might share.

6 My Lady, those are all the questions I had.

7 LADY SMITH: Thank you very much. Does anyone have any  
8 outstanding applications for questions of Mr Edward?

9 (Pause).

10 No. I hear silence, John. At this time on a Friday  
11 afternoon you are probably glad of that. Thank you very  
12 much for coming along today, but before that for all the  
13 work that has gone into the paperwork that you have made  
14 available to us. It is tremendously helpful to my work  
15 here in this section of our boarding school case study  
16 and beyond. So thank you for that, and I am now able to  
17 let you go back to that flowchart.

18 (The witness withdrew)

19 LADY SMITH: Yes. That is us for today then, is it,

20 Mr Brown?

21 MR BROWN: My Lady, that is the end of this week. We start  
22 again on Tuesday with Professor Paterson, who will be  
23 speaking briefly about research he has done on school  
24 surveys. By his own acknowledgement, it is relatively  
25 limited because the data is limited, but he will be

1 speaking to that and, once he is complete, we will move  
2 on to Helen Harrison, the headmistress -- or the  
3 headmaster of Fettes.

4 LADY SMITH: Thank you very much. Thank you all for your  
5 interest and attendance this week. Have a good weekend  
6 and I will see those of you who are coming for Tuesday's  
7 evidence on Tuesday. Thank you.

8 (3.55 pm)

9 (The Inquiry adjourned until 10.00 am on Tuesday,  
10 23 March 2021)

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