

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Tuesday, 30 March 2021

(10.00 am)
LADY SMITH: Good morning and welcome back to phase 1 of our case study looking into the provision of residential care at boarding schools in Scotland.

As I think was mentioned on Friday, we have another two days of oral evidence, and I understand we have a witness ready to start today.

MR BROWN: My Lady, we have Jonathan Anderson who is the headmaster of Merchiston this morning. (Pause).

LADY SMITH: Good morning. Could we begin by you taking the oath, please.

MR JONATHAN ANDERSON (sworn)

LADY SMITH: Please sit down and make yourself comfortable. Don't let me rush you, just get yourself comfortable with whatever you want to have in front of you. It may help you to know the red folders have the documents that so helpfully the school have already provided to us. You will also see documents coming up on screen.

The only other question I have for you at the moment is how would you like me to address you? I am happy to use Mr Anderson, or your first name if you feel more comfortable with that.

A. Jonathan is absolutely fine, my Lady.

LADY SMITH: Jonathan, I will hand over to Mr Brown and he

1 will take it from there. But please let me know if you
2 have any questions, it is important you are as
3 comfortable giving your evidence as possible.

4 Mr Brown.

5 Questions from MR BROWN

6 MR BROWN: My Lady, thank you.

7 Jonathan, good morning. Just to carry on from where
8 her Ladyship started, you have two red folders in front
9 of you, they contain parts A and B in one, and then
10 parts C and D, which is the school's response to the
11 questions sent by the Inquiry itself.

12 You also have a large folder in front of you. Does
13 that duplicate --

14 A. It does, yes.

15 Q. I thought it might. For triplicate, you will also see
16 some pages appearing on the screen in front of you, so
17 whichever you prefer. It may be that the screen is more
18 straightforward.

19 Can we start by just talking about you for a moment.
20 You are now the headmaster at Merchiston, and I think
21 you began there in August 2018, is that right?

22 A. That is correct.

23 Q. But you have a background in the boarding sector?

24 A. I do, yes. I started teaching in 1997, and my first
25 post was at Christ's Hospital School in Sussex and that

1 is a full boarding school.

2 Q. And I think you were from 1998 an assistant housemaster
3 there?

4 A. That is correct, yes.

5 Q. And then you became a housemaster in 2003?

6 A. That is right.

7 Q. Thereafter you spent in total 14 years at Christ's
8 Hospital but then moved to become senior deputy head at
9 Worksop College in Nottinghamshire which is another
10 boarding school?

11 A. That is right.

12 Q. Were both schools, in comparison with Merchiston, of
13 a similar scale and type or were there subtle
14 differences?

15 A. Subtle differences, I suppose. Christ's Hospital was a
16 full boarding school, so all of the students boarded,
17 and it was co-educational. Worksop College was a day
18 boarding school, much like Merchiston, although it was
19 co-educational. Merchiston always stays a day boarding
20 school with only boys.

21 Q. Okay. Coming from a career in England, obviously coming
22 north to work in Edinburgh, you would have to comply
23 with the requirements of GTCS. Was that
24 straightforward?

25 A. Not altogether. I had an unbroken teaching career

1 teaching geography, and when it came to getting my
2 registration I was initially placed on provisional
3 registration, because the GTCS didn't feel there was
4 a complete enough record of my teaching, so that
5 required further references to be sought by my head at
6 the time. It was resolved, but it did take a bit of
7 toing and froing.

8 Q. All right. That was after 21 years of being a teacher
9 in England?

10 A. Yes.

11 Q. All right. With a degree from Queens in
12 Northern Ireland?

13 A. That is correct.

14 Q. Was that the cause of the slight --

15 A. I think the cause of the problem was my PGCE. When
16 I completed my PGCE I moved then to qualified teacher
17 status after a year of service, there was no formal
18 process to recognise your first year of service. That
19 now has changed but at that point it wasn't in place, so
20 GTCS I believe sought to get as much evidence as they
21 could for my teaching.

22 Q. PGCE, just translate.

23 A. Sorry, Postgraduate Certificate in Education.

24 Q. Touching still very briefly on GTCS, obviously on Friday
25 of the first week of evidence we heard figures given by

1 GTCs about their understanding of how many teachers at
2 the various schools we are interested in remained
3 unregistered, the cut-off point being 1 June this year.
4 Am I right in saying the position as we stand today is
5 there are no unregistered teachers at Merchiston?

6 A. That is correct.

7 Q. Thank you. If we can touch briefly then with a picture,
8 which is INQ-000000362. That is absolutely fine, just
9 keep that, so that's INQ-000000364.

10 That I think is a picture of Merchiston?

11 A. It is indeed, yes.

12 Q. Which is obviously in Colinton in Edinburgh, the leafy
13 suburbs, and it's quite a large campus by the looks of
14 it?

15 A. It is indeed, yes.

16 Q. Merchiston has always been known as a rugby school, is
17 that fair, reflected by the number of rugby pitches?

18 A. That is fair to say. We are a little bit more than just
19 rugby, but certainly we are very proud of what we have
20 achieved in rugby.

21 Q. I think perhaps a focus on rugby, as we will come to,
22 has diminished over the years. There has been an
23 expansion to other things?

24 A. Indeed.

25 Q. We see at the centre with the white tower, is that

1 the original building?

2 A. That is the main school, yes.

3 Q. In the middle right. And again just in terms of the
4 location, it is in Colinton. The school buildings we
5 see, there is a white building nearest to us, are those
6 relatively new?

7 A. Yes, that is the sixth form boarding house,
8 Laidlaw House, which was built in 2009.

9 Q. And then behind Laidlaw House we see the more original
10 buildings which circle around the main school building,
11 is that fair?

12 A. That is right, that is the other boarding house blocks.

13 Q. The one building I think we can't see particularly well
14 is Pringle, which is the junior school, is that right?

15 A. That is right, yes, it would be to the rear of the
16 picture, further down the drive towards the housing at
17 the top of the picture there.

18 Q. Because we should understand Colinton Road is where you
19 gain access, and as one comes into the school there is
20 a drive up to the main building, but near the entrance
21 is Pringle. It's physically distant, is that correct?

22 A. That is right, yes. It's about 200 metres away from the
23 main school.

24 LADY SMITH: I do not think it is actually Colinton Road
25 that your access is from, is it?

1 A. It is, my Lady.

2 LADY SMITH: It's Colinton Road itself?

3 A. Yes, it's Colinton Road at that point. The school
4 address is 294 Colinton Road, my Lady.

5 MR BROWN: But I think, as her Ladyship points out, the
6 barracks are on the other side of the road?

7 A. Absolutely.

8 LADY SMITH: You have driveways with access from --

9 A. From Colinton Road we have a driveway access, and then
10 from Paties Road at the rear of the school down by
11 Colinton Dell.

12 MR BROWN: Could we touch briefly on 362, please -- just
13 slightly more removed. Top left we can see the parade
14 ground of the infantry barracks, and that is
15 Colinton Road that one sees running to the right. Can
16 you see Pringle just at the very top of that photograph?

17 A. Yes, you can. Where the cursor is now, that is
18 Pringle House. And if you go a little bit to the left,
19 the Pringle Centre, that is the -- sorry, beg your
20 pardon, to the right towards the tennis court, the
21 Pringle Centre, that is the teaching block for the
22 youngest years.

23 Q. Thank you.

24 You have, as we have already discussed, two folders,
25 and can I just express the thanks of the Inquiry because

1 clearly a considerable amount of effort was put into
2 responding because the responses are particularly full,
3 and that includes also -- we will be touching on parts
4 A, B, and C, A being broadly background, C being
5 policies and B being acknowledgement of things that have
6 perhaps worked less successfully than you would wish
7 them to be. Part D is focusing on actual abuse, and
8 that is something we will return to in the second phase
9 of the Inquiry. You understand that?

10 Is it fair to say one of the reasons, and again we
11 touched on this in the first week, is Merchiston as
12 a school I think had to look at itself fairly carefully
13 because of events in the mid-20-teens where, we have
14 already heard, the Care Inspectorate conducted
15 an inspection which, after a run of very good results,
16 suddenly turned on their head. That in due course led
17 to conditions being put in the school by the Government?

18 A. That is right, yes. I think throughout the 2010s the
19 school reflected very, very carefully on past events and
20 indeed its current practice and continued to develop
21 best practice where it could.

22 Q. Again, and this is something that we will come to in the
23 second phase, there was a police inquiry as part and
24 parcel of that. So as distinct perhaps from other
25 boarding schools, Merchiston has had to look at matters

1 before the Child Abuse Inquiry even first contacted
2 them?

3 A. Yes, I think our submission is as much reflection as it
4 is anything else.

5 Q. All right. If we may, we will start with some
6 background, and I know you have been following the
7 hearing so you will understand what is likely to be
8 coming. Could we have part A, please, which is
9 MER.001.001.0247, and page 2 of the report. Obviously
10 this sets out the school was first founded I think in
11 1833, though I think as a boarding school with 15 pupils
12 initially?

13 A. That is correct.

14 Q. And at a different location?

15 A. Yes, it was in Merchiston Tower in Merchiston.

16 Q. I think in the 1850s it began to take day boys?

17 A. That is correct.

18 Q. And perhaps the most profound change was the move to
19 Colinton which was in the 1930s?

20 A. That's right, yes, the school opened on the Colinton
21 site in 1930.

22 Q. Obviously over time it has developed considerably. If
23 we go to page 28 of this document and to the bottom half
24 of the document, we can see in terms of numbers --
25 page 28, please. Thank you. If we go to the second

1 half under the figures of establishment, it has been set
2 out very faithfully all the way through. So in 1930
3 there were 229 boarders and 26 days. Obviously through
4 the 1930s that diminished. If we go over the page and
5 run through boarding from 1939 onwards, 180. By the
6 time we get to 1979, at the foot of that list, it has
7 gone up to 346, and one day has been changed to 50 day
8 pupils.

9 Then more recently, on the following page, bringing
10 things more up-to-date, in 1980, 313 boarders, 61 day, a
11 total of 374. But by 2014 we have got 300 boarders and
12 173 day pupils, so the school roll has increased fairly
13 significantly but largely it's day pupils?

14 A. That would be right, yes.

15 Q. As things stand now, are those numbers still broadly
16 consistent, 300 and 170-odd?

17 A. We are a little smaller today, so we are a school of 379
18 with 230 boarders.

19 Q. So the boarding has gone up?

20 A. 230 boarders --

21 Q. 230?

22 A. Yes. So the proportions are roughly the same but the
23 overall roll has dropped.

24 Q. We have been hearing from the other schools that that
25 seems to indicate a trend away from boarding certainly

1 in the younger years, is that mirrored --

2 A. That is right, yes. The proportion of boarders in the
3 junior school is about 10% boarding, 90% day, and that
4 flips on its head when you get to the sixth form, so 90%
5 boarding, 10% day.

6 Q. Distinct from the other schools, Merchiston remains
7 single sex?

8 A. It does. It is, sorry.

9 Q. In terms of the make-up of the pupils, do they tend to
10 be Scottish or are they international also?

11 A. About 20% of our school roll is international and the
12 remainder is broadly Scottish, but we do have some
13 students who board with us from the North of England.

14 Q. The international element, is that something that has
15 grown and, if so, since when?

16 A. We have had international students in the school for
17 some time. The proportion of boarders that are
18 international has grown, and I would say that is
19 probably from the late 1990s through the 2000s.

20 Q. Again, we have heard this question asked: in terms of
21 language, presumably -- the other schools have been
22 talking about there has to be a language assessment so
23 you can speak English. Put simply, is that the same at
24 Merchiston?

25 A. It is one of the conditions of a tier 4 student visa,

1 that the student has to demonstrate their ability to
2 communicate.

3 Q. All right. Thank you. You mentioned that in 2009
4 Laidlaw House was built, and this is a change in a sense
5 in the approach of the houses in Merchiston, because
6 this -- does this introduce a slightly new approach, or
7 did in 2009?

8 A. Certainly at the senior end of the school. It combines
9 two year groups. So the lower sixth and the upper sixth
10 are in Laidlaw North and South, two separate houses, but
11 they are mixed year groups. The other year groups are
12 arranged horizontally, so each house represents a year
13 group, and each year that year group moves into a new
14 boarding house.

15 Q. So there is a progression through all the boarding
16 houses as one grows up in the school?

17 A. That is right.

18 Q. I think on page 31, the next page from the one we are
19 on, we see details of that. If we go down, it reads:

20 "The school has a horizontal house system. Boarding
21 houses can be one age group."

22 And we see over time there has been some movement in
23 terms of an increase in houses, is that fair?

24 A. That is right, yes.

25 Q. In 1930 to 1967, there were four houses, Chalmers West,

1 Chalmers East, Rogerson East, Rogerson West, covering
2 the different age groups, but then from 1967 to 1977 we
3 have the introduction of Pringle, which was for a third
4 form, a younger start?

5 A. That is right, yes.

6 Q. And as we see, that was for the age group of 12 to 13,
7 and progressively that age group has diminished with
8 people starting younger. So by 1977 to 1986, Pringle is
9 11 to 13 year olds. The same in 1986 to 1994. By 1994
10 to 2000 it has then dropped to 10 to 13 year olds. And
11 by 2001/2002, 8 to 12 year olds. So there has been some
12 movement in Pringle, boys have been getting younger?

13 A. They have, yes.

14 LADY SMITH: You mentioned Laidlaw. Who is Laidlaw House
15 named after, the two Laidlaw houses?

16 A. Named after a benefactor, Lord Laidlaw.

17 LADY SMITH: If you take something like Chalmers, that is
18 the founder?

19 A. The founder.

20 LADY SMITH: And other significant people associated with
21 the school, I think?

22 A. That is right, former headmasters, my Lady.

23 LADY SMITH: Thank you.

24 MR BROWN: Just continuing the theme, September 2014, which
25 is the last entry, by that stage Pringle House for the

1 juniors is covering quite a wide range, 7 to 13. What
2 is the position now?

3 A. It is the same. So Pringle is a vertically arranged
4 house, for want of a better way of putting it. At the
5 middle school we have horizontal houses, and then in the
6 sixth form we go back to a vertical boarding house
7 albeit for two years.

8 Q. Do you know why the horizontal approach was followed at
9 Merchiston?

10 A. I don't know why with reference to Merchiston. I do
11 know that other schools have horizontal boarding houses,
12 certainly Stonyhurst has horizontal houses. So it may
13 have been a feature of boys' houses -- boys' schools,
14 sorry, I don't know. Certainly my previous experience
15 at Christ's Hospital and Worksop, the boarding was
16 arranged vertically.

17 LADY SMITH: What is the thinking behind the two
18 arrangements? Putting to one side I suppose the final
19 year at school, where there might be strong arguments
20 for horizontal to help prepare students for leaving, but
21 lower down what is the thinking behind it?

22 A. I suppose it allows us to focus on age and stage,
23 my Lady. So all of the boys are in one house, they are
24 sharing that same educational experience at that same
25 time, and you can focus on their needs as a year group.

1 You also have a broader range of the year group within
2 that house. In a vertical house you would divide up
3 your year and you would have small pockets of one year
4 group spread across a number of houses. With one year
5 group in one house, everybody is able to find their
6 friendship niche in the friendship group.

7 One of the negatives of a vertical arrangement is if
8 you are in a house with a particularly small year group
9 and you don't get on with your friends then you can be
10 isolated, but if you are in there with your entire peer
11 group there is much more opportunity for you to find
12 that right friendship group.

13 LADY SMITH: Yet if you were living at home and you had
14 siblings, your home life would involve children of
15 different ages.

16 A. It would. We have prefects that live in the houses, so
17 the boys do have other influences of older boys. They
18 are in the boarding house.

19 LADY SMITH: Thank you.

20 MR BROWN: I think at page 68 of part A at the foot where
21 the question is:

22 "What is the nature of the culture of the
23 organisation?"

24 One sees at the very bottom paragraph:

25 "The unusual horizontal house system made

1 inter-house rivalry out of the question and helped to
2 mitigate the possibility of bullying of younger by older
3 boys. However, the school has always been as vigilant
4 as possible with regard to peer/peer bullying in our
5 horizontal house system."

6 You have worked in both systems. Do you, given your
7 experience, have any views on whether that is accurate,
8 or are there benefits to the vertical system that you
9 have seen?

10 A. One of the great challenges we had at Christ's Hospital
11 in my early days there was eliminating hierarchical
12 behaviour, fagging for want of another way of putting
13 it. With the system we have at Merchiston, that is not
14 such an issue, because there is not that -- there is not
15 that hierarchy already built within the house, so
16 certainly from that point of view it is a much stronger
17 system.

18 Q. I think though, touching on the house system more
19 generally, obviously house systems -- you have
20 experienced this being a housemaster -- we have heard
21 acceptance that the house system particularly may follow
22 the direction of a given housemaster, which may be for
23 good or potentially ill, and one of the concerns may be
24 that having a house system, things will be kept in house
25 and shielded from the wider oversight of the school. Is

1 that something you would recognise in theory and have
2 you seen it in practice?

3 A. I think within a vertical system you do have houses that
4 develop their own idiosyncrasies, their own characters,
5 their own reputation for certain things; the sporty
6 house, the musical house, those sorts of things. One of
7 the benefits at Merchiston of having the horizontal
8 system is that every year there is a reset, so the boys
9 move to a new house and to a new housemaster, and
10 actually there is -- the downside is that they have got
11 to redevelop that relationship with the housemaster, but
12 actually it allows everybody to have a fresh start and
13 re-energises the housemaster in actually getting to know
14 the boys.

15 But with the vertical system there is that danger,
16 I suppose, that you live in a system where you may not
17 necessarily get on with your housemaster very well and
18 that then persists for a number of years. You may be in
19 a house that is sporty and you are not particularly
20 sporty. That is one of the benefits, I suppose, of the
21 horizontal system.

22 Q. But I think as we know, and we don't need to go into the
23 detail of this today, but we know from the very full and
24 candid response that Merchiston provided in relation
25 to Pringle House, which is why I was making the point it

1 is physically removed from the rest of the school, there
2 was a period, I think, and the school acknowledges this,
3 where the head of that house might be described as
4 running his own little fiefdom and he didn't welcome any
5 intervention from the school to oversee or control how
6 he ran that house, is that something you would accept?

7 A. I would, yes. I think there is evidence to suggest that
8 was the case.

9 Q. Is that something you as headmaster at Merchiston,
10 because of the past experience, can say the school was
11 very alive to?

12 A. Absolutely. And I think today the housemasters team
13 works much more closely together in aligning their
14 practice, sharing good practice, and as a result there
15 is not that -- that risk, that threat of fiefdom.

16 Q. Again looking at just Merchiston in the round, I think,
17 as distinct from some of the schools, it is obviously,
18 I think, as always schools are, a registered charity,
19 but it was not set up originally with philanthropic
20 purposes in mind other than to educate?

21 A. That is right, yes.

22 Q. Yes. In relation to the ongoing status of being
23 an educational charity, again we have heard from other
24 schools that that entails various requirements to be
25 met. Is that reflected in the number of bursaries and

1 funded student places?

2 A. Yes, absolutely. So we have a bursary programme to
3 support families and students to join the school, either
4 with quite substantial bursaries or a smaller bursary,
5 to help them continue their studies with us, and that is
6 a requirement that we need to fulfil and demonstrate to
7 OSCAR.

8 Q. In terms of the boarding sector, the boarding sector
9 seems to be diminishing broadly overall. There is
10 a slight reduction because of the age factor if nothing
11 else; people don't want to send their children at a very
12 young age to boarding school. We have heard mention of
13 various schools in Edinburgh -- obviously it's perhaps
14 a good example with three boarding schools -- that they
15 are fishing from the same pond. Is that something you
16 recognise, it is becoming more important to be able to
17 recruit? Is that an ongoing problem?

18 A. Absolutely, recruitment of students is the lifeblood of
19 the school. I think beyond Edinburgh, beyond Scotland,
20 recruitment into boarding schools across the UK is
21 a challenge.

22 Q. To that extent, presumably, the image of the school is
23 important?

24 A. Absolutely, I think parents want to know that their
25 children are going to a school that will support them

1 and will challenge them and will allow them to flourish
2 and progress.

3 Q. But also it might be said schools are very anxious to
4 have a good image because a bad image might lead to
5 a dropping in numbers and therefore funding, at its most
6 basic?

7 A. Absolutely.

8 Q. You have worked in the sector for 20 years. Have you
9 ever seen in that 20-year period a school perhaps be
10 more interested in image than it should be?

11 A. Yes, yes, I think ... it's difficult without naming
12 names, but yes, I think there is the danger that schools
13 will wish to whitewash or sidestep particular issues to
14 preserve their image.

15 Q. It can happen, all right. Again though presumably,
16 thinking of Merchiston now, given the experience of the
17 last 10 years and the amount of inspection that is
18 carried out, I take it that would be the last thing
19 Merchiston would want to do?

20 A. Absolutely. We have -- we feel that honesty has always
21 been the best policy, and I think parents will respect
22 the fact that we have been open, we have been candid,
23 and that we know our school.

24 LADY SMITH: I suppose there is absolutely nothing wrong
25 with caring about your good image and working to protect

1 your good image provided it, in truth, reflects reality.

2 A. Absolutely.

3 LADY SMITH: But where the problem will arise is if reality
4 is ignored for the sake of preserving the image.

5 A. That is absolutely right.

6 LADY SMITH: It is not all about perception, it's about
7 truth.

8 A. Correct.

9 LADY SMITH: Mr Brown.

10 MR BROWN: Thank you, my Lady.

11 That is perhaps recognition of the need for candour
12 which, as you just accepted, is particularly focused
13 because of Merchiston's experience over the last ten
14 years.

15 Turning away from perceptions, candour, but just the
16 way the school has also changed over time, one of
17 the issues that we have been touching on is staffing,
18 and we will come to recruitment of teaching staff and
19 headmasters in a moment, but just sticking with the
20 accommodation system, could we look at page 60 and
21 paragraph 6. This is obviously looking at the gender
22 balance of childcare workers.

23 Again consistent with the other schools we have
24 already heard from, the majority of teaching staff have
25 historically been male. In 1974 there were no female

1 teachers, in 1993 there were 17% female, and in 2008
2 30%.

3 Jumping a paragraph:

4 "There has been a deliberate policy to increase the
5 number of female teaching staff with a rise to 40% by
6 2017 and also an increase in female staff in promoted
7 positions."

8 The middle paragraph looks, however, at where there
9 were females historically, and that is amongst the staff
10 including headmaster's wife, housemothers, matrons,
11 catering staff and domestic staff. Again from your
12 researches and reading the background material, the
13 impression is that housemasters would always have been
14 male. If they were married, their wives would have been
15 expected to play a role?

16 A. I think that became more the case. Initially if
17 a housemaster was married his wife and family lived
18 off-site, but as the accommodation was improved in the
19 boarding houses it allowed families to live on site, and
20 today that is the case. We don't expect spouses to play
21 a direct role but they are certainly there to support
22 their spouses in the job that they do.

23 Q. Historically female roles were on the caring side but
24 that has now obviously shifted. What is the current
25 proportion of female teachers at the school?

1 A. Very similar to 2017.

2 Q. Are you aware of there being any -- I'm talking about
3 obviously before the 1990s -- any policies in place
4 about recruitment of support staff?

5 A. Not that I am aware of, no.

6 Q. Again we have heard from other schools, it was simply
7 assumed they would be safe, is that fair?

8 A. That is fair to say, yes.

9 Q. Could we go to page 70, please. This is moving on to
10 headmasters and the different impact the character of
11 a headmaster can have on the whole school. This is
12 looking at the change of culture that has taken place at
13 the school.

14 We see the paragraph:

15 "The Register also records the change in culture of
16 male dominated regime and it was the arrival of
17 Headmaster Spawforth who brought about significant
18 cultural change. Headmaster Evans (1936-57) was the
19 first to focus on developing a family atmosphere in the
20 school, aided by his wife."

21 So she has a role to play because he is there?

22 A. Yes.

23 Q. "Another dominant female figure was Miss Thom, the
24 school matron, who retired in 1974.

25 "The major change in culture came with Headmaster

1 Spawforth again supported by his wife."

2 Headmaster Spawforth continued until 1998, is that
3 right?

4 A. That is right.

5 Q. So even as late as 1998 his wife was playing
6 a particular role, but at that stage presumably she
7 would simply be there because he was there without any
8 of the checks or balances that we now take for granted?

9 A. At that point, yes.

10 Q. But to read on:

11 "They believed passionately in improving the
12 boarding experience and in making Merchiston a home from
13 home, getting to know pupils and staff individually. In
14 1981 there were three bachelor housemasters out of five
15 houses, as family flats were developed in the 1980s with
16 a focus on the appointment of married housemasters
17 another key change in culture."

18 Again, would you understand why that was felt to be
19 an important change?

20 A. I suspect the reason behind it was to create that
21 feeling of an extended family within the boarding house.

22 Q. Would you accept that in the 1980s, and obviously it's
23 before your time, there is a softening of the approach
24 of the school which has been very male, with support
25 staff as required, but we read on, and there is

1 reference to an HMIE report in 1984:

2 "... which noted the excellent relations between
3 staff and pupils. Headmaster Spawforth also instituted
4 a culture change in the school's relationships with the
5 parents and families of pupils. He introduced annual
6 parents' meetings for all parents, posting of calendars
7 to parents every term, and pupil report cards that
8 included more than just academic performance."

9 A. Yes, I think that was a significant cultural shift, and
10 that was across the sector as well, I think. Boarding
11 schools were becoming more approachable. Long gone were
12 the days when you sent your son or daughter off to
13 school and didn't see them for three months; you sought
14 to engage the parents, keep the parents informed of
15 their son or daughter's progress.

16 Q. So that sort of softening, we would understand from what
17 you just said, it was across the sector and from the
18 1980s?

19 A. Yes, late 1980s, early 1990s, I would say.

20 Q. It makes the point perhaps, as we have discussed in
21 relation to various housemasters, a housemaster is
22 a fundamental person because he can dictate the tone of
23 a given house. Would you agree the same is true for
24 a headmaster reflecting the tone of the school?

25 A. Absolutely.

1 Q. I suppose that is why we see recorded that there is
2 a change when the current headmaster at the time this
3 report was written undertook an audit of provision
4 across the whole school, we see at the foot of page 70,
5 in 1998/99 and that is Andrew Hunter when he took over
6 from Spawforth and he:

7 "... undertook an audit of provision across the
8 whole school and the resulting school development plan
9 identified areas of care and welfare requiring priority
10 action."

11 A. Yes.

12 Q. That would reflect I suppose the sector progressing but
13 also his tone?

14 A. Absolutely. Andrew came from a boarding background, he
15 had been a housemaster prior to his appointment as
16 headmaster, and again I think it was a time of change
17 within the sector, and he will have been responding to
18 that.

19 Q. One of the areas that we would understand can be
20 impacted by the tone of the headmaster, and I suppose by
21 the staff, is the approach to corporal punishment. Is
22 that a fair statement?

23 A. Having not worked in a school where corporal punishment
24 was used, yes, I -- yes, I suppose so, but it is not my
25 experience.

1 Q. Can we go to page 75, please, and question 6 halfway
2 down, the general question:

3 "When and why did any changes in the culture of the
4 organisation come about?"

5 "As previously detailed in section 3, these changes
6 in culture were mostly driven by successive headmasters,
7 sometimes in response to changes in national legislation
8 and at other times in a drive to modernise the school.
9 Examples of key changes include, in 1974, abolition of
10 corporal punishment by prefects."

11 So up until 1974 at Merchiston, one could still be
12 beaten with a belt or a cane --

13 A. Yes.

14 Q. -- by prefects?

15 A. That is right.

16 Q. Another 13 years later, as we have heard, in line with
17 most of the boarding schools at that time, abolition of
18 corporal punishment, but also in terms of tone,
19 development of married family accommodation, and by
20 1999, formalised policies and procedures for pupils,
21 parents and staff to ensure compliance with new
22 legislation and best practice.

23 So of course schools are evolving, but in part it
24 will be down to national legislation and the sector, but
25 also down to the individual headmaster?

1 A. That is right, yes. I think we at Merchiston moved
2 quite quickly on the corporal punishment abolishment
3 with staff. It was some years after that it was
4 formally abolished in independent schools in Scotland.

5 Q. In terms of pupil discipline, again I think we see from
6 page 20 of this report that that was down to the
7 headmaster from 1969 to 1981, Donald Forbes, who took
8 the view in 1974 that corporal punishment by prefects
9 should stop. And as the report goes on to say, staff
10 did have the option of corporal punishment, although as
11 a sanction it was used less and less frequently.

12 What is the current position about peer discipline
13 of other peers?

14 A. Our prefects are not able to give any sanctions per se.
15 They are able to identify when a student is getting it
16 wrong, they can take that concern to a member of staff,
17 and the member of staff then will intervene usually
18 through a restorative process.

19 Q. A restorative process in practice means what?

20 A. Having a discussion, identifying what went wrong, what
21 happened, how that behaviour can be improved in the
22 future.

23 Q. Can I just ask in terms of training for such pupils,
24 what is provided for them?

25 A. In terms of our prefects, our prefects undergo prefect

1 training, and that includes a degree of child protection
2 training, how to handle difficult conversations, how to
3 handle confrontational behaviour. That is part of their
4 training programme.

5 Q. Do you know when that started?

6 A. When it started, I believe -- I could find out for you,
7 but I believe it was in the mid-teens.

8 Q. Again looking at your experience in the sector, is that
9 something you have seen develop, or was it present in
10 other schools that you have worked in already?

11 A. I can recall, though I wasn't involved in it, prefect
12 training at Christ's Hospital in the early 2000s, and
13 certainly by 2011 when I went to Worksop it was very
14 much part of our prefect training programme. We had
15 a week where they were off-timetable and did a number of
16 leadership activities. So it certainly has evolved and
17 grown from the early 2000s.

18 Q. By the sounds of it it may be something, certainly as
19 regards Merchiston, that Scotland is a little bit behind
20 on as compared with your experiences south of the
21 border?

22 A. Perhaps, although I would need to double-check there
23 wasn't other training in place before 2014.

24 Q. Obviously prefects are, I suppose, considered student
25 leaders?

1 A. Yes.

2 Q. You are now headmaster of a large school and you
3 obviously possess qualities of leadership that got you
4 the job. From your perspective again having been in the
5 system for 20 years, have you seen a change in the way
6 leadership is understood in the boarding sector?

7 A. Yes, I think now schools will have a strong leadership
8 team. It will not just be down to one individual
9 per se. I think the scope and breadth of a leadership
10 role within education has changed, so you do need that
11 breadth of experience and that breadth of expertise in
12 your leadership team.

13 Q. Again thinking from your experience when you started at
14 Christ's Hospital in 1998, was the head still very much
15 the head in that all decisions were his, or was there
16 a senior leadership team in place even then?

17 A. I would say that was probably the tipping point.
18 I think his predecessor was probably much more of
19 a standalone headmaster, but the head at the time
20 when I was there developed and grew his leadership team.

21 Q. Again was that your experience at Worksop?

22 A. Yes. And again at Worksop we were there, we developed
23 the depth and breadth of the leadership team.

24 Q. In part was that because of sectoral changes driven by
25 legislation, we know obviously in the 1990s the emphasis

1 on pastoral care began to be better understood and also
2 regulated. Is that your experience?

3 A. Yes, I think that is part of it, but also I think there
4 are again many threads and strands to the operation of
5 the school with regards to the more commercial aspects
6 of it, if you like, and the financial running of the
7 school, also marketing and admissions and the role of
8 the Registrar. Those are all important facets of the
9 leadership of the school.

10 Q. Perhaps put another way, they became more businesslike?

11 A. Yes. Yes.

12 Q. It's a big operation that has to be well-managed?

13 A. Correct.

14 Q. And perhaps one person under the new regulations, new
15 expectations -- you mentioned marketing -- can't to do
16 it all?

17 A. That is right. I would say so.

18 Q. The other thing that will have changed obviously,
19 though, along with those shifts in head leadership, the
20 senior management teams assisting the head, is
21 governance of the school. We would understand that, as
22 with others, Merchiston has a board of governors, is
23 that correct?

24 A. That is correct.

25 Q. I think we can see the governance structure assessed at

1 page 63 of part A. The articles of all schools change
2 from time to time, but we see that in 2009 the articles
3 for Merchiston talk about the current state of play, and
4 reading halfway down:

5 "As detailed in the audited accounts of 2006, the
6 full Board of Governors meets four times during the
7 year. Certain of the business is delegated to the
8 following subcommittees:

9 "Finance and General Purpose ... Education &
10 Pastoral ... Health & Safety and Accessibility ...
11 Development ... Nominations ... Risk Management.

12 "In addition, strategy meetings are held on an
13 ad hoc basis."

14 I appreciate we have the history very fully set out
15 so we don't need to rehearse it, but again from your
16 experience would you understand over, say, the last
17 20 years you have worked in the sector, the
18 responsibility and involvement of governors has only
19 increased?

20 A. Absolutely so. The governance structure at
21 Christ's Hospital was slightly different and quite
22 unique to the school, but my experience at Worksop would
23 certainly say that in the time I was there the
24 responsibility of governors increased exponentially. It
25 is a particularly demanding voluntary role that they

1 sign up for and we are very grateful that they do.
2 Their oversight is very important in a number of areas,
3 not least safeguarding and child protection.

4 Q. I think over the page, 64, halfway down, after seeing
5 the perhaps more traditional approach that was taken
6 from 1927 onwards, there will be appointed governors
7 from various professional bodies. If we go up, we've
8 got the university coat of the University of Edinburgh,
9 and the University of Glasgow, Faculty of Advocates,
10 Writers to the Signet and the Royal College of Surgeons.

11 Going down two paragraphs:

12 "However, over time it proved difficult to fill the
13 above nominated posts so [the articles] were changed in
14 2009 to the following:

15 "The Board of Governors shall be composed of not
16 less than five and not more than eighteen competent
17 persons appointed by the Members at the AGM. At least
18 one-third of the Governors for the time being shall be
19 former Pupils and members of the Merchistonian Club."

20 That is perhaps telling that it was becoming
21 difficult to get professional governors from the various
22 bodies. Is that something you had experience of
23 elsewhere?

24 A. Yes, we had similar challenges at Worksop.

25 Q. If you know, or if you don't know please say, was there,

1 thinking back at Worksop, for example, the expectation
2 that at board meetings everyone would turn up, or was it
3 expected you wouldn't get a full house?

4 A. There was always the hope that everybody would turn up.
5 That wasn't always the case. I do recall a conversation
6 with my headmaster about one board member who was
7 finding it difficult to make the commitment, and that we
8 would need to try to find a successor.

9 Q. Are things different now practically at Merchiston?
10 Would you expect full attendance, short of some
11 professional --

12 A. Yes, absolutely we would, and attendance is very good
13 with --

14 Q. Is that simply a reflection of the greater seriousness
15 with which people who are willing to undertake --

16 A. I think governors take their responsibilities very
17 seriously and its one of the things that is spelt out to
18 them, the time commitment they have to give to the role,
19 and we are very pleased they are able to fulfil that.

20 Q. You mentioned how onerous it is from a practical point
21 of view. What would we understand the time commitment
22 to be?

23 A. For example, this term just past with our Finance and
24 General Purposes Committee, we were meeting on a weekly
25 basis, and that was largely to manage the strategy

1 around COVID mitigation, the return to school, and they
2 were a de facto strategy group that we were discussing
3 those changes with across the term.

4 Ordinarily, most subcommittees would meet once
5 a term and the full board would meet once a term. With
6 our child protection liaisons governors, they would
7 visit school at least once a term to audit our child
8 protection records. And then there is a number of other
9 commitments that governors are invited to as well, and
10 indeed encouraged to come along to attend, when school
11 is opening normally.

12 LADY SMITH: Just going back to the period when willingness
13 to undertake these roles began to fall off, and you have
14 talked about your experience in Worksop obviously as
15 well as up here. Thinking back, can you identify
16 anything in particular that was making people decline
17 the request to join governing bodies of independent
18 schools?

19 A. We had one case, my Lady, with a former head who was
20 a reporting inspector for the Independent Schools
21 Inspectorate and he had to step down because it
22 represented a conflict of interest, and actually getting
23 a good headmaster with inspection experience was always
24 seen as being a good board member. So sometimes it was
25 down to conflict of interest, there were other occasions

1 where it was simply the time commitment that didn't
2 allow the board member to --

3 LADY SMITH: Was it ever a problem for people to meet the
4 time of day or the day of the week that meetings tended
5 to take place?

6 A. On occasion, although we tried to be as flexible as we
7 possibly could to accommodate people's working lives and
8 their other commitments.

9 LADY SMITH: I just wondered about that, whether schools
10 have to recognise nowadays that it is not that easy for
11 people to, for example, take half a day off work to
12 fulfil their governance duties for a school, but if the
13 meeting was fixed for a different time or a different
14 day, dare I say at the weekend, then it might work for
15 them?

16 A. Absolutely, my Lady. We do have a number of
17 professionals who are on our board and we have made
18 allowances on occasions to make sure they can attend.

19 LADY SMITH: Thank you.

20 MR BROWN: What time are board meetings normally starting?

21 A. 4 o'clock, but we have moved them to 5 o'clock and they
22 have been even later in the evening as well.

23 Q. One element of the change was only a third of
24 the governors shall be former pupils and members of
25 Merchistonian Club. Previously are you aware whether it

1 was assumed everybody would be, other than the named
2 appointments, although I suppose some of them would be
3 old boys too, was the assumption that the board would
4 really be made up of old boys?

5 A. I am not sure on that one, if I am honest. But I think
6 where it reads that at least one-third should be old
7 boys, I think there was always a keenness to keep the
8 Merchistonian community involved in the governance of
9 the school.

10 LADY SMITH: When did women first become involved in the
11 board?

12 A. I believe that was in the late 1990s.

13 MR BROWN: You mentioned -- or I mentioned and you then
14 confirmed that one of the subcommittees would be in
15 relation to child protection.

16 A. That is correct.

17 Q. Can you tell us when the child protection became
18 a particular board responsibility?

19 A. Let me just refer to my notes, if I may. There was
20 a child protection governor in place from 2008, and the
21 first reference that I can see in the board minutes were
22 2012.

23 Q. But I think, and again this is touching on what
24 I mentioned at the outset because of the particular
25 experience Merchiston had, we can see at the foot of

1 page 63 the governors in fact were very proactive. If
2 we go to the foot of page 63:

3 "The governors also had the ability to instruct
4 governors or external parties to undertake reviews of
5 any areas of the school. Such reviews took place in
6 2013 and 2014 into: to determine whether the school has
7 in any sense fallen short in terms of its duty of care
8 to the boys in its charge, to record lessons to be
9 learned from a tragic sequence of events (the suicide
10 a staff member) and to review the school's handling of
11 other child protection issues since 1998 ..."

12 And then over the page:

13 "... to recommend any changes to the current
14 procedures or policies which should be implemented in
15 light of these reviews."

16 So following the events that led to the focus, the
17 board became highly proactive?

18 A. Yes, absolutely, and in 2016 there was the foundation of
19 the Wellbeing and Compliance Committee.

20 Q. Which is still extant?

21 A. It is still extant, yes. The Chair is
22 David Johnston QC, and we have a child protection
23 liaison governor and a deputy child protection liaison
24 governor, and their role is to audit on a termly basis
25 the child protection records of the school.

1 Q. Was one of the things that was discovered, and this
2 touches on governance and also, I suppose, on governance
3 in terms of the headmaster, that one of the things
4 Merchiston learned was the danger of being too loyal to
5 staff?

6 A. Yes, I think that was an issue that recurred throughout
7 that period.

8 Q. Merchiston obviously, and again this will be dealt with
9 in more detail, one teacher in particular at Pringle
10 had, put simply, spent his life at Merchiston?

11 A. Yes. He was there as a pupil and then continued his
12 career, beyond retirement, at the school.

13 Q. And there was considerable loyalty to him from the old
14 boys?

15 A. Yes, old boys, parents, governors, that is correct.

16 Q. Would the school accept that one of the difficulties was
17 people weren't prepared to see a problem, putting it no
18 higher than that, or a potential problem, because of
19 loyalty to service?

20 A. I think that loyalty and loyalty to service did get in
21 the way of a more objective process taking place.

22 Q. And that is again another of the lessons that Merchiston
23 learned over the last seven or eight years?

24 A. Absolutely.

25 LADY SMITH: Sorry, what do you understand you are talking

1 about when you say loyalty to service?

2 A. Somebody's dedicated service to the school, my Lady.

3 This was a member of staff who lived and breathed the
4 school and was very, very positively seen by many.

5 However, that got in the way of other issues that should
6 have been dealt with.

7 LADY SMITH: Assumptions being made in relation to him
8 because of, as you call it, loyalty to service?

9 A. Assumptions, and perhaps the benefit of the doubt, given
10 where in other cases it was not or should not have been
11 given.

12 MR BROWN: I think, to add to that, difficulties in
13 managing?

14 A. Yes, and I think his closeness to parents, former pupils
15 and governors made it a difficult job for the
16 headmasters at the time to manage him.

17 Q. Because there was a great deal of affection and, one
18 might say, protection of him?

19 A. Yes.

20 Q. Thank you. That obviously moves us into the area of
21 policies and their implementation, because I suppose it
22 is wonderful to have policies but, if they are not
23 followed, nothing is achieved.

24 When you came to Merchiston in 2018, as compared
25 with the other two schools you have worked at, where

1 did it stand in scale of policies?

2 A. Not dissimilar from -- certainly from Worksop.

3 I think -- again I had been away from Christ's Hospital
4 by that stage for nearly ten years so it was hard to
5 gauge, but certainly at Worksop there was a fair
6 comparison. There were the core policies that you knew
7 needed to be there with regards to health and safety and
8 child protection, and around it then there were some
9 idiosyncratic policies and policies that were developed
10 more in line with the particular school. But in terms
11 of its compliance, if you like, the school was
12 absolutely up there in terms of a suite of carefully
13 considered, approved, regularly reviewed policies.

14 Q. If we go to part C, which is MER.001.001.0053 and
15 page 52, and this is touching on the next area which is
16 recruitment, I think we see at the foot:

17 "Staff related policies now include ..."

18 And if we go to the top, there is a raft of policies
19 for, it would appear, almost everything. Is that
20 consistent with your experience elsewhere?

21 A. Absolutely.

22 Q. Recruitment obviously has been a subject that has given
23 rise to some tensions in the past, and I think over the
24 page, on page 53, the issue of references at the foot of
25 the page is highlighted. Because references obviously

1 should be both taken up seriously when employing
2 someone, and also should be given seriously when someone
3 else moves on.

4 I think in terms of references it is recognised that
5 it would appear on one occasion, the last two lines:

6 "On one occasion, a full and frank reference was not
7 provided to future employers."

8 And the detail of that we can look at in the second
9 phase.

10 A. Yes.

11 Q. Over the page:

12 "The school has previously used compromise
13 agreements and settlement agreements as part of managing
14 staff out of the school and this process involved a
15 limited reference although current policy will always
16 make reference to any child protection concerns. On one
17 occasion a reference was subsequently provided after the
18 compromise agreement which provided fuller details of
19 the staff member's achievements but did not include
20 a specific child protection issue that had happened
21 earlier in his career."

22 Again that is an example that the school has
23 volunteered and which we can look at in due course.

24 It might be said that that perhaps touches on the
25 anxiety about image. From the school's perspective,

1 they don't want to reveal a problem. Would that be
2 unfair?

3 A. Yes, I think that is probably a little unfair. I think
4 it is probably more to do with protecting the member of
5 staff. I'm not saying that is right, but I am saying
6 that is probably what happened.

7 Sometimes child protection issues, they can range
8 from something that has been dealt with and that has
9 been managed successfully and there has been sufficient
10 training put in place to allow that member of staff to
11 continue in the profession, and then you can go to the
12 other end of the spectrum, the more significant child
13 protection issues that absolutely should be red-flagged.

14 As a head, you do walk a difficult line between your
15 child protection obligations, which absolutely come
16 first, but there is employment legislation as well which
17 means sometimes you have got to be very, very careful
18 about what is put into a reference. That said, anything
19 regarding child protection should go into a reference,
20 but you might have a member of staff who feels that
21 an issue has been dealt with in the past and has been
22 addressed and there is no need to refer to it, because
23 they will perceive that as having a negative impact on
24 their future employment prospects.

25 So the best place is to be open and to be frank and

1 to be honest with anybody who you are providing
2 a reference to, and sometimes that means picking up the
3 phone and having a further conversation with that
4 person.

5 If I may, my Lady, I could probably refer to
6 an incident in my time at the school.

7 LADY SMITH: Please do.

8 A. It is probably not right to do it now but if I could
9 write to you about it, because if I reveal it now it may
10 reveal the identity of the member of staff and I don't
11 think that would be fair on them.

12 LADY SMITH: I can understand you would want to check that
13 you are not doing that.

14 A. But I could walk you through one of the complex issues
15 that you have around fulfilling your child protection
16 obligations but also not inadvertently or unfairly
17 damaging somebody's career. But any issue that involves
18 significant or serious breaches of child protection must
19 be referred to in references, and if there have been
20 occasions where that has not happened that is not good
21 enough.

22 LADY SMITH: Do you always have a telephone conversation in
23 relation to the provision of a reference, either because
24 it is somebody leaving you or somebody coming to you?

25 A. When we have somebody coming to us we like to verify

1 references over the phone, and at least one of
2 the references. Members of staff leaving us, it is not
3 always the case. Occasionally heads will contact you.
4 And it depends sometimes on the post; if it is
5 a pastoral post, more often than not they will pick
6 up -- and I have seen a trend in recent years of heads
7 going back more than one employer, so they go back to
8 maybe, you know, employer but one or but two. And I was
9 contacted on that basis and have taken that advice
10 forward, so the next time we make a pastoral appointment
11 I will be doing something similar.

12 LADY SMITH: Thank you.

13 MR BROWN: I think in fairness, obviously I wasn't intending
14 to show this, but given what you have just said can we
15 go and look at MER.001.001.0118, which is one of
16 the appendices, part C, recruitment procedures. I think
17 this is the current document produced which is headed
18 "Improvements to the Management of Staff" and it sets
19 out new staff recruitment:

20 "Our reference requests now include questions on any
21 instances of a member of staff being involved in any
22 child protection investigation and we confirm this in
23 our telephone verification of the reference.

24 "References are taken up before interview so that
25 any 'issues' can be fully discussed during the interview

1 if necessary.

2 "Self-declaration form must be completed as part of
3 the application process and any 'issues' can be
4 discussed at interview if necessary.

5 "There is a specific verbal request during
6 interviews to confirm the details provided in the
7 self-declaration form.

8 "2 detailed references received. However, this is
9 not always possible for those staff whose previous
10 employment is not a school.

11 "Additional questions added to reference requests
12 try and understand if the employee has left previous
13 role as part of a settlement agreement.

14 "Telephone verification of the detailed reference to
15 check the identity, explore the responses to
16 disciplinary issues and ask question of suitability to
17 work in a boys' boarding school. Telephone verification
18 of any reference also takes place even when the detailed
19 reference is not received."

20 Then understanding of what child protection is with
21 the candidate, and final sign-off of the recruitment
22 process by headmaster or bursar once the full process
23 has been completed and all elements are recorded as
24 having been satisfied. Then there is child protection
25 induction and training. That is part of the process for

1 all staff.

2 In terms of staff leaving Merchiston, see over the
3 page:

4 "A reference policy was formalised in 2016 which
5 outlines the school's position on providing employment
6 references which bear the school's name and represent an
7 official statement of the school's assessment of
8 a former or existing employee of Merchiston Castle
9 School.

10 "The school maintains a separate register of child
11 protection issues so that the headmaster can ensure that
12 any reference written will divulge any relevant
13 information in this area."

14 So that is part and parcel of it. You will go to
15 the file --

16 A. Yes.

17 Q. -- and it will reveal all child protection issues,
18 serious or otherwise?

19 A. Indeed.

20 Q. "The revised disciplinary process and draft 'Allegations
21 against Staff' policy both also highlight to staff what
22 sort of information will be included in future
23 references including:

24 "Any record relating to a breach of Child Wellbeing
25 and Protection Policy and Guidance will be retained

1 indefinitely.'

2 "Cessation of use of settlement agreements when
3 staff leave the school where there have been any child
4 protection issues identified as this can inhibit what
5 can be said in a reference."

6 And that's what it's coming to, that settlement
7 agreements, as we have heard, perhaps given the nature
8 of references that tend to be attached to them, would be
9 like a red flag --

10 A. Yes.

11 Q. -- because it will say nothing. But for any issues
12 concerning child protection, there won't be a settlement
13 agreement?

14 A. No, there won't.

15 LADY SMITH: I suppose there could still be a settlement
16 agreement but it just doesn't have a non-disclosure
17 clause in it.

18 If you are paying a member of staff something
19 because they have claimed against the school when they
20 depart, and their claim is settled by payment of a sum
21 of money, you would probably still want to have that
22 recorded in an agreement. But the point is there
23 mustn't be a provision to silence the member of staff or
24 to silence you in speaking about why the person left and
25 what their background in the school was and so on?

1 A. Absolutely, particularly with regards to child
2 protection, yes.

3 MR BROWN: Just to follow up on that, the word is
4 "cessation", and I think as we heard from another
5 school, they will not engage in these settlement
6 agreements. Just to be clear, is that the position with
7 Merchiston: if there is a child protection, there will
8 be no settlement agreement?

9 A. That is correct, if there is any child protection issues
10 we will not be using the settlement agreement.

11 Q. The use of language is obviously important because it's
12 "any child protection". You said you have to walk, as
13 a headmaster, a fine line, and one can understand that
14 because it is very difficult to see black and white
15 easily sometimes. Should we understand that the use of
16 "any", though, is followed through on? Because you were
17 talking about something minor as assessed by the school
18 which has led to perhaps restorative work and teachers'
19 career progressions, nonetheless that will be shared?

20 A. That will be shared, but put in the context of the
21 training and the work that has been done to address any
22 issues that were there. Particularly if the member of
23 staff has continued in the school's employment,
24 employers will want to understand how and why that
25 happened and how that could happen. So they would want

1 to be satisfied that there was a correct process
2 followed. So it is about honesty, but also about
3 putting any concerns that you have in the context so
4 that you are being fair to everybody.

5 Q. So it's about honesty but it is also about
6 communication --

7 A. Correct.

8 Q. -- and being open in communication, but putting
9 a context so it's properly understood?

10 A. That is right.

11 LADY SMITH: Sorry to go on about this, I just want to be
12 clear. When you say "settlement agreement", am I to
13 understand you mean an agreement that includes
14 a provision whereby neither party will disclose the
15 basis on which there was a settlement?

16 A. Sorry ...

17 LADY SMITH: Let me just go through this with a practical
18 example, just to be fair to you, because I am wondering
19 if there are circumstances in which an agreement has to
20 be entered into.

21 Let's imagine a teacher claims that they are being
22 unfairly dismissed, or have been unfairly dismissed, and
23 they start an employment tribunal claim, and your
24 lawyers advise you that the prospects are pretty even
25 either way in the employment tribunal claim, but they

1 have spoken to the teacher's lawyer and he would settle
2 for X thousand pounds and withdraw the claim.

3 You could decide that looks like very good sense,
4 and the governors could think that is very good sense,
5 so the deal is going to be you pay X thousand pounds and
6 the teacher drops the employment tribunal claim. That
7 will have to be recorded for your protection --

8 A. Yes.

9 LADY SMITH: -- in an agreement. But what that agreement
10 will not say is that the circumstances in which you came
11 to dismiss the teacher can't be disclosed. Let's say
12 part of the circumstances were you had strong suspicions
13 that he was abusing a child. He doesn't accept that,
14 but that remains your position and that was what led you
15 to dismiss him, perhaps not just for that but for other
16 things as well, but you are going to be free to talk
17 about that, for example, in a reference, but you will
18 have your deal on your X thousand pounds recorded.

19 A. I understand now.

20 LADY SMITH: Let's talk about it as a deal. A deal is the
21 settlement agreement.

22 A. Yes.

23 LADY SMITH: But the question is what goes into the
24 settlement agreement?

25 A. If it were an agreement arrived at let's say as a result

1 of a redundancy, there would be a clause in there that
2 says that neither party will talk unfavourably about
3 either party. But we will not enter into any settlement
4 agreement where any disclosures of a safeguarding or
5 child protection issue are part.

6 So it's understood that if we were to get to that
7 point, and a settlement agreement was the way that we
8 would move things forward, child protection is not
9 something that would be included in any confidentiality
10 clause.

11 LADY SMITH: I am reassured, and you should be reassured,
12 because the message is not going out that Merchiston are
13 saying they don't enter into settlement agreements, but
14 someone pops up and said "Oh yes they do, because I was
15 made redundant and got paid this and there was an
16 agreement about that".

17 A. We have used settlement agreements, but when it comes to
18 child protection ...

19 LADY SMITH: You are free to talk.

20 A. We are free to talk, indeed.

21 LADY SMITH: Thank you.

22 Mr Brown.

23 MR BROWN: I am just looking at the language of the policy.

24 LADY SMITH: I know. You might want to look again at the
25 language of your policy.

1 MR BROWN: To be fair, to put it in perspective, it is
2 "cessation of" and --

3 LADY SMITH: Indeed.

4 MR BROWN: -- it may be that it is a step too far. Do you
5 see at the bottom of the page?

6 A. Yes. I will check the recruitment policy, I believe it
7 does specify in there that settlement agreements would
8 not be used in cases of child protection. Or there
9 would be a provision to make sure that there would be
10 disclosure in a case of child protection. I can check
11 that.

12 LADY SMITH: Thank you.

13 MR BROWN: There has to be candour and there has to be
14 openness about what has taken place, and that is perhaps
15 the crux. Okay, thank you.

16 In terms of employment, obviously, and this has been
17 a topic that has been raised throughout the course of
18 this phase, is the use of checking using the PVG scheme.
19 Again, the expectation obviously for any member of
20 staff, be it teacher, SSSC, whatever, they would be
21 PVG-checked for employment by the school?

22 A. That is correct. All employees and all residents, all
23 adult residents on the school site are PVG-checked.

24 Q. Again it's the adult residents that perhaps has been the
25 issue from what other schools have been saying. On

1 occasion that can be a battle. But it is achievable?

2 A. It is. It is a bit of a battle but it can be done.

3 Q. From your experience about -- and we are back to
4 communicating issues. We have heard about a three-year
5 cycle, and that is the aspiration that notification
6 would be a rolling process. Do you have any views on
7 that?

8 A. It's our understanding that it was on a notification
9 basis. The three-year cycle piece was not something
10 that we were absolutely tuned to, but again it makes
11 perfect sense and it does follow what happens south of
12 the border with an update to your DBS checks.

13 Q. Again acronyms?

14 A. Disclosure and Barring Service, so it's the equivalent
15 south of the border of Protecting Vulnerable Groups.

16 Q. Again coming from the same sector but south of the
17 border, having experienced both, what are your
18 observations about the Scottish scheme?

19 A. Very similar I suppose. The DBS scheme to me -- it's
20 certainly much easier to have non-teaching staff checked
21 as part of the DBS scheme.

22 Q. But in terms of notification?

23 A. In terms of notification there was a rolling programme
24 of update, and you were notified by DBS of any changes
25 to anybody's disclosure.

1 Q. Your experience of that approach in Scotland?

2 A. I haven't got any experience of PVG contacting us with
3 regards to current members of staff, although they do
4 occasionally get in touch with us about former members
5 of staff, but that is probably more to do with our list
6 that PVG hold against our name and making sure that it's
7 accurate against the staff that we have got currently
8 employed.

9 Q. Just to follow up on then the DBS, the English approach,
10 the rolling notification. In practical terms, how often
11 were you hearing from them?

12 A. Good question. I would have to check on that, I can't
13 remember off the top of my head, but I think it was
14 every three years.

15 Q. So it was --

16 A. Similar, yes.

17 Q. So it wasn't the situation that if something happened
18 you would immediately hear about it?

19 A. I beg your pardon. They were updated every three years.
20 You were notified if something appeared on their
21 disclosure.

22 Q. Comparing that with your Scottish experience, I suppose
23 it may be there is nothing to report, but you simply
24 wait for the three years to elapse?

25 A. Correct.

1 Q. What about reporting issues yourself, because this is
2 the other side of reporting, and again we come back to
3 the difficult line that headmasters have to walk. We
4 know that if there is an incident that requires the
5 Care Inspectorate to be told, you have to do it within
6 24 hours.

7 A. That is right.

8 Q. We know that in the past -- there was reference earlier
9 on to a letter from Andrew Hunter, I think in 2012 or
10 2013, where he is saying practically: the weather was
11 atrocious, the school was open, I was spinning many
12 plates, putting it very, very simply, and I am sorry
13 I didn't do this. Is that something you understand or
14 is that potentially now just a thing of the past?
15 Reporting would take place no matter what?

16 A. Reporting would take place no matter what.

17 Q. Is that because the school has systems in place?

18 A. We have systems in place, and we have a very good
19 relationship with the Care Inspectorate and with our
20 link inspector there, so it would follow that we would
21 be in touch. Even if it were just a precautionary
22 contact, we would always look to inform them rather than
23 not to inform them.

24 Q. And in terms of that process, is it a given that you
25 would also contact other bodies?

1 A. I suppose this is where it does get a little more
2 complicated. I think if it is a serious concern then
3 you would contact the Registrar, you would contact
4 Education Scotland. Whether or not you would contact
5 GTCS, their referral -- their referral process is there,
6 although it is not necessarily altogether clear, I would
7 say. But certainly you would start with the
8 Care Inspectorate.

9 My experience south of the border I felt was much
10 more supportive in that if you had any child protection
11 concerns involving an adult, you would contact the local
12 area designated officer, and they would advise -- and
13 they would advise you on your next steps, whether that
14 would be to contact the police, whether that would be to
15 contact DfE, and indeed they would co-ordinate that
16 response and they would pull together what was called
17 a multi-agency safeguarding hub if the issue needed to
18 be progressed. And they were there with you along the
19 way, advising and guiding and taking you through the
20 process.

21 Q. We heard from Lisa Kerr of Gordonstoun on Friday about
22 LADO. Thank you for not using the acronym. That
23 obviously is something that you think works well. On
24 a practical level is there anything approaching it?
25 There is not an organisation in Scotland, but on

1 a practical level do the same things happen or not?

2 A. Again we do have very good relationships with our link
3 inspectors at the Care Inspectorate and
4 Education Scotland. I suppose it is that one point of
5 reporting. But more so than that, it is that additional
6 element of advice. I think when you go to your
7 inspectors, the people who ultimately come back and
8 regulate you, they may be placed in a difficult position
9 in terms of the type of advice that they might give, and
10 with the LADO you have somebody who is independent of
11 your regulatory regime advising you and guiding you, and
12 not necessarily taking responsibility for your response
13 but helping you with your response to any concerns that
14 you have and it feels like a much cleaner relationship.

15 Q. We have heard that all boarding schools have membership
16 of a variety of umbrella organisations, the obvious one
17 in the Scottish context being SCIS?

18 A. Yes.

19 Q. BSA, Headmasters' Conference -- Headmasters' and
20 Headmistresses' Conference. Merchiston is engaged in
21 all of those?

22 A. We are. We are members of HMC, BSA and SCIS.

23 Q. LADO is obviously something that is understood by the UK
24 organisations. Is it something you have raised with
25 SCIS as being a possible way forward?

1 A. Personally no, not yet. But certainly having heard
2 evidence over the last few weeks, I would suspect there
3 will be a number of schools that would like to speak to
4 SCIS about how we might improve the processes, and it is
5 about making sure the processes are as robust and as
6 helpful as they possibly can be.

7 MR BROWN: My Lady, that might be an appropriate time.

8 LADY SMITH: Does that work for you? Very well.

9 We normally take a break in the middle of the
10 morning. If this would work for you, Jonathan, I will
11 do that now, and sit again in about 15 minutes or so.

12 Thank you.

13 (11.25 am)

14 (A short break)

15 (11.47 am)

16 LADY SMITH: Welcome back, Jonathan. Are you ready for us
17 to continue?

18 A. Absolutely.

19 LADY SMITH: Mr Brown.

20 MR BROWN: We were talking -- we had begun to talk about
21 policies and the plethora of policies that is
22 the day-to-day lot of a headmaster and a teacher.

23 A. Yes.

24 Q. Obviously during the course of the last few weeks we
25 have been hearing a lot about SHANARRI, GIRFEC and the

1 change in emphasis, which I think again, speaking very
2 broadly, started in 1990s, and the recognition that
3 child protection and pastoral care were matters of
4 ever-increasing importance, as distinct from the period
5 before that where really education was the focus, pure
6 and simple.

7 From your experience at Worksop, obviously you
8 appear to have been accustomed to policies in a large
9 number?

10 A. Yes.

11 Q. That was the norm. When you came to Scotland in 2018,
12 were SHANARRI and GIRFEC matters of any concern to you,
13 or did they just fall neatly into place?

14 A. No, there was some learning for me to do around GIRFEC
15 and SHANARRI. I like the approach, I think it is
16 something that should be mirrored south of the border,
17 that idea that you are putting the child, the young
18 person, at the centre of everything that you do and that
19 their wellbeing is paramount.

20 I think that explicit statement is absent perhaps in
21 legislation south of the border and I think it is a very
22 beneficial thing to have as a starting point across all
23 sectors in Scotland.

24 Q. But the introduction of these concepts were not
25 straightforward, would you agree with that proposition

1 given your experience of ever-increasing regulation and
2 policy south of the border, in the sense that when they
3 come in there is a period where there is transition?

4 A. Yes, there is transition, there is training, there is
5 understanding what that means for all of the key
6 stakeholders.

7 Q. And that can be problematic?

8 A. Yes, yes.

9 Q. Obviously you came to Merchiston in 2018, but if we
10 could look, please, at document MER.001.001.0339, you
11 will have seen this before?

12 A. Yes, I have seen this.

13 Q. This is a report produced for Merchiston by WithScotland
14 and it's an analysis of Merchiston Castle School's child
15 protection policies and procedures. You would
16 understand this was produced in response to the issues
17 we are aware of in terms of Care Inspectorate reports
18 and other inspections of Merchiston and what had
19 happened in the past?

20 A. That is right. I believe it was a requirement of one of
21 the regulations set down by Education Scotland.

22 Q. Absolutely. It pre-dates your experience so we don't
23 need to go into the detail of that. We have had the
24 broad picture of conditions being put on Merchiston and
25 being complied with efficiently and effectively.

1 A. Indeed, in full, yes, by the end of 2016.

2 Q. But in March 2016 this report and the background is set
3 out:

4 "Inspections by HMI and Care Inspectorate in 2015
5 raised concerns in relation to Merchiston Castle
6 School's child protection policies and safeguarding
7 procedures and the implementation of those policies."

8 And as you have said:

9 "As a result, the school was required by
10 Scottish Ministers to take steps ..."

11 Third paragraph:

12 "Merchiston Castle School approached
13 Professor Julie Taylor from the University of Birmingham
14 to undertake an independent analysis of the school's
15 child protection policies and safeguarding procedures
16 and implementation of those policies. It was agreed
17 WithScotland would work in partnership with
18 Professor Taylor to undertake the review."

19 And the footnote reveals:

20 "WithScotland is a national resource built on an inclusive
21 promise to help improve outcomes for children in need of
22 protection and adults at risk of harm."

23 A. Yes.

24 Q. I am not going to take you through the entirety of this
25 document, but in summary the review team, we see on the

1 third page, spoke with just about 20% of all staff?

2 A. Yes.

3 Q. And also, if we go down just a fraction, spoke to 18
4 pupils from across the school in two discussion groups.

5 Carrying on down the page:

6 "Policies in detail" heading:

7 "It is clear from the policies and from discussion
8 with the school's leadership team and board of governors
9 that child protection is a key priority for the school
10 and a range of policies across child protection and
11 disciplinary procedures have been developed to take
12 account of concerns raised within the school and by
13 external agencies. The school has taken on board the
14 language and principles of Getting It Right For Every
15 Child and is committed to updating all policies by
16 August 2016 in line with the implementation of the
17 Children and Young People (Scotland) Act 2014."

18 If we move on to page 7, please, and halfway down,
19 this is under the general heading "Implementation Of and
20 Engagement With Policies and Procedures", there is
21 a heading, if we go up the page, please. "Knowledge
22 Levels":

23 "It was evident from the comments of staff and
24 pupils that their knowledge levels of safeguarding,
25 wellbeing and child protection was greater following the

1 emphasis on this by the school leadership team and
2 through the training events. Staff from across the
3 school were aware about child protection and believed
4 that boys have confidence in whom they can approach for
5 help or to speak with if they had concerns. Pupils were
6 also confident and clear about the range of people to
7 whom they could take concerns."

8 Touching on that briefly, again looking to your
9 experience, is the reporting by pupils something that
10 has changed over your professional career, the
11 expectation who one can speak to?

12 A. Yes, I think the range of people that young people can
13 turn to has certainly increased. The use of counsellors
14 particularly in schools has grown, and I think that is
15 a very, very positive thing. We have a resident
16 counsellor on site, and that is just one of the many
17 members of staff that the young people can turn to if
18 they have any concerns.

19 But also I think what has changed is signposting
20 those people to anybody with a concern, young people
21 with concerns. Making sure they are aware who it is
22 they can turn to, and the range of people they can turn
23 to, is particularly important.

24 Q. And then reading on:

25 "All staff recognised that they had a role to play

1 in relation to the care of each boy and teaching staff
2 were clear that changes in the behaviour, attitude or
3 presentation in the boys may be alerts to issues of
4 wellbeing or protection."

5 I'll come back to that in a moment.

6 "Policies on child protection and safeguarding now
7 had a much greater profile within the school and staff
8 were confident about where and how to access
9 information. Older pupils and particularly those in the
10 sixth year understood their role in relation to child
11 protection. Policies were felt to be more embedded one
12 year on."

13 So in terms of pupils, is that reflecting the
14 training of prefects?

15 A. I would say so, yes, their understanding of what their
16 responsibilities and roles are within child protection,
17 and will have come from the training that they have
18 received through PSHE and from their prefect training.

19 Q. I said I would come back to:

20 "All staff recognised that they had a role to play
21 in relation to the care of each boy and teaching staff
22 were clear that changes in the behaviour ..."

23 Et cetera, were important. You may have heard
24 Lisa Kerr talking on Friday about the Wellbeing system
25 that they have developed at Gordonstoun?

1 A. Yes.

2 Q. Did that resonate with you? Is there something similar
3 in Merchiston?

4 A. Yes, we do, our policy around safeguarding, and our
5 mantra is "Notice, check and record", and that is
6 something that we always fall back on, and the key word
7 there being "noticing", and it is about noticing changes
8 in behaviour, noticing unusual patterns or something
9 that is not quite right.

10 In terms of recording that, we have an MIS, a
11 management system, management information system, and in
12 it there is a child protection wellbeing module that we
13 have helped refine with the software company that built
14 it, and that allows colleagues to record any wellbeing
15 concerns that they have. Those are then flagged by
16 housemasters and by the pupil support leadership team
17 and addressed accordingly.

18 Q. Does that include support staff as well?

19 A. It doesn't extend to support staff, but we have a system
20 of encouraging our support staff to report those issues
21 through the pupil support leadership team, and indeed
22 our domestic manager meets our senior deputy head on
23 a weekly basis and has the opportunity to report those
24 in the formal meeting, but also in the course of their
25 daily interactions they can do that as well.

1 Q. But to be clear, support staff in the dining hall,
2 I think was the example Lisa Kerr gave, if someone is
3 not eating?

4 A. We have members of staff supervising the dining hall,
5 particularly the younger ones, so they can pick up on
6 any trends there. We do have our catering staff
7 watching and monitoring what the boys are eating, and
8 they share that then with housemasters who would be on
9 duty in the dining hall.

10 Q. Again, since it was raised on Friday, does the system in
11 Gordonstoun appear to be slightly more rounded than the
12 one you have just described?

13 A. I think it is bespoke and I think that is hugely
14 helpful. And again if I can call on previous experience
15 in other schools, you can buy off-the-shelf management
16 systems for your school and all of them will contain
17 some form of reporting or recording of concerns module.
18 Indeed WCBS, the company that we use, have developed one
19 that talks to GIRFEC and the wellbeing wing. But it is
20 not bespoke, and each school has different structures,
21 different boarding house structures, for example,
22 different leadership structures, and trying to make it
23 bespoke is more challenging. So having something that
24 you build yourself is certainly a positive but it is
25 not -- it doesn't mean that the other systems aren't

1 robust, they are probably just not as refined for the
2 school that is using them.

3 Q. Just in terms of ongoing oversight and development of
4 these systems, is that something that is considered
5 regularly in terms of: does it work? Can it be
6 improved?

7 A. Indeed, and it was one of the points for discussion that
8 was raised and one of our recommendations from our most
9 recent Care Inspectorate inspection in 2019, and we have
10 continued to make refinements to the way in which we
11 record wellbeing concerns using our past system.

12 Q. Again is this something that is reviewed centrally in
13 terms of the oversight organisations, SCIS, BSA, or is
14 this really left to the school?

15 A. It is really left to the school, although there has been
16 at points consultation with the software providers in
17 order to make sure that they are providing something
18 that fits the needs of the schools.

19 LADY SMITH: Jonathan, you mentioned your 2019 inspection
20 report a moment ago and you say that they made
21 a recommendation in relation to refining your wellbeing
22 concerns. Can you remember off the top of your head
23 what their idea was?

24 A. It was -- I'd maybe just need to check, but it was
25 making sure that the right staff had the right

1 visibility and access to the particular modules, and
2 also to make sure that concerns that were being raised,
3 they were being followed up, but were they actually
4 being followed up to the point where an eventual outcome
5 was being arrived at, and how that was being recorded.
6 In most cases there was an eventual outcome, it may have
7 been days and weeks beyond, but it wasn't being
8 recorded, so that is something we looked to address in
9 the system we were using.

10 LADY SMITH: Thank you.

11 MR BROWN: From what you are saying, this is something the
12 Care Inspectorate are alive to?

13 A. Absolutely, yes.

14 Q. And we will come back, if we may, in a moment, to the
15 inspection regime and your experience of it. But just
16 to continue with this document briefly, we see at the
17 foot of the page, and this is in 2016 after the
18 introduction of GIRFEC and SHANARRI and a raft of
19 policies produced by the school as a result, you will
20 see the final paragraph:

21 "There were other issues to emerge which the review
22 team did not consider as direct barriers to reporting
23 concerns but were thought to be significant in
24 supporting staff."

25 If we go over the page and just run through these:

1 "First, the policies have brought a degree of
2 anxiety for some staff in their dealings with the
3 pupils. Staff were clear it was not their roll to
4 investigate any child protections concerns. It was
5 reported to review team that this had initially applied
6 to wellbeing concerns. However, the policy has since
7 changed and staff have been reassured about responding
8 to wellbeing concerns. Nevertheless, there was still
9 some confusion and a lack of confidence about when
10 a wellbeing concern became a child protection concern
11 and when an inquiry became an investigation. Some fear
12 repercussions for unwittingly doing the wrong thing and
13 many said they felt they could no longer use their
14 common sense. The person's default position was to seek
15 help from the deputy head (pupil support) or line
16 manager."

17 You are nodding and smiling.

18 A. I am trying to place myself in the position of
19 a colleague at the school in 2015/2016. The school had
20 been subject to a series of inspections, and it was made
21 very clear that things had to change, and I suspect
22 the anxiety that is emerging there is a desire on the
23 part of those colleagues to get it right. They didn't
24 want to get it wrong and they were worried that they
25 were either over-reporting or perhaps, potentially more

1 seriously, under-reporting, and they wanted confidence
2 to follow their better judgment, but I suspect that that
3 had been shaken by the number of inspections that the
4 school had undergone.

5 Q. The fundamental concern about new policies causing
6 issues, does that resonate with your experience as
7 policies were introduced at previous schools?

8 A. I think with any policy that you are introducing to
9 a new school you need to demonstrate how it is going to
10 work on the ground and review it regularly, certainly in
11 its earliest implementation, to make sure that you are
12 refining best practice and the policy that you are
13 applying is working. There is no point -- as you said
14 yourself, there is no point in having a policy if it is
15 not going to work.

16 LADY SMITH: Jonathan, am I right in thinking that to have
17 an effective review of how a new policy is working, you
18 first of all have to build good relationships with the
19 people who are implementing it? Take staff,
20 for example, you need them to be honest about whether
21 it's working for them or not, not to give you false
22 reassurance, but equally you need to draw on their
23 skills and understanding of where the policy needs to be
24 tweaked. That is all to do with relationships within
25 the working environment, isn't it?

1 A. Absolutely, my Lady, and I think there was certainly
2 that commitment from the staff at Merchiston.
3 Colleagues were determined to get it right and to make
4 it work and I think any anxiety, as I said, that was
5 coming out, was through a desire to get it absolutely
6 right.

7 LADY SMITH: You can see from the second short paragraph
8 that ends with "which has yet fully to embed", the
9 people carrying out the review in 2016 did accept that
10 the school was still in its formative stages of shifting
11 to new systems, and they weren't condemning them for
12 there being still some bumps in the road that they
13 identified.

14 A. No, absolutely, my Lady.

15 MR BROWN: I think moving on to the next one, if we run down
16 to the -- so you see the full second bullet point:

17 "Second, all staff commented on the speed and
18 plethora of policies which have been introduced. Many
19 asked for time to embed policies and for time to reflect
20 on recent developments. The school had moved quickly
21 from comparatively few policies to a range in place
22 without recognition of what had worked well previously.
23 Staff also commented on the speed with which policies
24 are updated. They did not always read each update in
25 full but recognised that they knew where to find the

1 information."

2 Is that something that you have had experience of?
3 Because plainly there was -- again being colloquial --
4 there was a policy dump which would appear to have
5 drowned some of the teachers?

6 A. I think that there was a significant number of policies,
7 or a significant amount of practice that was placed into
8 policy, and I think that a lot of it was common sense,
9 a lot of it was happening, but it did come in policy
10 form, and with that then there is the requirement to
11 make sure you have read the policy and you understand
12 the policy, and that will have felt like a big task for
13 a number of colleagues certainly.

14 The speed at which policies are updated, again
15 I suppose that comes back to the amount of information
16 that they had received in one go. I would imagine,
17 again I would need to check, but I would imagine the
18 reason why there had been such a big dump of policies,
19 to use your terminology, that was to do with the
20 timelines that were put in place around the conditions
21 that the school was placed under.

22 Q. And also reflected the fact that policies had not been
23 in place to the same degree --

24 A. Yes, some of the formalised structures hadn't been
25 formalised in policy form, correct.

1 Q. But also, as we have heard, language of these policies
2 is not necessarily the most plain?

3 A. I think it was a change in language, I think it was
4 probably a change in language to reflect GIRFEC, but,
5 yes, I'm not sure if that was something that took
6 a little bit longer.

7 Q. It may have been another factor which didn't make life
8 easier?

9 A. Possibly, yes.

10 Q. Because as I think we know from evidence, when there is
11 an inspection you get one report which uses education
12 speak, whereas there is a separate letter to parents
13 which talks in plain English?

14 A. Yes.

15 Q. Is that not the summary of the situation?

16 A. That is true, yes.

17 Q. Why not just use plain English across the board?

18 A. That would certainly be helpful.

19 Q. You speak education speak, you are in the system. You
20 have learned it. Is that fair?

21 A. Yes, but I think it would be helpful for all concerned
22 to use the plainest and most simple, straightforward
23 language to avoid any ambiguity.

24 Q. The third bullet point concerns an anxiety that there is
25 greater administration with a great raft of policies.

1 Is that true?

2 A. I think that may have been the perception or indeed may
3 even have been the reality. I think additional
4 vigilance will require you to be more active in the role
5 that you are doing. For example if you are in
6 a boarding house and you are doing a duty of an evening,
7 ordinarily you would go around the house, you would
8 speak to boys, you would have conversations, and that is
9 very much part of the pastoral role you have, but there
10 may be things that you need to follow up. Certainly in
11 my experience as a housemaster and a tutor, we started
12 where you -- when I started you didn't have a daily log,
13 for example, but by the end of my time we had a daily
14 log where you are recording what you did on your
15 evening's duty and you had a handover note to the next
16 person who was taking over the next part of the duty, so
17 there was that flow of information carrying through.

18 That will have felt like an additional
19 administrative task, actually, but it was a very, very
20 useful task and it was only really reflecting what you
21 had done as part of your duty anyway. There may have
22 been areas where the administration hadn't been tight
23 enough and there hadn't been recording around certain
24 new policies and that will have been something that
25 colleagues will have had to have adjusted to.

1 Q. The final bullet point I am interested in is the fourth
2 one:

3 "Because some teachers clearly commented on the
4 changing nature of relationships with boys."

5 And you will see the second line:

6 "Some support staff had begun to distance themselves
7 from the boys because they were worried that a comment
8 or action could be misinterpreted."

9 Is that something that you recognised from other
10 experience or is that an ongoing issue?

11 A. I think there is always -- when you are working in
12 schools there is always a vigilance that has to be had
13 about being friendly but not being somebody's friend,
14 and again that is something we have within our policies,
15 and there is a big distinction.

16 Again, I would suggest that the comment has been
17 made in light of the experience that the school had had
18 up to that point, and staff will have felt that they
19 have been put through the wringer, as it were, by
20 the regulators, with regards to how they would approach
21 things previously. There was probably a degree of
22 self-doubt about how they were interacting with the boys
23 and they wanted to make sure that they weren't getting
24 it wrong, because new policies arriving will have
25 perhaps given them cause to think that there was

1 a closer scrutiny being placed on the way in which they
2 were behaving. Again, I would say that is probably
3 an example of a new policy being given the chance to bed
4 in, in light of the situation that the school found
5 itself in at the time.

6 Q. Is that something then that is no longer an issue?

7 A. I think staff, colleagues, have always got to be
8 vigilant around their relationships with young people,
9 and they shouldn't be too friendly, but they should
10 certainly be approachable and they should be -- they
11 should absolutely feel relaxed about being spontaneous
12 and speaking to the boys, but they obviously have to
13 remember their safeguarding and child protection
14 obligations as well.

15 Q. If we just go to the foot of page, please, there's
16 reference to two specific policies, staff disciplinary
17 policy, and I appreciate this is 2016:

18 "Staff understood that suspension without prejudice
19 was part of the general disciplinary policy, but some
20 questioned the proportionality of how this part of the
21 policy was being applied."

22 Is that still policy?

23 A. Suspension is a possible outcome regarding safeguarding
24 and child protection issues.

25 Q. But with a degree of subjectivity on the part of the

1 headmaster, presumably --

2 A. Indeed. And we will seek advice as well from employment
3 lawyers and from the Care Inspectorate, if needs be, as
4 well, to make sure that we are following best practice.

5 Q. Again is that something -- going back to the English
6 scenario with LADO -- would that be something you would
7 discuss, about whether this was an issue that required
8 suspension or not?

9 A. Yes, and they would advise a course of action.

10 Q. The second policy is the whistle-blowing policy:

11 "In general, most staff were aware of the
12 whistleblowing policy, but it was unclear how
13 appropriate feedback would be given to staff who may
14 wish to raise concerns or how organisational changes are
15 taken forward."

16 Has that progressed in terms of -- there is still
17 a whistle-blowing policy?

18 A. There is still a whistle-blowing policy, yes. To my
19 knowledge it has not been used -- well, certainly in my
20 time it has not been used in relation to child
21 protection or any other operations of the school, so
22 I couldn't comment about how they would feel around the
23 changes being taken forward, but certainly the policy is
24 in place and still there for staff.

25 Q. We heard on Friday about Gordonstoun, that it is

1 a matter of discipline if there is non-reporting. I
2 know that is not quite whistle-blowing. But going back
3 to the reporting and watching reporting as necessary, is
4 that something that Merchiston has contemplated?

5 A. It is a professional responsibility for staff to raise
6 concerns particularly around child protection and to not
7 do so leaves you potentially at risk of further action.
8 It is not something that we have -- there is not
9 a predefined outcome, it will depend on the severity of
10 the scenario and so on, but if we feel that somebody has
11 been derelict in their duty then there is the
12 possibility that we will take --

13 Q. It is not in the contract of employment?

14 A. No.

15 Q. No. Is that something that has been contemplated or
16 not?

17 A. It has certainly not been contemplated by me.

18 Q. Would there be any prejudice, do you think, including
19 such a condition?

20 A. I think the -- the structure is already there. I think
21 if we are expecting colleagues to follow the GTCS code
22 of conduct, and similarly the SSSC code of conduct, you
23 have that facility. The issue of mandatory reporting
24 I know will probably come up in the course of the
25 Inquiry, and if that were to follow, then there would be

1 the expectation that a professional involved with young
2 people would have to make a declaration. If they
3 didn't, then there would be an outcome.

4 Q. Do you have a view?

5 A. I think mandatory reporting is a positive step forward,
6 yes.

7 Q. Were either of the other two schools you worked at
8 places where reporting was mandatory?

9 A. No, and again I think that is largely down to the
10 sector, but I know that the IICSA Inquiry south of the
11 border is considering mandatory reporting, and again
12 BSA, and part of the BSA charter, is pushing for
13 mandatory reporting.

14 Q. If we can move on to inspection now, and obviously we
15 have touched on this already and you have talked about
16 some of the pressures that were on teachers at
17 Merchiston, to use your phrase, "put through the
18 wringer". After a string of good inspections or
19 excellent inspections suddenly there was change.

20 A. Yes.

21 Q. Again I appreciate you weren't there, but you will
22 no doubt have discussed it at length. Was this
23 something that came as a surprise to those staff who
24 were present that, after a run of positive inspections,
25 suddenly it seemed to go wrong?

1 A. I think given the events that took place around those --
2 in and around those inspections, they understood why
3 that might have been the response, although I do think
4 they struggled as to how that decision was arrived at,
5 yes.

6 Q. That may be a matter we can speak with your predecessor
7 about when he gives evidence in due course, because
8 obviously he lived it.

9 A. Indeed.

10 Q. In terms of inspections, you have talked already about
11 the good relationships you have with the link inspector
12 and the associated inspector with the Care Inspectorate?

13 A. Yes.

14 Q. That connection is only a positive thing I take it?

15 A. It is, yes. It is something again that is different
16 from my experiences with the Independent Schools
17 Inspectorate south of the border. Having the capacity
18 to pick up the phone and check with your inspector is
19 a good thing. And the engagement visits, I have had two
20 with my link inspector with Education Scotland. Those
21 have been very, very positive experiences and very
22 helpful experiences, certainly in my first year,
23 although, as I said earlier on, I do think that as
24 an inspector there is advice and guidance that will be
25 given, but I think when it comes to matters around child

1 protection they require a different point of contact to
2 make sure that any concerns are being addressed
3 objectively, honestly, and good advice is being given.

4 Q. So we are back to LADO?

5 A. Yes.

6 Q. Okay. In terms of the inspection system north of the
7 border, obviously we have heard a great deal begins with
8 self-assessment. Do you see any difficulty with that?

9 A. No, I think self-reflection and self-assessment is a very
10 powerful part of the inspection. I think a good
11 inspection will assess how well a school knows itself,
12 if that makes sense, and certainly with the previous
13 inspection framework that I was used to, that was one of
14 the -- your self-assessment framework was something that
15 the inspectors would look very, very carefully at. So
16 I think self-reflection is a very, very important part
17 of inspection.

18 LADY SMITH: It's an interesting one, Jonathan, because in
19 the modern world one would expect a good school to be
20 teaching their students about self-reflection, and it
21 would be very sad indeed if the school itself was not
22 capable of effective self-reflection, wouldn't it?

23 A. Absolutely. And I know, my Lady, you have mentioned
24 growth mindsets, and that is very much part of the
25 growth mindset philosophy.

1 MR BROWN: Is that something you had experience of, that
2 philosophy, in your English experience?

3 A. Yes, growth mindsets was something we had developed at
4 Worksop.

5 Q. What led to that development, or triggered it?

6 A. There are many different pedagogical theories out there
7 but most of them talk about the capacity to learn and
8 the plasticity of the brain and the ability to learn and
9 reflect, and that is something that at Worksop we
10 embedded in the junior school first and then it filtered
11 its way up through the school.

12 But there are many, many lessons for teachers as
13 well within that group, growth mindset philosophy,
14 because if you are applying that mindset philosophy to
15 your classes and to young people's learning, there is
16 absolutely no reason why you can't be applying it to
17 your own practice.

18 Q. You said it was introduced in the junior school. In
19 terms of the introduction, was it staggered and slow, so
20 it would be something that would build as --

21 A. It is something that builds as years passed yes.

22 Q. Rather than just trying to land on everyone?

23 A. Yes.

24 Q. You obviously mentioned your experience of inspections
25 south of the border. Having experienced both, do you

1 see strengths in one over the other, or are they very
2 similar?

3 A. There are similarities I think. The inspectors seek to
4 be reassured that the school knows itself, I think that
5 is very important. I think -- my experience is limited,
6 I have much more experience south of the border, but the
7 experience that I had with the new inspection regime
8 that we had, we were one of the first schools to
9 undergo.

10 Q. Which school are you talking about?

11 A. I beg your pardon, Merchiston in 2019. It was quite
12 light touch, but at the same time the inspectors did
13 a very good job of speaking to a wide range of
14 stakeholders and feeding back some very useful
15 recommendations for us.

16 I think one of the differences was that south of the
17 border there were regulations, quite specific, explicit
18 regulations set out in respect of how independent
19 schools would be assessed and would be inspected. And
20 in respect of boarding schools, there were national
21 minimum boarding standards as well, which was a very
22 useful document to make sure that your practice was up
23 to speed, because you knew that a boarding inspection
24 would refer to the national minimum boarding standards.
25 And that covered all aspects of boarding care,

1 accommodation, guardianship arrangements and so on.

2 Q. Was that more robust?

3 A. It is hard to say. My experience is probably too
4 limited north of the border to draw any real
5 comparisons. But I think certainly it felt to me in my
6 previous role that there were very clear expectations,
7 whereas here, north of the border, I don't quite sense
8 that same level of expectation. Although the inspection
9 itself is very thorough, I don't see where we find our
10 standards, if you like.

11 Q. Can you expand on that? Where would you be looking to
12 find the standards set?

13 A. By the Care Inspectorate, I suppose.

14 Q. They have a plethora of documents, as we know.

15 A. They do. But I think with the specific relationship to
16 boarding schools -- a lot of the language that
17 the Care Inspectorate uses is not necessarily something
18 that is easily translated into boarding school speak, if
19 you like.

20 Q. But the inspectors, we would understand, obviously, are
21 accustomed to inspecting boarding schools?

22 A. Indeed, and I understand that there now is a group of
23 inspectors that specifically focus on boarding schools,
24 and I think that is a very positive step as well.

25 Q. Certainly in terms of -- you said it was light touch,

1 but it was thorough?

2 A. Indeed, yes. I think in years gone by when inspections
3 had a degree of announcement to them, there was always
4 the sort of building up to the inspection week or the
5 inspection days and lots of preparation happening. The
6 expectation is now that inspectors could walk through
7 the door at any point and inspect, and I think that is
8 absolutely a positive.

9 Q. By the sounds of it, if you knew the inspectors were
10 coming, you could prepare accordingly?

11 A. Yes, and I have experience of that, that is certainly
12 what happened in my very first inspection, but that is
13 over 20 years ago now.

14 Q. Was that done with a view to trying obviously to get as
15 good a inspection report as possible?

16 A. Yes, I would imagine so.

17 Q. Because that would matter.

18 A. Yes.

19 Q. And we are back to perhaps image. But that aspect is
20 now less of a --

21 A. That, quite rightly, is no longer a feature of
22 inspections.

23 Q. We have talked about -- obviously we have heard about
24 the inception of the SSSC. Again, as compared with your
25 English experience, do you have any comment on SSSC's

1 engagement?

2 A. There is no equivalent south of the border. So I think
3 the involvement of SSSC, and that requirement to have
4 non-teaching members of staff in residential settings
5 qualified, I think is a very positive step.

6 Q. In terms of engagement, you talked about engaging the
7 stakeholders. I take it stakeholders include pupils?

8 A. Indeed.

9 Q. Obviously we have heard from the Care Inspectorate about
10 their engagement with pupils and likewise with Education
11 Scotland. That is something that has developed
12 engagement with parents also?

13 A. Yes.

14 Q. Is that what we might understand, by triangulation,
15 engaging with different sets so you can look at the
16 whole from a different perspective?

17 A. Yes. Understanding that what the school says it does
18 the school does, and that is demonstrable in the
19 experience of the pupils, in the experience of the
20 parents. And the staff and the colleagues at the school
21 who are implementing those policies and procedures, they
22 are actually living those as well.

23 Q. So it's a way of cross-checking?

24 A. Indeed.

25 Q. Is that, again, any observation as between Scotland and

1 England in how that is done?

2 A. Again, my experience with the Care Inspectorate
3 inspection was quite limited, but the ISI inspections
4 that I had had, as I was leaving England there was
5 a tremendous focus on student feedback and pupil
6 feedback, and that was done both through surveys but
7 also interviews, but quite a wide-ranging number of
8 interviews.

9 Q. Is that something that became more important in your
10 time working south of the border?

11 A. Yes, it did.

12 Q. From your limited experience of 2019, was the same
13 approach taken here or was it less engaged?

14 A. I think -- again it was quite a short inspection, and it
15 wasn't the full inspection covering all of the criteria,
16 but there were elements of parental survey, pupil
17 survey, and pupil interview as well.

18 Q. One of the issues that we have talked about, and this is
19 obviously speaking with children, is the -- again we
20 have heard from the inspectors that children are much
21 more willing to speak, some are very enthusiastic. They
22 talked about how they would speak to a whole range of
23 pupils. Again just on a practical level, thinking of
24 Merchiston, how can you be sure that perhaps the less
25 open children have a voice?

1 A. That is a very important aspect of making sure that
2 everybody is safe. You may have those students who
3 can't find their voice and you need to find other ways
4 of making sure that they are okay. You have students,
5 young people, who are shy, who do find difficult to
6 speak out, so you are looking, you are noticing, you are
7 checking their behaviour, you are checking their habits.
8 If you are noticing anything that is not quite right, if
9 they are not eating or if they are not completing their
10 prep, you are building a picture, and it is at that
11 point you can then intervene and have that conversation
12 with them to see if they are okay.

13 In terms of having as many opportunities for
14 students to speak up, that is very important to us, so
15 we have a range of adults that they can speak to, but
16 also trained students. We have a number of forums that
17 they can come to and speak to. They have the ability to
18 speak confidentially with our counsellor and with our
19 medical centre staff as well. So having as many options
20 open to every young person to speak is absolutely
21 important, but also recognising that even then they
22 might find it difficult to come forward, and you need to
23 have that vigilance to make sure that you are doing all
24 you can to support them.

25 LADY SMITH: When you are referring to your counsellor, does

1 this person have some specific qualifications?

2 A. Yes, they are a trained counsellor.

3 LADY SMITH: So in turn they have their own mentor and their
4 own professional responsibilities to undertake their
5 training?

6 A. Indeed.

7 LADY SMITH: Thank you.

8 MR BROWN: A couple of other specific issues, if I may. We
9 have looked at the campus when we started with the
10 aerial shots. It is quite an accessible campus in the
11 sense one can simply drive off into it.

12 A. Yes.

13 Q. Security no doubt is something that is ever-developing
14 too?

15 A. Indeed. So even this year we have access control to the
16 rear of the school, so there is now a gate, pedestrian
17 gate and vehicle gate, and you can only gain access by
18 code. That has allowed us to secure the rear perimeter
19 of the school, the north side of the school if you like.

20 It is more of a challenge to the Colinton Road side
21 but we have enhanced our CCTV coverage across those
22 entry points. Access to buildings is controlled by
23 keypads and access control, and we have CCTV in public
24 spaces to make sure we are able to spot any untoward
25 behaviour.

1 Q. As we know from the considerable paperwork you have
2 produced, visitors is something that has been developed
3 over time?

4 A. Indeed. We have a policy where all visitors have to
5 sign in and have to be accompanied.

6 LADY SMITH: Jonathan, can I take you back a moment to the
7 role played by the counsellor. You mentioned that
8 students are able to speak confidentially with the
9 counsellor. Does that mean that they will not have that
10 conversation reported to their parents? Or the fact
11 that they have seen a counsellor reported to their
12 parents?

13 A. Not necessarily. It will depend on the young person's
14 wishes. But if there are concerns, and particularly of
15 a safeguarding nature, students know that even
16 a counsellor has a duty to share critical information.

17 LADY SMITH: So is it explained to students what the limits
18 of the confidentiality are?

19 A. I would need to check the conversations that they have,
20 but certainly any conversations that we have with
21 students around child protection, we say that we may not
22 be able to keep this between ourselves, particularly if
23 it is of a significant nature.

24 LADY SMITH: Yes. I was just thinking, it cuts both ways.
25 To do the right thing for the child, then the child may

1 have to be assured this will be an entirely private
2 conversation. But equally if something is flagged up
3 that needs to be passed on, that is going to have to be
4 done, but you have to do it in a child-centred approach
5 and explaining to them --

6 A. Absolutely so, my Lady, yes.

7 LADY SMITH: Thank you.

8 MR BROWN: The impression I get is that if there is
9 a serious child protection issue, all policies will go
10 out the window because the child is the key.

11 A. Safeguarding trumps everything.

12 Q. Yes. So if there is a conversation with a counsellor
13 and child protection is at risk or is a serious issue,
14 presumably, in terms of the policy, there would be
15 an expectation that what the counsellor has been told
16 would be shared?

17 A. If a disclosure is made to an adult and it is
18 a safeguarding concern, then that trumps everything
19 else.

20 Q. Okay. The next issue is looking at the boarding houses.
21 You have been a housemaster, you have lived this.
22 Thinking of your previous experience at the two English
23 schools, did things in the 20 years or so that you
24 worked in that environment change markedly in terms of
25 access by you to student accommodation and, perhaps more

1 relevantly, for students coming to your accommodation?

2 A. Yes. Certainly in my time as a housemaster the
3 structure of the boarding houses changed, there was
4 a greater degree of privacy. So we moved away from open
5 dorms of 15/20 boys to smaller dormitory spaces of six
6 down to individualised rooms, greater privacy around
7 showering cubicles and so on, and those were all in
8 response to minimum boarding standards that were applied
9 at the time.

10 With regards to security, yes, access control to the
11 boarding houses was introduced. Access to staff
12 accommodation was always controlled, but certainly in my
13 boarding house it was put behind doors that only members
14 of staff could get access to.

15 Q. Was there any access to your accommodation?

16 A. There was a door from the boarding house to my house,
17 but you couldn't get direct access into my
18 accommodation, no.

19 Q. How was that controlled or overseen?

20 A. Above the door there was a camera and there was a fob
21 system, a proximity card system. So in order to get
22 into the vestibule outside my house you needed to have
23 a fob. There was a doorbell that could be rung to
24 bring --

25 Q. What I am getting at is what oversight was there of who

1 you were admitting?

2 A. There was none. That is always the risk. But again,
3 similar to Merchiston, there was a policy about
4 entertaining pupils in staff accommodation.

5 Q. Obviously you will understand why I am asking these
6 questions because that was an issue at Merchiston before
7 you arrived.

8 A. Yes.

9 Q. Can you ever oversee that issue?

10 A. No, you cannot. You can have a robust policy in place,
11 and that is what we have today, and --

12 Q. Sorry to cut in. Is it any more robust than the policy
13 that was in place then?

14 A. I think it is absolutely explicit and very clear that
15 students should not be entertained in staff
16 accommodation. And indeed there is an expectation on
17 the part of the boys to know that they shouldn't be
18 entering staff accommodation and there are places that
19 are acceptable to have meetings.

20 I suppose what has also changed is the mindset.
21 When I first started as a housemaster, you would have
22 had groups of boys in your house accommodation. My wife
23 would have been there. It might have been a reward or
24 a birthday party or something like that, and that was
25 absolutely acceptable. You never had an individual in

1 your house on your own.

2 So I think the understanding of those requirements
3 has evolved and changed within the profession, and
4 I think housemasters and house staff now know that it is
5 of paramount importance that they keep their own private
6 spaces to themselves and the boys are not allowed in
7 them.

8 Q. As you said, the flipside of that is the boys themselves
9 will understand that they can't just have access --

10 A. Yes.

11 Q. -- as they once did?

12 A. And within our policy it makes that very clear.

13 Q. How is that transmitted to the boys?

14 A. It is part of their induction to the house, and when
15 they arrive at the house one of the things the
16 housemasters will do is they will give them a tour and
17 show them where they are and are not able to go. There
18 are very few places they are not able to go; those
19 places are staff accommodation.

20 Q. Although presumably that is one place a child in
21 distress, for whatever reason, will go?

22 A. They can go, but there is a way of raising the
23 housemaster that means they don't have to go into the
24 accommodation.

25 Q. All right. We have heard about keeping doors open and

1 windows being put in doors, is that something that is
2 the norm at Merchiston?

3 A. Yes, it is.

4 Q. The other aspect about the case making passing reference
5 to was the use of social media both by the teacher and
6 by pupils?

7 A. Yes.

8 Q. Which was clearly an issue that Merchiston had to face
9 up to, it would appear all schools are inevitably having
10 to face up to. Again, you have lived through the
11 development of social media and the problems it brings,
12 as well as the benefits, I imagine?

13 A. Yes.

14 Q. What are your thoughts on that? Can one ever resolve
15 that conundrum?

16 A. I think it is something that we have got to constantly
17 work on. We have to constantly educate ourselves and
18 continue to educate the boys in our care. Social media
19 evolves, it changes, it goes in different directions,
20 and we need to be alert to that. Indeed, different
21 platforms will offer different opportunities for things
22 to happen and different -- different ways in which boys
23 can interact with other people, and again we have to be
24 vigilant.

25 I am not a big believer in prohibition, I think that

1 we have to educate them on safe use, and we have to set
2 good standards ourselves and use social media
3 appropriately, but we should be educating the boys, not
4 prohibiting them from using it. I think prohibition
5 just leads to a curiosity which can then be unhelpful,
6 because everything is happening under the table rather
7 than on the table, as it were.

8 Q. Obviously you will be aware, as everyone is, about
9 newspapers' leading stories about the culture in -- or
10 the predatory culture that boys' schools can produce.
11 Is that something from your experience that you
12 recognise?

13 A. I think it is an issue across all schools. I don't
14 think -- I think it is unfair to single out just boys'
15 schools, I think it is a societal issue. I think it is
16 about how we educate young men, and we take that
17 responsibility very, very seriously. I think actually
18 having the space to be able to have frank discussions
19 with them in a boys-only environment is very healthy in
20 that regard, but I think to say that it is just an issue
21 for boys' schools I think is probably not fair.

22 Q. I think, in fairness, the expectation in the news today
23 is it's coming from every --

24 A. Indeed.

25 Q. But it began life in Dulwich obviously.

1 We have talked about a variety of things. If we
2 could turn finally to the part B part of your response.
3 This is at MER.001.001.0349 at page 104. This is the
4 retrospective acknowledgement/admission of abuse. And
5 I think it is only fair to recognise for the reasons we
6 discussed at the outset, and because Merchiston I think
7 have a considerable volume of records to look at because
8 records have been kept, is that fair?

9 A. Yes, we had significant records and we still do. We
10 have retained those records for the purposes of this
11 Inquiry.

12 Q. Yes. Once the Inquiry is over is there an anticipation,
13 other than child protection issues, pupil files in terms
14 of data protection will be thinned out?

15 A. I would expect so, yes.

16 Q. But as things stood in the 2010s onwards, there was
17 still a vast raft of material to consider, and that
18 is what Merchiston did?

19 A. Yes, that is what we did.

20 Q. Because as we can see, there is reference to:

21 "The full review of our historic files for the
22 purposes of responding to this Inquiry, together with
23 the review which has been taking place since the police
24 investigation referred to in 2013, means that the school
25 has identified and therefore accepts there have been

1 instances of abuse between 1930 and 2014."

2 And there is reference to one criminal case.

3 In terms of the next question:

4 "What is the organisation/establishment's assessment
5 of the extent of the scale of such abuse?"

6 And it reads:

7 "Following a review of available files and
8 complaints covering the period 1930 - 17 December 2014,
9 we believe that there may have been psychological and/or
10 emotional abuse including humiliation of pupils;
11 bullying; voyeurism, including what the school
12 identifies as lewd practices and inappropriate
13 behaviour."

14 And that again reflects a trawl through a
15 considerable amount of paperwork?

16 A. Yes, absolutely.

17 Q. As I alluded to earlier, I think that is reflected in
18 a very full part D where the school has gone to great
19 lengths to set out what it found?

20 A. Yes, it was a harrowing process, but we felt it was
21 a very important process to fully engage with honestly
22 and completely.

23 Q. The assessment also revealed, as well as instances of
24 staff abuse, as we see over the page, an acknowledgement
25 of cases of peer abuse, principally verbal and physical

1 bullying. But I think it is also correct to add that as
2 well as a detailed account, the school provided
3 a reminiscence of a pupil in the 1950s of what life was
4 like in the school in the 1950s both in terms of --
5 well, about peer-on-peer abuse, both bullying but also
6 sexual?

7 A. Yes, yes.

8 Q. In terms of the assessment, there is reference to the
9 number of past files and also to two police
10 investigations which followed on from the events of
11 2013.

12 In terms of systemic failure, looking on to
13 page 106:

14 "Does the organisation/establishment accept that its
15 systems failed to protect children ... between 1930 and
16 17 December 2014?

17 "... it is apparent that historically there are
18 occasions where there has either been a lack of rigorous
19 procedures and policies of the type in place now or
20 a lack of full application of the procedures that were
21 in place in respect of some complaints brought to the
22 school's attention. Where this has occurred, it can be
23 said that the systems failed to protect some children
24 from abuse between 1930-2014 and, in particular, this
25 involved a deceased member of staff."

1 A. Yes.

2 Q. And:

3 "What is the organisation/establishment's assessment
4 of the extent of such systemic failures?

5 "The extent of the failures are in reference to
6 systems not applied rigorously rather than a total
7 absence of systems."

8 Although I think, as you have acknowledged, policies
9 certainly were lacking previously?

10 A. Yes.

11 Q. The school in 2014 instructed a further report by
12 a lady, Kate Cherry, and we have a copy of it, The
13 Report into Child Protection Policy and Procedures, and
14 she:

15 "... looked at issues since 1998 and reported that
16 'there was a deficit in the school's organisation which
17 did not have in place a mechanism to see the whole
18 picture of individual behaviour of staff'.

19 "There was evidence that the school, whilst reacting
20 to all reports of abuse, did not follow through to the
21 strongest extent in accordance with disciplinary policy
22 as it existed at the times of these inappropriate
23 behaviours.

24 "When there were concerns raised, we believe that,
25 looking back, our systems for dealing with such

1 instances were too informal and did not follow fully a
2 disciplinary policy. We believe that Merchiston did its
3 best in these instances to deal responsibly and
4 sensitively with these situations in accordance with the
5 standards of the time."

6 If we move to paragraph 4, page 107, the standards
7 of the time, the response to the question:

8 "What is the organisation/establishment's
9 explanations for such failures?

10 "One explanation is that there were errors of
11 management 'where the balance of pupil care and
12 collegiate loyalty or making allowance was not well
13 judged'."

14 A. Yes, I think that is something we absolutely acknowledge
15 was the case. We now absolutely recognise that
16 safeguarding trumps everything, safeguarding comes
17 first, and that is absolutely our watchword. This has
18 been a salutary experience, it's been a harrowing
19 experience for those involved, and we are deeply sorry
20 that it has taken that to bring this to our fullest
21 attention, but the school of today absolutely recognises
22 that safeguarding is a single priority.

23 Q. I think finally on page 108, paragraph 4:

24 "What is the organisation/establishment's
25 explanation for such failures and deficiencies?"

1 If one reads to the last three paragraphs:

2 "The principle of universal promotion of wellbeing
3 was not established strongly enough historically to
4 allow the pupils or staff to question with confidence
5 behaviours which they found of concern.

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

11 "There also appears historically to have been
12 a mistaken sense of loyalty to the peer year group, to
13 the school, to other staff.

14 "Historically, it can be identified that there was a
15 lack of consistent objective scrutiny from the Governing
16 Body."

17 That was then?

18 A. That was then. I think now, as I said, we have
19 absolutely learned from this experience. Safeguarding
20 is our number one priority and the wellbeing of
21 the young people in our care, it is of paramount
22 importance to us, and we do not want to have a situation
23 whereby a mistaken sense of loyalty or any ambiguity
24 comes into play. Safeguarding and the wellbeing of
25 young people is our number one priority.

1 MR BROWN: Thank you very much. I have no further
2 questions.

3 LADY SMITH: Are there any outstanding applications for
4 questions of Jonathan? (Pause). No further questions
5 for you. Can I just thank you and the school for
6 answering so fully all the questions we have posed thus
7 far, both in writing and by you coming along today. It
8 has been enormously helpful. We will be returning to
9 matters to do with Merchiston, as you know, later in the
10 year, but meanwhile thank you very much and I am able to
11 let you go.

12 A. Thank you.

13 (The witness withdrew)

14 LADY SMITH: Mr Brown.

15 MR BROWN: My Lady, at 2 o'clock we will be hearing from
16 Rodger Harvey-Jamieson who will be speaking to Keil,
17 I should say for two reasons, one, that Keil closed in
18 2000 and, two, Mr Harvey-Jamieson is appearing
19 effectively out of the goodness of his own heart,
20 because he was not a governor, but he was connected
21 with --

22 LADY SMITH: I appreciate that he is involved as a trustee
23 with the trust that provided funding for the school.

24 MR BROWN: Indeed. Accordingly, the response produced by
25 the school and his ability to answer will be limited, so

1 that I do remember that your involvement with
2 Keil School was not a direct involvement in a position
3 of employment at the school, but as somebody who had
4 volunteered to be part of the governance of the Trust
5 that supported the school, so I do appreciate that.
6 Thank you for giving us the help that I know you are
7 going to be able to give us.

8 I will hand over now to Mr Brown.

9 Questions from MR BROWN

10 MR BROWN: Thank you, my Lady.

11 Good afternoon. Can we just take a little bit of
12 background because, unlike all the other witnesses who
13 are speaking to the various schools who have tended to
14 be headmasters, you have never been an educationalist,
15 is that fair?

16 A. That is correct.

17 Q. You are -- you were a lawyer with Murray Beith Murray?

18 A. I was until 20 years ago.

19 Q. That is why I said you were, and you have been retired
20 for some time. But I think because of the connection
21 that we know about between Murray Beith Murray and what
22 was Keil School, you had a connection with the school
23 from the late 1970s until its closure in 2000 when you
24 were the clerk to the board of governors.

25 A. That is correct, yes.

1 Q. And because of the firm's connection and the service you
2 had provided, you were then asked, after the school
3 closed, to become a trustee of the MacKinnon MacNeil
4 Trust, which was the trust that was responsible for
5 setting up Keil in the first place?

6 A. Once again that's perfectly correct, thank you.

7 Q. Just by way of further background, all the schools were
8 sent what is known as a Section 21 requirement to comply
9 with lots of questions in four parts, A to D. You
10 I think are responsible in large measure for the detail
11 of the reply that was provided on behalf of Keil for two
12 reasons, one because of the knowledge you have as clerk
13 and now trustee to the Trust, but also because, on the
14 closure of Keil School, some school records went to
15 Dumbarton Council, or the council in Dumbarton.
16 For example, we have seen copies of school magazines and
17 such historical material. But I think I am right in
18 saying you kept the minutes of the school meetings, the
19 board meetings?

20 A. Yes, a complete record of the minutes from 1915 onwards
21 were retained by Murray Beith Murray, and I retained
22 them for the purposes of this inquiry.

23 Q. You then provided them to inquiry?

24 A. I have done that, indeed. And the responses to which
25 you referred in parts A to B and C to D are largely

1 based on approval of the minutes.

2 Q. Yes. Because there is no other record, other than the
3 material in Dumbarton which tends to be of the magazine
4 type, and also in terms of collective knowledge, the
5 school has been closed for over 20 years, so that
6 institutional knowledge has dissipated really over time.

7 A. Unfortunately, that is the case. Many of the key
8 players are now dead.

9 Q. The document was signed by two people, Thomas Smith, who
10 was the last headmaster of the school, and at the time
11 of signing was clerk to the Trust, which I understand he
12 is about to cease being because his health is
13 deteriorating, is that correct?

14 A. Correct, yes.

15 Q. But also Andrew MacKinnon who is chairman, or was then
16 chairman of the MacKinnon MacNeil Trust, does he remain
17 in place?

18 A. He remains in place but he is not residing in Scotland.

19 Q. Thank you very much indeed.

20 The other material I think you relied upon, and
21 I know you had a copy of it earlier, is the history of
22 Keil School, which was published I think in the late
23 20th century and then republished in the early part of
24 this century, is that correct?

25 A. Yes. The first edition was 1993, and then there was

1 a supplement taking us up to the closure in 2000.

2 Q. Thank you. In relation to again the institutional
3 knowledge, there was an old boys' group, but I think we
4 know that that has been wound up?

5 A. That gradually lacked support. It did have an annual
6 dinner but the numbers attending were reducing quite
7 markedly, and a few years ago it was decided that that
8 organisation had no future.

9 Q. Which is why the reliance really fell on you to produce
10 the responses to the Inquiry, and for that we are very
11 grateful.

12 If we could look, please, at one document to start
13 with, which is KSC-000000139, and you will see that it
14 will appear on the screen in front of you.

15 A. Yes.

16 Q. This is a handbook which is undated but I think, given
17 the headmaster at the time was ES Jeffs, will take it
18 back to -- if we go to the next page, page 3, please,
19 and if we zoom in on the staff.

20 A. It is in front of me.

21 Q. You looked a little puzzled when I said ES Jeffs?

22 A. I was just trying to recall where he was headmaster,
23 when the school was at Dumbarton.

24 Q. Yes, it would appear that he was. And if I can assist,
25 this is a document -- if we jump to page 9, please.

1 This is the same document. If we go down, it shows
2 various extracurricular activities, including the use of
3 a Transit minibus-type vehicle. So I would understand
4 this would be in the early 1970s, perhaps?

5 A. Yes.

6 Q. All right. But if we go back to page 1, one can see
7 that was the main house at Dumbarton, which is the
8 school you would have known --

9 A. Indeed.

10 Q. -- when you were clerk to the governors. Just to be
11 clear, you would have visited the school I think perhaps
12 a couple of times a year for board meetings to take
13 minutes?

14 A. The only occasions on which I did visit the school was
15 within the rather sheltered environment of a Trust
16 meeting.

17 Q. Yes.

18 A. We did it on occasion take lunch with the school, but
19 apart from that we had no real interaction with pupils.

20 Q. So your experience is limited to that. And there is no
21 criticism, that is simply all you can speak to, and the
22 terms of the material you have produced.

23 If we could go now to KSC.001.001.0001, which is the
24 part A response. This is simply to set out briefly the
25 history of the school. It began life away from

1 Dumbarton in Kintyre following the setting up of
2 a trust, because William MacKinnon and his nephew,
3 Duncan MacNeil, both of whom died in 1893, bequeathed
4 a fund to provide for the education of deserving
5 Highland boys from the age of 13. A trust was
6 established, we read, by the joint executors, and in
7 1915 part of the accumulated fund was utilised to
8 establish the Kintyre Technical School at Southend on
9 the Mull of Kintyre. So a fairly focused educational
10 trust looking at Kintyre and Argyll?

11 A. That is absolutely correct. Part of the purpose was to
12 provide technical training for engineers going to have
13 a career with the shipping line that Sir William
14 MacKinnon was involved with.

15 Q. As we see from the fourth response:

16 "The founders were philanthropists and boarding was
17 the only realistic option for the Highland boys, who
18 came mainly from the West of Scotland and the Islands.
19 The original trustees were all professional men of some
20 standing in the community and they would never have
21 considered themselves inadequate to oversee a boarding
22 establishment."

23 They presumably just assumed it would work well?

24 A. They had great faith.

25 Q. Yes. And that was always the tradition of the Trust in

1 terms of governance. It was professional men and, as we
2 see, it would reflect representatives from the Institute
3 of Engineers and Shipbuilders and the Universities of
4 Glasgow and Strathclyde, Glasgow Chamber of Commerce and
5 the local business community. It was very west coast in
6 outlook?

7 A. It was certainly that. That is what they called the
8 area of benefit.

9 Q. Indeed. But at that stage obviously the Clyde was a hub
10 of international trade and the maritime world, both in
11 terms of shipbuilding but also commerce, hence
12 the setting up by these professional men of training
13 with that sort of profession in mind, is that correct?

14 A. I think that is fair comment, yes.

15 Q. But we know that the school moved, I think there was
16 a fire in Southend?

17 A. The school was completely destroyed by fire and it
18 moved, at about the time of the outbreak of the Second
19 World War, to Dumbarton.

20 Q. Yes. Thank you. It moved, we would understand,
21 a little before the Second World War.

22 A. Sorry -- (overspeaking)

23 Q. I think it was 1935 it may have moved.

24 A. In fact, yes.

25 Q. Although I think during the Second World War, as we

1 established in the first week of the Inquiry, looking at
2 some of the school inspection reports, in wartime it
3 moved away from Dumbarton because of the fear of air
4 raids?

5 A. Thank you for correcting me.

6 Q. Not at all. We have the benefit of recovering records
7 from other sources, and Education Scotland produced --
8 or Scottish Government records produced some very early
9 reports from the 1920s and 1930s, which I may say were
10 positive in terms of the school.

11 In terms of funding of the school in its original
12 form, we read that it was set up for the Trust with the
13 Trust paying for the initial boarders and the cost of
14 running the school. But as you say on page 2:

15 "School fees were introduced gradually but
16 scholarships continued to be funded by the endowment for
17 those who needed it."

18 A. Yes.

19 Q. Very candidly the report goes on:

20 "Funding was always tight but the overall
21 accommodation was generally described in HMI reports as
22 fair and staff levels had been good, as was the quality
23 of care. The body corporate continually invested in
24 facilities for boarders and others, resorting to bank
25 borrowing and general appeals as required."

1 Put simply, because obviously the school closed in
2 2000, was funding an ongoing problem throughout the life
3 of the school?

4 A. It became an increasing problem for the trustees to
5 grapple with. The main focus of attention of the main
6 Trust was to try and keep the school afloat and to raise
7 funds for improvements to the infrastructure. It was
8 obvious that improvements were required.

9 Q. Indeed. Again, and we have heard this in relation to
10 other schools but in the passing. But I think so far as
11 Keil was concerned, the assisted places scheme, which
12 finished in 1997, was very important?

13 A. The school would have closed without it.

14 Q. Yes. And it ceased in 1997 with the school closing
15 three years later in 2000. Put simply, was the
16 financial difficulty too great to continue, allied with
17 the reduction in the number of boarders and the school
18 more generally?

19 A. That is the case. Every effort was made to increase the
20 school's income, including bringing overseas students
21 in, which had never been done before, but they failed.

22 Q. Yes. You operated as clerk to the trustees from the
23 late 1970s until the closure in 2000. Speaking
24 generally, was the main focus of the Trust meetings
25 trying to keep the school afloat?

1 A. There was a split level of management within the
2 MacKinnon MacNeil Trust. So the main board, the core
3 element, was focused entirely on finance, and the
4 subsidiary element was delegated as a house committee or
5 governors of Keil School.

6 Q. Just to be clear, were you attending both groups or just
7 one?

8 A. This is where my recollection is not entirely clear, but
9 I do know that I attended some meetings of the governors
10 of Keil School.

11 Q. Yes.

12 A. But not, to my knowledge, on a regular basis. Nor did
13 I have any particular expertise to offer to them.

14 Q. So your principal focus was the Trust meetings
15 themselves rather than the house committee which would
16 be focusing on the running of the school?

17 A. Yes.

18 Q. And as you say, the Trust committee would be focusing on
19 the finances?

20 A. Yes, primarily.

21 Q. The Trust obviously continues, notwithstanding the
22 school's closure in 2000. You have obviously been
23 a trustee since that happened, and you remain a trustee?

24 A. I remain a trustee, yes.

25 Q. We see at paragraph 1.3(a) (i) to (iv):

1 "The Trust now solely provides scholarships and
2 bursaries based on merit to assist students from the
3 original area of benefit, comprising the Highlands and
4 the West of Scotland, at further education
5 establishments of the beneficiary's choice."

6 A. We do. We have approximately 100 scholarships currently
7 running.

8 Q. So the MacKinnon MacNeil Trust continues to this day as
9 desired by the original benefactors, albeit not perhaps
10 in exactly the same way.

11 A. Yes, that is correct. The philosophy has continued.

12 Q. Yes. We know from the school reports from the 1930s
13 that it was positively assessed and adequate in terms of
14 space for children, facilities. But having seen some
15 photographs, you will see them too, is it fair to say
16 that the school at Dumbarton -- a large house obviously
17 converted into a school -- was perhaps spartan in its --

18 A. I think you are being kind. It was certainly a surprise
19 to me when I saw it. One of the first things that we
20 were engaged with, to my knowledge, was moving the young
21 children out of one of the houses called Mason House
22 into smaller groups in much more appropriate
23 accommodation.

24 Q. Yes. Numbers at the school, as we know from part A,
25 began in 1915 with 18 boarders, rising and stabilising

1 in 1928 to 1946 at around 100, before a maximum was
2 achieved in 1965 of 179. But as you say in your
3 response:

4 "Demand for boarding diminished thereafter, numbers
5 reducing to 135 in 1971 (out of a total school roll of
6 170). By 1990 they had fallen to 83 (out of a total
7 school roll of 187) and in 1999 to 57 (out of a total
8 school roll of 159).

9 Which again confirms that numbers were dwindling.
10 Over the life of the school:

11 "... in the region of 8000 boarders may have been
12 accommodated over approximately 80 years ... roughly 100
13 per year."

14 On average.

15 A. That is a reasonable estimate, I think.

16 Q. There were a number of boarding houses, but obviously,
17 as you said in terms of Mason House, there was some
18 fluctuation in movement as between. And obviously one
19 thing that did change was the introduction of girls. It
20 became co-educational as of 1978.

21 A. That was a success. That is correct. It first started
22 from the SNR [REDACTED] and then developed
23 into full-blown co-educational.

24 Q. That would be around the time I think you would join as
25 secretary to the Trust?

1 A. That is correct, yes.

2 Q. Again was the introduction of co-education another part
3 of the battle to keep the school going by introducing
4 fresh blood to the school by way of girls, rather than
5 dwindling numbers of boys?

6 A. I think it was partly that and partly a desire to
7 modernise. I think there was a feeling that perhaps
8 single sex schools were beginning to become rather
9 anachronistic.

10 Q. Again keeping to the spartan terminology, in terms of --
11 and this may tie in with, I suppose, the issue of
12 funding, one tradition which was mentioned in the very
13 early inspection reports was the fact that there was
14 a system of chiefs, who were effectively prefects, but
15 there was a fair amount of control by older pupils over
16 younger pupils, is that your understanding?

17 A. That is correct, yes.

18 Q. And also as part and parcel of the daily existence,
19 I think as it is set out, to try and teach common sense
20 and responsibility, domestic chores fell to a degree on
21 the pupils themselves?

22 A. Yes. That would also save a degree of expense.

23 Q. Quite so. I think there were cleaners as well who
24 I think would come around in the evenings. But say in
25 the morning, for example, part of the daily routine

1 would be cleaning, supervised by the chiefs and pupils?

2 A. Yes.

3 Q. And likewise we see food being served in the dining room
4 by students under the guidance of the chiefs. So there
5 was great reliance on pupils for the day-to-day running
6 of the school, as well as obviously supervision by
7 teachers and the headmaster?

8 A. Yes. It was part of a philosophy of them being
9 self-reliant and a degree of responsibility for others.

10 Q. In terms of what obviously we have come to look at, and
11 this morning, for example, a great deal of time was
12 spent about what has taken place since the late 1990s
13 when the concept of pastoral care and child protection
14 became more and more common. What is said in terms of
15 the establishment, and this is paragraph 1.5(b)(ii) to
16 (iv):

17 "Apart from general awareness and vigilance on the
18 part of both male and female staff, no unusual or
19 special childcare or child protection measures were
20 taken. The school was not aware of any specific
21 training or courses available at the time but did ensure
22 that proper discipline was maintained and took full note
23 of all guidance received from official sources and
24 bodies such as the Scottish Council of Independent
25 Schools (SCIS) of which it was a member."

1 But in essence, the idea of a policy-driven regime
2 did not exist within Keil, is that correct?

3 A. It did not originate in Keil, no. It followed guidance
4 provided to schools rather than developing anything
5 of its own in the way of pastoral care.

6 Q. And likewise in terms of staffing, obviously we see
7 staff numbers would vary over time dependent on the
8 number of pupils obviously, but:

9 "On average there was somewhere between 15 and 20
10 teachers, supported typically by three office staff,
11 a matron, a chef, a lab technician and a caretaker. As
12 a school, most members of the teaching staff would have
13 contact with boarders at subject classes and activities
14 and sport. The school also had a live in matron and
15 a minister and doctor who both visited weekly.
16 Unaccompanied access to the pupils would be available to
17 all of the staff."

18 Again it was, by the sounds of it, just assumed the
19 school would function without any particular
20 consideration of issues that are perhaps now much
21 clearer in people's minds, like pastoral involvement
22 and, more importantly child protection?

23 A. Yes, that is correct. No areas of concern were
24 identified at that point.

25 Q. Yes. I think in fairness to you, and we have -- this

1 would be a set of minutes -- sorry, we don't have them
2 on the screen, but we have minutes from 1996, a meeting
3 of the governors of the MacKinnon MacNeil Trust, held at
4 Keil School on Thursday, 21 November 1996. You are not
5 mentioned, I have to say, by name, so you may not have
6 been there. It seems to be fairly brief:

7 "Apologies.

8 "Minutes.

9 "Matters arising.

10 "Headmaster's report."

11 Which dealt with a number of matters. And then
12 a bursar's report.

13 There was also then specific reference, and this is
14 focusing on visits, the bursar is focusing on CCTV and
15 repair work in the girls' shower, so it is practical.
16 But then there is reference to a SCIS governor seminar
17 on child protection and welfare:

18 "Mr SK Thomson amplified his report of this seminar
19 (already circulated) and wide-ranging discussion took
20 place."

21 And it then moves on to marketing and development
22 plan committee.

23 So clearly by the mid-1990s, or 1996 to be precise,
24 there was a recognition of child protection and welfare
25 at board level or governor level?

1 A. That's correct. At that point I first heard the
2 expression "safeguarding", and it came from the school
3 out to the governors.

4 Q. Right. But that was the first time that that had been
5 raised in your experience at Keil?

6 A. That is correct. I think there was a degree of concern
7 amongst the teaching staff at the school that there were
8 no written policies in place concerning safeguarding.

9 Q. So that was filtering up to the trustees at the meeting
10 at the school?

11 A. And triggered by the conference held by SCIS.

12 Q. Right. So it would appear that SCIS is the trigger, and
13 the word then is brought back by a teacher who has
14 presumably been at the conference, dissemination to the
15 staff, and then it works its way up to trustee level?

16 A. That is right.

17 Q. Can you say whether anything followed from that board
18 meeting? Do you remember, in terms of policy, whether
19 policies were introduced?

20 A. At the top trustee level I think perhaps there may have
21 been a degree of reliance on the lower tier, on the
22 governors of Keil School, to drive forward the written
23 policies that did exist. Unfortunately they have not
24 survived with the school records.

25 Q. No. Would the expectation be -- you have talked about

1 the lower tier, which is the school governors, if you
2 like, the house committee that you talked about a moment
3 ago.

4 A. Of whom three were also in attendance at governors'
5 meetings at the top level.

6 Q. But presumably day-to-day running of the school really
7 was devolved down to the headmaster?

8 A. The implementation of that, yes, absolutely, it would
9 be.

10 Q. And we would hope in due course to hear from the
11 penultimate headmaster of Keil School, and he may be the
12 better person to speak to about implementation of
13 policies such as they were?

14 A. I would hope so, yes.

15 Q. Okay. In terms of life at the school, you have
16 acknowledged that policies were not perhaps an important
17 part of the day-to-day running. It simply ran,
18 certainly in the earlier phases.

19 You say at paragraph 1.7, which is about children's
20 background experience:

21 "Pupils mostly came from state primary schools,
22 often in more remote areas of Scotland."

23 So was the tradition of taking pupils from the west
24 coast maintained throughout?

25 A. Insofar as there was sufficient demand, yes.

1 Q. If you could you would, but presumably lots of pupils
2 came from Glasgow as well or Dumbarton and areas around
3 about?

4 A. Increasingly so towards the end of the life of the
5 school, yes.

6 Q. You say at paragraph 13:

7 "All students were free to visit other boarding
8 houses at appropriate times. Students had ready access
9 to a private telephone." Again, by today's standards,
10 simple fare, but there was access to phone out of the
11 school, looking back, before the advent of mobile
12 phones?

13 A. Indeed. I recollect it being pointed out to me where it
14 was.

15 Q. In terms of the boarding houses, at paragraph
16 1.8(b)(iii), you have said:

17 "Each boarding house had two members of the teaching
18 staff directly involved with the running of the house,
19 commonly living in the premises or at least very close
20 by. In addition, a spouse was also normally involved
21 with caring for the youngsters."

22 So if a member of staff was married, it would be
23 expected their spouse would help?

24 A. Oh, yes. And that was probably one of the factors in
25 recruitment of staff at that time, that if they were

1 married they would be expected to contribute to the
2 school's life.

3 Q. And that would be made clear?

4 A. Yes.

5 Q. Okay. You go on at paragraph (iv) to say:

6 "There was no specific childcare training for
7 teachers undertaking boarding house duties but all were
8 qualified and registered with the General Teaching
9 Council. References were taken up prior to appointment
10 ..."

11 A. That was my understanding, yes. I am aware that some
12 witness statements have come forward saying that perhaps
13 that was not entirely the case, but certainly that was
14 the information that came back to me directly from the
15 headmaster and from the bursar.

16 Q. All right. We can no doubt hear what witnesses have to
17 say on the subject but that was your understanding.

18 "... but there was no specific childcare training."

19 Again, if a teacher was employed, it was assumed
20 they would also be able to undertake the pastoral side
21 of a housemaster or housemistress?

22 A. That is correct. I think there were hopefully
23 a number of safeguards in that, in that there were
24 monthly meetings of all the staff to look at any
25 concerns that there might be on safeguarding issues or

1 any other issues that had arisen within the school
2 and I think weekly meetings of boarding house staff
3 together to raise any issues that may have arisen. So
4 there was a degree of supervision coming through that,
5 I think, and discussion of any concerns.

6 Q. Yes. You go on to say:

7 "There were no designated childcare workers but
8 boarding houses tended to have both male and female
9 staff."

10 A. Yes.

11 Q. That would presumably be during the daytime or in the
12 early evening with meals and the like? In terms of
13 overnight, would it simply be the appropriate
14 housemaster or housemistress who would live on site who
15 would be the cover?

16 A. Yes, that is right. There was no change of staff, it
17 was just a rota of the available staff.

18 Q. Yes. So staff on a rota presumably would be limited and
19 would only see what they could see when they were on
20 duty, otherwise they wouldn't be there?

21 A. That is correct. Yes.

22 Q. The report also then goes on to governance, and we have
23 touched upon this in terms of the background to the
24 Trust itself and the importance of having people
25 connected with industry and local universities, and

1 I think that persisted throughout the life of the
2 school?

3 A. That's right. The introduction of the university
4 element was thought to be particularly helpful on the
5 educational side of the Trust.

6 Q. I see the 1960 version of the scheme, which was
7 operative until 1985, included three life governors
8 drawn from the family of the founder, Sir William
9 MacKinnon, six elected governors representing Glasgow
10 and Edinburgh Universities, the Royal College of Science
11 and Technology Glasgow, Heriot Watt College, as it then
12 was, in Edinburgh, and the Institute of Engineers and
13 Shipbuilders in Scotland, as well as the Glasgow Chamber
14 of Commerce. So until the 1980s it was still focusing,
15 as it had traditionally done, on the universities and
16 industry?

17 A. Yes.

18 Q. As well as three co-opted governors, two of whom would
19 be old boys.

20 I think, as you candidly accept, governors received
21 no special training in relation to residential care
22 services, nor were they required to have such training.
23 And should we understand that, as with your experience
24 of going to the school for meetings, really there was
25 little contact with the pupils, is that fair?

1 A. That is fair. I think there was great reliance on the
2 fact there was a chaplain and a school nurse or matron
3 who was thought to be extremely good at looking after
4 the pastoral needs of the children. It was thought that
5 that was sufficient.

6 Q. In relation to the chaplain, that would be a local
7 minister?

8 A. It was the local minister, yes, who took some classes as
9 well.

10 Q. Okay. That has been looking at what I think is
11 contained within part A, which is really the background
12 and history of the school.

13 Looking to part C, which focuses on prevention and
14 identification policy and practice, really this is where
15 you have the difficulty that there are really no records
16 to rely upon.

17 A. That's correct. I think I have explained the retention
18 of records. The policy was adopted.

19 Q. Yes. But I think you say in looking at the past, and
20 obviously that is all, with Keil, we can do because of
21 the closure in 2000:

22 "Neither the organisation nor the establishment was
23 aware of any applicable national care policy or
24 guidelines. Neither residential care, in the sense
25 of operating a children's home, nor foster care, ever

1 formed any part of the activities of either the
2 organisation or the establishment. Although both were
3 conscious of a growing concern in society during the
4 1990s regarding children in care, it wasn't until 2007,
5 after the closure of the school, that Tom Shaw's
6 independent review of historic abuse from 1950 to 1995
7 was completed, and 2010 when the Scottish Government
8 published the national guidance for child protection in
9 Scotland."

10 Put simply, all of this was beginning to happen, I
11 think, we heard this from other sources, in the late
12 1990s, but that was the last gasp of Keil. And whilst
13 there was some recognition of it, as we have heard about
14 SCIS, implementation really wouldn't have had a chance
15 because of the closure in 2000?

16 A. That is correct.

17 Q. Nonetheless, and again we will come back to this and ask
18 the headmasters, and as you have accepted at paragraph 4
19 of the same question:

20 "Policies and procedures did not refer in specific
21 terms to safeguarding and child protection."

22 Because those were phrases that didn't really
23 feature until the late 1990s.

24 "However, examples of the approach included
25 requirements that students inform boarding staff of

1 where they were at all times and students were forbidden
2 to leave the grounds without permission."

3 And there is also a reflection of medical care:

4 "Emotional mental welfare was provided by the school
5 chaplain, who was a regular visitor and also conducted
6 some lessons. All staff were expected to demonstrate
7 commitment and concern for the general welfare of the
8 boarders and to contribute."

9 But that is as far as one can go.

10 A. I regret that that is all.

11 Q. Obviously there was ongoing inspection of the school by
12 HMI, Her Majesty's Inspectorate of Education, and you
13 obviously quote from a number of reports in the 1990s,
14 in particular in 1998:

15 "HMI's report on the inspection of the welfare of
16 residential pupils was generally positive but noted
17 there was a need for detailed staff remits and an
18 updating of policies and procedures. In other respects,
19 care was good, relationships were open and friendly,
20 day-to-day health and safety was well attended to,
21 residential staff worked hard on the students and there
22 was a clear sense of community in the boarding houses.
23 Pastoral needs of students were well met, with matron's
24 contribution being highly valued. Criticisms were made
25 of dire laundry facilities and there was a need to

1 continue improving facilities generally which was
2 addressed."

3 Again, by 1998, there was the beginnings of
4 understanding, is it fair to say, about the need for
5 pastoral, but it was not regulated in the school
6 formally?

7 A. I think that would be the case, yes.

8 Q. Reliance, as traditionally, fell on matron and the
9 chaplain?

10 A. As I have said, yes, indeed.

11 Q. Okay. In terms of staff recruitment, because obviously
12 teachers are fundamental and were fundamental in terms
13 of the boarding houses, I think we see that the normal
14 recruitment procedures would involve seeking references
15 confirming qualifications and GTC registration, as well
16 as checking List 99 and making contact with the police,
17 is that what you would understand?

18 A. I was given assurance of that from the school through
19 the headmaster and through the bursar. It was the first
20 time I had heard of List 99, I must confess, which was
21 the forerunner of Disclosure Scotland.

22 Q. Yes. But all your understanding is what you were told
23 by the school, the school staff, principally the
24 headmaster and the bursar?

25 A. Yes, it was their responsibility in terms of their

1 contracts of employment and we had no reason to believe
2 that they were not fulfilling the requirements.

3 Q. Nothing was ever reported to you in terms of the
4 trustees' meetings that caused you concern?

5 A. No, nothing was reported in the way of concern about any
6 member of staff. It was a complete shock to the system
7 to discover that there had been failures which allowed
8 abuse to take place.

9 Q. Yes. If we can come to that in a moment. I think the
10 point is, though, you were going to the school for
11 approximately 20 years for meetings, but so far as you
12 were concerned, and being there as the secretary to the
13 Trust, the Trust was unaware of any issues because it
14 wasn't told of any by the headmaster or the bursar or
15 any other member of staff?

16 A. That is correct. We were relying entirely on the
17 headmaster's reports that came in termly, and they were
18 showing no areas of concern of that nature.

19 Q. Because obviously part B of the questions asks about
20 acknowledgement and admission of any abuse at the
21 school. The response is that:

22 "As a result of the admission in court and
23 sentencing in May of 2016 of one former teacher who was
24 at the school between 1987 and 2000, the organisation
25 acknowledges that some children suffered abuse at the

1 school."

2 You are relying on what you have been told, or have
3 learned subsequently, in relation to that one
4 conviction?

5 A. Yes, that's right. We had absolutely no inkling or
6 suspicion that that sort of abuse was occurring at the
7 school earlier and it's devastating that it should have
8 taken place. The trustees are considerably shocked.

9 Q. Yes. I think as you made plain, and here we go back to
10 your opening statement which you kindly read a couple of
11 weeks ago, the first the trustees had any inkling that
12 there was a problem was when Tom Smith, who was the last
13 headmaster and currently remains the present clerk to
14 the trustees, was contacted by the police who were
15 making inquiries into three named individuals?

16 A. That is the case, and it was a total surprise that that
17 was taking place. Very little information about
18 the investigations being conducted at that time was
19 relayed to the trustees.

20 Q. Was the first you were aware of that one of the three
21 involved in the police's investigations in fact had
22 appeared in court and pled guilty to matters of abuse?

23 A. Yes, that is correct. And even at that stage we had no
24 idea of the extent of his activities.

25 Q. Had there been no feedback from the police to the Trust?

1 A. None whatsoever.

2 Q. Has there ever been such feedback?

3 A. None to my knowledge. In fact I think enquiries have
4 been rebuffed in view of the confidentiality that
5 the police wanted to maintain in their inquiries.

6 Q. That criminal conviction was May 2016. As you said, it
7 came as a profound shock, because until the police
8 inquiries and that conviction, the Trust was simply
9 oblivious. Is that fair?

10 A. Totally oblivious. As you say, it was a total surprise.

11 Q. And that is why presumably you say that as far as the
12 organisation you represent at the Trust is aware, the
13 extent of the abuse was confined to the five students
14 who were reflected in the criminal case plea?

15 A. Yes.

16 Q. All of whom named one individual. And you go on to say:

17 "The basis of the assessment is based on an honest
18 belief based on present knowledge. The school itself
19 has now been closed for 17 years. The events in
20 question are the only ones which have been reported and
21 they took place well over 20 years ago."

22 But then there is an acknowledgement that the
23 organisation accepts the fact that abuse took place
24 means that the systems in place failed?

25 A. With the benefit of hindsight, clearly it is obvious

1 they must have done, indeed.

2 Q. But I think the point is made that as far as the Trust
3 is concerned, there were no obvious reasons to suspect
4 teacher abuse, and he was able to continue work
5 undetected in the profession after Keil School closed?

6 A. Sadly that is the position, yes.

7 Q. You said at the very beginning of your submission
8 a couple of weeks ago when you appeared online:

9 "All of the trustees of the MacKinnon MacNeil Trust
10 are devastated by the events which have led to this case
11 study and offer their deepest sympathy to all who have
12 been affected by them. Even a single case of abuse is
13 one too many."

14 A. Indeed. That is a heartfelt statement on behalf of the
15 trustees.

16 Q. Obviously the trustees can only go on what they know and
17 with very limited material in terms of background
18 paperwork and the like?

19 A. That is correct. There has been no claim for
20 compensation from any of the victims directly to the
21 trustees. They had no idea of particular circumstances
22 until such time as the evidence before this Inquiry was
23 disclosed to them.

24 Q. Yes. Obviously you have had sight of material that has
25 been disclosed by the Inquiry, is that correct?

1 A. We have. That was quite devastating.

2 Q. Is there anything you would like to comment --
3 obviously, as you know, there will be a second phase
4 where applicants, former pupils of the school, will be
5 coming to give evidence to talk about their experiences.
6 It would be useful to hear from you, if you can, after
7 that phase. But is there anything you would like to say
8 today, having seen the disclosure?

9 A. First of all, we are reeling from what we have read.
10 Again, we want to offer our profound sympathy to all who
11 have been affected by this.

12 MR BROWN: Thank you very much indeed.

13 Unless there is anything else, my Lady.

14 LADY SMITH: Are there any outstanding applications for
15 questions of Rodger? (Pause).

16 Rodger, that does complete the questions we have for
17 you. It just remains for me to thank you again for all
18 that you have done to bring such information as you have
19 to our attention. That is very helpful indeed.

20 I just reiterate what Mr Brown said. As you know,
21 we will be returning to Keil School and its applicants
22 in due course a little bit later on this year, but
23 meanwhile I am able to let you go, with my thanks.

24 A. Thank you, my Lady, and thank you also.

25 (The witness withdrew)

1 LADY SMITH: Mr Brown.

2 MR BROWN: My Lady, the last school in the first phase is
3 Queen Victoria School who will be giving evidence
4 tomorrow. There will be three witnesses, one in person,
5 the headmaster, and two others I would hope joining by
6 screen. The technology, I have high hopes, will work.

7 LADY SMITH: I hope so. So this is where I am going to have
8 to address the challenge of multiple virtual witnesses.

9 MR BROWN: Yes.

10 LADY SMITH: Is that right?

11 MR BROWN: That is right.

12 LADY SMITH: The system may have to be a little bit
13 different.

14 MR BROWN: The intention is, as with Loretto, that we will
15 have two heads on screen, so it will be effectively
16 a panel, and that worked well enough.

17 LADY SMITH: It did. Here's hoping it works tomorrow as
18 well.

19 Very well, I will rise now until tomorrow morning at
20 10 o'clock. Thank you all very much.

21 (2.50 pm)

22 (The Inquiry adjourned until 10.00 am on Wednesday,

23 31 March 2021)

24

25

INDEX

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

MR JONATHAN ANDERSON (sworn)1

 Questions from MR BROWN2

MR RODGER HARVEY-JAMIESON (sworn)105

 Questions from MR BROWN106

1

2

3

4