

1 Friday, 17 December 2021

2 (10.00 am)

3 LADY SMITH: Good morning and welcome to the last day in the
4 Fettes section of our boarding schools case study.

5 As those of you who were here last week will
6 remember, today's the day we move on to closing
7 submissions, having finished the presentation of
8 evidence. When he's ready, I'm going to invite Senior
9 Counsel to the Inquiry, Mr Brown, to address me.

10 Mr Brown.

11 MR BROWN: My Lady, one practical question. I'm obviously
12 beginning and will be talking likely and generally about
13 what we've heard, but we have already received
14 submissions from Edinburgh Academy and Fettes. It terms
15 of order, it may be simpler to let Edinburgh Academy to
16 follow me and to let Fettes close, given the focus,
17 unless your Ladyship has different views.

18 LADY SMITH: I'd be happy with that.

19 What about counsel? Would that work for both of
20 you?

21 MR MITCHELL: My Lady, I'm content with that.

22 LADY SMITH: Very well, that's what we'll do.

23 At some sensible point we'll take a morning break,
24 if we can just bear that in mind.

25 MR BROWN: It may be that the break would follow Edinburgh

1 Academy because Fettes' submissions of course are of
2 greater breadth, albeit I understand from my learned
3 friend he's not going to read verbatim.

4 LADY SMITH: I'm sure he won't. Thank you.

5 Closing submissions by MR BROWN QC

6 MR BROWN: My Lady, thank you.

7 As far as the Fettes part of the Inquiry is
8 concerned, as with previous observations, I'll talk
9 about the number of witnesses we heard. We heard 18
10 live witnesses and 44 read-ins. In relation to the
11 read-ins, I'm most grateful to Fettes for its effort to
12 obtain contact and thoughts from former pupils. It is
13 clear from some of the responses provided to the school
14 and passed on to us that many enjoyed their time at
15 Fettes, and that's to be expected. Although, given the
16 evidence of the school prior to the 1990s, one could
17 take the view from the evidence we've heard that those
18 who enjoyed it were the first division children, to use
19 'Robert's' language, where those with difference were
20 perhaps in a second division, the non-sporty, perhaps
21 the non-academic, those who were somehow different, as
22 I say.

23 LADY SMITH: That's a picture we have seen in other boarding
24 schools as well, Mr Brown, isn't it?

25 MR BROWN: It's a very common theme, my Lady. As 'John' put

1 it, and he's talking about the 1960s:

2 "My time at Fettes was marked by beating, bullying
3 and buggery. I suffered badly from two and narrowly
4 missed the third."

5 That, candidly, does reflect what we've heard in
6 other schools too. Similar themes resonate with the
7 evidence we've heard already, and many themes are
8 repeated and are familiar.

9 Autonomous boarding houses, where far too much power
10 was given to boys and reliance was placed on boys which
11 was far too great and allowed teachers perhaps not to
12 become involved as much as they should have done.

13 Violence by teachers, everyday classroom violence,
14 throwing dusters, using rulers to thwack children.
15 Excessive corporal punishment, both in terms of what
16 would be simple assault, given the force used, but also
17 excessive by the then standards of the day, going beyond
18 six strokes. We've heard of that, I think, in all
19 schools and we've heard of it again in Fettes.

20 The one distinction perhaps with Fettes was the
21 emphasis we heard of that one would shake hands and
22 thank the teacher who had beaten, which is a novel
23 twist, and particularly in relation to Chenevix-Trench,
24 the word used by one witness was that his behaviour in
25 that regard was "twisted".

1 We've also heard about positive violence, and when
2 I say positive violence, I don't mean just loss of
3 control by throwing things in the classroom scenario
4 like the duster, and obviously what I'm thinking of
5 primarily is the behaviour of 'Edgar': pulling children
6 up by the sideburns, ripping hair out on occasion;
7 banging heads on desks; throwing children literally
8 about, to the extent that other teachers became involved
9 to stop the loss of control which seems to have been
10 understood, if nothing else, by other staff, and which,
11 frankly, could not have passed unnoticed by anyone in
12 the junior school.

13 Violence by pupils. Again, excessive corporal
14 punishment by pupils when they were allowed to beat, and
15 the everyday violence of the elder boys on younger boys.

16 That was perhaps neatly summed up, thinking of the
17 disciplinary side, by 'John', one of the read-ins, who
18 said:

19 "In terms of physical abuse, that can be divided
20 into abuse by boys of boys and abuse of boys by staff,
21 both falling under the general category of
22 institutionalised abuse. In both cases the primary
23 instances were those of institutionally sanctioned
24 beatings. There were three basic classes of beatings:
25 house beatings, administered by the house prefects;

1 school beatings, administered by the school prefects;
2 and beatings by a housemaster or the headmaster. In the
3 house and school beatings, all boys in the house or
4 school were confined to their studies or communal study
5 areas and silence was strictly observed, sometimes
6 lasting for well over half an hour. The psychological
7 effect of this on the whole community was powerful. One
8 listened out for the steps in the empty corridor of the
9 boy to be beaten and for any sound from the room where
10 the beating took place and of course for any sounds of
11 distress. The house and school beatings were not
12 monitored by the staff."

13 Though he did say by his time:

14 "... stretchings were no longer done by the boys, or
15 at least I was never aware of it, but they were recent
16 history. A boy would be laid naked on his back and
17 stretched across the low boot lockers in the changing
18 rooms, his stretched stomach would then be scraped with
19 a comb and salt rubbed in."

20 That is a detail, I think, we haven't heard before.

21 Again, in common with other schools, we've heard of
22 sexual violence and assaults by teachers. 'Edgar'
23 stands out as perhaps the most significant individual
24 abuser we have heard of to date in that regard. From
25 the totality of the evidence, he was plainly, on the

1 evidence, a serious serial sexual offender who
2 repeatedly abused multiple boys throughout his career,
3 first abroad, then at Edinburgh Academy and then finally
4 at Fettes. Like the QVS teacher, he abused in plain
5 sight in front of his class, and on some accounts,
6 involving half of a class of 20. He watched in the
7 showers and abused there too. Put shortly, evidence
8 suggests he took advantage and engineered abuse whenever
9 and wherever the mood took him.

10 There is evidence of other teachers being too
11 interested in their charges, for example, DXM who
12 was simply allowed to leave quickly after his breathing
13 exercises with boys were discovered. None of it, one
14 has to say again though, comes close to 'Edgar's'
15 behaviour in terms of scale or gravity.

16 Again, the theme continues along the lines of other
17 schools in terms of sexual abuse by pupils, homoerotic
18 behaviour, up to and including rape. 'Mark', one of the
19 witnesses, talked about the impact that that had and
20 saying:

21 "The abuse by the senior pupil was common knowledge
22 among the senior pupil's peer group, the way people
23 treated me changed considerably. I became known as the
24 senior pupil's bum boy. It made me untouchable. The
25 bullies backed off. In the showers, everyone would

1 steer clear of me, it was a confusing situation to be
2 in. I was in this strange bubble of quasi-affection.
3 There was this cool older boy showing me special
4 attention. I was marked out as someone special. The
5 fact that bullying backed off was proof in itself that
6 I was special to him. I began to question whether it
7 was me, whether there was something wrong with me.
8 Later years taught me differently, but I still see him
9 as a product of the system at Fettes rather than
10 a predator."

11 That, perhaps, is the most telling point, that it
12 was the system that allowed this to take place and for
13 the impact he describes to have such effect.

14 That obviously leads on to the other category that
15 we talk about regularly at Fettes but elsewhere, and
16 that's the emotional abuse that all the previous abuses
17 cause, but emotional abuse in itself. In that regard we
18 heard of misogyny: 'Claire' being told she was a lesbian
19 by her classmates in the junior school, and then the
20 very powerful account of 'Samantha', which reflects her
21 courage in standing up and exposing a thoroughly
22 unhealthy culture that was alive and well in the 2000s,
23 and not just for herself but for her entire year group.

24 LADY SMITH: She was the spokesperson put up by quite
25 a number of girls, according to her evidence.

1 MR BROWN: Indeed so, and what one also should remember from
2 that chapter was the fact that the initial response,
3 certainly, of the school was less than ideal.
4 There's also racism, and one remembers the evidence
5 of --
6 LADY SMITH: Sorry, when you say "less than ideal", if we
7 look back to what actually happened, in a case where
8 a girl was speaking up, not simply for herself but for
9 a group of girls, about abuse that you rightly
10 characterise as a type of misogyny. The way it was
11 handled was both the boys and the girls were called in
12 to the deputy head's study together or a room, I can't
13 remember exactly where, together.
14 MR BROWN: Yes.
15 LADY SMITH: They were in the same venue with the teachers
16 at the same time to talk about this.
17 MR BROWN: Yes. The root cause was not understood by those
18 in authority, and that then had to be pointed out to
19 them, as we know from documentary evidence, and that's
20 why I said the initial response, with irony, left much
21 to be desired.
22 LADY SMITH: Mm.
23 MR BROWN: It had to be resolved by intervention from
24 others, as we know.
25 LADY SMITH: Very unfortunate. More than unfortunate.

1 Thank you.

2 MR BROWN: I was moving on to the racism, which obviously
3 we've heard of in other schools and which does form part
4 and parcel of, I think, society, although it has been
5 steadily improving. But with Saffy we heard of the
6 conduct in class and also the culture of slave auctions
7 into the 2010s, so within ten years of now. Saffy, as
8 Your Ladyship will recall, thought about 60 per cent of
9 her classmates were racist in their behaviour, while the
10 rest were silent and just not really concerned with what
11 they saw happening to her.

12 She said some of the staff -- thinking of the
13 behaviour of her chief tormentor, was just accepted by
14 the staff. It was accepted that he would act in that
15 way towards her. Others, she was clear, wouldn't have
16 tolerated it.

17 I'll obviously come back to that aspect, the
18 responses, in a while.

19 LADY SMITH: Yes.

20 MR BROWN: The other emotional aspect, which in a sense is
21 particular to Fettes, though I think it's the word
22 "mocking". We've heard of similar behaviour, although
23 there is perhaps -- in other schools. I think Loretto
24 had a different word for much the same behaviour. It
25 might arguably from the Fettes evidence be at a level

1 beyond the experiences of other schools however, because
2 it seems to have been part and parcel of the Fettes
3 culture in the past.

4 As 'Patrick' said:

5 "Verbal mocking was remorseless and directed by
6 almost everyone to almost everyone. It was incessant
7 and created an unhealthy environment."

8 'Patrick' was from Northern Ireland so received
9 relentless mocking of his accent and his country of
10 origin:

11 "My differences provided an opportunity for derision
12 and ridicule from the other pupils and there was no
13 structure in place or intervention by any member of
14 staff to indicate that this behaviour was wrong.
15 I think that staff were subconsciously aware that it was
16 wrong and perhaps took the view that it did no harm and
17 might even toughen up a boy. It does not. It weakens
18 the boy. Generally it's a feeling that he is not worthy
19 of care, breeds resentment and causes the pupil to
20 disengage."

21 And 'James', who had suffered at the hands of
22 'Edgar' at Edinburgh Academy, then came to Fettes for
23 three years in the second half of the 1970s and
24 describes it in this way:

25 "I suppose the culture at Fettes when I was there

1 really was there was just a tremendous amount of
2 mocking. It was a way of holding people to account,
3 I suppose. You were going to be mocked on some level,
4 so you'd have to toe the line, so I just recall it as
5 just excessive mocking, different pupils who were there,
6 very, very cruel, very ganging up on people and tearing
7 them apart for all sorts of things, their physique,
8 their demeanour, their accents. It was very cruel,
9 very, very cruel. I suppose it was a way of
10 administering power in a way by shaming people, so in
11 a way you had to kind of join in. You had to be part of
12 it, this cult."

13 When asked whether that culture had ever changed, he
14 said:

15 "No."

16 And went on:

17 "The oddness about it is that people were
18 rebellious, but once they had power, they became
19 disciplinarians and they quite enjoyed it."

20 So it was a perpetuating cycle and one where there
21 was no attempt to stop.

22 The impact of all these abuse again echoes what we
23 have heard in other schools. It has multiple effects,
24 multiple accounts of the need for professional
25 intervention as life travels along. A common thread was

1 the feeling life could have been so much better, had it
2 not been for the impact of abuse at Fettes.

3 Your Ladyship will remember our first witness, our
4 oldest witness, 'Roland', who was there in the
5 mid-1950s. He still finds it very difficult to forget,
6 he thinks the Inquiry is going to help him, but "it's
7 something that's with you for the rest of your life", he
8 said. He didn't want to offend the headmistress:

9 "She was very kind, she offered to take me around
10 Fettes, but I'm afraid even now I couldn't set foot in
11 the Fettes grounds."

12 Half a century, 70 years later, almost.

13 LADY SMITH: Yes, he was born in 1940, I think.

14 MR BROWN: Yes. He was there in 1955.

15 LADY SMITH: 1940, I think he is 80-odd now.

16 MR BROWN: That's right, and he was there from 1955 to 1959.

17 LADY SMITH: Yes.

18 MR BROWN: We've been talking about the constant themes that
19 we've been hearing at other schools as well, and
20 I accept and I stress broadly up until the world began
21 to change in the 1990s, just as we've heard in other
22 schools. There are two aspects to the Fettes evidence
23 that perhaps stand out, though.

24 The first is reputation. Now, reputation,
25 of course, is important to all schools and we've heard

1 that, but in the Fettes chapter we heard acknowledgement
2 from Mr Spens that it can be too important. He has
3 thought that after a period of reflection.

4 The 'Iona' evidence, if I can describe that chapter
5 in toto, demonstrates not only the problems of
6 reputation, but it also demonstrates the danger of
7 overloyalty to tradition and a school, as perhaps
8 evinced by 'Iona's' behaviour herself.

9 Ironically, the one issue raised in that chapter
10 before the years of complaint and the battle that ensued
11 was actually dealt with properly, and that was
12 Mr Alexander acting when concerns were raised about the
13 swimming instructor, Mr Stein. He gave what was
14 a proper response and warned, and as we know from the
15 police reports, two reports, in 1998 and 2015, it was
16 found that there had been no repetition of what had been
17 complained of by the girls.

18 The fallout from 'Iona's' distress at her son's
19 expulsion from the school was in many ways harmful to
20 many, many people. Mr Alexander spoke about tensions
21 within the junior school and the impact on its pupils.
22 'Claire', 'Betty' and 'Stephanie' were caught up in that
23 tension. They suffered. The SNR [REDACTED] of the time,
24 CXL [REDACTED], Mr Alexander remembers, was put under
25 intolerable pressure. And even with the support of the

1 board, faced a torrid time, I think is one of the
2 phrases that was used. To his credit, he managed to [REDACTED]
3 [REDACTED] without it, apparently, on Mr Alexander's
4 evidence, suffering negative impact, though there was,
5 one might infer, a personal cost.

6 He required to be looked after too.

7 But what was then impacted, following the 'Iona'
8 episode, was the mentality of the school after those
9 torrid five years. As I say, Michael Spens has
10 reflected on this and was candid about the result.
11 There was a defensive mentality caused by the
12 experience, but he recognised it led to inadequate
13 responses, for example in 2004 when 'Frank' came to the
14 school to talk about 'Edgar'.

15 As Mr Spens said when he was asked if he protected
16 that reputation above anything else:

17 "I think that's fair comment. It's one of the
18 things I reflected upon is that perhaps in those early
19 days at Fettes there was undoubtedly a defensive
20 mentality in terms of reputation. It was coming from
21 the leadership of the school, be that governors, the
22 senior leaders in the school. As you've implied, the
23 school does not enjoy bad publicity, particularly if
24 it's felt that it's unfair, and undoubtedly [REDACTED]
25 [REDACTED] had a very torrid time at the hands of the

1 press and I think that instilled a defensive mentality.
2 I think there was a danger that one would look too much
3 at the potential impact on the school rather than
4 looking beyond that at the substance of whatever you
5 were discussing."

6 Admirably candid and better still -- I'll come to
7 this at the end -- are his thoughts, his reflections, on
8 what you do to try and address that, which may be of
9 benefit, thinking of the purposes of this Inquiry in the
10 round.

11 LADY SMITH: Yes, I see that.

12 Just thinking of the position of SNR having
13 what -- Mr Alexander or was it Michael Spens --
14 described as a torrid time over an extended period.

15 MR BROWN: Yes.

16 LADY SMITH: In fairness, they're not suggesting that he
17 crumbled or the school fell apart.

18 MR BROWN: No.

19 LADY SMITH: However, if that happens to SNR anyone in
20 that senior leadership team, it needs to be recognised
21 there is a risk of them going under, not coping, does it
22 not, because that will damage the pupils --

23 MR BROWN: Further.

24 LADY SMITH: -- if that happens.

25 MR BROWN: Absolutely. It's to CXL credit, on the

1 evidence we've heard, that he didn't crumble, but the
2 potential has to be there and the need to address that
3 potential to ensure that steps are appropriately taken
4 (a) to prevent it crumbling or (b) to address it if
5 things do go wrong.

6 Reputation also was seen perhaps in the way that
7 Anthony Chenevix-Trench was protected, despite his
8 behaviour becoming increasingly well understood when he
9 was alive. We heard repeatedly of his drinking. We
10 heard of the boy who suffered 12 blows and had to go to
11 the sanatorium. Yet nothing was done. We've heard
12 about the decades that were required to remove his
13 memorial, which reflected the reality of his behaviour,
14 but the reputation of the school was more important for
15 decades until that happened.

16 It does rather fit in with the picture of it being
17 a feather in Fettes' cap that they got a former Eton
18 headmaster, notwithstanding the condition of that Eton
19 headmaster when he arrived. Clearly Chenevix-Trench is
20 a very complex character, a very damaged man physically
21 and emotionally, given his experiences at the hands of
22 the Japanese. He was liked, on the evidence, by some,
23 if not many of the boys, because he was quite capable of
24 fighting their corner, perhaps to their surprise, but
25 equally he was renowned for being drunk much of the

1 time, vicious in his beatings, and also sexually aroused
2 by them and by senior boys.

3 As 'Max' said:

4 "He was always drunk, he would stink of alcohol, and
5 in terms of the choices that he offered [remembering
6 that he offered different choices of punishment] well,
7 sometimes you didn't want to get your arse fondled,
8 sometimes you thought no, I'm not going to do that, so
9 you'd just allow yourself to be caned."

10 Max went on:

11 "He certainly achieved a vocal and physical pleasure
12 or climax, he gurgled a lot, I didn't, you know -- it
13 was like Lot's wife, I didn't turn around, I didn't want
14 to see what was going on."

15 Yet nothing was done. No doubt because to do
16 otherwise would be harmful to reputation.

17 With that in mind, looking back from now, his
18 employment seems remarkable, but is an example of the
19 second area which is perhaps novel to the Inquiry,
20 namely the willingness to take and keep staff who were
21 manifestly unfit to work with children.

22 We've had allusions to this, but the evidence about
23 'Edgar' and his conduct at Fettes in the 1970s is,
24 frankly, jaw-dropping when the facts are reviewed, and
25 of course those facts were reviewed in the 1970s and

1 were understood, at least in part, in the 1970s, and yet
2 nothing was done. I don't think on the evidence any
3 school has acted so badly, with the benefit of the 2021
4 view.

5 He was a man who was known to have rages, to lose
6 control, to pull hair, it was complained about to the
7 school by a parent, and who was known to have sexually
8 abused a child, because he admitted it in 1975, and yet
9 he was not sacked because an eminent psychiatrist said
10 he could be cured.

11 And yet, when he did it again, and on the evidence
12 must have done it many times before and after the
13 original complaint, the school, with the support of the
14 governors on that occasion, agreed he should go, but
15 only nine months later, because that administratively
16 suited the school. And notwithstanding, given the
17 written evidence, the paper evidence we've seen, by that
18 stage they knew he'd been sacked from a previous job
19 abroad because of a serious episode of abuse.

20 It is simply incredible, remembering that
21 background, and that notwithstanding the agreement that
22 was reached, yes, he could stay but he mustn't work with
23 children in the future, Chenevix-Trench was
24 enthusiastically writing references for him to do just
25 that.

1 It is, I think, the most cavalier approach to child
2 protection the Inquiry has heard of thus far, and
3 I suspect it may not be bettered, if I can put it that
4 way.

5 As 'Colin' said of Edinburgh Academy, where he
6 suffered at the hands of 'Edgar', 'Edgar' looking in at
7 the boys in the shower there:

8 "I do wish the school had shown a bit more
9 transparency at the time. If they knew about this, they
10 should have gathered the boys at assembly and asked if
11 anyone knew anything about it, told them the school
12 would take the necessary steps to deal with it. I don't
13 know if 'Edgar' was found out and sacked or whether his
14 visa was just up."

15 One obviously cannot say for certain if he knew
16 anything, but one can say with certainty that Fettes did
17 and yet failed to take appropriate action, both in the
18 1970s and on one view into the 21st century, given the
19 response to 'Frank' and simply passing it on to the
20 police, rather than contacting the student body, as
21 seems to be the way it would be done now.

22 All of this, of course, has been very negative about
23 Fettes, because we are hearing evidence of abuse. It's
24 clear that there is some very positive evidence about
25 Fettes too, which, if nothing else, emphasises a theme

1 we have reflected on and the importance of appointing
2 good people to schools.

3 I would suggest Your Ladyship might take the view
4 that Mr Alexander was a good appointment. He did deal
5 with Stein. He was interested in resolving 'Claire's'
6 complaints, trying to talk calmly to her on the
7 evidence, but the problem was, of course, that after
8 that meeting where he tried to give advice and he spoke
9 about that in evidence, matters then stopped because
10 'Claire' never returned to school, along with 'Betty'
11 and 'Stephanie', but he said:

12 "It was a difficult time, which was a shame because,
13 as I say, we tried so hard to make and keep life normal
14 for 'Claire', and here it was becoming very abnormal."

15 He recognised the difficulties.

16 He also talks of the impact of CXL arriving in
17 its 1990s and the change that a proactive SNR can make.
18 He remembers older staff commenting that CXL had
19 made such a difference, both in terms of dealing with
20 bullying and stopping initiation ceremonies. It's very
21 striking that SNR comes in and effects such
22 significant change in culture.

23 There's no question that the school has been seeking
24 to change itself since the 1990s, in part, no doubt,
25 because of societal changes, legislative changes and the

1 guidance that SCIS has been providing to all schools.

2 I also think it noteworthy that both the current
3 head and a board representative attended every day and
4 have clearly taken matters seriously, and I think the
5 same is true for Edinburgh Academy on the days that the
6 evidence reflected past conduct there.

7 The current head gave thoughtful and passionate
8 evidence, and it's clear from what all have said in
9 evidence and what is now said in submission, that there
10 is no challenge to the evidence of abuse, save questions
11 of emphasis, perhaps, and the weight to be given to
12 individual witnesses, which might be understood in
13 particular cases.

14 Both submissions received are interesting,
15 particularly -- I think this is taking it to levels not
16 seen before -- as they look ahead to possible changes of
17 practice which might improve matters, and that is of
18 great benefit.

19 I take no issue with Edinburgh Academy's
20 submissions, paragraphs 5 and 12 in particular, as to
21 'Edgar's' behaviour are welcome, given their realism.

22 As for Fettes, much is made of the myriad changes
23 that have taken effect from the mid-1990s onwards, which
24 of course, as I've said, echoes the evidence from other
25 schools.

1 There does seem to be concern expressed that somehow
2 time constraint prevented the evolutionary development
3 of the current safeguarding regime from being understood
4 in oral evidence. Can I just reassure that that's not
5 so. Given the volume of documentary evidence, one
6 couldn't achieve that in oral evidence with times
7 allowed, but it will be fully considered outwith
8 hearings.

9 LADY SMITH: Indeed.

10 MR BROWN: That obviously includes the totality of
11 Helen Harrison's helpful statement and the material
12 which was received by the Inquiry last week, which we
13 haven't yet had a chance to assess properly.

14 In due course it will be an interesting comparative
15 exercise to look at the evolution of safeguarding in all
16 seven of the schools before the Inquiry, both from
17 school documents and the numerous inspection reports.

18 The school and the heads seem to remain troubled at
19 my question about whether Fettes was more responsive and
20 less proactive than they might have been at times. That
21 is a matter for Your Ladyship to consider on the
22 evidence.

23 There's no doubt that increasing number of processes
24 were put in place from the 1990s onwards. For example,
25 the abundance of appropriate steps taken from 2020 as

1 regards equality, diversity and inclusion, which
2 undoubtedly focused what had previously been reflected
3 in anti-bullying material from the 1990s onwards.

4 However, as is recognised, just as with the concerns
5 about misogyny in 2000, echoing 'Claire's' complaints of
6 junior school misogyny in the 1990s, it's clear,
7 I suggest, that racism went unnoticed in the 2010s, the
8 decade when the slave auctions were routine until it was
9 recognised that they shouldn't be.

10 As Michael Spens said about racism:

11 "I found out from my daughters of the problems after
12 they left."

13 He was deeply disappointed that he didn't know more,
14 and the key point is that he and other staff seem to
15 have been unaware of the problem, just as 'Samantha'
16 found with misogyny complaints a decade earlier.

17 As for slave auctions, Michael Spens's evidence was
18 interesting. He agreed it was open to misinterpretation
19 and was simply unhelpful, reflecting on it when you're
20 trying to put across messages of tolerance and no
21 discrimination and anti-bullying and all of that:

22 "It was a worthy intention which was meant to be
23 light-hearted and positive in nature, but the result was
24 unhelpful."

25 And he acknowledged:

1 "You reach a point where you decide, tradition or
2 not, you're going to end it."

3 But the process of reaching that stage, with
4 hindsight, perhaps took longer than it might have done.

5 LADY SMITH: I was interested in his concession, I think,
6 when I took up with him the line that Saffy had
7 explained, that having multiple nationalities in a place
8 like a school doesn't mean that you have and understand
9 the impact of multiple cultures. You haven't ticked the
10 necessary box by being able to count the number of
11 countries that children come from. When Michael Spens
12 had pointed out, "Oh, we had children from so many
13 different countries" and I asked him to think again and
14 think about multiplicity of cultures, he did seem to
15 accept that she was absolutely right to say what she
16 said about that --

17 MR BROWN: Yes.

18 LADY SMITH: -- and the risk that an organisation thinks
19 it's enough to notice where everybody has geographically
20 come from.

21 MR BROWN: That ties in what I was going to say next,
22 because one of the very useful things about the Fettes
23 chapter of evidence beyond hearing about episodes of
24 abuse, I would suggest we received some very helpful
25 reflective evidence from former heads, which ties in --

1 LADY SMITH: Yes.

2 MR BROWN: -- with what we've heard, but it's interesting

3 that independently these former heads, thinking about

4 it, which demonstrates, if nothing else, their

5 professionalism and passion for education.

6 LADY SMITH: Mm.

7 MR BROWN: I'm going to quote from two passages from

8 Mr Alexander and then from Mr Spens. Alexander said:

9 "As my son, who works in a school, pointed out to

10 me, he said I'm well out of date with current practice

11 and I wouldn't understand this and I wouldn't understand

12 that, but I thought [he was thinking about what he'd

13 written in his statement] I have tried to write as

14 principles that if they are applied correctly would lead

15 to good child protection and good child safety. I think

16 you've got to get the right people in the first place.

17 I think you have got to make sure they are trained

18 adequately, I think you have to make sure they are

19 comfortable that they are being observed, without having

20 somebody looking over your shoulder all the time, that

21 they feel that what they do is known about, that they

22 have advice and help, that they're regularly reviewed

23 and appraised and that they are people who can build

24 a good rapport with the children in their care. I don't

25 think everyone who goes into the teaching world would

1 fall into that category, but I think if you can achieve
2 that, you will have people who will be good at
3 childcare. I think the important thing is not to build
4 a structure that forces people to become too
5 bureaucratic in the name of it being accountable.
6 I think it's important that it works in practice rather
7 than it works on paper."

8 That perhaps takes on what you've just said about
9 Saffy. You can have all the processes in the world, but
10 unless you're actually making sure they're implemented
11 realistically, it matters not. Because Mr Alexander
12 agreed:

13 "Good processes being identified and written down
14 does need to be done, because that's what people need to
15 understand to begin with, but then you need to have
16 practical ways of making it work that are manageable and
17 not simply bureaucratic."

18 That, pretty succinctly I think, reflects the
19 evidence we've heard from other heads before in a neat
20 way.

21 Michael Spens also talked about reputation and what
22 you do about the potential for reputational problems.
23 His response, I suggest, was interesting too:

24 "Part of it is you learn from experience, it's the
25 learning culture that we've discussed in the past, and

1 as you go through the job you appreciate actually what
2 is important and what isn't. And that people matter far
3 more in the end than reputation and that the one will
4 lead to the other anyway. And I think you need to --
5 you have to change your perceptions of life and
6 understand that what happens in the papers one day will
7 be forgotten very soon after. In the great scheme of
8 things, that is not the most important thing in the
9 world. What is important is the well-being of the
10 people in the school. The pupils obviously, but pupils
11 and staff and parents and everyone involved in the
12 school."

13 I asked whether, thinking of the last stages of his
14 time as head in 2017, whether he would have behaved
15 differently than he had with 'Frank' in the early 2000s,
16 and his response was:

17 "Undoubtedly differently."

18 What would have been different, I asked:

19 "I think it refers back to what you were asking
20 about a moment ago. I think the response would have
21 been far less defensive and much more sympathetic. And
22 we would have hopefully engaged in a conversation with
23 the individual to discuss ways of taking this forward in
24 a constructive manner. But there was, perhaps, more of
25 a competitive silo mentality amongst schools 20, 30

1 years ago than there is now. I think there is a much
2 more collegiate approach between schools and rather than
3 being worried about a rival getting a jump ahead of you,
4 you work more on the basis of let's all try and get
5 better together."

6 That ties in, just as they all have spoken, and I'm
7 going to Helen Harrison in this, with the need for
8 references to be -- perhaps a unified approach to be
9 taken, a sensible approach, which this Inquiry may
10 express views on, but Helen Harrison also talked
11 encouragingly of the increasingly joined-up approach of
12 the schools for the Inquiry. They are talking to one
13 another, they are talking to SCIS, and I suspect from
14 what she said we may hear that reflected in closing
15 thoughts by SCIS in February.

16 So there's a great deal of positivity coming from
17 the Inquiry, recognising a great deal of abuse up to
18 largely perhaps the 1990s, but some beyond, and there
19 can be reasons for enthusiasm looking ahead, because of
20 the quality of the evidence in toto we have heard over
21 the last three weeks.

22 LADY SMITH: Thank you.

23 MR BROWN: I think the only thing I can say now is hopefully
24 we can look forward to hearing from Merchiston on
25 11 January.

1 LADY SMITH: We must not lose the belief that we can keep
2 making progress, Mr Brown. So far so good.

3 Edinburgh Academy, Mr Mitchell, and if you'd like to
4 come forward, I know, she said with confidence, I think
5 I know, that that microphone will pick you up clearly.
6 Thank you.

7 Closing submissions by MR MITCHELL QC

8 MR MITCHELL: Good morning, my Lady.

9 Edinburgh Academy has provided a written submission
10 to the Inquiry. Does my Lady have a copy of that?

11 LADY SMITH: Yes, I do. It's very helpful.

12 MR MITCHELL: Thank you.

13 It's often remarked that the true meaning and full
14 impact of witness evidence cannot be obtained from the
15 printed page. That was no less true in the evidence
16 that the Edinburgh Academy listened to over the three
17 days that it attended at the Inquiry.

18 Those who practice in courts in Scotland are not
19 unused to listening to evidence of abuse. However, what
20 we do not often hear is a witness speaking of the
21 effects of the abuse that continue to plague them
22 decades after the event in question. This is both
23 shocking and very sad. All schools should be safe
24 places. The Edinburgh Academy applauds the bravery of
25 all the witnesses who have come forward to the Inquiry.

1 The Academy is very grateful to Your Ladyship for
2 allowing it the opportunity to take part in the Inquiry,
3 this important Inquiry, and to appear today to make
4 a submission. The Academy has taken and continues to
5 take the process very seriously. It has done its best
6 to support all aspects of the Inquiry, as well as
7 current criminal investigations. It will always try to
8 support its former pupils to the best of its ability.
9 The rector, Barry Welsh, and the chair of the Academy's
10 court of directors, Morag McNeill, were present on each
11 of the three days that evidence involving the Academy
12 was led and they are present today.

13 LADY SMITH: Thank you.

14 MR MITCHELL: What, then, can the Academy contribute to this
15 Inquiry? What can it say that has not already been said
16 by others?

17 I think there are a number of things.

18 Firstly, it can acknowledge. It can acknowledge the
19 abuse spoken to by the witness 'James' and the witness
20 'David'. 'David', whose evidence was read into the
21 Inquiry. Both suffered at the hands of the teacher
22 'Edgar', who was at the Academy in the late 1960s to the
23 early 1970s. It can acknowledge and face up to the
24 wider underlying issues that flowed from the evidence of
25 these two witnesses, such as the movement of 'Edgar'

1 from the Academy to Fettes, where he carried out further
2 abuse, as spoken to by the witness 'Ben'.

3 Secondly, the Academy can provide reassurance. It
4 can reassure the witnesses, the Inquiry and the public
5 that things have changed dramatically since the 1970s.
6 Governance, oversight, pastoral support, pupil voice,
7 peer support and robust employment procedures are seen
8 by the Academy as essential prerequisites for a modern,
9 well-functioning school.

10 Clearly there were times in the past when schools,
11 the Academy included, lacked a consistently
12 child-centred approach to education. Not so today.

13 Nevertheless, the Academy recognises that there is
14 no room for complacency. The protection of children
15 within the education system requires constant vigilance,
16 constant vigilance.

17 Thirdly, and this flows from the need for vigilance,
18 the Academy looks to the future and can respectfully
19 offer two suggestions that may assist the chair when she
20 comes to make recommendations to the Scottish
21 Government.

22 I turn then firstly to the first of my three
23 chapters, that's acknowledgement.

24 I acknowledge the evidence given by 'James' and
25 'David' and of the wider issues raised by their

1 evidence. 'James' gave evidence of being abused
2 sexually on one occasion in the Academy prep school by
3 a teacher, 'Edgar', when his genitals were fondled under
4 his gym shorts. He also spoke of being beaten by
5 teachers with wooden clackens.

6 'David's' statement referred both to physical and
7 sexual abuse at the hands of 'Edgar'. He spoke of being
8 pulled up by his sideburns and lifted off his feet. He
9 recalled being called to the front of the class by
10 'Edgar', ostensibly to check his written work. He was
11 made to stand by 'Edgar's' desk and was then covertly
12 sexually abused by him. This particular form of sexual
13 abuse was a frequent occurrence and spanned a period of
14 about one year.

15 'David's' description was mirrored by evidence given
16 by 'Ben'. 'Ben' had been a pupil at Fettes Junior
17 School from 1974 where he was taught by, amongst others,
18 'Edgar', who had left the Academy by this point to teach
19 at Fettes. 'Ben' was repeatedly sexually abused by
20 'Edgar' and in the manner described by David. 'Ben'
21 moved to the Academy for his senior schooling and
22 discovered that 'Edgar' had been a teacher at the
23 Academy. 'Ben's' new school friends at the Academy told
24 him that they were well aware of 'Edgar's' predatory
25 behaviour.

1 Having listened to the evidence, the Academy does
2 not think that the practices of 'Edgar' can be viewed in
3 isolation. Underpinning the evidence of 'James',
4 'David' and 'Ben' were certain common constants or
5 features. They are the type of feature that allowed
6 a teacher like 'Edgar' to operate, largely unchecked.
7 They might be summarised as follows.

8 There was a lack of care shown towards the pupils.

9 There was a reluctance on the part of pupils to
10 speak to teachers about their worries or even to share
11 their concerns with their friends. The witness 'James'
12 spoke of an atmosphere of fear, an atmosphere of fear
13 amongst the boys. One inferred that this was due to the
14 administration of physical discipline and bullying by
15 older boys.

16 There was a reluctance on the part of teachers to
17 confront abuse. The witnesses thought teachers at the
18 Academy must have been aware of 'Edgar's' behaviour.
19 However, such a teacher was able to continue in his post
20 and even move to another school.

21 These underlying features, these constants, are
22 incredibly destructive. They make for unhappiness and
23 misery, and they give oxygen, oxygen to the actions of
24 a teacher such as 'Edgar'. They have no place in
25 society, much less in education. The Academy accepts

1 without reservation the evidence of 'James', 'David' and
2 'Ben'. To them, and to all pupils who suffered at the
3 hands of 'Edgar' or who suffered from a lack of care or
4 bullying, the Academy offers a heartfelt apology. The
5 years that a person spends at school should be amongst
6 the best of their lives. It will be of no comfort to
7 them that many thousands of pupils enjoyed and continue
8 to enjoy their time at the Academy, but for those
9 affected the Academy is truly sorry that it failed them.

10 The ability of 'Edgar' to move to another school is
11 particularly concerning to the Academy and I return to
12 that issue later in the submission.

13 Having dealt with the first of my themes,
14 acknowledgement, I turn to the second, which is
15 reassurance.

16 In very general terms the Edinburgh Academy now has
17 in place a series of checks and balances that safeguard
18 children at all levels of the school. Child protection
19 training is now core to the ethos of the Academy. The
20 pastoral teams that oversee every aspect of day-to-day
21 life for students are highly trained individuals, who
22 devote significant periods of time to ensuring the
23 safety and happiness of the children. These teams
24 prevent students from feeling that they are in some way
25 second class.

1 I propose to deal with this chapter of reassurance
2 under the following headings. Governance and
3 safeguarding, pastoral support, pupil voice and peer
4 support and friend support group.

5 Firstly, then, governance and safeguarding. Viewed
6 from today's standpoint and looking at the Academy of
7 the 1970s it is clear that staff lacked the training in
8 child protection that is essential when dealing with
9 young people. Strikingly, the inference that was drawn
10 by the witnesses 'Ben' and 'David' was that the school
11 attempted to conceal issues of abuse for fear of
12 reputational damage.

13 The clear need for oversight and governance of
14 safeguarding and well-being issues was lacking.

15 Today at the Academy in governance terms the court
16 of directors has the ultimate responsibility for child
17 protection. But it delegates that to its safeguarding
18 committee. The committee consists of court directors
19 who are trained by the same child protection teams that
20 train the teaching staff. Visits from Education
21 Scotland, Her Majesty's Inspectorate of Education and
22 the Care Inspectorate ensure that national standards are
23 followed.

24 The safeguarding committee maintains a close working
25 relationship with the rector and other senior academy

1 staff. The Academy has clear terms of reference and has
2 responsibility for the governance and oversight --

3 LADY SMITH: The committee?

4 MR MITCHELL: The committee, I'm sorry, my Lady.

5 The committee has clear terms of reference and
6 responsibility for the governance and oversight of
7 safeguarding issues. It provides assurance to the court
8 on the following matters.

9 LADY SMITH: Just for those who don't understand when you
10 say "court", I understand from what's in the submission
11 that you're referring to the governing body at the
12 Edinburgh Academy, which, for the whole of its life,
13 I think, has always been referred to as the court of
14 directors. Is that correct?

15 MR MITCHELL: Yes, that's correct.

16 The safeguarding committee provides assurance to the
17 court of directors, the governing body, on the following
18 matters: the integrity of the structures and procedures
19 in place within the Academy, senior and junior schools,
20 for the effective management of safeguarding issues;
21 secondly, the Academy's performance in the management of
22 safeguarding issues when viewed against best practice;
23 and, thirdly, the Academy's compliance or otherwise with
24 guidelines relating to the Westminster Government's
25 Prevent strategy, which targets radicalisation and

1 terrorism.

2 The committee meets at least twice in each academic
3 year, although it reports to the court of directors four
4 times in each academic year. A recent governance review
5 was carried out by the chair of the court. As part of
6 that review it has been agreed that each court committee
7 will provide a formal written annual assurance report.

8 LADY SMITH: Just rewinding for a moment, Mr Mitchell, you
9 tell me they meet, the safeguarding committee meet twice
10 a year --

11 MR MITCHELL: Yes.

12 LADY SMITH: -- but they report four times a year. How does
13 that work if they are only meeting twice a year?

14 MR MITCHELL: I think they're statutorily obliged in terms
15 of their charter to meet at least twice, but they meet
16 on an ad hoc basis more than twice.

17 LADY SMITH: Thank you. So that's the minimum?

18 MR MITCHELL: Twice is the minimum.

19 LADY SMITH: Four times a year will be the quarterly
20 meetings of the whole court of directors; is that right?

21 MR MITCHELL: That's what I understand.

22 LADY SMITH: Thank you.

23 MR MITCHELL: External audits help to ensure the robustness
24 of the Academy's child protection protocols.

25 I turn now to pastoral support. A common theme to

1 the evidence was that the children did not feel cared
2 for. The relationship between students and staff were
3 lacking, and often pupils felt there was no one to
4 approach to discuss issues.

5 A simple definition of pastoral support might say
6 that it is the support of the students' emotional,
7 psychological and spiritual well-being. Of course that
8 bare definition does not convey the effort and
9 dedication required to provide support. Quite simply,
10 pastoral support is present in everything that the
11 Academy does. It is present in the smallest everyday
12 interaction between teacher and pupil, to more
13 substantial issues when concerns are raised about
14 a child's well-being. Pastoral work can never be
15 successful without healthy staff-pupil relationships and
16 they are built over countless interactions, both formal
17 and informal, the result of which is that students know
18 that there is someone who they can talk to.

19 Just pausing there, my Lady. To give a small
20 example of pastoral support, imagine that a pupil does
21 well in a maths competition or in a music competition or
22 does well in a hockey or rugby game over the weekend.
23 The rector goes out of his way to find out about that
24 success and goes out of his way to speak to that child,
25 perhaps in the lunch queue, and say, "You had success at

1 the weekend, you had a good result, well done". That
2 makes that child feel ten feet tall and it makes the
3 child realise that the rector and the staff care for the
4 child and the child then begins to care for the staff.

5 LADY SMITH: What about the child who is next in the lunch
6 queue and is not that sort of achiever? Possibly would
7 love to be, but never gets picked for the team, doesn't
8 have musical talent, what about them?

9 MR MITCHELL: That child might be academically bright or
10 that child may go on in future years to be a sport
11 achiever or a musician. But the way the staff patrol
12 the lunch queue, I think it's important to realise that
13 at lunchtime it is not pupils who patrol the lunch
14 queue, it is the staff. So my understanding is that the
15 staff have a word for every child in the lunch queue.

16 LADY SMITH: Thank you.

17 MR MITCHELL: The large example of pastoral support is when
18 there is a serious issue to contend with, such as, for
19 example, a child has to leave their family home because
20 of abuse. The rector or a senior member of staff will
21 then go out of his or her way to speak to that child,
22 "Come and see me at lunchtime, let's have a chat", and
23 at that meeting finds out exactly what is going on with
24 the child.

25 There have been significant developments in pastoral

1 support at the Edinburgh Academy over the years. This
2 has moved in tandem, of course, with developments in
3 educational thinking and measures introduced by statute,
4 such as the Children and Young Persons (Scotland) Act
5 2014 and the introduction of GIRFEC, Getting It Right
6 For Every Child. Those who provide pastoral support
7 work very closely as a team, meeting regularly to share
8 concerns. Pastoral staff are given time and training so
9 that they can work carefully and thoroughly through
10 issues where child protection or safeguarding may be
11 a concern. Child protection concerns are shared quickly
12 amongst the team and relevant support agencies are
13 always contacted when necessary.

14 The Academy has ambitious standards in relation to
15 openness and transparency. It has clear guidelines as
16 to when confidentiality is appropriate or necessary.

17 I turn now to pupil voice and peer support. It was
18 striking in the evidence presented just how absent
19 members of the teaching staff appeared to be and there
20 was a lack of visible and available support. Staff
21 presence and the importance of the pupil voice is now
22 central to all that the Academy does.

23 This evolution, whilst wonderful to see, has come
24 too late to protect those students who attended the
25 Academy 50 years ago. Students in the modern school are

1 encouraged to be open, honest and secure in feeling that
2 their voices will be listened to and their views and
3 feelings respected. The Academy's prefect group, the
4 Ephors, are selected via an interview process that
5 includes a focus on how they as individuals and as
6 a team want to make the school a better place. They are
7 empowered to be student leaders and are promoted on
8 their ability to understand, have empathy for and care
9 for their fellow students.

10 In overview, there are countless interactions that
11 all build up a sense of community. Ephors meet with
12 staff weekly, the pupil council who represent every year
13 group meet with senior staff regularly to discuss their
14 concerns. Support groups provide safe spaces for
15 students who seek out others with similar concerns and
16 views. Staff lead activities and clubs in non-class
17 time, so students can explore their passions and develop
18 a deeper connection to the school. Coaches and music
19 teachers are all engaged in pastoral care.

20 LADY SMITH: Mr Mitchell, just going back to using
21 an interview process for the appointments of Ephors, do
22 the pupils apply or are they invited to interview
23 without application?

24 MR MITCHELL: I don't know the answer to that immediately,
25 but I can provide that answer.

1 LADY SMITH: That's a very interesting idea.

2 MR MITCHELL: That they should be invited and interviewed?

3 Yes. But I can find the answer to that.

4 LADY SMITH: Thank you.

5 MR MITCHELL: The pupil council, the Ephors, the various

6 student support groups throughout the school all work

7 together to provide a voice for the students so that

8 their concerns are heard. Many of those who go on to

9 serve the school as student leaders have spent time

10 themselves in offering peer support early in their

11 careers, such as in the friend support group which

12 I deal with in more detail below.

13 For the school community to work it is vital that

14 relationships are built between the students and their

15 teachers so that the students feel safe and know they

16 will be listened to, supported and cared for.

17 I turn lastly to the friends support group. This,

18 my Lady, is an idea that I think originated in

19 Scandinavia that the Academy heard about and that it has

20 run for a number of years now to great success, I think.

21 For the past five years the Academy has run a friend

22 support group in each of the middle years. The Academy

23 believes that it is one of only a very few schools to

24 run such a scheme. Pupils in the middle years are at

25 a very important stage in their personal development, as

1 they make the transition from children to young adults.
2 Experiences show --
3 LADY SMITH: What age group are they covering when they say
4 "middle years"? Because I think the school is simply
5 junior school and senior school, from what I have heard.
6 MR MITCHELL: Yes. Third, fourth and fifths.
7 LADY SMITH: In the senior school?
8 MR MITCHELL: In the senior school.
9 LADY SMITH: Early teens?
10 MR MITCHELL: Early teens.
11 LADY SMITH: Thank you.
12 MR MITCHELL: The Academy believes that the friend support
13 system can play an important part in helping the
14 children to negotiate this difficult but exciting stage
15 of their lives and help to maintain a safe and
16 supportive environment. The friend support team meet
17 regularly with the head of year to share their ideas
18 about how the pupils in middle years can be best helped
19 by the pastoral team. The system works as follows: each
20 class elects a number of pupils who work with their
21 classmates, class teachers and the heads of year to help
22 any individual in their class who is experiencing
23 difficulties at school. This support could take various
24 forms. For example, the friend support pupil might let
25 the pastoral staff know about a person who is having

1 friendship problems and ask them to help resolve the
2 situation. The friend support pupil might be approached
3 by one of their classmates who wants to talk to someone
4 they can trust about someone who is being insensitive or
5 unkind to them. The friend support student might alert
6 teachers to bullying comments being made about
7 an individual on social media.

8 The role of the friend support pupil is clearly
9 explained to all the middle years in a series of
10 meetings. Only students who feel they want to take on
11 the responsibilities of the role are involved. It is
12 entirely voluntary. Those students who are chosen by
13 their peers receive further training to help them in
14 their roles.

15 The friend support group has proved invaluable in
16 supporting pupils in that it provides them with insight
17 into pastoral issues and helps staff to address those.
18 The system builds on and strengthens the positive and
19 supportive relationships which already exist among the
20 students. It also gives recognition and a clear role to
21 the individuals who are recognised by their peers as
22 being particularly responsible, sensible and caring.

23 There are different levels to pastoral support.
24 There is the pastoral support that exists between the
25 teacher and the pupil. At another level, there's the

1 pastoral support that exists between an older pupil and
2 a younger pupil, and then you have the level of pupils
3 in the same year. The idea here is that they gain
4 an insight and an appreciation for pastoral support.

5 Power is not put into their hands to resolve the
6 situation, because that wouldn't be appropriate, but
7 they gain the insight into what pastoral care and
8 support means.

9 The future. I turn now to the third and final
10 chapter, that of suggestions for the future. I wish to
11 mention two issues.

12 Firstly, checks made when a teacher changes school.

13 Secondly, the friend support group.

14 Checks made when the teacher changes school. The
15 evidence that the teacher 'Edgar' was able to move from
16 the Academy to Fettes is a source of deep regret and
17 horror for the Academy. The Academy find it difficult
18 to comment on how it happened. Records from that period
19 do not provide an answer, but I believe the Inquiry
20 heard evidence about a favourable reference that was
21 provided by someone at the Academy to a teacher at
22 Fettes.

23 It is inconceivable that in the modern academy
24 'Edgar' could have carried out sustained abuse and be
25 allowed to move to another school. The checks and

1 balances outlined above would have found him out. The
2 police would have been involved, a criminal prosecution
3 would have followed and his name would have been placed
4 on the Sex Offenders Register.

5 Plainly in dealing with a teacher for whom concerns
6 are raised, transparency and robustness in
7 decision-making is critical. The Academy is confident
8 that its child protection measures are fit for purpose
9 and would be able to deal with a similar situation
10 should it arise.

11 Changes in human resources practices have
12 immeasurably improved the safe environment for students.
13 Employment protocols, protecting vulnerable groups,
14 a scheme managed by Disclosure Scotland and the
15 inclusion of child protection questions in all
16 interviews for employment have meant that safeguarding
17 and child protection remain a significant priority in
18 all aspects of recruitment.

19 However, in order to maximise or enhance protection
20 of children, the Academy would encourage the Inquiry to
21 look at the standardisation and educational references
22 across Scotland in both the private and state sector.
23 Character and professional references are vital when
24 considering the safety of students. Modern referencing
25 protocols that exist in many schools mean that current

1 or former employers are only willing to provide bare
2 details of employment, such as dates and positions held.
3 They do not provide the opportunity for the current
4 employer to provide further details on character,
5 ability and, more importantly, any record of training or
6 experience in child protection. This puts the new
7 school at a significant disadvantage.

8 When a student moves on to a new school,
9 safeguarding and well-being protocols ensure that
10 information and details about pastoral support and
11 intervention are shared between the schools. The
12 schools, and in particular the respective child
13 protection officers, work together so that information
14 is shared. This allows the student to settle more
15 quickly into a new environment and enables support to be
16 put in place. The new pastoral team is therefore ready
17 for the arrival of the new student. This confidential
18 sharing of information is a central feature of Getting
19 It Right For Every Child and an important conduit to
20 enable schools to care for their students.

21 It seems peculiar, therefore, that the same level of
22 confidential professional sharing of information does
23 not exist between schools when discussing teaching
24 staff. Now, it's a difficult area, confidential
25 information, what is and what is not, and there's little

1 law in Scotland about it, although there is quite a lot
2 in England, and of course one has article 8 ECHR to bear
3 in mind too.

4 For example, if a teacher wants to move school and
5 mentions a headmaster of the current school as
6 a referee, the Academy find that that referee is
7 unwilling to provide any detail at all on child
8 protection matters, so even if the person has been the
9 subject of disciplinary procedures in relation to child
10 protection or is currently undergoing a child protection
11 disciplinary procedure, that will not be mentioned.

12 Now, that seems bizarre when the child is the focus
13 and when everything ought to be being done in the best
14 interests of the child. I would submit that when child
15 protection interests are at issue, there is no duty of
16 confidentiality.

17 I know that evidence was given in the Loretto phase
18 about this, I read the submission about that by
19 Ms Graham. She mentioned a free-flowing approach to
20 references was felt by one witness to be uncomfortable,
21 difficult for that witness to comply with, but that
22 a questionnaire might be better.

23 But even a questionnaire in this scenario might butt
24 up against a statement, "Well, we just don't provide
25 that information", and the fear is liability.

1 LADY SMITH: I think there's no doubt that there is a fear
2 of litigation. But can't that be addressed by always
3 being careful to provide only what is fact, the fact may
4 be there is an ongoing investigation into this incident
5 at this school and the allegation was a child protection
6 allegation. It's not yet resolved.

7 MR MITCHELL: Absolutely, yes.

8 LADY SMITH: If that's true, that that's what the position
9 is, then there should not be any concern.

10 MR MITCHELL: What is the difficulty in providing that? But
11 that is the reality: that sort of information is not
12 provided.

13 LADY SMITH: Sorry to interrupt, but it's all too easy,
14 I suppose, as the school from which the teacher is
15 departing, for the head's reaction to be that they
16 shouldn't do that because in truth this will be an end
17 of that person's teaching career, they won't get a job,
18 they'll be forced to start doing something else, and
19 when this issue all plays out, his name may be cleared
20 or her name may be cleared. There simply may be no
21 determination that any child was harmed or at risk. But
22 it might go the other way.

23 MR MITCHELL: It might go the other way, and the child
24 should always be the focus of the issue. We're not
25 talking here about staffroom gossip --

1 LADY SMITH: No.

2 MR MITCHELL: -- we're talking about hard fact.

3 I move, secondly, to the second suggestion, and I've

4 dealt with this already in some detail so I mention it

5 in passing, but the Academy feels able to recommend to

6 my Lady the friend support group as something that would

7 be of benefit in all schools. The concept of such

8 a group originated, it is understood, in Sweden, where

9 it has been very successful and it has proved to be very

10 successful at the Academy.

11 LADY SMITH: If I was a child at the school, a teenager who

12 was a member of the friend support group, would I have

13 allocated to me particular children that it was my

14 responsibility to look out for rather as a mentoring or

15 buddying system might involve, or is it, as I think

16 I have the impression, that they generally have

17 a responsibility to look out for all children in

18 their -- I don't know whether it's a class group or

19 a year group?

20 MR MITCHELL: In their year group.

21 LADY SMITH: The whole year group?

22 MR MITCHELL: Yes. That's my understanding. They're not

23 assigned children to look out for. It's a concern that

24 they have to have for the whole year.

25 LADY SMITH: Is the idea then being that they are possibly

1 the best people to get a clear overview of what's

2 happening amongst that peer group, that year group?

3 MR MITCHELL: Yes. They have their fingers on the pulse.

4 They interact with their fellow pupils day in/day out,

5 they see what's going on, but they are then required to

6 take those concerns to the pastoral team, where they

7 discuss them. And if further action is required, they

8 are not required to go and sort it out. The pastoral

9 team take it on from there.

10 LADY SMITH: Thank you.

11 MR MITCHELL: It encourages a climate of mutual respect for

12 the pupils in the middle years, such that they

13 understand and play their part in building friendly,

14 responsible and caring relationships with one another.

15 In conclusion, my Lady, the Academy deeply regrets

16 the mistakes of the past, but it passionately believes

17 that the school is now and for some time has been

18 a supportive and safe environment for its children.

19 However, as already mentioned, child protection within

20 education requires constant vigilance. The Academy has

21 listened carefully to the evidence led. It is mindful

22 of the errors of the past. It is not blasé. It does

23 not intend to sit back and rest on its laurels. There

24 is no room for complacency. It moves forward more

25 concerned than ever with the concern for protection of

1 every child who walks through its gates.

2 LADY SMITH: Thank you, Mr Mitchell.

3 MR MITCHELL: My Lady, can I say in conclusion thank you

4 very much for allowing us to take part in this Inquiry

5 and to make the submission today.

6 Can I also thank Mr Brown, Senior Counsel to the

7 Inquiry, for his very helpful approach in many

8 conversations that he and I have had over the past

9 months and for answering all my questions.

10 Can I finally thank the staff to the Inquiry, who

11 have been very friendly and accommodating to us, to the

12 Academy.

13 LADY SMITH: Thank you very much for all of that,

14 particularly if I may say, your thanks to the staff, who

15 are tireless workhorses behind the scenes. We

16 appreciate that. Thank you.

17 Very well. As mentioned earlier, we'll need to take

18 a morning break and now would seem to be the right time

19 to do it.

20 (11.16 am)

21 (A short break)

22 (11.37 am)

23 MR BROWN: He was here two minutes ago.

24 LADY SMITH: Obviously, or I wouldn't have been brought on.

25 He is no doubt on his way.

1 SPEAKER: If Your Ladyship would excuse me for a short
2 minute, I will ...

3 LADY SMITH: That would be helpful, thank you.
4 The alternative is you could take over.

5 MR BRODIE: My apologies, my Lady.

6 LADY SMITH: It's quite all right. I was about to
7 apologise, because I don't want to put you under
8 pressure, Mr Brodie. We thought you were ready, but
9 you're obviously ready now.

10 Closing submissions by MR BRODIE QC

11 MR BRODIE: My Lady has a copy of the full written
12 submissions for Fettes. My Lady will have seen that
13 they are fairly lengthy and I'm aware that the allocated
14 time is such that it is perhaps best if I simply adopt
15 those written submissions and now give what is more by
16 way of a summary of what is contained therein.

17 LADY SMITH: Thank you.

18 MR BRODIE: My Lady, on each day of evidence relating to
19 Fettes College the head of school, Helen Harrison, and
20 a representative of the governing body have been here,
21 listening to those who have given evidence in person and
22 to the witness statements read to the Inquiry.

23 Helen said at the start of her own evidence, and she
24 has asked me to underline, that she has listened to and
25 been profoundly moved by what those former pupils have

1 had to say, whether in oral evidence or by statement,
2 and in respect of the effects on their lives.

3 Helen and the board of governors wish to renew what
4 was said in opening submission. The school is truly
5 sorry, and makes a full and unreserved apology to those
6 who have suffered abuse whilst at Fettes.

7 As also said in the school's opening statement,
8 words of apology may of themselves have limited worth.
9 What then are the ways in which the school is reflecting
10 on the evidence heard by the Inquiry? The accounts of
11 those who have given evidence describing their time,
12 their experience of school and abuse suffered are now
13 very much part of the school's history and will not be
14 forgotten.

15 This evidence has already become a warning and guide
16 to the discussions of all involved in developing how the
17 school seeks to protect its pupils. Fettes has written
18 to its community of former pupils inviting them to
19 respond to the school and the Inquiry with their
20 experiences. A sincere invitation is extended to anyone
21 who wishes to come forward.

22 The school is not reflecting alone. There is
23 currently an ongoing dialogue amongst boarding schools
24 in Scotland together with the Scottish Council of
25 Independent Schools as to the work of the Inquiry, the

1 issues to emerge in respect of boarding schools and what
2 lessons are to be learned.

3 Helen Harrison and the school are central
4 participants in that dialogue.

5 In seeking to give tangible form to its profound
6 regret for the abuses described, the school now turns to
7 its closing submissions and to the Inquiry's terms of
8 reference. The school has provided a written copy, as
9 I've said. They seek, the submissions, to address the
10 evidence relating to Fettes and how that evidence
11 relates to the issues the Inquiry must now address under
12 its terms of reference.

13 It will assist if I explain the structure of those
14 submissions.

15 The first section constitutes this introduction
16 where, first and foremost, the school wishes to place
17 its apology and to state its gratitude to those who have
18 given evidence. It is a privilege for the school to
19 have heard those accounts and insights.

20 The second section looks at the evidence of abuse at
21 Fettes, and that, as my Lady knows, is further to the
22 Inquiry's remit in paragraphs 1 to 4 of the terms of
23 reference.

24 The third section seeks to assist the Inquiry in
25 addressing paragraph 6 of its terms of reference, and

1 that is the paragraph directing the Inquiry to consider
2 the extent to which failures, in this case on the part
3 of Fettes, to protect children from abuse have been
4 addressed by changes in practice, policy and
5 legislation.

6 The last 25 years has been a period of great change
7 in practice, policy and legislation as it relates to
8 child protection. That has been underpinned by advances
9 in thinking and approach and that has been true in
10 Fettes too.

11 The third section of the submission sets out in some
12 detail the course of those developments in Fettes over
13 the last 25 years. That detail is provided to the
14 Inquiry in an attempt to help answer the questions posed
15 by its terms of reference, as opposed in any way to
16 deflect from the accounts of abuse or to suggest that
17 there may not be scope for improvement. The school
18 gives this account to inform and perhaps thereby
19 facilitate constructive criticism.

20 The fourth section sets out some thoughts for future
21 changes, further to paragraph 7 of the terms of
22 reference.

23 My Lady, the school would be delighted to welcome
24 not only any who have suffered abuse whilst at Fettes,
25 but also any visit from the Inquiry and to provide any

1 further assistance it can. It may be, if my Lady were
2 to find it of assistance, that the policies and practice
3 and systems that have been described in Helen Harrison's
4 full statement, and are discussed in the full written
5 submissions, it may be my Lady might find it of
6 assistance to visit to see any aspect, all aspects of
7 those policies and practice in operation. Thus it is
8 therefore that I formally wish to make that invitation
9 to the Inquiry.

10 LADY SMITH: I'll bear that in mind, Mr Brodie, but you no
11 doubt also appreciate I've heard about a lot of schools.

12 MR BRODIE: Indeed, indeed. It therefore may not be
13 an invitation that is seen of any benefit.

14 LADY SMITH: And other organisations, some of which are
15 still in existence and providing, albeit in limited ways
16 so far as they survive, for the care of children. Thus
17 far it hasn't been my practice or policy to ask to go
18 and see the places myself. But I realise one should
19 never say never. I bear it in mind. Thank you.

20 MR BRODIE: I now turn to the second section of submissions,
21 and that is essentially as set out in the written
22 submission that is before my Lady. That is to address
23 the evidence as to the nature of abuse.

24 Put shortly, the school does not challenge the
25 evidence led by counsel to the Inquiry. The school is

1 grateful for the fair and balanced way in which that has
2 been done and the assistance provided. As it is
3 understood the Inquiry does not intend to make
4 individual findings, this submission will look in
5 a broad way at what would seem to be the type of abuse
6 that has occurred. That should not be taken as ignoring
7 or undervaluing in any way the account of any individual
8 witness. Each account is now part of the history of the
9 school. Analysing the evidence in terms of types of
10 abuse and the causes of each is done in an attempt to
11 understand how such abuse occurred and explore how such
12 causes can be prevented in future.

13 Physical abuse is the next section that I look to,
14 or the first of the sections in respect of the evidence
15 that has been heard.

16 These are the types of physical abuse that witnesses
17 described as occurring in the 1950s, 1960s, 1970s and
18 1980s. Corporal punishment having been administered by
19 certain teachers in excess of what the law then
20 considered to be reasonable chastisement. The excessive
21 use of corporal punishment on the part of the headmaster
22 from 1971 to 1979, Anthony Chenevix-Trench, on multiple
23 occasions. The nature of his beatings was known amongst
24 pupils, as was his drinking. It seems likely both must
25 have been known of by at least some of the staff. There

1 was a failure of supervision by governors at points in
2 the 1970s.

3 'Edgar's' acts fall into two categories, physical
4 abuse and sexual abuse.

5 In respect of physical abuse, his use of corporal
6 punishment went beyond reasonable chastisement and
7 constitutes assault. Acts of physical violence,
8 similarly, constituted assault.

9 Witnesses have said that 'Edgar's' acts of physical
10 assault must have been known by teachers. Evidence from
11 some teachers is to the effect that they did not know of
12 'Edgar's' physical or sexual assaults. However, there
13 is evidence to the effect that there was no effective
14 system of supervision.

15 Acts of certain teachers verging on or constituting
16 physical assault, for example throwing dusters and
17 smacking with rulers. The use of corporal punishment,
18 canings, beatings, by prefects. On the evidence, this
19 practice, school-sanctioned disciplining by older
20 pupils, prefects, of younger pupils had come to an end
21 by the 1970s, having been prevalent in the 1950s and
22 1960s. No or little adult supervision was given.

23 Physical abuse by pupils on pupils, I go on further
24 to discuss this under the heading of "Peer-on-peer
25 abuse", in the period from the 1950s to the 1980s. This

1 seems to be associated with limited adult supervision,
2 failures by teachers to intervene, use of
3 pupil-administered discipline by prefects that extended
4 to corporal punishment and thereafter to the use of
5 strenuous exercise by way of punishment and a culture of
6 mocking.

7 Changes were seen with the introduction of
8 co-education and the eradication of all forms of
9 physical disciplining under the headship of
10 Cameron Cochrane.

11 The evidence establishes sexual abuse of the
12 following types. These events occurred in the 1970s and
13 1980s, with repeated and frequent regularity 'Edgar'
14 committed acts of sexual abuse. He may have gone
15 further. 'Ben' spoke of a repressed memory of sexual
16 abuse in the shower room. The evidence is that he may
17 have stopped for a period after a complaint in 1975, but
18 he had resumed by 1978 in committing acts of sexual
19 assault.

20 As was admitted by zDXM a teacher within
21 the school, he committed acts of abuse. He was
22 dismissed.

23 As discussed above, Anthony Chenevix-Trench's
24 administration of corporal punishment was described as
25 having a sexual element.

1 There have been occasions of pupils being sexually
2 assaulted by other pupils. One pupil reported that the
3 perpetrator was expelled but no support was given and he
4 was left confused and scared by the experience.
5 A teacher was dismissed by CXL [REDACTED] for sending
6 suggestive messages by text, and 'Elizabeth' spoke to
7 seeing inappropriate sexualised behaviour at earlier
8 stages than would have been expected when she was at the
9 school between 1992 and 1994.

10 LADY SMITH: And that was in the junior school.

11 MR BRODIE: And that was in the junior school. Which, as
12 my Lady understands, extends up to Senior 2.

13 LADY SMITH: Oh yes, but still young.

14 MR BRODIE: Oh indeed, oh indeed.

15 She described unwelcome sexual acts on the part of
16 other pupils and a failure to provide education on
17 boundaries and consent, leaving her vulnerable to such
18 acts occurring.

19 Peer-on-peer bullying. A number of former pupils
20 described peer-on-peer bullying during the 1950s, 1960s,
21 1970s and 1980s that may be characterised -- without
22 meaning in any way to undermine the value of that
23 evidence -- as follows. Punishment by prefects, older
24 pupils of younger pupils, the fagging system and
25 mocking.

1 The themes that may be said to arise in the evidence
2 showing how such bullying occurred include the existence
3 of a hierarchical system, for example prefects and
4 senior pupils, that system being used as part of the
5 school's method of administering the school, the
6 boarding houses, absence of any training of those pupils
7 in positions of authority, who then draw on what they
8 had experienced, either because of an absence of
9 training and leadership or as some idea that what one
10 has suffered, others will suffer. Fagging and mocking
11 being accepted. Sport and prowess in sport given status
12 above others or giving status above others.

13 LADY SMITH: You mentioned fagging and I can understand why,
14 and of course what's striking about that is I accept
15 there was also clear evidence that some people who were
16 fags found it to be a good thing, because they had
17 a good prefect. There was one witness who spoke to
18 being the fag to the head boy and it was good, because
19 he would look out for you. But it's a high-risk system,
20 that's the trouble.

21 MR BRODIE: It's a high-risk system. It is perhaps
22 an illustration that some traditions within boarding
23 schools may have had, in origin, good features. May in
24 continuance have had good features. But the problem,
25 and my Lady is saying this to me, the problem is where

1 there is lack of training and lack of supervision, and
2 you are leaving administration of a pupil to another
3 pupil, there is scope for abuse.

4 LADY SMITH: Is it also a matter of recognising that whilst
5 it must be a good thing to teach children about taking
6 responsibility and having certain powers, you equally
7 have to find a way of teaching them that with power
8 comes responsibility and recognise that there must
9 always be limits to what you can reasonably expect them
10 to exercise appropriately and responsibly. They are
11 only children.

12 MR BRODIE: They're only children. The school still will
13 use pupils to provide a mentoring to others, to provide
14 a point of contact, and prefects are still used for
15 disciplining purposes. But there's now a proper
16 structure been given to that.

17 My Lady will have heard in Mrs Harrison's evidence
18 of the training that is given to prefects to perform
19 that role, to perform a leadership role, and in many
20 ways that develops them as people and is a good thing
21 for them as people. But one hopes the protection from
22 that training is that those whom they are mentoring and
23 supporting have such from somebody who has some training
24 to do that. And also when they are disciplining, no
25 longer is any form of physical discipline administered.

1 No longer are excessive physical challenges set. It is
2 if an act of contravention of the rules is seen, to
3 report to a teacher. So it's being supervised in all
4 these ways.

5 So elements that may have been good in fagging,
6 a mentoring, can be preserved and taken forward. The
7 school offers in its practice examples of how that can
8 be done. My Lady has heard from the Edinburgh Academy
9 of similar mentoring relationships, and that may be
10 a common factor from other schools. The important thing
11 may be senior pupils being taught leadership skills,
12 given training, is good for them and is good for those
13 younger than them who have been allocated to them.

14 LADY SMITH: Thank you.

15 MR BRODIE: I was still with the written submissions at
16 paragraph 13 and the subparagraphs of that I had said
17 sport and prowess in sport had given status above
18 others, which led to peer-on-peer bullying. Also,
19 whilst fagging seems to have been abolished by the
20 mid-1970s, some witnesses spoke to it continuing in some
21 form into the early 1980s. There was an absence of
22 formalised pastoral care until the 1990s and the problem
23 of pupils not feeling able to speak out, the intractable
24 problem that Michael Spens referred to: the code of
25 silence.

1 In addition, my Lady has heard of the emotional
2 impact that these forms of bullying have had on pupils.
3 The emotional impact of mocking. And, as I said in my
4 opening paragraph, it has been very powerful evidence
5 and very moving evidence for the school to hear the
6 effects on people's lives.

7 My Lady, I move from that second section of
8 submissions to the third section of my submissions, and
9 that is the section that attempts to address the sixth
10 paragraph of the terms of reference. That paragraph,
11 the sixth paragraph of the terms of reference, is asking
12 the Inquiry to consider the extent to which failures by
13 state or non-state institutions, including the courts,
14 to protect children in Scotland from abuse have been
15 addressed by changes to practice, policy or legislation
16 up until such date as the chair may determine.

17 This third section seeks to discuss what has
18 happened in Fettes over the last 25 years in order to
19 assist the Inquiry when it comes to consider that sixth
20 paragraph of its terms of reference and consider the
21 extent of which failings in the past have been addressed
22 by changes. That third section in the written
23 submissions, as my Lady will see, discusses in some
24 detail the last 25 years.

25 Mr Brown had said that there may be a point of

1 difference between the position of the school and what
2 he was saying in respect of a loss of focus on the
3 documentary evidence. May I just simply explain what
4 I meant in my written submissions?

5 LADY SMITH: Thank you.

6 MR BRODIE: Understandably, the oral evidence, with all the
7 constraints of time on oral evidence, led to the
8 discussion perhaps being principally in respect of
9 Helen Harrison's statement as to current practice.

10 What I was simply wishing to say in respect of the
11 third section is because of that oral part of evidence,
12 sight should not be lost to the documentary evidence
13 that relates to the evolution of practice and policy
14 within the school over the last 25 years, because the
15 school's position is it is not that its current
16 practices and policies have only recently come to be.
17 The school's position is, perfectly or imperfectly, that
18 throughout the last 25 years, in step with national
19 level, society and the educational sector, there has
20 been a process of evolution, revolution, in thinking
21 about child protection and steps that might be taken.

22 That is what I was saying when I said that the oral
23 evidence -- I realise the totality of evidence will be
24 looked at by the Inquiry -- placed a particular focus on
25 current practice and policy and I wouldn't want it to be

1 felt that the school had been doing nothing for the last
2 25 years.

3 LADY SMITH: I don't think we were suggesting that for one
4 moment, Mr Brodie. And of course the documents that
5 have now been made available will be considered.

6 MR BRODIE: At paragraph 18 I said that the Inquiry is aware
7 there's been a revolution in child protection. That has
8 been true at a national level and in individual schools
9 and it has been fuelled by a mixture of societal
10 changes, research and collaboration in educational
11 sectors, legislative and regulatory reforms at
12 a national level and thinking and initiatives in
13 individual schools.

14 Whilst the changes as effected from the mid-1990s
15 may be seen as revolutionary, the process has been
16 evolutionary as well. From around 1984, with the
17 abolition of corporal punishment, Fettes effected
18 a series of changes in its culture, policies and
19 administration that have addressed the failures that led
20 to the abuses discussed in section 2 of this submission.

21 The school's current thinking, culture, policies and
22 measures relating to safeguarding are identified and
23 discussed in the statement provided by Helen Harrison to
24 the Inquiry. To best understand the depth and scope of
25 that, one perhaps requires to read the statement

1 together with the documentary evidence found in the
2 disclosure of 7 December 2021, and in particular, as
3 I detail at paragraphs 20.1 to 20.5, particularly,
4 perhaps, by looking at: The PSE programme and tutorial
5 sessions relating to equality, diversity and inclusion;
6 peer-on-peer abuse policy; equality, diversity and
7 inclusion policy; safeguarding report; and safeguarding
8 guidelines for 2021 to 2022.

9 Counsel to the Inquiry raised in evidence for
10 discussion whether the school has been reactive as
11 opposed to proactive in developing its safeguarding
12 policies and measures. Respectfully it is submitted
13 that is most certainly not the case.

14 As I say, the constraints on the Inquiry's time
15 perhaps has not led to so much focus on the documentary
16 evidence, but the documentary evidence illustrates that
17 child protection and safeguarding have been a constant
18 in the school's thinking and policies since 1993, and it
19 demonstrates that the school has drawn on its own
20 thinking, on bodies such as the Scottish Council of
21 Independent Schools, SCIS, of which it is a member and
22 which it participates, and on national regulation and
23 guidance.

24 Independent assessment of what Fettes has been doing
25 is to be found in the work of Her Majesty's Inspectors

1 of Schools and the Care Inspectorate. In its most
2 recent inspections, those of 2002 and 2009,
3 Her Majesty's Inspectors of Schools rated the school
4 highly for the care of pupils. The Care Inspectorate's
5 last inspection was in 2017 -- I've dated that as 2014,
6 the Care Inspectorate's last inspection was in 2017 --
7 when the school was awarded 6s, as it had been in 2014.

8 There were discussions in Phase 1 of the Inquiry,
9 my Lady will remember, about the extent to which perhaps
10 both sides of the equation were fully understanding each
11 other. As I remember the evidence and put very shortly,
12 there has perhaps been an element of learning on the
13 part of the Care Inspectorate about the boarding school
14 sector and perhaps on the part of the boarding school
15 sector about what information the Care Inspectorate
16 requires and how that's best provided.

17 Without doubt one may wonder about whether the
18 earliest inspections have been as effective as they
19 might be, but the trend of the evidence, as I understood
20 it from both sides, was as they have learned of each
21 other and informed each other, they have with each
22 inspection become better and better at assessing what
23 measures schools are taking, what measures the boarding
24 schools are taking.

25 And so, with proper humility, because I'm not saying

1 that everything is necessarily perfect, but there is
2 confidence to be drawn from these positive remarks,
3 these positive reports of 2014 and 2017.

4 The reason for mentioning that is not in order to be
5 self-congratulatory, but is part of the essential
6 self-evaluation process and process of reflection on the
7 part of the school.

8 That brings me to self-evaluation. Aside from
9 outside inspection and scrutiny, the principle of
10 self-evaluation, growth mindset as a methodology, are
11 an integral part of how the senior leadership team work.
12 That process and how it applies in Fettes is discussed
13 at paragraphs 29 to 36 of the written submission.

14 As discussed at paragraph 29, self-evaluation is the
15 bedrock of Education Scotland's approach to school
16 improvement set out in the How Good Is Our School and
17 the Care Inspectorate's equality framework for
18 mainstream boarding schools and school hostels 2019.
19 Both the HM Inspectors and the Care Commission demand
20 that that process of self-evaluation is demonstrated by
21 schools. They want to see your self-assessments.

22 Fettes has done so and been commended for its work
23 there. This methodology of self-evaluation is a further
24 invaluable cross-check on how a school is addressing
25 safeguarding issues.

1 May I suggest a practical example of how the process
2 works and helps develop strategies for evolving needs,
3 that process of self-evaluation. I've set that out in
4 paragraph 25 of the written submission.

5 An example of how the process of self-evaluation and
6 audit works and leads to developments in policy is found
7 in the documents submitted to the Inquiry, equality,
8 diversity and inclusion action timeline.

9 LADY SMITH: That's at paragraph 35. I think you said 25
10 earlier --

11 MR BRODIE: Did I? Sorry.

12 LADY SMITH: -- but it's clear you meant 35.

13 MR BRODIE: I'm grateful that my Lady is following so
14 closely. Thank you.

15 The example given. Policies, as part of Fettes'
16 practice, are systemically reviewed. Hence the pastoral
17 team had undertaken a planned audit of the equality,
18 diversity and inclusion policy. Input was received from
19 the student-led Fettes Equality Society. In summer 2020
20 the head of school wrote to the Old Fettesians community
21 in respect of Black Lives Matter. Responses confirmed
22 to the head her already existing intention to update EDI
23 policy.

24 The Fettes equality group was established in the
25 autumn term of 2020 with, as its objective, building on

1 existing policies in respect of anti-racism, anti-sexism
2 and anti-homophobia. In September 2020 an audit and
3 provision for staff training was undertaken with
4 an independent body being consulted and their views
5 taken into account, namely ConnectFutures.

6 In November 2020, staff training with an Old
7 Fettesian who had contacted the school occurred and
8 further training given. The HR department consulted
9 with the Stephen Lawrence Trust in respect of ways that
10 would encourage diversity in recruitment.

11 LADY SMITH: Going back to 35.6, the staff training with
12 an Old Fettesian who had contacted the school, what were
13 the skills or discipline of that Old Fettesian, do you
14 know?

15 MR BRODIE: I will have to take instruction to --

16 LADY SMITH: If you just let us know.

17 MR BRODIE: Yes, will do.

18 My understanding is, subject to correction, that
19 that was somebody who had been making comments about
20 an absence of proper racism policy.

21 LADY SMITH: Thank you.

22 MR BRODIE: They were not coming as a professional. They
23 were coming as an Old Fettesian with an interest,
24 describing their experiences at the school and with
25 recommendations as to changes that might be made.

1 LADY SMITH: Thank you very much.

2 MR BRODIE: The HR department consulted with the Stephen
3 Lawrence Trust in respect of ways that would encourage
4 diversity in recruitment of staff. In the summer term
5 of 2021 the Fettes equality group report on data
6 obtained from staff and student surveys and recommended
7 a training plan for staff and students in senior roles.
8 Those recommendations were implemented.

9 Introducing a specific topic for reporting in iSAMS,
10 the software program of which Helen Harrison speaks at
11 greater length in her statement, and is the tool used
12 for monitoring well-being and child protection issues.
13 A specific topic was introduced into that software
14 program under the heading "Prejudicial intent".

15 My Lady will also have heard about the iSAMS system
16 from Helen Harrison, that it is seen as an invaluable
17 tool of picking up on changes in individual pupils'
18 behaviour, changes that may be early signs of a child
19 suffering in some way, of a child being bullied, and the
20 software program, in conjunction with the OneNote
21 software program, is discussed in Helen Harrison's
22 evidence.

23 At base, these are seen as allowing issues to be
24 recorded in such a way that they then become analysed so
25 as to indicate problems developing.

1 There was a question asked: do such systems make
2 things more complicated? Have they become overly
3 complicated? Well, Helen Harrison's experience is very
4 much: no, they are convenient ways of recording
5 important information. Staff, of course, have to be
6 trained how to use any such program, but staff are
7 provided with that training, and algorithmic analysis,
8 as I say, can detect patterns that might not otherwise
9 be detected.

10 The OneNote system is much the same as carrying
11 an iPad, which is effectively a notebook, but it brings
12 the information together and can share it very quickly
13 with others who need to know it, better than a notebook
14 that can get lost. Assuming, of course, the actual
15 computer isn't lost. But as a software program,
16 of course, that isn't a problem, because it's digital
17 and then available.

18 LADY SMITH: Of course, no software in the world will ever
19 do the teachers' and staffs' thinking for them.

20 MR BRODIE: Or noticing.

21 LADY SMITH: Or noticing in the first place, or being open
22 to listening.

23 MR BRODIE: Or being open to listening.

24 But training can help. Recruitment of good people
25 can help.

1 In autumn term 2021 a variety of measures were
2 pursued, including further development of training, use
3 of independent bodies to advise, setting a series of
4 short-, medium- and long-term goals in respect of pupil
5 and student involvement in looking at issues of
6 diversity and inclusivity.

7 In these indented subparagraphs, and in the list
8 I have just given, what I was attempting to do is set
9 out a worked example of what I submit shows how the
10 school does reflect on issues, changes in society,
11 information coming from its own student body, through
12 surveys, canvassing of them, and then thinking about
13 what all that shows and what changes perhaps are
14 appropriate. And the school has been open to the use of
15 outside bodies.

16 My Lady will see in the written submission that the
17 school has commissioned an outside auditor and that,
18 therefore, is another form -- independent of the schools
19 inspectorate, independent of the Care Inspectorate -- of
20 independent objective cross-checking on what the school
21 is doing, and the school finds that a valuable resource.

22 Incidentally, it also finds the independent auditor
23 as a very useful adviser when child protection issues
24 come up. Helen Harrison had spoken in Phase 1 and again
25 in Phase 2 that if a child protection issue arises, fast

1 decisions have to be taken. The decisions have to be
2 the right ones as to whom one goes to and speaks to, and
3 it is very useful -- when sometimes you're not getting
4 that advice from others such as the police, it is very
5 useful to be able to have on call an independent source
6 of advice. So the school finds the independent auditor
7 not just simply auditing but also advising, and that is
8 very useful, the school finds that very useful.

9 What then are other changes in the last 25 years
10 that had developed today's extensive safeguarding
11 provision?

12 Teaching oversight. In respect of staff oversight
13 and regulation, the Inquiry has heard of the
14 requirements for registration with the GTCS and of the
15 requirement for PVG checks.

16 The role of the governors. At a school level, the
17 governors now have a direct role in overseeing the
18 running of the school. All school governors and chair
19 are made accountable for ensuring their schools have
20 effective child protection policies and procedures in
21 place. This was touched on also in the submission by
22 the Edinburgh Academy with their I think board of
23 directors --

24 LADY SMITH: Court.

25 MR BRODIE: Court of directors.

1 The governors have training in this regard. Fettes
2 has dedicated safeguarding governors for both the prep
3 and senior school, established in 2015, who advise the
4 board on safeguarding. They receive additional
5 training. They meet as a safeguarding committee and
6 their role is more fully explained in Helen Harrison's
7 statement at paragraphs 42 to 44.

8 Another change over the last 25 years. Members of
9 the Board of Governors visit the school and boarding
10 houses regularly. There are governors with specific
11 responsibility for each of the boarding houses.

12 Further checks are provision of a system of
13 supervision ensuring the accountability of the head are
14 to be found in the development of Senior Management
15 Team. The direct obligation and accountability each
16 member of the Senior Management Team -- that's school
17 teachers, the Senior Management Team -- has for child
18 protection and the whistle-blowing policy are such that
19 no head could now act in isolation and thus that lack of
20 supervision that one has evidence of, particularly in
21 respect of Anthony Chenevix-Trench, that just could not
22 now happen.

23 Encouraging the students' voice. The problem of
24 pupils not feeling able to speak up, of not speaking up,
25 of codes of silence and the intractable problem recurred

1 as a theme throughout a lot of the evidence heard from
2 witnesses: who could I speak to? What language did
3 I have? And so discussed more fully in the written
4 submission, but I come to encouraging the students'
5 voice and that's discussed at paragraphs 37 and 38 of
6 the written submission.

7 It is essential, as Helen Harrison said, that pupils
8 feel they are in an environment where they can speak,
9 where they are comfortable to speak. There is no
10 disputing it is a challenge to achieve that. Codes of
11 silence, a fear of nothing being done and a lack of
12 language, as I touched on, can all serve to prevent the
13 child from seeking help.

14 What has the school done, what is the school doing
15 about this?

16 Steps include -- this is set out in these two
17 paragraphs in the written submissions: Repeated
18 messaging to students by various media that bullying is
19 unacceptable and people should speak up; forging
20 professional relationships between the various adult
21 staff, teachers, matrons, houseparents, tutors and
22 medical staff, whereby students feel able to speak;
23 training and creating a culture where staff actively
24 watch out for signs of a pupil being unhappy; training
25 and having prefects who serve as personal, social and

1 educational prefects -- and I spoke of them in the
2 context of those prefects to whom training is given and
3 in whom leadership skills are developed. They are
4 charged particularly with looking out to see if other
5 pupils are showing signs of unhappiness. They are there
6 for other pupils to speak to.

7 If I may make this ex parte representation, in
8 conversation Helen Harrison has described how they are
9 finding that pupils do speak up. They are finding that
10 pupils will speak on occasions when they will not speak
11 to their parents about very sensitive matters. I'm not
12 claiming that means that always happens, but it is
13 an indicator that something is working. And the
14 something that is working, from my understanding of
15 discussion with Helen Harrison, my indication of the
16 something that is working is the tutor system, good
17 staff relationships and also fellow pupils.

18 LADY SMITH: This is no doubt a work in progress, some of it
19 will be trial and error. The ultimate position is no
20 doubt likely to be that all schools, all residential
21 institutions, have to recognise that there's no single
22 way to facilitate the child's voice. You need a range
23 of practices, because children are different, what they
24 want to talk about is different, different ages,
25 different experiences. There's not going to be one size

1 fits all.

2 MR BRODIE: No, there's not. One pupil might find, for
3 example, the chaplain is somebody they find
4 approachable. Another person just might not. And the
5 tutor system works -- Fettes respectfully says the tutor
6 system works very well. Forging that relationship
7 between adult and pupil, such that the pupil will
8 discuss things far beyond simply academic performance.

9 Of course, in another educational setting they might
10 not have the infrastructure for that, they might not
11 have a history of that, so as a long answer, perhaps
12 unnecessarily long to my Lady's point, there is no one
13 size fits all. Perhaps it is that all schools need to
14 look at providing a wide range of options.

15 LADY SMITH: Mm.

16 MR BRODIE: I was talking about the prefects who serve as
17 personal, social and education prefects. There is also
18 the Personal and Social Education programme, and that is
19 part of the curriculum as developed in Helen Harrison's
20 statement that now covers all years of the school and
21 that educates on well-being issues and child protection
22 issues.

23 Then there is canvassing of students' views. The
24 school has been using that quite extensively recently,
25 but also when one looks at the school inspectors'

1 reports from 1996, Care Inspectorate reports from 2001,
2 they have referred in those reports to the obtaining of
3 views from students, and positives that have been
4 identified in those reports have included that
5 canvassing, although also, I recognise, recommending
6 that more of it be done, and thus talking about it as
7 a technique for trying to bring forth the students'
8 voice.

9 Then further in encouraging the students' voice,
10 I make reference to the software systems. I think I've
11 already said sufficient for today's purposes about that.

12 Does this work? Really, I've covered this before.
13 An indication that these measures are working is to be
14 found in the extent to which Helen Harrison and other
15 staff find pupils are speaking to them about all sorts
16 of problems, and some of them have been quite serious,
17 although not necessarily connected with being in school.

18 In this section I'm talking about changes in the
19 last 25 years.

20 Discipline, corporal punishment has long since been
21 abolished. However, separately, as can be seen from
22 school and staff handbooks, from at least the mid-1990s,
23 discipline has been standardised, recorded and oversight
24 provided. The important point perhaps is that there
25 must be clarity as to the rules, there must be

1 consistency in application of discipline and there must
2 be oversight of that discipline.

3 Corporal punishment may no longer be an issue, but
4 proper oversight is still relevant, although corporal
5 punishment is not being administered. Essentially
6 relatively minor misbehaviour in the classroom will be
7 dealt with by the teacher, but otherwise teachers are
8 expected to report to the houseparent, and for other
9 more serious matters to the deputy head with
10 responsibility for discipline. There must be
11 an accounting system to allow things to be fair and
12 perhaps also to show to the pupils that the system is
13 not going to be one of arbitrary decisions by one adult
14 with whom they may not get on. An experience,
15 I suppose, that many of us have had in our school lives.

16 Bullying. Sadly, every school requires to continue
17 to address bullying. Helen Harrison said in her
18 evidence if she went into any school that claimed it has
19 no bullying she would walk out, taking the view they
20 just were not seeing that bullying that must inevitably
21 occur on occasions.

22 Teenagers do, unfortunately, find ways to be mean to
23 each other.

24 The steps taken by Fettes over the last 25 years are
25 discussed at paragraphs 42 to 46 of the written

1 submission. In those paragraphs there is narrative of
2 the anti-bullying policies seen in the house books,
3 school handbooks and guidance issued to staff over that
4 period. At heart, bullying is using inequality in
5 a relationship to hurt another.

6 Combating that and encouraging the victim to speak
7 up has been at the centre of each of those policies as
8 they have evolved and as they have been set out in the
9 house books, school books, teachers' guidance that are
10 included and date from about 1996.

11 However, they have developed in detail and
12 explanation as to the signs to look for over those 25
13 years. That is in line with my Lady having made the
14 point during the course of evidence, and as I have
15 spoken today, of the need to notice. And so policies --
16 at root, I'm suggesting, bullying is inequality causing
17 harm to others, but the policies that are narrated have
18 seen development in the extent to which they explain how
19 bullying may manifest and that is part of the need for
20 adults to be seeing, and so it is accepted that there
21 must always be thought given to what is the latest form
22 of bullying.

23 That continual process of thinking is now seen in
24 the standalone document that contains the school's
25 counter-bullying policy and the discussion of forms of

1 bullying, including, for example, prejudice-based
2 violence, including gender-based violence, and of direct
3 relevance to an aspect of discussion when the chair
4 raised the issue of seeing and putting oneself in the
5 position of difference, putting oneself in the shoes of
6 the child, is the section discussing how some may be
7 particularly vulnerable to abuse by their peers.

8 It is now the case that all policies are reviewed
9 annually, more often if a problem develops. The current
10 iteration of the bullying policy is not where the school
11 sees it stopping, but it is the result of much
12 self-reflection and thinking.

13 If it fails to do that, the policy will fail. But
14 as Helen Harrison said, when asked: What changes do you
15 consider are necessary or should be made?

16 Helen Harrison explained that was a difficult question
17 for her to answer, and the reason it was a difficult
18 question was because this process of self-evaluation,
19 self-assessment that I've talked about, if properly
20 applied, should be throwing up what needs to change.
21 That doesn't mean to say everything is perfect, but it
22 should mean that if the school's leadership are doing
23 their job, they are looking continually at whether
24 safeguarding, that is to say well-being and child
25 protection, is doing what it should do.

1 Coming to an end of this short review of changes in
2 the last 25 years, I come to the welcoming of new
3 pupils, induction, dissemination of information.

4 My Lady will remember from the evidence time and
5 time again witnesses described the extent to which
6 nobody told them what to do, nobody told them where to
7 go, they were left rudderless. Rudderless leaves one
8 feeling lonely, rudderless leaves one falling into
9 difficulties and problems.

10 These failings, it is submitted, have been something
11 that have been addressed over the last 25 years.
12 There's now a full welcome and induction programme.
13 Taster visits are encouraged prior to entry to the
14 school. That's very relevant to those who said, "I knew
15 nothing about Fettes, never been there, I got dropped
16 off", and in some cases, dropped off and the car drove
17 away.

18 So the school sees the need for the pupil coming to
19 it with some understanding of what it is coming to.

20 Once there, a buddy will contact each pupil before
21 they join -- sorry, not once there. A buddy will
22 contact each pupil before they join. The modern house
23 system where houseparents are a constant presence,
24 supported by tutors and matrons, provides ready access
25 to an adult and sources of information.

1 As described, an important function of house
2 prefects is to serve effectively as big brother or
3 sister. That is expected of them and training is
4 delivered.

5 The tutor relationship provides a dedicated adult
6 whose role is to inform themselves of the whole child,
7 and that's spoken of in Helen's statement and I've
8 already made reference to it so I shan't labour the
9 point.

10 Before I turn to the fourth section, which adopts
11 essentially simply what is in the closing submission,
12 before I turn to that, can I speak briefly about the
13 issue of reputation that has been raised in the
14 submissions today.

15 The school's reputation matters because a good
16 reputation means that things are being done well and
17 a good reputation is important for the morale of
18 teachers and pupils, and that therefore is important to
19 the well-being of pupils. So, to that extent,
20 reputation does matter.

21 LADY SMITH: I don't think anybody would quibble with that
22 and I certainly don't think Mr Brown would quibble with
23 that.

24 MR BRODIE: My Lady will evaluate the evidence on the issue,
25 but if the idea be that in the last 25 years concern for

1 the reputation of the school has come at the cost of
2 making appropriate changes, that at least is not how the
3 leadership sees things and does not see that the
4 defensiveness as spoken to by Michael Spens meant that
5 time was being lost thinking about child protection,
6 time was being lost thinking about changes.

7 LADY SMITH: Sorry, are you saying he was wrong --

8 MR BRODIE: No.

9 LADY SMITH: -- when reflecting and telling me the way he
10 sees it, on reflection is that the school was defensive
11 in -- let's just call it "the old days", for the sake of
12 using common language -- and too keen to protect its
13 reputation? As a school that really cares about its
14 reputation of course will always want to be open and
15 frank and if things have gone wrong, be honest about it.

16 MR BRODIE: Yes, my Lady. What I am saying is this, I'm not
17 disputing Michael Spens's evidence at all.

18 LADY SMITH: Thank you.

19 MR BRODIE: Nor in fact in respect of the meeting of 2004
20 with 'Frank' that was referred to by Mr Brown, may
21 I just say that the school accepts the submissions
22 Mr Brown made in that regard.

23 LADY SMITH: Thank you.

24 MR BRODIE: No.

25 Also, I recognise that where the complaints that

1 were raised by 'Iona', I recognise absorbed an enormous
2 amount of time and energy, what however I say is that
3 the present leadership of the school doesn't see that
4 that took away from the continuing evolution of policies
5 and thinking that I've described in the last 25 years.

6 Reputation did and does matter, and there can be
7 good reasons, as my Lady immediately recognised and said
8 to me, why reputation matters.

9 The last 25 years' iteration of policies shows,
10 however, that the school was open to change and was
11 making change, and so, at least in that regard, concerns
12 for reputation or defensiveness, I'm suggesting, have
13 not been a significant obstacle to the school's
14 evolution in thinking and development.

15 The fourth section is essentially as I have set out
16 in the written submissions and I can go through that.
17 It is the future, and paragraph 7 of the terms of
18 reference. It is looking at changes that might be
19 recommended.

20 As discussed above and in Helen Harrison's evidence,
21 and also in the evidence of other heads, the work of the
22 Inquiry has long been a topic for discussion and
23 analysis in conversation between heads and within SCIS.
24 As they are all professionals within the field of
25 education, that discussion will facilitate ongoing

1 reflection and sharing of best practice.

2 Both Michael Spens and Helen Harrison spoke of the
3 inevitable benefit of sharing information and practice,
4 and SCIS is due to give further evidence, as my Lady
5 knows, in February.

6 Thus, what one perhaps has is evidence that already
7 the heads are collaborating, and perhaps, perhaps, even
8 more so than before, because of Covid, they're
9 collaborating at formal and informal levels. Helen
10 spoke to WhatsApp being used as a way of sharing
11 information.

12 So that as a phenomenon is occurring and may be of
13 some comfort to the Inquiry in considering what steps
14 are taken within residential boarding schools. The
15 extent to which maybe there's any formality given to
16 that is very much perhaps more a question for SCIS to
17 discuss with my Lady.

18 But I point to Helen's evidence of finding those
19 discussions and interactions with SCIS and the other
20 bodies whereby heads come together as invaluable and is
21 happening more and more.

22 An example of how the Inquiry is prompting
23 reflection is in the example given by one of the
24 witnesses, I have said 'Elizabeth', I think I have that
25 wrong, actually, I think I have the wrong name there.

1 But one of the witnesses spoke very memorably to what
2 language would I have had when being asked why no report
3 of abuse had occurred -- why they had not reported
4 abuse.

5 Helen found that resonated very strongly with her,
6 and I think is -- well, is something she's going to take
7 away to think about more from the Inquiry, and I think
8 prompted by a question by Mr Brown, perhaps by my Lady:
9 is that something you're going to do? Yes, it is, and
10 it is something to take back to SCIS, said Helen.

11 What language? How do we think about providing
12 language to our pupils so that if things go wrong they
13 feel able to speak about what has gone wrong and
14 I suppose also are able accurately to describe what has
15 gone wrong?

16 That may in turn require the involvement of child
17 psychologists and relevant experts. My Lady will be
18 aware within the criminal courts of developments in how
19 children's evidence of abuse are to be brought before
20 a court, and the giving of language in that context to
21 children when they're interviewed perhaps first in joint
22 investigative interviews.

23 So, my Lady, drawing on the experience within the
24 High Court and in trials may have a degree of insight
25 that is absolutely relevant within the schools sector

1 when it comes to think about giving language, giving
2 a voice to the student.

3 The point, however, I'm making about involving
4 expert psychologists, that is exactly perhaps the sort
5 of thing that can be very usefully done under the
6 umbrella of SCIS and the other heads' bodies and would
7 arise with this being brought and being part of the
8 conversation amongst heads.

9 The issues of staff references and what will be
10 written in one is something where a formalised
11 sector-wide process that is consistent might be of
12 value.

13 It is the experience of both Michael Spens and
14 Helen Harrison that every referee will set out fully the
15 facts attendant to a child protection matter of which
16 they are aware.

17 This was discussed. My Lady asked the question
18 essentially but what of facts? Will they not go in if
19 they relate to a child protection issue? It is
20 Michael Spens's experience, Helen Harrison's experience
21 that, absolutely, if one is talking about a child
22 protection issue, the facts will be set out in
23 a reference. Their experience was not that fears of
24 litigation meant people held back in that regard. They
25 saw the fears of litigation being more relevant when one

1 was moving to teaching quality or doubtful elements.

2 What am I saying there is it is their evidence that
3 in practice child protection issues are clearly set out
4 in letters of reference.

5 LADY SMITH: There does seem to be a mixed picture,
6 Mr Brodie.

7 MR BRODIE: Well, so let me explain. I am not disputing
8 what was being said by Mr Mitchell. I'm not disputing
9 that. All we can say is from Michael Spens's evidence
10 that's not been the experience and from Fettes'
11 experience that has not been a problem.

12 However, I suppose if one school is seeing it, then
13 it is perhaps further a reason why for some sector-wide
14 advice ought to be given.

15 LADY SMITH: That, I suppose, is the point.

16 MR BRODIE: Yes.

17 Perhaps the way I've set it out has perhaps laboured
18 it unnecessarily. I'm only going the length of saying
19 it has not been Helen Harrison's experience, but if it's
20 an experience of one, then it perhaps indicates a need
21 for change.

22 But, as I also say, practice will, however, vary as
23 to matters falling short of child protection or where
24 the facts are uncertain, and that is something where
25 advice would be of assistance across the sector, so that

1 each head can have an understanding of expectation as to
2 what they are going to be given in a reference.

3 The school also says it would be much assistance if
4 following completion of each round of inspections the
5 Care Inspectorate provided findings to the whole sector,
6 to highlight areas for development and examples of best
7 practice.

8 LADY SMITH: What exactly do you mean by that? Are you
9 talking about the inspection report being circulated
10 throughout the sector or particular aspects of what they
11 find as fact in the course of their inspection being
12 circulated?

13 MR BRODIE: From their inspections, practices that are
14 regarded by them as exemplars might be set forth for the
15 whole sector in a shortly digested statement.

16 LADY SMITH: I'm just thinking about that. You're seeing
17 them creating a separate document and that will convey
18 what is their particular learning, their learning --

19 MR BRODIE: Their learning.

20 LADY SMITH: -- from what they've seen at the place they
21 inspected that they believe could be of benefit to other
22 similar schools. Is that it?

23 MR BRODIE: Yes, their learning and their reflection and
24 their evaluation of that.

25 LADY SMITH: Thank you.

1 MR BRODIE: Finally, turning just in one final paragraph not
2 found in the written submission, if I may refer to the
3 start of Helen's evidence last week, she said:
4 "You can't listen to all we have heard and be in my
5 position and not feel a huge weight of responsibility.
6 That is because it matters so much we get this right.
7 That has always informed everything I have done."
8 That's why the school wrote to ask any who had
9 suffered abuse to come forward to the school and to the
10 Inquiry. That is why Helen extends a sincere invitation
11 to any former pupils who wish to come and speak, and
12 that is why current practice and policies are the
13 subject of annual review, or more frequently if problems
14 arise. That is why the school has sought over the last
15 25 years to keep its practices in step with and ahead of
16 best practice.
17 It matters to the school.
18 It may have done things wrong -- well, it has done
19 things wrong. There may still be things to be improved.
20 But it matters.
21 LADY SMITH: Thank you.
22 MR BRODIE: Thank you very much and thank you very much to
23 my Lady and to the Inquiry.
24 LADY SMITH: Thank you for all your assistance, Mr Brodie.
25 I'm very grateful to you. Thank you.

1 Mr Brown.

2 MR BROWN: My Lady, that concludes the Fettes chapter of
3 this part of the Inquiry. As I indicated earlier, we
4 would recommence on 11 January with oral evidence about
5 Merchiston Castle.

6 LADY SMITH: Thank you very much.

7 A couple of things before I leave. Can I extend my
8 thanks and gratitude to all who have attended so often
9 here to listen, absorb, think about and take very
10 seriously the evidence I have been hearing in this part
11 of the case study. I haven't failed to notice that and
12 I do recognise the commitment that it's shown.

13 Thank you to counsel today for coming at the end of
14 what's been a troubled week for many of us for reasons,
15 the word for which I now don't like using, and I hope
16 that we all get through this sooner rather than later.
17 It will pass. And we all have a Christmas festival to
18 look forward to at the end of next week. I hope somehow
19 all of you have a good one, whatever it is you're able
20 to do, whatever plans you've had to cancel. That
21 matters, and it matters that for a short period you can
22 just stop thinking about all the difficult, distressing
23 evidence that we've had to listen to and think about and
24 enjoy yourselves. Thank you very much.

25 (12.46 pm)

1 (The Inquiry adjourned until 10.00 am on Tuesday,
2 11 January 2022)
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