

Friday, 19 June 2026

1

2 (10.00 am)

3 LADY SMITH: Good morning, and welcome back to Phase 10 of
4 our case study hearings. Today is the last day of
5 Phase 10 and we're going to complete the closing
6 submissions which we began yesterday.

7 I think we've got four still to go and the first of
8 those is the submission to be made on behalf of the
9 Care Inspectorate, who are represented by Mr Crawford.

10 When you're ready, Mr Crawford, I'm ready to hear
11 you.

12 Submissions from Mr Crawford

13 MR CRAWFORD: Good morning, my Lady. Ross Crawford on
14 behalf of the Care Inspectorate.

15 My Lady, the Inspectorate's written closing
16 submissions for Phase 10 have been lodged. I adopt
17 those and do not propose to rehearse their detail.

18 The Inspectorate wishes to publicly highlight the
19 reality that nothing said on behalf of any institution
20 in this room matters more than what has been said by
21 those who have come forward to highlight the abuse they
22 suffered as children.

23 Children were placed in care so that they would be
24 kept safe. They were not. That should never have
25 happened. It should never happen again.

1 The Inspectorate recognises the courage and
2 fortitude it has taken for these individuals to
3 contribute to the Inquiry. For many, being disbelieved
4 when they first tried to speak. In this phase, 'Daniel'
5 put it in words that are difficult to hear:

6 'No been listened to, never been believed and just
7 branded a troublemaker. All the abuse or anything that
8 ever happened to me was always brushed under the carpet
9 and I never had a voice.'

10 Day 605.

11 Those words, my Lady, describe one of the failures
12 this Inquiry exists to confront. And it's the evidence
13 of these individuals that make confronting it possible.
14 The record this Inquiry is building exists because of
15 their courage. The Inspectorate does not take that for
16 granted.

17 The Inspectorate has welcomed the opportunity to
18 participate in Phase 10. It has welcomed its
19 involvement throughout the work of the Inquiry. It says
20 that not, my Lady, as a formality. The Inquiry's
21 examination of the history of oversight of residential
22 childcare in Scotland has been of real value to the
23 Inspectorate.

24 The Inspectorate is the successor to a regulatory
25 environment that was ineffective. Inspection that was

1 not independent. Children with no effective way of
2 raising concerns. Not being believed.

3 The evidence in Phase 10 has illuminated the human
4 consequences of that ineffectiveness. Hearing those
5 consequences described by the people who lived them is
6 why the Inquiry's work matters to the Inspectorate.

7 The Inspectorate is, and determined to remain,
8 a learning organisation. It continues to reflect on its
9 own practice in light of the evidence; on inspections
10 that are person-centred; inspectors having the skills to
11 engage meaningfully with children and young people; on
12 communicating with children in ways they understand
13 before, during and after inspection. And, above all,
14 ensuring that children in the services it regulates have
15 real and trusted ways to raise concerns and confidence
16 that when they speak, they will be heard and believed.

17 The regulatory landscape has changed for the better.
18 Independent inspection, regulation of services,
19 regulation of the workforce, safer recruitment. All of
20 this has been touched on so far in the course of
21 submissions heard yesterday.

22 The Inspectorate takes no satisfaction in that
23 contrast. It takes responsibility. Responsibility to
24 maintain those safeguards, to strengthen them and not to
25 allow them to be reversed.

1 The Inspectorate closes with an acknowledgement of
2 the strength and courage of every individual who has
3 come forward, writing and in person, to tell this
4 Inquiry their lived experience. Their voices were not
5 heard when it mattered most. They have been heard now.

6 The Inspectorate's commitment is that what they
7 endured -- what they have contributed will shape how
8 children in Scotland's care are protected.

9 The Inspectorate is listening, it is learning, and
10 it will continue to act.

11 Thank you, my Lady.

12 LADY SMITH: Thank you. Thank you very much.

13 Now, let me turn next to the representation for
14 Police Scotland. I see we have today Ms Haggerty
15 representing Police Scotland.

16 When you're ready, I'm ready to hear you.

17 Submissions from Ms Haggerty

18 MS HAGGERTY: Thank you, my Lady.

19 My Lady, I'm grateful for the opportunity to make
20 this closing submission on behalf of the Chief Constable
21 of the Police Service of Scotland.

22 Firstly, the Chief Constable wishes to express
23 sympathy to all survivors of childhood abuse, including
24 survivors who have experienced abuse within any of the
25 20 establishments featured within this case study.

1 The Chief Constable would also like to take this
2 opportunity to reassure survivors, the Inquiry, and the
3 people of Scotland that Police Scotland is fully
4 committed to thoroughly investigating all forms of child
5 abuse that has taken place in Scotland, regardless of
6 when it happened or who was involved.

7 Police Scotland remains committed to delivering its
8 response to the Inquiry and ensuring that all relevant
9 information held is provided in compliance with the
10 terms of notices issued under the Inquiries Act.

11 This information includes policies, procedures and
12 documents relating to investigations into the abuse and
13 neglect of children within the establishments featured
14 within this case study.

15 Police Scotland also wishes to inform the Inquiry
16 that in keeping with its continued commitment to
17 non-recent child abuse investigations, it is currently
18 investigating non-recent abuse within establishments
19 featured within this phase of the Inquiry. These
20 investigations have arisen out of both the review of
21 previous investigations and new reports of abuse from
22 survivors.

23 Police Scotland continues to build on its engagement
24 with survivors of childhood abuse, seeking views and
25 consulting with survivors, support services and

1 statutory partners to enhance public confidence and
2 improve service provision.

3 Police Scotland recognises the importance of using
4 organisational learning to effect continuous
5 improvement, to ensure its staff have the best skills
6 and capabilities to deal with the specific needs of
7 survivors of child abuse.

8 As such, Police Scotland will take into account any
9 good practice or areas of learning that may be
10 identified from this phase of the Inquiry hearings as
11 part of its commitment to developing and improving its
12 service provision.

13 Finally, Police Scotland remains committed to child
14 protection, both locally, as a core statutory child
15 protection agency, and nationally, in partnership with
16 multi-agency and strategic leadership groups, to
17 implement continuous improvements and make a positive
18 contribution to protecting Scotland's children, both now
19 and in the future.

20 Thank you, my Lady.

21 LADY SMITH: Thank you very much, Ms Haggerty.

22 And next I turn to the representation for the
23 Lord Advocate and that's Ms Lawrie KC.

24 When you're ready, I'm ready to hear you.

25 Submissions from Ms Lawrie

1 MS LAWRIE: I'm Leigh Lawrie and I appear on behalf of the
2 Lord Advocate this morning.

3 My Lady, I'm grateful for this opportunity to make
4 a brief submission on behalf of the Lord Advocate at the
5 close of the Inquiry's public hearings in relation to
6 its Phase 10 investigations.

7 The reason the submission is brief is because it
8 understood that the focus of the present phase is not
9 the Crown, although that will, of course, change during
10 the anticipated criminal justice case study.

11 LADY SMITH: We'll come back to that. You'll have heard
12 that I announced Phase 11 yesterday, but the way you've
13 put it, it sounds as though there will definitely be
14 a separate case study. I'm not giving any assurances of
15 that at this stage. Decisions are yet to be made.

16 MS LAWRIE: Sorry, my Lady, that is our understanding as
17 well, that it might be that we're encompassed in
18 Phase 11, although I appreciate that no decision has
19 been made.

20 LADY SMITH: Yes. Thank you.

21 MS LAWRIE: During the Phase 10 hearings, the Inquiry has
22 heard evidence of the physical, sexual and psychological
23 abuse of children and young people within residential
24 establishments run by local authorities and
25 establishments run by voluntary providers, used by local

1 authorities for their care.

2 Evidence has been heard by the Inquiry that some of
3 this abuse was reported to and thereafter investigated
4 by the Crown Office and Procurator Fiscal Service, which
5 I'll shorten to COPFS.

6 Indeed, across the five blocks of hearings and in
7 relation to various establishments, the Inquiry has
8 heard evidence that there were prosecutions of several
9 individuals against whom allegations of abuse were made.

10 The prosecutions, which are featured in Inquiry
11 evidence during this phase, span a period of some
12 43 years, beginning in the early 1980s and the most
13 recent taking place last year.

14 Some of this evidence has come from individuals who
15 are also complainers in those prosecutions. In addition
16 to prosecutions, the Inquiry has heard evidence about
17 a fatal accident inquiry conducted into the death of
18 a young person at Bellshill.

19 It's acknowledged, my Lady, that some of this
20 evidence gives rise to concerns and criticisms about
21 those investigations and prosecutions, including
22 decisions made by COPFS in the recent past.

23 LADY SMITH: On that matter, Ms Lawrie, you will have heard
24 the implied criticism being made earlier -- yesterday,
25 in an earlier set of submissions, in relation to the

1 fact that Mrs Barrie was not prosecuted. Can I take it
2 that that's been noted and that will go back to your
3 team?

4 MS LAWRIE: You can, my Lady. It's noted that there were
5 two investigations, one was in 2001 to 2004, and the
6 most recent was 2014 and 2016. And if I can assure
7 my Lady that concerns and criticisms which concern Crown
8 investigations and prosecutions are being noted by the
9 Crown team, on the understanding that they require
10 a response and will require to be addressed by them.

11 LADY SMITH: Thank you.

12 MS LAWRIE: My Lady, looking forward and in terms of current
13 practice, given these concerns and criticisms, the
14 Lord Advocate wishes to highlight again the work of the
15 SCAI review team. As the Inquiry is aware, since
16 2017 --

17 LADY SMITH: I'm sorry, when you say 'SCAI review team', you
18 are talking about the Crown team.

19 MS LAWRIE: Exactly, my Lady, that's a confusing term for
20 the public to understand. What I mean is exactly what
21 my Lady has said: there is a dedicated team within Crown
22 Office who look at cases to do with abuse in
23 institutions, my Lady.

24 LADY SMITH: Thank you. And in foster care.

25 MS LAWRIE: And in foster care. When we use the term 'abuse

1 in institutions', my Lady, it's supposed to be broad and
2 encompass all the institutions that this Inquiry is
3 looking at.

4 LADY SMITH: I see. So, to that extent, it's covering the
5 local authorities that provide the foster care, as well
6 as the foster carers themselves.

7 MS LAWRIE: It is, my Lady.

8 LADY SMITH: Thank you.

9 MS LAWRIE: Since 2017 and with the establishment of that
10 team, my Lady, the internal team, COPFS has sought to
11 bring greater specialism to COPFS's handling of cases
12 concerning allegations of the abuse of children in care
13 through the creation of the SCAI review team, that
14 internal team.

15 Initially, the team was established to review
16 decisions taken in the past by COPFS in respect of
17 allegations of institutional child abuse which were
18 reported to it by the police, and to consider whether,
19 with a modern understanding of these types of case,
20 further investigation with a view to future possible
21 prosecution was appropriate.

22 Since 2017, the team's role has developed. As part
23 of COPFS's move towards greater specialism and improved
24 services for victims and complainers, it is now
25 an established team of specialist prosecutors, which

1 considers current reports of institutional child abuse,
2 and I should say that covers foster care, my Lady.

3 LADY SMITH: Thank you.

4 MS LAWRIE: And does not simply review decisions taken in
5 the past by COPFS.

6 One of the aims of the team is to ensure
7 a consistency of approach to prosecutorial
8 decision-making in these cases.

9 The work of the SCAI review team is one aspect of
10 COPFS's ongoing efforts to improve the quality of
11 service the public rightly expects, in relation to the
12 investigation and prosecution of allegations concerning
13 the abuse of children in care and foster care.

14 Therefore, evidence critical of COPFS, alongside all
15 other evidence given to the Inquiry, has been and will
16 continue to be very carefully considered and reflected
17 upon.

18 In conclusion, my Lady, may I repeat the
19 Lord Advocate's ongoing commitment to supporting the
20 work of the Inquiry and to contributing both positively
21 and constructively to its work, and also to ensuring the
22 fair, effective and rigorous prosecution of crime in the
23 public interest for all members of society, including
24 those who have been abused as children whilst in care,
25 including foster care, in Scotland.

1 Thank you, my Lady. Unless I can be of further
2 assistance, those are the submissions on behalf of the
3 Lord Advocate.

4 LADY SMITH: That's all at the moment. Thank you very much,
5 Ms Lawrie.

6 And finally I would like to turn to Mr Scullion, who
7 is here to present closing submissions for Scottish
8 Ministers.

9 Mr Scullion, when you're ready.

10 Submissions from Mr Scullion

11 MR SCULLION: Thank you, my Lady. My name is Dominic
12 Scullion and I'm here to represent the Scottish
13 Ministers.

14 My Lady, these Phase 10 submissions are made on
15 their behalf and on behalf of those executive agencies
16 for whom the Scottish Ministers are directly
17 responsible.

18 They address the evidence heard by the Inquiry from
19 applicants in the period since January of this year,
20 about their experiences in establishments run by local
21 authorities and establishments run by voluntary
22 providers used by local authorities to place children in
23 care.

24 They also seek to address certain specific matters
25 that have featured in the evidence heard by the Inquiry

1 during this phase. But, of course, the absence from
2 these submissions of material on a particular matter is
3 not to suggest that the Scottish Government is
4 uninterested in or unconcerned by that issue or issues.

5 And finally, my Lady, these submissions will update
6 the Inquiry on matters that concern Scottish Ministers'
7 wider responsibility for the regulatory framework and
8 the ongoing programme of reform.

9 My Lady, in their opening statement for this phase,
10 the Scottish Ministers explained the various aspects of
11 their interest in this part of the Inquiry's work.
12 Ministers, of course, have a range of interests in the
13 way in which residential accommodation services are
14 provided to children and young people by and on behalf
15 of local authorities.

16 While day-to-day responsibility for looked-after
17 children sits with Scottish local authorities, ministers
18 set overarching national policy. Ministers are also
19 responsible for ensuring that the legislative framework
20 is fit for purpose and for bringing forward law reform
21 proposals for consideration by Parliament.

22 That opening statement also noted that the framework
23 relevant to this part of the Inquiry's work includes the
24 Children (Scotland) Act of 1995, the Children and Young
25 People (Scotland) Act 2014, which make provision in

1 relation to the duties of local authorities to
2 looked-after children.

3 The looked-after children regulations impose a range
4 of obligations on local authorities, including
5 obligations to assess children's needs and how those can
6 be met, to prepare a child's plan and to place siblings
7 together where the local authority is considering
8 placing a child in residential care.

9 And that opening statement also referred to the
10 regime for registration and inspection of residential
11 childcare by the Care Inspectorate and for the
12 regulation of social care workers by the SSSC, or the
13 Scottish Social Services Council, as well as specific
14 provision for the regulation of cross-border placements
15 of children in residential care.

16 Now, my Lady, as in all previous case studies,
17 representatives of Scottish Government have not been
18 actively involved in the taking of evidence from those
19 who gave evidence about the abuse they experienced. And
20 in the circumstances, and as before, ministers do not
21 make detailed submissions on the evidence of abuse heard
22 by the Inquiry during the case study, and nor do they
23 propose that the Inquiry should make any specific
24 findings in fact.

25 However, Scottish Ministers would wish applicants to

1 understand that representatives of the Scottish
2 Government have listened to their evidence and continue
3 to listen to the evidence given by applicants.

4 Scottish Government accepts, and believes, the
5 evidence that has been given by applicants about the
6 abuse that they experienced. And as in earlier stages
7 of this Inquiry, the Scottish Government acknowledges
8 the courage of all of the individuals who gave evidence
9 about their experiences and about the impact of
10 childhood abuse on their future lives, and records its
11 gratitude to them for contributing to this Inquiry.

12 My Lady, the Inquiry heard evidence during this
13 phase about the operation of the disclosure regime in
14 Scotland and, in particular, the Inquiry heard on
15 19 February from Mr John Trainer, who was the Chief
16 Social Work Officer of Renfrewshire Council, and on
17 1 April from Mr Arun Singh, the Chief Social Work
18 Officer at Perth & Kinross Council. And part of the
19 evidence related to the question of whether individuals
20 about whom safeguarding concerns exist might move
21 between employers without detection.

22 The Scottish Ministers are conscious that the
23 Inquiry has not had evidence on this issue in this phase
24 from Disclosure Scotland or other relevant parts of
25 government, but of course, should it assist the Inquiry,

1 the ministers can provide a response in writing in
2 connection with any of the issues raised.

3 Meantime, with a view to assisting, the Scottish
4 Ministers would ask the Inquiry to note the following:

5 First, Mr Trainer's evidence was that where
6 an employer had a concern about an individual, the
7 concern would be referred to Disclosure Scotland only
8 once a disciplinary investigation had concluded. And
9 that led counsel to the Inquiry to ask whether there
10 might be a gap in the regulatory framework and, in
11 particular, whether an individual might leave their
12 employment prior to the conclusion of the disciplinary
13 process.

14 Mr Singh, on the other hand, explained that where
15 an allegation of abuse is made, an employer must notify
16 Disclosure Scotland within three months if a staff
17 member is dismissed from a regulated role, or leaves
18 before an investigation is completed, or is removed from
19 that role due to harm or risk of harm.

20 And, my Lady, if I may pause there to highlight
21 a correction that I have just made there in the oral
22 submissions to what was contained in the written
23 submission --

24 LADY SMITH: Can you give me a paragraph number?

25 MR SCULLION: Yes, my Lady, the written submission is at

1 paragraph 20.

2 LADY SMITH: Yes.

3 MR SCULLION: In the fourth line, say, and I quote:

4 '... and leaves before an investigation is
5 completed.'

6 My Lady, the 'and' there should be an 'or'.

7 LADY SMITH: Yes, of course.

8 MR SCULLION: And that reflects both Mr Singh's evidence
9 and, of course, the statutory wording in the 2007 Act.

10 But returning to that evidence, my Lady, Mr Singh's
11 evidence was that Disclosure Scotland could bar
12 an individual from regulated work, even where
13 an employer has concluded that there is no case to
14 answer.

15 Now, my Lady, Scottish Ministers consider that
16 Mr Singh's evidence on this point more accurately
17 reflects the legal position. The law places a duty upon
18 an employer to refer an individual to ministers, even
19 when the individual resigns before the completion of
20 a disciplinary process. Non-compliance constitutes
21 a criminal offence.

22 Section 3 of the Protection of Vulnerable Groups
23 (Scotland) Act 2007 provides that an organisation must
24 make a referral to Disclosure Scotland where it has, on
25 a referral ground, dismissed an individual, or

1 transferred them out of their regulated role, or would
2 or might have done so but for the termination of their
3 employment.

4 Referral grounds include harm to a child, placing
5 a child at risk of harm, engaging in inappropriate
6 conduct of a sexual nature involving a child,
7 inappropriate use of pornography, or giving
8 inappropriate medical treatment to a child.

9 And there are similar provisions, my Lady, requiring
10 a referral where an organisation becomes aware of
11 information that would or might have led to a person's
12 dismissal on a referral ground, but where, by the time
13 the information comes to light, the person is no longer
14 in the regulated role.

15 And so, my Lady, as a matter of law, therefore,
16 a person cannot avoid scrutiny by leaving their employer
17 organisation, and Disclosure Scotland has measures in
18 place that proactively monitor compliance by
19 organisations who are under this duty to refer. And
20 of course, this includes taking steps to both obtain the
21 missed referral and reporting organisations to Police
22 Scotland.

23 Disclosure Scotland has encountered a small number
24 of cases where organisations have not referred
25 an individual because their position is that

1 an investigation has not started and in such cases,
2 Disclosure Scotland will consider the whole
3 circumstances to assess whether an offence under the Act
4 may have been committed.

5 LADY SMITH: And when it comes to the nature of institutions
6 that are covered by the term 'organisation' -- I should
7 have checked, sorry -- it's pretty wide?

8 MR SCULLION: It is pretty wide, my Lady. I actually don't
9 have the definition before me at the moment, my Lady,
10 but the entire disclosure regime, being a matter which
11 came up in the evidence here, is, of course, something
12 which, if it would assist, could be something that
13 ministers provide a paper on to the Inquiry.

14 LADY SMITH: I'm sure we can check that. I can check that.
15 I have a recollection of this also being a concern in
16 the matter of teachers, similarly, that they could slip
17 away without any disciplinary proceedings either taking
18 place or being completed, but that would put children at
19 risk in the future if they managed to get further
20 employment.

21 And there are other types of employment to whom it
22 would apply, but it needs to be a very wide ambit to
23 catch anybody who is going to be at risk of working with
24 children in the future.

25 MR SCULLION: Yes, my Lady, and I mean, I am aware and

1 I'm instructed that Disclosure Scotland provides and can
2 provide, on request, advice to a range of organisations,
3 can provide training to organisations, and encourages
4 organisations to take a broad view of their
5 responsibilities under the Act.

6 And there are a couple of other matters in relation
7 to Disclosure Scotland which I propose briefly to touch
8 on.

9 The aspect of Mr Trainer's -- another aspect of
10 Mr Trainer's evidence, my Lady, was that there was
11 a concern about how the regime might apply to domestic
12 workers, for example, as opposed to care staff.

13 LADY SMITH: Yes.

14 MR SCULLION: And ministers do not agree with Mr Trainer's
15 evidence on this matter, my Lady.

16 LADY SMITH: Or somebody working in the grounds, for
17 example.

18 MR SCULLION: Yes, and indeed I was going to touch upon
19 something that Mr Young referred to yesterday in
20 submissions about trades.

21 LADY SMITH: Yes.

22 MR SCULLION: But, my Lady, the ministers would essentially
23 wish to draw the Inquiry's attention to the terms of
24 paragraphs 1, 20 and 21 of Schedule 2 to the 2007 Act,
25 and paragraphs 1, 13 and 13A of Schedule 3 to the 2007

1 Act.

2 LADY SMITH: 1, 13 and 13A, Schedule 3.

3 MR SCULLION: Yes, my Lady. And paragraph 20 of Schedule 2,
4 this is the schedule which deals with the regulated
5 roles with children, and paragraph 13 of Schedule 3,
6 which is the schedule which deals with regulated roles
7 with adults, provide that such roles include,
8 respectively: being engaged in the provision of
9 a domestic service, including cleaning, preparing food;
10 acting as a caretaker of premises or carrying out
11 maintenance of premises that is provided for children in
12 an educational institution, hospital, nursery, daycare
13 premises and so on, my Lady. But I've set it out fully
14 in the written submissions.

15 LADY SMITH: That's very helpful. Because these can
16 classically be higher risk than the people who are
17 obviously tasked with working directly -- working
18 directly with children, because the children may see
19 them as outwith the core that they're not comfortable in
20 talking to, and they get to know the tradesman, they get
21 to know the person who works at the boilers, in the
22 grounds or whatever.

23 MR SCULLION: Yes, quite so, my Lady, and that is perhaps
24 one of the reasons why paragraph 21 of Schedule 2 in
25 particular is crafted in quite wide terms.

1 Paragraph 21 of Schedule 2 and paragraph 13A of
2 Schedule 3 include any person carrying out an activity,
3 that's the statutory wording, so 'an activity', but in
4 the same setting as paragraphs 20 and 13. And they
5 require the person concerned the opportunity of
6 unsupervised contact with children. And Disclosure
7 Scotland's view, my Lady, is that these provisions
8 encompass roles involving activities of domestic
9 service, so that would include cleaning, cooking,
10 caretaking, maintenance, and they would, to pick up on
11 Mr Young's submission yesterday for Renfrewshire
12 Council, likely cover trades, because the effect of
13 paragraph 21 is that trade staff with an opportunity,
14 that's the wording, 'an opportunity' for unsupervised
15 contact with children, as a necessary part of their
16 role, will require PVG.

17 LADY SMITH: And it also will catch people who are working
18 in the place, having been supplied by an agency, not
19 employed by the organisation at all themselves. So
20 either self-employed or they have another arrangement
21 with the agency, but the employer in the place can't
22 directly control them.

23 MR SCULLION: It's focusing on the opportunity for the
24 unsupervised contact.

25 LADY SMITH: Yes. And of course, typically, part-time

1 agency staff and the like may be working in kitchens,
2 a type of manual work, trades work, or indeed may also
3 be working in the direct roles. There are many places
4 that have to use people from agencies to supplement
5 their core staff that are directly employed.

6 So the legislation is now designed to cover anybody
7 who could be engaged with children, whether formally or
8 informally really; is that it?

9 MR SCULLION: Yes, my Lady, and the legislation is worded in
10 terms of 'any person'.

11 LADY SMITH: Good. Thank you.

12 MR SCULLION: But I am, my Lady, instructed once again to
13 offer the Inquiry a paper on any of the issues raised in
14 the evidence if that would assist, and, of course, that
15 would cover the discussion here.

16 LADY SMITH: Thank you.

17 MR SCULLION: My Lady, turning to Fornethy House. The
18 Scottish Government has heard and has listened carefully
19 to the evidence of applicants who were abused at
20 Fornethy House.

21 The Government acknowledges the appalling nature of
22 that abuse and the Government has also heard and
23 listened carefully to the evidence given by those
24 applicants about Scotland's Redress Scheme and the
25 eligibility criteria that govern redress payments under

1 the scheme.

2 LADY SMITH: And the impact that it has had and is having on
3 them that they are excluded from Redress.

4 MR SCULLION: Yes, my Lady.

5 LADY SMITH: There was some very powerful evidence about
6 that and how it has made them feel now for a long time
7 and how they continue to feel: being not as important as
8 others, there being a hierarchy of abuse, as -- it being
9 impossible for them to understand how, when the abuse
10 they suffered at Fornethy is directly in line with abuse
11 that I have found took place in other institutions that
12 are covered by the Redress Scheme, how it is that their
13 applications are being rejected.

14 MR SCULLION: My Lady, the Government has heard and listened
15 carefully to all of that evidence and will continue to
16 reflect on it, but, my Lady, the Government's position
17 is that the eligibility criteria for the scheme should
18 not be changed.

19 LADY SMITH: Well, that's one answer. There are other ways
20 of looking at this, Mr Scullion, and first of all, you
21 have to ask whether the current legislation actually of
22 itself, of necessity, excludes the Fornethy survivors.
23 And I wonder if that's right?

24 MR SCULLION: Well, my Lady, if I may, that is a point I was
25 coming on to say, which is Fornethy survivors are not,

1 by virtue of being Fornethy survivors, excluded.

2 LADY SMITH: Well, they're having difficulty in
3 understanding how that is the Government's position,
4 having for instance heard in March 2024 the then Deputy
5 First Minister, Ms Robison, say that the Redress Scheme
6 was designed for vulnerable children who were in
7 long-term care. Therefore, somebody who was at Fornethy
8 can't qualify for Redress because, as she also said,
9 children at Fornethy were there for convalescence or
10 a holiday to help them recuperate.

11 Now, on both counts actually, that's wrong, because
12 if you look at the fact, alone at the fact that foster
13 care is covered by the Redress Scheme, that shows you
14 that the Redress Scheme was not designed so as to only
15 cover long-term care.

16 And then if you look at the wealth of evidence we
17 have about the reasons why children were sent to
18 Fornethy, it wasn't because they had been ill and they
19 needed to recover. Insofar as there was any element of
20 respite in some cases, it was to give a parent respite,
21 and that ranged from a parent who had been very ill to
22 a parent who was studying to -- I think it was
23 a teaching qualification the mother was working for, and
24 she needed to get her head down to do the studying for
25 the exams, and so her daughter went to Fornethy, so that

1 her mother could do the work.

2 There are a number of other people who went because
3 their friend was going, so they asked, could they go
4 too, because they'd heard it was fun. And so many of
5 them went there because the school had sent something
6 like a round-robin letter home with them to give to
7 their parents to invite them to go to Fornethy and they
8 nagged their mother to go.

9 And many of these weren't children who you could
10 describe as vulnerable. There's a wealth of evidence of
11 people talking about home life being good, a happy life,
12 had good parents, and, 'I thought this was going to be
13 a holiday because people talked about it being a holiday
14 and fun'.

15 And yet it was actually part of the scheme for
16 residential education that the Glasgow Corporation
17 established in 1945, not to give helpful treatment or
18 rest or recovery to children who had been ill, but
19 generally to improve the health of children in
20 education.

21 And you'll have seen, I hope, Mr Scullion, and heard
22 the evidence about the system whereby you were actually
23 classed as being still at school in Glasgow while you
24 were at Fornethy. You were being marked as present in
25 Glasgow. And there were three sets of records; the

1 normal school register, the residential school record,
2 there were pupil progress records and the school
3 logbooks that were being passed from the Glasgow school
4 to Fornethy and back.

5 And lo and behold, Fornethy came under the ambit of
6 the Education Department of Glasgow, and what sort of
7 people did it employ to have direct contact with the
8 children? Well, there was a headteacher and then there
9 were teachers, like Patricia Robertson or Baxter, who
10 also made another friend who was a teacher. And the way
11 the day was run was, whatever you think of the quality
12 of the education -- and it didn't seem to be up to very
13 much -- that was taking place, there was education
14 taking place in a classroom setting, in Fornethy, in the
15 mornings, I think, is the impression that comes over
16 from the evidence, and then they were taken outdoors in
17 the afternoon, no doubt because it was thought that was
18 a good thing and it was better than being in the city
19 streets of Glasgow and it would give them the chance to
20 get some fresh air, pink cheeks, and for those that were
21 needing a feed-up, if they weren't force-fed, to give
22 them some more food or different food than they might
23 have at home, that sort of thing.

24 It really doesn't sound like what ministers had been
25 advised by officials was the purpose of the scheme and

1 the way the scheme was operating.

2 So, I don't expect you to answer this now,
3 Mr Scullion, but this is really striking to me at the
4 moment and I do just wonder whether it's not good enough
5 for Scottish Ministers to say: 'Well, it all is what it
6 is. What it is will exclude Fornethy people'. All
7 right, there may be some Fornethy people that will get
8 through somehow, but it will exclude Fornethy people
9 largely because, well, it was -- we go back to this
10 place for convalescence on a short-term basis that's in
11 their heads.

12 I'm not sure that advice was right and I can see it
13 filtered through into what Shona Robison was saying in
14 2024 and what her successor Kate Forbes was advised of
15 when she spoke subsequently.

16 Now, policy is for government, I see that, but what
17 I can do is point out to government what my evidence is
18 that's come before me very powerfully and ask them
19 whether they need to think again about this.

20 MR SCULLION: My Lady, I suppose there are two immediate
21 responses. The first response, of course, is that the
22 ministers are in a position where the legislation was
23 unanimously approved by Parliament. But the second
24 point to make is that the ministers will, of course, as
25 they have with every phase of this Inquiry, listen

1 carefully to anything that your Ladyship says and will
2 give due consideration to that. And I hear what
3 your Ladyship has said and I will ensure that those
4 instructing me will give careful thought to everything
5 that your Ladyship has said.

6 LADY SMITH: Well, thank you very much, because of course
7 there are two things at play here: one is the
8 legislation, does that need to be amended? But two is,
9 are we applying the legislation, the law, the law which
10 the Scottish Parliament has made, are we actually
11 applying that correctly, if we think more carefully
12 about what the facts are?

13 And then look at the impact this whole situation has
14 been having on these women for a long time now and will
15 continue having.

16 I leave it with you, Mr Scullion.

17 MR SCULLION: Thank you, my Lady.

18 LADY SMITH: Now, where do we go after Fornethy?

19 MR SCULLION: We go briefly to legislative reform.

20 My Lady, the Scottish Government would wish to
21 update the Inquiry on this. I've set it out in the
22 written submission but in brief, the Children (Care,
23 Care Experience and Services Planning) (Scotland) Act
24 2026 was passed on 19 March this year and it received
25 the Royal Assent on 15 May.

1 As was noted in the opening statement, the Act is
2 wide-ranging but, among other things, it will extend to
3 aftercare and corporate parenting duties, to include
4 children who were looked after by a responsible local
5 authority before the age of 16, including making
6 provision for 19 to 25-year-olds who request support
7 from the local authority.

8 LADY SMITH: Does that mean that if a child went into
9 residential care at the age of 16, that child would not
10 get the benefit of this legislation?

11 MR SCULLION: I'm sorry, my Lady, I wonder if --

12 LADY SMITH: You say the extension of aftercare and
13 corporate parenting will include children who were
14 looked after before age 16, and then there will be
15 provision for 19 to 25-year-olds.

16 MR SCULLION: Yes, I see -- I take your Ladyship's point.

17 LADY SMITH: I'm sure I've come across instances of -- not
18 many, but instances of children at 16 being in need of
19 care, residential care, and on that basis they would
20 fall through the net.

21 MR SCULLION: My Lady, I wonder if I might get back to
22 your Ladyship --

23 LADY SMITH: Just check that, if you could.

24 MR SCULLION: -- on that point.

25 LADY SMITH: Thank you.

1 MR SCULLION: The --

2 LADY SMITH: It flags up to us because our cut-off, or our
3 definition of a child, from my terms of reference, is
4 18.

5 MR SCULLION: No, no, no, I fully appreciate why
6 your Ladyship's asking the question and I could probably
7 find out the answer today, if your Ladyship wished
8 a short adjournment, or we could put in a note.

9 LADY SMITH: Well, if you could just let us know what's
10 going on there.

11 MR SCULLION: Thank you, my Lady.

12 LADY SMITH: Thank you.

13 MR SCULLION: My Lady, in relation to restraint --

14 LADY SMITH: Yes.

15 MR SCULLION: -- the Act places a statutory duty on
16 ministers to issue guidance on the use of restraint in
17 children's residential care settings, secure care
18 settings and school care accommodation services located
19 within secure care. And the new guidance is expected to
20 draw on early findings from the Holding Differently
21 project.

22 For the benefit of the audience, the Holding
23 Differently initiative, of course, is led by CELCIS,
24 that's the Centre of Excellence for Looked-After
25 Children in Scotland and the University of Strathclyde,

1 and it focuses on reducing and eliminating physical
2 restraint in residential care by exploring and
3 developing therapeutic models of holding and
4 containment.

5 And separately, my Lady, the Restraint and Seclusion
6 in Schools --

7 LADY SMITH: What, you say there is new guidance coming out?

8 MR SCULLION: Yes, my Lady.

9 LADY SMITH: When?

10 MR SCULLION: There is new -- well, I'm not sure I have the
11 date yet for when the guidance is going to be issued,
12 my Lady, but work on this is ongoing at the moment, and
13 there is the Restraint and Seclusion in Schools
14 (Scotland) Act which was passed on 24 March this year
15 and that is what imposes a duty on the ministers to
16 issue guidance to education providers about the use of
17 restraint and seclusion in schools.

18 The potential for overlap between these Acts is
19 understood, and the Government is alert to the need for
20 the guidance to be produced under each Act to take
21 account of the existence of the statutory obligations
22 contained within both Acts.

23 And finally on the issue of restraint, my Lady, the
24 ministers advised the Inquiry during the closing
25 submissions of Phase 9 that a mechanism had been put in

1 place to ensure that all incidents of restraint and
2 restrictive practices occurring within the education
3 provision of secure accommodation should be reported to
4 the Care Inspectorate, who would then pass that
5 information to His Majesty's Inspectors to follow up
6 accordingly.

7 That mechanism was put in place for an initial
8 period of six months until the end of October 2025. It
9 was then extended for a further six months until April
10 of this year and it's been extended again until October
11 of this year.

12 My Lady, in an update to the information contained
13 in the written submissions, I am told that this interim
14 arrangement has been further extended until the end of
15 May 2027, at which point it will be reviewed again.

16 LADY SMITH: Thank you.

17 MR SCULLION: My Lady, I would also wish to update the
18 Inquiry on the implementation of the Education
19 (Scotland) Act 2025. Section 33 of that Act establishes
20 the office of His Majesty's Chief Inspector of
21 Education. That section was brought into force in March
22 of this year and at the end of March, Ruth Binks took up
23 post as His Majesty's Chief Inspector and there's
24 further information on that in the relevant paragraphs
25 in the written submission.

1 Very briefly, my Lady, on the National Social Work
2 Agency. On 18 March of this year, the Scottish
3 Government announced the establishment of a National
4 Social Work Agency, replacing the office of the Chief
5 Social Work Adviser. The NSWA was established as
6 an executive agency of the Scottish Government with the
7 purpose of providing national leadership, professional
8 oversight and consistent workforce development across
9 social work in Scotland.

10 And the agency will, of course, provide social work
11 advice to ministers and support co-ordination of
12 national policy affecting social work practice.

13 And finally, my Lady, of course, on 25 February of
14 this year, the Scottish Government announced its
15 intention to establish a statutory public inquiry into
16 group-based child sexual abuse and exploitation in
17 Scotland.

18 The terms of reference of that inquiry are expected
19 to be set in the coming months.

20 LADY SMITH: Have you any indication at all of what that
21 means?

22 MR SCULLION: No, my Lady.

23 LADY SMITH: Thank you.

24 MR SCULLION: The Cabinet Secretary in announcing the new
25 inquiry acknowledges that this Inquiry has heard and

1 continues to take evidence in relation to group-based
2 harm and child sexual exploitation of children in care.
3 And of course, as your Ladyship identified in her
4 remarks yesterday, and as was picked up by senior
5 counsel to the Inquiry, there has been considerable
6 evidence of such abuse and exploitation given to this
7 Inquiry during this phase of its work, including
8 evidence of direct access to children by adult men,
9 given direct and unsupervised access to children,
10 organised group-based abuse and staff complicity,
11 participation and facilitation.

12 LADY SMITH: And as I hope was made clear yesterday,
13 Mr Scullion, both by Mr MacAulay and me, the
14 exploitation doesn't have to be by a group for me to be
15 interested in it.

16 MR SCULLION: Yes, my Lady.

17 LADY SMITH: There are instances of one person, at least one
18 person starting exploitation. There is then a risk of
19 the child being passed on to others thereafter.

20 MR SCULLION: Yes, my Lady.

21 LADY SMITH: But applicants won't be excluded just because
22 they're talking about one person having exploited them.

23 MR SCULLION: No, that has been completely understood and
24 has been heard by those instructing me, my Lady.

25 LADY SMITH: And, of course, I'm interested in any form of

1 exploitation, not only sexual exploitation, because, for
2 example, there are instances of such children and young
3 people being drawn into illegal drugs activity and other
4 criminal activity, not just sexual activity.

5 MR SCULLION: Of course, my Lady.

6 LADY SMITH: It's too narrow simply to look at that. And it
7 reflects my terms of reference that, as you know, we
8 have not limited our view to looking only at sexual
9 abuse and I have discovered so much evidence of other
10 forms of abuse and some applicants saying 'Actually, it
11 was the emotional abuse that was worst, somehow it was
12 worse than the sexual abuse I had and other forms of
13 abuse'.

14 But, sorry, I digress.

15 MR SCULLION: No, thank you, my Lady and, of course,
16 everything that your Ladyship has said has been noted by
17 everyone behind me and everything will be passed on.

18 But, my Lady, the work of the new inquiry is not
19 intended to duplicate the work of this Inquiry in this
20 area.

21 LADY SMITH: Yes.

22 MR SCULLION: And your Ladyship asked me, as I commenced the
23 submissions on this part, if there was any update or
24 anything on that.

25 LADY SMITH: Yes.

1 MR SCULLION: The only thing that I'm instructed at the
2 moment is that the Deputy First Minister is committed to
3 all appropriate engagement with this Inquiry on the
4 terms of reference for the statutory inquiry into
5 group-based child sexual abuse and exploitation, and it
6 is currently being progressed.

7 LADY SMITH: Thank you.

8 MR SCULLION: My Lady, unless I can assist, those are my
9 submissions.

10 LADY SMITH: Thank you very much, Mr Scullion. I've no
11 other questions at this point.

12 Now, that completes the closing submissions. Thank
13 you all very much for your contributions in that way,
14 and I say thank you all to those who were here yesterday
15 as well as those of you who are here today.

16 I want also to take this opportunity of publicly
17 thanking my team who have worked so hard, and really
18 hard, to bring Phase 10 to this conclusion. It's been
19 a long phase, having started six months ago, and much
20 has been achieved. It's sad to think, when one says
21 'much', that's the result of investigations that have
22 uncovered so much that falls within the terms of
23 reference regarding children having been abused.

24 But I couldn't have achieved what's been achieved by
25 this stage without the commitment and hard work of

1 counsel, of my legal team, and I include in that my
2 paralegal team, and those who also do all the work that
3 a lot of you probably don't think about, in dealing with
4 our record-keeping, our electronic management of the
5 record-keeping and pushing that all forward to the stage
6 that we can make public presentations, so as to share
7 with the public what we think are the most important
8 aspects of what we have uncovered. So, my grateful
9 thanks to them.

10 I told you all about Phase 11, insofar as I can,
11 yesterday. I'm not going to say anything else about
12 that at the moment. I just hope you all have a good
13 weekend.

14 Thank you.

15 (10.55 am)

16 (The Inquiry adjourned until a date to be confirmed)

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