

<p>1 Tuesday, 24 November 2020 2 (10.30 am) 3 THE CHAIR: Good morning, everyone and welcome to Day 7 of 4 this public hearing. Ms Scolding? 5 MS SCOLDING: Good morning, chair. Just to indicate for 6 everybody who wasn't clear, we have had to rejig the 7 witness timetable, so we thank Mr Meyrick and 8 Mr Llewellyn, who have moved from the morning to the 9 afternoon, to accommodate Ms Spielman, who has an urgent 10 meeting with Cabinet at lunchtime about coronavirus. So 11 we have slightly had to rejig the timetable, but thank 12 you very much for accommodating that. 13 Ms Smith, may we call Ms Spielman, Ms Humphreys and 14 Mr Kennedy, all of Ofsted, please. 15 MS HELEN HUMPHREYS (sworn) 16 MS AMANDA SPIELMAN (sworn) 17 MR JOHN KENNEDY (affirmed) 18 Examination by MS SCOLDING 19 MS SCOLDING: Good morning to all three of you. A few 20 introductory matters before I ask you to go to your 21 witness evidence, please. 22 Firstly, as you know, this isn't a test of memory, 23 so if you have made any notes, please feel free to refer 24 to them. 25 Secondly, you should have bundles in front of you.</p> <p style="text-align: center;">Page 1</p>	<p>1 There are three volumes of bundles. Don't worry, 2 I don't think we are going to be getting every single 3 one of those pages or, in fact, very many of them, up, 4 but obviously, as well as referring you to the paper 5 bundle, my colleague, Mr Hyde, can get documents up on 6 screen, and we shall be getting them up. If you can't 7 see them, please let me know and we can get them 8 enlarged or changed around. 9 Thirdly, if there are any technical difficulties, we 10 shall try and sort them out. We are hoping that won't 11 be the case. 12 Lastly, as there are three of you, I shall try and 13 preface or at least at some point in the question put 14 someone's name in there, but that doesn't preclude 15 anybody else. If you want to contribute, as we 16 discussed briefly yesterday, please could you raise your 17 hand, and I can bring you in to add to the discussion. 18 I am going to run through, firstly, some general 19 issues, because of Ms Spielman needing to get away at 20 lunchtime, and then I'm going to deal with specific 21 issues to do with Clifton College, Headlands and 22 Hillside. 23 Ms Spielman, I'm turning to you first. We have two 24 witness statements from you, which we add to the other 25 witness statements we received in phase 1. The first</p> <p style="text-align: center;">Page 2</p>
<p>1 one of those is dated 6 July 2020, and it is behind 2 tab 6 of the first volume of the bundle. Can I ask you 3 to confirm that you signed that witness statement? 4 MS SPIELMAN: I did. 5 MS SCOLDING: Is it true, to the best of your knowledge and 6 belief? 7 MS SPIELMAN: It is. 8 MS SCOLDING: There is also another witness statement, dated 9 14 October. Chair and panel, you may well have that 10 loose, rather than in a tab. Can I ask you to confirm, 11 Ms Spielman, that you signed that witness statement? 12 MS SPIELMAN: I did. 13 MS SCOLDING: And it is true, to the best of your knowledge 14 and belief? 15 MS SPIELMAN: It is. 16 MS SCOLDING: Can I just ask you to confirm, we have heard 17 evidence from you in a number of investigations, but 18 that you are Her Majesty's Chief Inspector of Schools? 19 MS SPIELMAN: Of Education, Children's Services and Skills. 20 MS SCOLDING: I do apologise. Second, Ms Humphreys, can 21 I ask you to turn to tab 7 of the witness bundle, which, 22 again, is the first volume. That is a witness statement 23 from you dated 2 July 2020. Again, did you sign that 24 witness statement? 25 MS HUMPHREYS: I did.</p> <p style="text-align: center;">Page 3</p>	<p>1 MS SCOLDING: Is it true, to the best of your knowledge and 2 belief? 3 MS HUMPHREYS: It is. 4 MS SCOLDING: We also have another witness statement from 5 you behind tab 9. That's dated 29 September 2020. 6 Again, did you sign that witness statement? 7 MS HUMPHREYS: Yes, I did. 8 MS SCOLDING: Is it true, to the best of your knowledge and 9 belief? 10 MS HUMPHREYS: It is. 11 MS SCOLDING: Ms Humphreys, we heard from you in phase 1, 12 but just for those people who weren't watching during 13 that phase, what is your role within Ofsted at present? 14 MS HUMPHREYS: I am one of Her Majesty's Inspectors of 15 Social Care and I am the specialist advisor for 16 residential care. 17 MS SCOLDING: Thank you very much. Mr Kennedy, can we turn 18 to you? We have one witness statement from you, which 19 is sandwiched between those of Ms Humphreys, behind 20 tab 8 of the bundle. Again, that's dated 2 July 2020. 21 Turning to the last page of that document, can you 22 confirm that you signed that? 23 MR KENNEDY: Yes, I did. 24 MS SCOLDING: Is it true, to the best of your knowledge and 25 belief?</p> <p style="text-align: center;">Page 4</p>

<p>1 MR KENNEDY: There's five minor errors. Do you want me to 2 go through those? 3 MS SCOLDING: Well, yes, please. 4 MR KENNEDY: On paragraph 48, it refers to "the 2009 changes 5 in paragraph 42", that should be "paragraph 28". 6 MS SCOLDING: Right. 7 MR KENNEDY: There's a minor error on paragraph 52. The 8 date of our response was 9 February, not 7 February. 9 MS SCOLDING: Thank you. 10 MR KENNEDY: And in paragraph 65, the reference should be 11 "Inspecting schools: Handbook for inspecting secondary 12 schools". 13 Paragraph 108 should be "ten" rather than "nine" 14 nonteaching staff. 15 And paragraph 120, it should be referring to 16 "paragraph 74", not "75". 17 MS SCOLDING: Thank you very much, Mr Kennedy. 18 Can you tell us who you are and your role within 19 Ofsted, please? 20 MR KENNEDY: Yes. I'm an assistant regional director for 21 the London region. I was appointed to that role in 22 2018. I'm also one of Her Majesty's Senior Inspectors 23 and I lead on the training of safeguarding for new 24 inspectors and new HMI and I'm a member of Ofsted 25 safeguarding group.</p> <p style="text-align: center;">Page 5</p>	<p>1 MS SCOLDING: Ms Spielman, turning to you first, we last 2 heard evidence from you in October 2019 in this 3 investigation. Have there been any significant changes 4 to the inspection framework in respect of child 5 protection or safeguarding since that point in time? 6 MS SPIELMAN: Not to the main frameworks, no. There are two 7 changes I can draw to your attention, one around the 8 guidance on talking to pupils that we published 9 in September 2020. This is usually uncontentious in 10 most inspections, but there were a few quarters where 11 schools were uncomfortable, so we provided some 12 clarification. 13 And in initial teacher education, we published a new 14 inspection framework for initial teacher education 15 in June 2020, which will be used in inspections from 16 next year. This does look at how teachers are trained 17 in relation to safeguarding as well as in relation to 18 curriculum, pedagogy and other aspects of teaching. 19 MS SCOLDING: As you have talked about those two aspects, 20 now might be an appropriate moment to talk about them. 21 Firstly, talking to pupils. One of the experiences that 22 we have seen from the schools, both in phase 1 and 23 phase 2, is that, certainly in inspections in the past, 24 there may well not have been a great deal of focus upon 25 discussing matters with pupils. When you say you've had</p> <p style="text-align: center;">Page 6</p>
<p>1 to clarify things, how central to inspection is talking 2 to pupils and how far do you seek their views and seek 3 to listen to their views, both during the inspection but 4 also between inspections? 5 MS SPIELMAN: It's a very important part of every 6 inspection, certainly while I have been chief inspector. 7 And sort of meeting groups of pupils and meeting those 8 in a context where they can talk freely about the school 9 without staff present to inhibit their ability to 10 express concerns is fundamental. 11 The resistance to that has generally come 12 particularly from certain faith schools where they have 13 wanted to have staff or faith group representatives 14 present, which, of course, makes it harder for children 15 to express concerns. So the guidance I would describe 16 as clarification, it's not altering a fundamental 17 principle. 18 In between inspections, we have Parent View, through 19 which parents can express views and concerns. We are 20 also a place to which parents can complain for certain 21 types of school, not for independent schools, when they 22 have exhausted local routes. So we also receive and 23 consider and act where appropriate. I think my 24 colleague Helen Humphreys would like to -- 25 MS SCOLDING: Ms Humphreys has her hand up. Ms Humphreys,</p> <p style="text-align: center;">Page 7</p>	<p>1 perhaps you can help us with that? 2 MS HUMPHREYS: Yes. Children in social care settings are 3 required to have the number to contact Ofsted should 4 they have any concerns in between inspections, and when 5 they ring the Ofsted number, they are put straight 6 through to a specially-trained handler who can take 7 those calls, and then, if needed, those calls are then 8 put on to an inspector. We don't have many children who 9 ring through, as you can imagine, but it does happen. 10 We probably get in the region of about a dozen a year. 11 So it does show that it does work, and those matters are 12 always taken up and either dealt with immediately or 13 they will be passed to the allocated inspector to 14 explore at the inspection. 15 We also, in social care, do the annual point-in-time 16 surveys, so every child and staff and professionals and 17 parents are asked to complete questionnaires and then we 18 publish annually and we are about to publish it again 19 very shortly on the findings of those surveys, and then 20 those survey findings are then used as part of 21 the preparation for inspection. 22 MS SCOLDING: That's to -- when you talk about social care 23 in this sector, that would be independent schools with 24 a boarding element and special schools with a boarding 25 element?</p> <p style="text-align: center;">Page 8</p>

1 MS HUMPHREYS: Yes.

2 MS SCOLDING: So you do a survey annually of those for both

3 parents and pupils for all of those institutions; is

4 that right?

5 MS HUMPHREYS: And children's homes and all the settings

6 that we inspect, but, yes, for schools. If there is

7 anything that comes up on those surveys, so if a child

8 writes that they're unhappy or they don't feel safe or

9 they have got a particular concern, that is then

10 escalated through to the allocated inspector, who will

11 take it up with the school.

12 MS SCOLDING: Ms Spielman?

13 MS SPIELMAN: John Kennedy may have more to add, but in the

14 context of a mainstream day school, it would be

15 a safeguarding concern if children did not have recourse

16 to anyone outside the school to whom they could express

17 concerns.

18 MS SCOLDING: Thank you. Mr Kennedy, do you have anything

19 else you want to add about this point? We are going to

20 come on specifically to advocacy in boarding settings

21 a bit later, but just sort of generally?

22 MR KENNEDY: Just a couple of points about the actual

23 inspection. Pupils have the opportunity to complete

24 a survey which inspectors will look at, and that can

25 contain comments, for example, around safeguarding as

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1 within initial teacher training. Is that something that

2 any of you -- I'm looking to you, Ms Spielman, first --

3 whether or not that was something that's come out of

4 the most recent work you've done about that or something

5 that you or the inspectorate have identified as

6 problematic?

7 MS SPIELMAN: The framework was developed in a similar way

8 to the main education inspection framework going beyond

9 simply looking at outcomes and saying were people

10 teaching competently in the schools they were placed in

11 and working in subsequently to looking at the curriculum

12 they are offered and making sure that it is cumulative,

13 coherent, well sequenced. So the question of, is all

14 the right content there will be looked at. We haven't

15 started inspecting under this yet. Our routine

16 inspections are suspended. But when we do begin

17 inspecting under this framework, I believe it will give

18 us a better handle on what it is trainees are being

19 taught about safeguarding and will help to iron out

20 unevennesses that we know exist between providers at the

21 moment.

22 MS SCOLDING: Ms Humphreys and Mr Kennedy, I'm assuming you

23 have nothing to add on that topic? No, okay.

24 Turning on, you have obviously talked about the fact

25 that inspections are suspended. They're suspended under

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1 well as other matters, and there's a strong emphasis not

2 just on speaking formally to groups of pupils, but

3 speaking informally throughout the time of

4 the inspection, which I think is quite important, that

5 it's not just the formal meetings. The informal can

6 give richer evidence.

7 MS SCOLDING: Can I ask about the pupil questionnaire. One

8 of the issues is, does it go through staff before it

9 gets sent to you, or is it something which they give to

10 you directly?

11 MR KENNEDY: They complete it online and the analysis is

12 provided to the inspectors, not to the school.

13 MS SCOLDING: So the school can't tamper with it, so to

14 speak?

15 MR KENNEDY: No.

16 MS SCOLDING: There are all sorts of ways in which they

17 might be able to do so, but they would have to go some

18 to do that. That's very helpful.

19 The second issue, Ms Spielman, which I think I'm

20 taking slightly out of turn, but, as you have said, you

21 have just done some inspection of initial teacher

22 education and relooked at that, we had the unions come

23 to give us evidence yesterday and they all said they had

24 some concerns about the variety and quality of

25 the teaching about child protection and safeguarding

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1 the coronavirus legislation. I can't remember whether

2 it's the substantive Act or the regulations. I think if

3 everyone forgives me about that.

4 But how much has -- obviously, since the last time

5 we have seen you, schools have been under some form of

6 very difficult situation over the past nine months. In

7 fact, all -- the whole country has. How far has the

8 pandemic altered approaches towards child sexual abuse

9 or child protection that we, as an inquiry, need to know

10 about?

11 MS SPIELMAN: I don't believe it's altered approaches, but,

12 clearly, COVID and addressing COVID has been a gigantic

13 priority that has pushed every other priority down the

14 list. There is no question that it's been extremely

15 hard to sustain attention and effort on other agendas in

16 the face of that overwhelming priority.

17 Clearly, the impact of COVID while schools were

18 closed to most children, physically closed to most

19 children, through the summer was enormous. There have

20 been many reports on that. We have just published a set

21 of briefings which I think we have sent to you.

22 MS SCOLDING: Yes, you have.

23 MS SPIELMAN: (Overspeaking) education and social remits

24 have fared and coped. Sorry, you wanted to come in?

25 MS SCOLDING: All I wanted to say is, yes, we have received

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1 them. We weren't going to put them up on the screen
 2 this morning, but we have copies of them.
 3 MS SPIELMAN: If I can pull out a few things that I think
 4 particularly stand out, one is low attendance, low
 5 school attendance, especially by children known to be
 6 vulnerable and, overall, I think something like a fifth
 7 of children are out of school on any given day at the
 8 moment, compared with about 5 per cent on a normal day
 9 and normal times, and attendance among children
 10 identified as vulnerable is substantially lower than
 11 that.
 12 We know that there's been a big rise in elective
 13 home education. We have picked that up on our autumn
 14 interim visits, more than half of heads telling us there
 15 were a lot of children who had been withdrawn. And ADCS
 16 published its annual survey, I think at the weekend, and
 17 suggests that there are now more than 80,000
 18 home-educated children, though numbers are very
 19 approximate, and at least 20,000 more than last year.
 20 Schools are having to work in very abnormal ways.
 21 COVID security means they're having to operate in
 22 completely different organisational models from those
 23 they normally operate. At one level, those constraints
 24 and restrictions may prevent some of the things that can
 25 go wrong from happening. But, on the other hand, it

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1 schools have had to reduce the number of children that
 2 they can accommodate because of shared rooms and limited
 3 communal space and to be able to make those COVID
 4 secure. So the offer is much reduced for children in
 5 residential special schools and short break settings,
 6 so, again, those children who perhaps need to be in
 7 those settings aren't getting the same level of offer
 8 and questions over who's got the line of sight, then,
 9 over those children who aren't in those particular
 10 schools.
 11 MS SCOLDING: Ms Humphreys, I was thinking that the
 12 children, as we will come on to discuss, in residential
 13 special schools are often children for whom the local
 14 provision has been exhausted or is inappropriate. So
 15 they are currently in a position where their educational
 16 needs aren't being met and that could have consequences,
 17 I'm assuming.
 18 MS HUMPHREYS: Definitely, yes.
 19 MS SCOLDING: Ms Spielman, thank you very much, that's
 20 a very helpful update. Turning to you now, one of
 21 the issues that Ms Richards from the Independent Schools
 22 Inspectorate has raised is the need for the paramountcy
 23 of the interests of the child to be central in the
 24 education sector and in the school sector.
 25 Now, at the moment, there is a statutory obligation

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1 clearly constrains the conversations that people can
 2 have when they're sort of required to work within
 3 bubbles. It limits children's access to adults if
 4 they're not the adult assigned to their bubble. The
 5 normal checks and balances and perhaps some other sort
 6 of tacit checks and balances that are normally there may
 7 well be compromised.
 8 I think it is worth mentioning particularly the
 9 issues around children with SEND. Many special schools
 10 did close completely. Many SEND children are still not
 11 back in school. There are some children whose needs
 12 unquestionably make it very hard for schools to have
 13 them back and comply with public health requirements.
 14 I think I would express concern that safeguarding for
 15 those children, particularly, is probably still
 16 unusually weak, through, in the main, no fault of
 17 schools, but simply because the constraints under which
 18 we are all living and working make it harder to do.
 19 MS SCOLDING: Ms Humphreys and Mr Kennedy, do you have
 20 anything to add?
 21 MS HUMPHREYS: I think what we are finding in some
 22 residential special schools, leading on from what Amanda
 23 has said, is that, for some parents, they don't feel
 24 confident enough their children will be safe if they
 25 send them back into staying overnight, and a lot of

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1 for local authorities, schools, to take into account,
 2 have regard to, the safety and welfare of children, but
 3 there's no paramountcy principle in education in the way
 4 that there is under the Children Act 1989. You think
 5 about section 1 of the Children Act says the interests
 6 of the child is a paramount principle and then it
 7 identifies various subsections. There isn't the
 8 equivalent of that in education. Do you think there
 9 should be?
 10 MS SPIELMAN: To me, it seems very well established that the
 11 child's interests come first, and of course the child's
 12 interests are in both safeguarding and in education.
 13 Those two have to be seen side by side. A school or any
 14 kind of provision that did only the one well but didn't
 15 do the other would be pointless. No parent would be
 16 happy with a school which educated well but didn't keep
 17 their child safe. Equally, no parent would be happy
 18 with a school that kept their child safe but didn't
 19 educate them. The two sit side by side and are
 20 absolutely fundamental parts of putting children's
 21 interests first.
 22 MS SCOLDING: I know, but what may come out in the evidence
 23 that we have heard, certainly over the past week or so,
 24 is that the focus upon academic attainment meant that
 25 issues to do with welfare and safeguarding slipped down

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<p>1 the agenda, just as you have described COVID making 2 everything else slip down the agenda. The very strong 3 focus which there has rightly been upon improving 4 academic attainment for all our children has potentially 5 led to the unintended consequence that issues around 6 safeguarding within the context of the school setting 7 are not seen as as important or as focused upon by 8 schools. Do you agree with that analysis? 9 MS SPIELMAN: I don't think I do. I think it would be very 10 exceptional in the modern day. I think what we're 11 seeing, in the context of many of these historic cases, 12 also, is how much the world has evolved in its thinking 13 and expectations around safeguarding over the last 30 or 14 40 years. When I look at the series of transformations 15 that inspection has been through and as it operates on 16 the ground, I can see that the kinds of inspections that 17 happened when I was at school myself were very focused 18 on the education piece with quite a cursory look at the 19 pastoral side. 20 I think the inspections that Ofsted operated before 21 about 2004 -- or until about 2004, maybe 2005, were 22 substantially more weighted onto education and went into 23 vastly more depth on education so that the safeguarding 24 and pastoral care represented a smaller piece. 25 Over time, we have shifted to a model which has</p> <p style="text-align: center;">Page 17</p>	<p>1 unweighted education and put more and more into the 2 safeguarding side. 3 We looked, for example, at, I think, the last full 4 year's inspections -- John Kennedy will correct me if 5 I have expressed that wrongly -- but I think we found -- 6 in the last year, we found 84 schools to have -- to be 7 ineffective in safeguarding. Not a single one of those, 8 I think, had anything other than an overall grade 4 9 judgment. So there is nothing coming through from our 10 work that suggests that safeguarding and child 11 protection are being treated as anything other than 12 matters of enormous importance. 13 MS SCOLDING: I suppose we say that because I understand 14 when you're talking about things before 2004, but the 15 interesting thing about the three cases that we will 16 come on to talk about later is, they all postdate that 17 time. We are looking at inspections from 2004, from 18 2006, from 2009, from 2012/2013 in some cases, and 19 obviously in the previous phase we also looked at -- 20 when I say "contemporaneous", I don't mean now, but I do 21 mean in the past 20 years, and in all those cases, 22 problems which subsequently emerged were not found upon 23 inspection. 24 I mean, do you think that demonstrates the limits of 25 inspection as a useful tool or do you think that</p> <p style="text-align: center;">Page 18</p>
<p>1 demonstrates that the way that you inspect is not 2 sufficient at the moment? 3 MS SPIELMAN: I have always been clear that inspection is 4 a limited tool and is part of a wider sort of framework 5 of assurance, and that assurance is not, and can never 6 be, an absolute guarantee. 7 I think the way to think about inspection is that it 8 is designed and works well as an assessment of 9 competence. It's not an investigation designed to 10 uncover every relevant fact to establish whether 11 everybody involved in an organisation has had their 12 integrity compromised at any point. 13 It's developed greatly in recent years to maximise 14 the scope for professional curiosity. I believe the 15 changes we've made in the latest framework continue to 16 take that forward so as to maximise the likelihood that 17 the kinds of inconsistency and anomaly that can lead an 18 intelligent and curious inspector to recognise that two 19 things don't add up or that something has not been said 20 that might open up a line of enquiry, and I think 21 inspectors are doing that, but nevertheless, I think 22 what many of these cases have shown is, firstly, that 23 where there is deliberate concealment, especially by 24 senior leaders, it is extraordinarily difficult to get 25 into it until you know that there is something there.</p> <p style="text-align: center;">Page 19</p>	<p>1 And, secondly, when people know what they should do 2 and deliberately withhold or deliberately omit, it is 3 much, much harder to spot omissions than it is to spot 4 errors and misstatements. 5 So, absolutely. I think the last thing I would say 6 is that I think the Stanbridge Earls case in particular 7 was one which really pushed us to look extremely hard at 8 our own processes and approaches, and I think the kind 9 of training we give inspectors and the sort of internal 10 processes and structures of training and review are the 11 things that -- I think that galvanised and pushed the 12 evolution into the model we operate now. I think 13 I would single that out as something that was a real 14 turning point for Ofsted. 15 Both of my colleagues were there at that point, and 16 through much of the period we are talking about, so it 17 might be worth asking them to add their thoughts. 18 MS SCOLDING: Yes. Ms Humphreys, first turning to you. Do 19 you view inspection as a suitable tool to identify 20 safeguarding concerns, and in what ways has inspection 21 changed over the past 20 years in respect of -- we are 22 going to go through the particular cases later, but as 23 a sort of an overarching matter, as somebody who has 24 been there since the beginning, so to speak, without -- 25 it means you have a vast amount of experience, so tell</p> <p style="text-align: center;">Page 20</p>

1 us how has it changed?
 2 MS HUMPHREYS: That's right, yes, there has been significant
 3 change, and I would agree with Amanda on that.
 4 Largely, that's to do with the fact that the
 5 children's -- the regulations have changed, the National
 6 Minimum Standards have changed, so there was always an
 7 emphasis more on premises, how safe were they. There
 8 was less about what was it like for a child to live
 9 here, what was it like for -- what was the outcomes for
 10 children. We were far more fixed on counting things and
 11 assessing physical things, and there was less about the
 12 more nebulous things, which was: are the outcomes for
 13 children good here; do children enjoy staying here; is
 14 there sufficient support for them?
 15 Then, with the shift, with the National Minimum
 16 Standards and also the introduction of the social care
 17 common inspection framework, where there's been a much
 18 greater shift towards what is it like for children to
 19 live here, what matters most for children, how can we
 20 examine what actually the experiences of children are,
 21 then that's a greater -- much, much greater shift in the
 22 way that we inspect.
 23 But I would exactly agree that, if you've got a line
 24 of enquiry in relation to safeguarding, then that's
 25 appropriate for you to follow it up. But the opening

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1 the staff that, "This is the script, this is what you're
 2 supposed to say", we sometimes have experiences of
 3 children who have clearly been rehearsed in what to say
 4 to the inspectors, so they don't go off the script.
 5 They will tell you that everything is marvellous, the
 6 food is wonderful, there's lots of staff around, and it
 7 is very, very difficult then to actually find what might
 8 be wrong, and you might be looking for something because
 9 there might be nothing wrong. They might be actually
 10 telling you how it really is. But it's really difficult
 11 when you're inspecting in either a hostile environment,
 12 where you're denied things, when you're told that you're
 13 not entitled to look at that or questioning whether
 14 you've got the right skills and experience in order to
 15 inspect, it's extremely difficult.
 16 You can also have an experience where you're not
 17 quite sure whether the leadership team are incompetent
 18 or are being obstructive, when you keep asking for
 19 things and then they bring you something and you say,
 20 "Well, that's not actually what I asked you for", "Oh,
 21 we didn't realise that's what you wanted", and there's
 22 a question of, are they being incompetent or are they
 23 actually being obstructive here, are they really
 24 being -- just pretending to be difficult? As an
 25 inspector, you have to manoeuvre around that to try to

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1 question is often to the head of school or head of
 2 boarding, "Has there been any safeguarding concerns
 3 since the last inspection?", and if they say there has
 4 not been and you have no other information from any
 5 other source, then it is extremely difficult to uncover
 6 whatever is being concealed.
 7 Sometimes a child will say something to you,
 8 sometimes a brave member of staff will seek out the
 9 inspector and will basically say, "You need to look at
 10 this" or, "You need to look at that", and I've had those
 11 experiences where a brave member of staff will sidle
 12 into the room where the inspectors are and point out
 13 something for you to look at that you probably wouldn't
 14 have looked at because it had been concealed, and then
 15 that can take you on a specific line of enquiry in order
 16 to find that.
 17 MS SCOLDING: Just picking up on that particular point about
 18 a brave member of staff, a member of staff shouldn't
 19 have to be brave to tell you those things. What does
 20 that tell us about the fear of passing -- you know,
 21 telling on other people and the fact that it's still
 22 seen as something which is shameful rather than
 23 something which should be completely normal. What does
 24 that tell us about that, Ms Humphreys?
 25 MS HUMPHREYS: So if the school leaders have insisted with

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1 get to: is there something here that's being concealed;
 2 are the leadership team incompetent; or, actually, is
 3 everything okay? That, again, is the skill and the
 4 curiosity of the inspector to probe that and go as far
 5 as they can until they can get a resolution to that
 6 question.
 7 MS SCOLDING: We will come on to talk about -- there was
 8 a situation where the hostility happened at Clifton that
 9 we will come on to later, but in that sort of situation,
 10 wouldn't you fail the inspection? Wouldn't you say,
 11 "They have behaved so badly towards me. They haven't
 12 given me the things I want".
 13 For a start, I would say any school where the
 14 children will tell you that the food is good, there's
 15 got to be something wrong, because, I mean, in no school
 16 do children ever tell you that the food is good, even if
 17 it is gourmet standard, so that should send everyone on
 18 alert.
 19 MS HUMPHREYS: We do have circumstances where children will
 20 tell us that the food isn't good, but we will go and try
 21 the food. In most cases, the food is amazing --
 22 MS SCOLDING: That's what I mean. Surely children have been
 23 coached if they all tell you that the food is good
 24 because the sine qua non is the fact that the lunch is
 25 rubbish.

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1 MS HUMPHREYS: They are more likely to tell you the food is
2 poor, in our experience, and you go and taste it and
3 it's absolutely perfectly good and there's a wide range
4 of choice. Yes, absolutely.
5 MS SCOLDING: We are getting slightly off point there, which
6 is, if you were to be in a situation where there was
7 hostility or concerns, I'm assuming that's reflected in
8 the inspection grade.
9 MS HUMPHREYS: It would depend where your enquiry has got to
10 and what evidence you have got to say that they have not
11 met the competencies within the inspection framework.
12 So it's a balance to be taken at the time.
13 MS SCOLDING: Mr Kennedy, do you have anything you'd like to
14 add to that? I'd like to take up -- one of the issues,
15 Mr Kennedy, I'd like to deal with with you is, a number
16 of the victim and survivor groups are concerned that
17 because inspection has been described as a snapshot,
18 that therefore means all you're looking at is what goes
19 on on the day and you're not running through various
20 bits and pieces. Can I take you to -- sorry,
21 Ms Spielman?
22 MS SPIELMAN: I was trying to say something before but
23 I think perhaps you didn't see my hand.
24 MS SCOLDING: I think I did, but then we got overexcited
25 about food choices and then I forgot. So, Ms Spielman,

1 if you come in first and say what you would like to say
2 and then I will go to Mr Kennedy.
3 MS SPIELMAN: You raised a question about whether a staff
4 member should have to be brave. I think we should
5 recognise that that is always going to be a challenge to
6 some extent, that no matter how many mechanisms you have
7 in place -- remember that a staff group in any school
8 has to work together as a team to educate effectively
9 and to safeguard effectively. Remember that a large
10 proportion of the harms of various kinds that affect
11 children originate outside school and schools have to
12 bring staff together to provide the right kind of
13 support, effectively cutting across, often, a lot of
14 different activities in the school. So there is always
15 going to be a need for good teamwork and a sense of
16 mutual cohesion, and we should recognise, I think, that
17 it will always be difficult for an individual to
18 overcome that to the point of telling somebody outside
19 about it, and we can do a great deal to facilitate, but
20 we shouldn't kid ourselves that it can ever be something
21 that won't require some personal discomfort to do.
22 MS SCOLDING: Thank you. Mr Kennedy -- I see Ms Humphreys
23 nodding. Mr Kennedy, do you have anything you would
24 like to add about that point, about being the teacher --
25 whether or not teachers have to be brave and breaking

1 the cohesion of the staffroom, so to speak, in speaking
2 out about things?
3 MR KENNEDY: I think it's difficult for some teachers, but
4 certainly my experience of inspection is that teachers
5 will speak about things they're concerned about during
6 the inspection, and I think the art of inspection is to
7 give them those opportunities, be it through formal
8 meetings or informal discussions. For example, in the
9 playground, you can get a lot of rich evidence from
10 playground supervisors about what's happening in the
11 school, and that can give you far richer evidence
12 sometimes than speaking to leaders.
13 MS SCOLDING: Yes. Well, the leaders will tell you what
14 they want you to hear and the midday meal supervisors
15 tend to be less coached in that respect. Is that a fair
16 assessment?
17 MR KENNEDY: I think the important thing is to get a range
18 of views rather than just focusing exclusively on what
19 leaders are telling you about what's happening in the
20 school.
21 MS SCOLDING: If we can go behind -- one of the concerns
22 that I have been asked to raise by a number of victim
23 and survivor groups, as we were just saying, is about
24 this sort of snapshot and whether or not, in fact, you
25 do inspect against a snapshot. Mr Kennedy, I am going

1 to ask you about this first, and then I am going to ask
2 Mrs Humphreys about it. Can we go to your witness
3 statement, which is behind tab 8, and in particular
4 paragraphs 27 to 31. Danny, would you mind getting this
5 up, please, OFS012669_008-010. It starts at
6 paragraph 27. This was an answer about how safeguarding
7 has changed since September 2009. At paragraph 28, it
8 obviously introduces the fact that safeguarding was
9 a limited judgment, so, in other words, you couldn't
10 pass an inspection if you failed on safeguarding from
11 that point onwards, emphasising for people to have to
12 speak with inspectors.
13 But then at paragraphs 29 and 30 -- Danny, would you
14 mind taking down _008 and getting up _010 for me,
15 please. That identifies the safeguarding aspects that
16 you undertake. So can you just talk us through, when
17 you go into a school and when you are inspecting
18 a school in respect of child protection and
19 safeguarding, do you look at the safeguarding policies?
20 MR KENNEDY: Yes, we do. I think there's a danger that we
21 just take the policy as what's happening on the ground,
22 so I think -- what I think is really essential is that
23 we balance what we read with what we're actually seeing,
24 in terms of evidence, and a lot of those points in
25 paragraph 29 are about how we try and explore the kind

<p>1 of cultural vigilance, the kind of challenge that there 2 is, for example, by the governing body, and we look at 3 other aspects which might not, on the face of it, seemed 4 to be linked to safeguarding but actually are. So we 5 might look at how they manage attendance and how they 6 follow up issues where pupils aren't attending, where 7 there might be other concerns.</p> <p>8 One of the significant differences now to what 9 happened, say, for example, in 2005, is we also look at 10 case records to ask the school to take us through how 11 they have dealt with particular issues that have emerged 12 over time, and just to pick up this point about 13 snapshot, an inspection is a moment in time, but 14 actually, if you read the handbook, it refers to "over 15 time" in a number of places, when it comes to making 16 judgments around, for example, behaviour or 17 safeguarding. It is not just about what happens on the 18 two days of the inspection. In fact, in terms of 19 behaviour, pupils can be really well behaved during the 20 two days of the inspection and inspectors need to get 21 under that and they do the same for safeguarding. It is 22 not just about pupils saying they feel safe today and 23 yesterday during the inspection, but they didn't feel 24 safe, and haven't felt safe, for the last six months. 25 That would be a concern to inspectors.</p> <p style="text-align: center;">Page 29</p>	<p>1 MS SCOLDING: We can see here the additional inspecting 2 safeguarding guidance at paragraph 30 gives a prompt, 3 a list, to use when checking the single central record. 4 I always erroneously call it the single central 5 register, so I'm going to apologise if I continue with 6 that mistake. So you will always check the single 7 central record. Will you always check whether any 8 referrals have been made to DBS or to any other agency, 9 to the NCTL, for example, or to the DfE where there have 10 been concerns? Will you always check that?</p> <p>11 MR KENNEDY: Yes, and that's something that wasn't the case 12 some years back, but now there's a requirement on all 13 inspectors to ask about concerns about staff, 14 allegations made about staff and had they been followed 15 through, depending on the nature of those allegations. 16 That's a requirement on all inspectors for all our 17 inspections (overspeaking) --</p> <p>18 MS SCOLDING: Is that forever or from the last inspection? 19 Say, for example, you had an inspection in 2015 and you 20 had another one in 2018, would you look at whether there 21 had been any referrals between 2015 and 2018 no matter 22 when in time the particular abuse might have occurred or 23 the particular allegations might have occurred?</p> <p>24 MR KENNEDY: We'd ask for any allegations that have been 25 referred -- or concerns that have been referred since</p> <p style="text-align: center;">Page 30</p>
<p>1 the last inspection, but we would also be expected to 2 take on board any intelligence that we might have about 3 what may have happened before that. That can be 4 a weakness. In other words, if we don't have that 5 information, it's difficult for us to then talk about 6 it.</p> <p>7 MS SCOLDING: Yes, which is why there's been some discussion 8 about -- we discussed this at length at the previous 9 hearing -- to try and improve that kind of intelligence, 10 whether or not there should be a compulsion upon the 11 LADO to tell you whether there have been any referrals 12 to them or whether there hadn't been any referrals to 13 them. How do you find your intelligence with the LADO, 14 Mr Kennedy?</p> <p>15 MR KENNEDY: I think it's fair to say that it varies. 16 Similarly, you could have a situation that a teacher has 17 been prohibited from teaching where there are 18 safeguarding issues, and we mightn't necessarily know 19 that because, you know, routinely, we are not given that 20 information.</p> <p>21 So to some degree, if we don't have that 22 information, you're somewhat blind going into an 23 inspection, and you might be able to uncover it during 24 the inspection, but it's more helpful that you know in 25 advance if there are concerns about a school.</p> <p style="text-align: center;">Page 31</p>	<p>1 MS SCOLDING: Both of those two things would seem to me to 2 be easily remedied by having proper information sharing, 3 firstly, between the Teaching Regulatory Agency and 4 yourself; secondly, between local authorities and 5 yourself. Obviously, an aspect of that, which we might 6 come on to later, is for boarding settings reinstating 7 the serious incident reporting forms so that you would 8 get that information even if it wasn't given to you by 9 other people. But do you therefore feel -- and I'm 10 asking this question to Mr Kennedy, but Ms Humphreys and 11 Ms Spielman please intervene -- do you still think there 12 are problems with information sharing which need to be 13 rectified?</p> <p>14 MR KENNEDY: Yes, I do. I don't think it's consistent and 15 I think it would help our job enormously.</p> <p>16 MS SCOLDING: Ms Spielman, I can see you nodding. Is there 17 anything you would like to add to that?</p> <p>18 MS SPIELMAN: Since you've raised it, I would like to talk 19 about information sharing more broadly because I do 20 believe it is a challenge across the system and not just 21 about LADOs and TRA but more widely. I think it is 22 often the case that we are expected to inspect blind, 23 when others do hold information but, for various 24 reasons, don't share it with us, perhaps because their 25 investigations have not reached the point of final</p> <p style="text-align: center;">Page 32</p>

1 determination.

2 Also, I think sometimes relationships can come into

3 it. I'm going to give an example here. I attended

4 a meeting of a group of directors of children's services

5 a few months ago where we were discussing offrolling,

6 actually, which can also be a safeguarding concern, and

7 one of the DCSs said that, in their view, when we

8 inspect, we should read every piece of correspondence

9 since the previous inspection between the local

10 authority and the school because that would show us

11 where the local authority had concerns about offrolling.

12 I said, "But we notify you about inspections, so that

13 gives you the opportunity to tell us if you have

14 concerns", to which the answer was, "No, but that might

15 interfere with our relationship with the school".

16 So across LADOs, local authorities more widely, TRA,

17 Standards and Testing Agency, where -- somewhere around

18 4 per cent of primary schools each year there are

19 suspicions about whether there's been some kind of

20 cheating or interference in primary tests, complaints,

21 information that go to EFSA, Department of Education.

22 There is an enormous web of information to which we

23 don't necessarily consistently -- we aren't necessarily

24 able consistently to tap in.

25 There is no question it's a difficult network to

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1 relevant to us in deciding whether or when to inspect

2 and the lines of enquiry that we pursue on inspection.

3 So I think strengthening the policy priority on

4 something that sounds as basic and dull as information

5 sharing, it may not be a vote catcher, but I think it

6 has real potential to improve children's lives.

7 MS SCOLDING: The other thing I suppose I would raise is,

8 certainly since, I think, the Laming Report, and before

9 that, I think every single major report talks about the

10 need for information sharing, so this isn't something

11 new.

12 Ms Humphreys, do you have anything you want to add

13 from a residential care perspective, or do you agree

14 with what your colleagues have said?

15 MS HUMPHREYS: On information sharing?

16 MS SCOLDING: Yes.

17 MS HUMPHREYS: Yes, I think I absolutely agree with what's

18 been said, but I think also people are very anxious

19 about what they can share, because they get worried how

20 much information -- is that information we can share, is

21 it -- or are we going to risk being in trouble with the

22 Information Commissioner? And so they choose,

23 therefore, not to share that information, or they don't

24 share it enough.

25 MS SCOLDING: I think it is not just yourself, I think the

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1 draw on. There is also no question that the very strong

2 international sort of policy priority in recent years

3 around privacy and data protection and, more recently,

4 GDPR and the fairly -- the very heavy regime operated by

5 the Information Commissioner also make it -- genuinely

6 makes it difficult for people to know what they can

7 properly record and share.

8 So it is a difficult environment for good

9 information sharing. I think there are real tensions

10 here.

11 MS SCOLDING: What's the solution? You have identified the

12 problem. What's the solution, from your perspective, as

13 Ofsted?

14 MS SPIELMAN: I don't think there is a single sort of killer

15 magic bullet, but a real sort of -- a policy priority

16 for good information sharing between all the bodies,

17 a recognition that we are all parts of a larger system

18 of assurance and that, if we don't -- unless we share

19 the information we have, we are handicapping others in

20 doing their job, and, for example, I know that we do

21 pass all the complaints that we receive about

22 independent schools to the Department of Education as

23 regulator. I'm not sure that we consistently, from

24 every part of the Department of Education and from every

25 part of the SFA, get all the concerns that could be

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1 ISI have also identified, for example, that somebody

2 said, "We can't tell you about the domestic violence

3 allegations that might be going on in respect of this

4 family's life because it would be a breach of the GDPR".

5 I think -- is that something that you have come across?

6 MS HUMPHREYS: It is, yes. You come across that a lot.

7 I mean, fortunately, we do have powers within the

8 Care Standards Act which say we are allowed to have

9 information, but you need to go through the process.

10 But I think the other thing -- and Mr Kennedy might want

11 to say more about this -- is that people are reluctant

12 to write things down, because if it's not written down,

13 then it can't be inadvertently shared or shared with the

14 wrong person. So then you have a problem with records.

15 So there isn't the audit trail that you would want to

16 find or the audit trail is weak because people have

17 written down the smallest amounts of information that

18 they think is allowed and so it makes it then very

19 difficult for you to follow that, and not just for

20 Ofsted inspectors, but then for other agencies to share

21 that information.

22 If I could just add a little bit about the LADO or

23 are we going to return to the LADO?

24 MS SCOLDING: We are going to return to the LADO because

25 I want to ask you some questions about the way the LADO

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1 currently operates, or doesn't operate, in a bit.
 2 Mr Kennedy, do you have anything else you want to
 3 add, particularly about the fact that record keeping
 4 seems to have diminished, rather than grown, because
 5 people now don't want to write things down? Is that
 6 something that you have come across, in your experience?
 7 MR KENNEDY: Yes, I would agree with Helen. I think there
 8 can be a tendency or an unwillingness to write stuff
 9 down because it may get you into difficulty.
 10 Given that a significant issue in all these cases
 11 has been recording, I think -- and it often is a major
 12 issue in child protection cases, the absence of records.
 13 I think that's something that we need to look at really
 14 carefully, and sometimes you do get questions asked when
 15 we inspect schools, "Can we actually see a child's
 16 record?", and we have the entitlement to see that, but
 17 sometimes there can be a resistance to us looking at
 18 those.
 19 MS HUMPHREYS: Yes.
 20 MS SCOLDING: Right. How common is that?
 21 MR KENNEDY: I don't think it's very common, but once we
 22 make it clear that we can see those records, I think the
 23 kind of defence goes.
 24 MS SCOLDING: The next point I wanted to come on to is the
 25 length of inspections. Now, Ms Spielman, in your

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1 has shown that, in practice, that isn't feasible and, in
 2 some respects, we have probably taken it back too far.
 3 This is something where, actually, I would like to
 4 say that the attitude of the Department of Education
 5 under the current Secretary of State has been very
 6 different from my experience with previous Secretaries
 7 of State who were overwhelmingly focused on making
 8 inspections less burdensome and seemed to continue in
 9 the mind-set of many predecessors of, how can we make
 10 inspection smaller, more limited, quicker. So we both
 11 have the removal of the outstanding exemption, where the
 12 regulatory change has now been made. When we resume
 13 inspecting, we will be including "outstanding"
 14 schools -- schools with a current "outstanding" judgment
 15 in routine inspection and, of course, that exemption
 16 exempted them from scrutiny of their safeguarding as
 17 well as of their --
 18 MS SCOLDING: Can I ask you about that now because it was
 19 something I was going to come on to later. There were
 20 over 1,600 schools that hadn't been seen for six years
 21 at the point of the National Audit Office report. It
 22 was probably more than that, because the regulatory
 23 changes had only just been made. What impact do you
 24 think that may have made upon not finding safeguarding
 25 and child protection concerns?

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1 witness statement in July you identified some
 2 recommendations you'd like to make in terms of potential
 3 changes to the inspection system. It is behind tab 6,
 4 chair and panel, and Ms Spielman, paragraph 34. We will
 5 get it up, Ms Spielman, OFS012666_010:
 6 "There may be scope [is part of what you say] ...
 7 for improving the safeguarding monitoring within
 8 inspections ..."
 9 This is particularly in respect of residential
 10 provision, but I wanted to ask whether or not it would
 11 apply more generally: bigger teams, longer visits;
 12 support work; more frequency in respect of residential
 13 provision in boarding and residential special schools.
 14 Do you think this should happen or is this something
 15 which might be nice to happen? Ms Spielman first and
 16 then I will pass to Ms Humphreys.
 17 MS SPIELMAN: I think I will say, as we have talked before,
 18 inspection has been pared back over the years. I think
 19 in the light of a sort of strand of public policy that
 20 came fashionable, perhaps around the turn of the century
 21 or just before, that everything could be done with data,
 22 with minimal human involvement, and so that
 23 inspection -- performance tables and similar data
 24 collections would render inspection vestigial or almost
 25 redundant. I think what we have seen over many years

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1 MS SPIELMAN: It is very hard to know. It is very hard to
 2 know. But I do think the sense -- I do believe that the
 3 knowledge that you will be inspected, that you will have
 4 the conversations, does have some effect on making
 5 people know that -- when people know that they will have
 6 to face scrutiny at some point, that they will be
 7 criticised if they haven't operated sort of proper
 8 safeguarding systems as well as good education. So it
 9 encourages people.
 10 To speculate on the sort of numbers who might have
 11 been affected is really hard, but I think we are now up
 12 to, for some schools, 13 years since the last
 13 inspection, because the exemption I think came in in
 14 2010 and, of course, there were some schools that
 15 were -- 2010 or 2011 and there were some schools that
 16 were just coming up -- about to fall due for inspection
 17 then. So it's been a very long time.
 18 So that's one thing I do welcome, where there's been
 19 a recognition of the need to increase the scope of
 20 the inspection. And the other I think was mentioned in
 21 Nick Gibb's statement, was the commitment -- I think it
 22 was made by the Prime Minister in the run-up to the last
 23 election -- to extend our work in relation to secondary
 24 schools and larger primary schools to enable us to run
 25 a three-day inspection. Of course that requires

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<p>1 additional funding. We don't yet have the confirmation 2 of that. But I'm very much hoping that we will be able 3 to take that forward when we resume inspecting. 4 MS SCOLDING: I wanted to ask you about that, because the 5 commitment was made, but the third day is meant to be 6 used to focus on behaviour and sport. I was just 7 wondering whether or not that is what your understanding 8 of that is or whether or not you think, actually, 9 a focus on child protection and safeguarding is maybe 10 just as important? 11 MS SPIELMAN: I think a number of ideas have been floated 12 about where that additional time might be best used. 13 There's also simply being in a school for longer gives 14 you a greater ability to recognise the kinds of anomaly 15 and inconsistency I talked about. So on behaviour, for 16 example, as one of my colleagues who is an experienced 17 secondary inspector once put it, people can hide a great 18 deal over one day, it gets harder on two, and for 19 behaviour it's almost impossible to conceal serious 20 behaviour problems by the third day. 21 So I think there are a number of sort of competing 22 priorities here, but certainly, for me, making sure that 23 there is the time and space for the difficult 24 conversations, as well as the time to stand back and 25 look and think, "What stacks up here? What doesn't",</p> <p style="text-align: center;">Page 41</p>	<p>1 and not to feel too rushed to come to that provisional 2 judgment that we do have to reach in all but the most 3 exceptional circumstances by the end of the visit. 4 MS SCOLDING: I note the time, chair. Thank you very much. 5 I will come back to Ms Humphreys on this point just 6 after the break, if I may. 7 Chair, may we now break for a short mid-morning 8 recess? 9 THE CHAIR: Yes. We will return at 11.45 am. Thank you. 10 MS SCOLDING: Thank you very much. 11 (11.30 am) 12 (A short break) 13 (11.45 am) 14 (Technical problems) 15 (11.50 am) 16 THE CHAIR: Ms Scolding? 17 MS SCOLDING: Thank you, chair. Ms Humphreys, we were just 18 coming back to you to talk about extending inspections 19 for residential boarding settings and for residential 20 special schools based upon Ms Spielman's suggestions at 21 paragraph 34 of her witness statement. Just to remind 22 everyone: bigger teams or longer visits, having some 23 element of support work -- thank you very much, Danny. 24 As if by magic. 25 Could you tell us how you envisage this working and</p> <p style="text-align: center;">Page 42</p>
<p>1 whether it is necessary or a "nice to have"? 2 MS HUMPHREYS: At the moment, the frequency for inspecting 3 residential special schools is annually. We also have 4 powers within section 87 of the Children Act that we can 5 visit more frequently if we need to, and we do do that. 6 But that is only for the boarding provision. The 7 education element is in independent schools -- requires 8 the Department of Education to request that they go and 9 do additional visits. 10 In terms of boarding schools, we currently inspect 11 boarding schools every three years, but -- unless it's 12 been judged RI and then we might go more frequently. 13 Again, we might go more frequently if it is judged 14 "inadequate". We definitely would go if it had been 15 judged "inadequate". 16 Bigger teams and longer visits would definitely 17 allow us to explore things in more depth. It probably, 18 in the bigger schools, would allow us to see more 19 children, visit more boarding houses, so in the very 20 large boarding schools, where you might have hundreds of 21 pupils who board, over perhaps 12/14 boarding houses, it 22 would mean that we'd have the opportunity to go into 23 more boarding houses, spend more time with children. 24 Because also children, particularly in boarding schools, 25 are often heavily timetabled, and so they move from the</p> <p style="text-align: center;">Page 43</p>	<p>1 end of the school day, into prep, into meals, into 2 evening activities, and it can be quite difficult for us 3 to seize those tiny opportunities to talk to children, 4 and an inspection over a longer period of time would 5 give us more opportunity to do those things as well. 6 In terms of additional support in between 7 inspections, I think, in the past, schools, independent 8 schools in particular, were able to get services from 9 the local authority. So they might be able to get free 10 training through the, as it was then, local safeguarding 11 boards. Cuts to local authorities have meant they have 12 just been able to -- you know, they have just had to 13 reduce those services to schools and so additional 14 support, you know, from the local authorities would, I'm 15 sure, be welcomed by the schools, particularly around 16 safeguarding, if they are not able to access other 17 external support. 18 MS SCOLDING: That's very helpful. In terms of what I would 19 call non-special school boarding -- at the moment you 20 say you inspect once every three years. Do you think it 21 should be more frequent than that? 22 MS HUMPHREYS: We could visit more frequently. I think it 23 would be helpful for us to be able to do it on 24 a risk-assessed basis to go more frequently. So to go 25 more frequently to the schools that we are more</p> <p style="text-align: center;">Page 44</p>

<p>1 concerned about, but then not at the expense of those, 2 like we have had in the past, where an outstanding 3 judgment meant that you didn't go, we don't want to 4 return to that, but, equally, a risk-assessed basis as 5 to why we need to visit a school more frequently, and 6 perhaps to do a specified inspection, so only look at 7 particular things, is something else that we could 8 explore, a thematic-type inspection. 9 MS SCOLDING: For example, looking at the voice of the child 10 or looking at a particular aspect of child protection or 11 safeguarding? 12 MS HUMPHREYS: Absolutely. That's all things that we could 13 explore. 14 MS SCOLDING: Can I ask -- I will ask you, Ms Humphreys, 15 because you are on screen at the moment, but I'm going 16 to ask the other two if they can come in as well -- how 17 do you inspect the culture of safeguarding? The 18 Independent Schools Inspectorate has said there needs to 19 be a real emphasis on the culture of a school, because 20 that's a difference between a school which is effective 21 and a school which isn't. How do you assess and inspect 22 that culture in practice? 23 MS HUMPHREYS: You can start at difference places but a good 24 place to start is children. You know, do children feel 25 comfortable about talking about the things that worry</p> <p style="text-align: center;">Page 45</p>	<p>1 and concern them? Can they tell you what they do if 2 they have got worries and concerns? Can they describe 3 the relationships that they have with staff? Do they 4 know how to access the people who can help them, 5 including their parents and other external agencies or 6 people within the school. And can they give examples as 7 to what happens if children are bullied or if they don't 8 feel safe. And that, also, children are allowed to take 9 some responsibility for their own safety and well-being 10 as well. It's not just all directed -- they're not so 11 heavily supervised that they're not allowed to make 12 decisions. They are allowed out. Older pupils are 13 allowed out. 14 In some schools, they never leave the school 15 premises from the start of one term to the end of 16 the school term, whereas, in other schools, you know, 17 older pupils are allowed to go down into the local 18 village and all those sorts of things. So there's the 19 whole thing about the way children are treated, that 20 their voices are heard, that they're treated as 21 individuals, helps you to understand about culture. 22 Then obviously staffing, staff know what to do, 23 they're well trained, and -- but also it's not -- that 24 they, again, are able to make commonsense decisions over 25 what is right, what is proper safeguarding, and not just</p> <p style="text-align: center;">Page 46</p>
<p>1 a drilled-down version of safeguarding. And then the 2 leadership team, how the DSL is -- the designated 3 safeguarding lead is appropriately supported, how 4 they're resourced, how they're able to make decisions, 5 and then you need to look at the leadership and 6 management and the governors in terms of their role in 7 monitoring the effectiveness of safeguarding. 8 One of the things that we do on inspection, if we 9 go back to the question over the snapshot, we look back 10 since the last inspection, so you will always sit 11 alongside the DSL and go through all the incidents that 12 they have had recorded and how they dealt with them, and 13 that will tell you a lot about the culture of a school, 14 in terms of how they deal with the low-level stuff to 15 how they deal with the more complicated and complex 16 matters, and that also will tell you about the culture 17 of decision making in terms of safeguarding. 18 MS SCOLDING: Mr Kennedy, do you have anything you wish to 19 add to what Mrs Humphreys has said? 20 MR KENNEDY: I won't repeat anything she said, but the bits 21 I would add is somehow getting a sense of vigilance in 22 the school, to what degree staff are vigilant, do they 23 understand the processes for identifying concerns and 24 following them through? I think -- are boundaries and 25 behaviours acceptable and known? Because I think one of</p> <p style="text-align: center;">Page 47</p>	<p>1 the issues that's come up certainly from the three cases 2 I'm looking at is around boundaries, a clear 3 understanding of boundaries. 4 And also I think it's about this business of, it 5 could happen here. You know, this sense that actually, 6 you know, there may well be a safeguarding issue here 7 and we need to be able to deal with it. 8 When we interview, say, governors -- just to pick 9 two examples, governors or designated leads. The 10 governors, I think we'd want to look at the questions 11 they ask to satisfy themselves about the kind of culture 12 in the school, and DSLs, for example, the question 13 I might ask is, if you're not there, how would issues be 14 dealt with? So, for example, if you were absent at 15 a training day. So you get a sense of who else is 16 involved in the responsibility for safeguarding, not 17 just the DSL. 18 MS SCOLDING: I think, in particular, when we are talking 19 about governing bodies, one of the issues that we have 20 come across in all three of these schools -- and, in 21 fact, I think in all of the schools we have looked at in 22 both phases -- is inadequate questioning by the 23 governing body of what was going on; a view that 24 everything was okay because nobody was telling them it 25 wasn't okay, rather than looking at it and penetrating</p> <p style="text-align: center;">Page 48</p>

<p>1 it.</p> <p>2 One of the conclusions that's been reached from that</p> <p>3 is whether or not there needs to be mandatory training</p> <p>4 for governors, or, at the very least, mandatory training</p> <p>5 for the governor who is nominally in charge of</p> <p>6 safeguarding, in order so that those kinds of</p> <p>7 challenging conversations can happen. Mr Kennedy,</p> <p>8 Ms Humphreys or Ms Spielman, do you think that that</p> <p>9 should be implemented?</p> <p>10 MR KENNEDY: If I can start, my view is that there is</p> <p>11 a danger that you pile too much on governors, but I do</p> <p>12 think that the designated -- the kind of lead governor</p> <p>13 for safeguarding needs to understand what's expected of</p> <p>14 them, and I think there is a role for training around</p> <p>15 that. So it is a difficult balance between piling too</p> <p>16 much stuff on the governing body while at the same time</p> <p>17 giving them a clear understanding of what they need to</p> <p>18 be doing, what are the right questions to be asking.</p> <p>19 MS SCOLDING: But the reality is that -- sorry, Ms Spielman,</p> <p>20 I will come to you in a moment. The reality is that, if</p> <p>21 you think at the heart of what a governing body should</p> <p>22 do: it should make sure that nobody is running off with</p> <p>23 the money and that the money isn't being spent in</p> <p>24 a profligate manner; it should make sure that there is</p> <p>25 a focus upon academic attainment or academic achievement</p> <p style="text-align: center;">Page 49</p>	<p>1 for pupils, no matter where they come from; and it</p> <p>2 should focus upon the welfare of students.</p> <p>3 So you're not really overburdening people if you are</p> <p>4 saying to a governing body, "One of the three things you</p> <p>5 have to do should be the subject of some form of</p> <p>6 training". Ms Spielman?</p> <p>7 MS SPIELMAN: I'm going to talk about -- I think the way in</p> <p>8 which governing has got more burdensome in recent years</p> <p>9 has been the addition of more and more sort of specific,</p> <p>10 prescriptive requirements that governors are expected to</p> <p>11 check. So you're absolutely right in principle and,</p> <p>12 more generally, I want to come in here. I think having</p> <p>13 somebody on a governing body who has real understanding</p> <p>14 and experience and ability to ask the right questions</p> <p>15 and to make sure that there are honest conversations is</p> <p>16 very important, and it ties in with the wider point</p> <p>17 I have been making, that we can't just judge governance</p> <p>18 by outcomes, because very often the outcome of good</p> <p>19 governance in respect of safeguarding is, "Nothing bad</p> <p>20 happened", but we know that we cannot infer from nothing</p> <p>21 bad having been reported that there is no deficiency in</p> <p>22 safeguarding.</p> <p>23 So, in practice, we do need to look at more than</p> <p>24 just outcomes to satisfy ourselves of governance around</p> <p>25 safeguarding. We need to see whether there is anybody</p> <p style="text-align: center;">Page 50</p>
<p>1 who isn't part of the head's family or who hasn't got</p> <p>2 a financial interest in the school, who's got some</p> <p>3 independence and objectivity, who can ask the tough</p> <p>4 questions, who will have the right conversations, and</p> <p>5 that there is somebody also who knows about safeguarding</p> <p>6 and will have those conversations.</p> <p>7 I don't think you need to get prescriptive about</p> <p>8 structures and processes to see that there are some</p> <p>9 critical things that need to be there.</p> <p>10 If the person you are relying on to have that</p> <p>11 safeguarding expertise doesn't clearly have it from the</p> <p>12 rest of their life, if you have got the safeguarding</p> <p>13 director from an NHS Trust or something, you possibly</p> <p>14 don't need to put them through exactly the same training</p> <p>15 programme that you put a brand new 19-year-old on a BED</p> <p>16 course, but, nevertheless, the principle of having</p> <p>17 somebody who's got that proper understanding of the role</p> <p>18 and what's expected really matters.</p> <p>19 MS SCOLDING: I suppose I would challenge you about that,</p> <p>20 because, even people who know a lot about safeguarding</p> <p>21 in other contexts, might not necessarily know the</p> <p>22 questions to ask about schools.</p> <p>23 MS SPIELMAN: Absolutely, which is fair. I just said it</p> <p>24 might not look exactly the same, but the principle of</p> <p>25 being prepared for your job is absolutely right, and</p> <p style="text-align: center;">Page 51</p>	<p>1 there are some things that are very specific to schools.</p> <p>2 MS SCOLDING: Leading on from that, what you identify in</p> <p>3 your most recent witness statement at paragraphs 13 to</p> <p>4 15 -- this is OFS012736_004 -- is that there should be</p> <p>5 some specific Independent School Standards with specific</p> <p>6 requirements about governance, and you basically set out</p> <p>7 what you think they should be at paragraph 14. Perhaps</p> <p>8 you'd just like to expand upon that briefly?</p> <p>9 MS SPIELMAN: Yes. The openness to -- so this is a place</p> <p>10 where we do take a different view from the Department of</p> <p>11 Education, as I said, because an absence of visible bad</p> <p>12 things happening I don't think gives sufficient</p> <p>13 assurance about governance in this area.</p> <p>14 The openness to external scrutiny. This is the</p> <p>15 having somebody involved in sort of regular scrutiny who</p> <p>16 is not part of the family. We do see independent</p> <p>17 schools where there is essentially nobody involved who</p> <p>18 isn't related to, or an owner of, or a part-owner of</p> <p>19 the school.</p> <p>20 Some level of honesty and transparency, being able</p> <p>21 to see that there is some regular conversation, some</p> <p>22 mechanisms through which information is shared and real</p> <p>23 conversations can happen about it. And that the people</p> <p>24 at the governance end aren't sort of too respectful of</p> <p>25 the head, too sort of intimidated by their apparent</p> <p style="text-align: center;">Page 52</p>

1 authority and knowledge to keep pushing on the difficult
2 things.
3 I think it's possible to capture those principles in
4 a standard without needing to get into anything
5 mechanistic that I can see ministers are concerned about
6 and, understandably, I don't think it would be right to
7 prescribe -- nor do I think saying, "You must have this
8 role, this frequency of meetings", would necessarily do
9 it. I actually think it is better done at the level of
10 principle.
11 MS SCOLDING: Following on from that -- we don't have any
12 particular concerns about that school, but there was
13 a school in phase 1 where we had -- Ms Humphreys gave us
14 a witness statement about the governance of that
15 particular school where exactly that happened. We had
16 concerns about the transparency, because it is a sort of
17 proprietor-led school, the proprietor isn't there, in
18 effect, there's too many familial -- too many
19 opportunities for potential conflicts of interest. So
20 when it comes to kind of owner/proprietor schools,
21 Keeping Children Safe in Education says, if there are
22 those possibilities, there should be somewhere that the
23 staff can go. Do you think it needs to be more
24 formalised than that, that there has to be some kind of
25 arrangements or oversight board or management board or

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1 with my colleagues. I think also it's an opportunity
2 for the department, when reviewing the National Minimum
3 Standards for residential special schools and boarding
4 schools, it's an opportunity for them to relook at those
5 standards, and in particular in boarding schools, what's
6 the role of the governing body, and for that area to be
7 strengthened.
8 Just touching -- going back to training for
9 governors, I think it's important that the training that
10 any -- the safeguarding training that any governing body
11 receives is about their role in safeguarding. What we
12 often find is that governing bodies are just put onto
13 the basic training, a bit like Amanda said, just put on
14 the basic level 1 training and that's it, tick, done.
15 Actually, it needs to be more focused about, what are
16 their safeguarding responsibilities as a governing body,
17 and we don't always see that as the step and the link --
18 and the link to that.
19 MS SCOLDING: In fact, your evidence on that concurs with
20 that of the Independent Schools Inspectorate, who say
21 the same thing. The problem is that there isn't
22 necessarily the properly-tailored courses. People just
23 get put on the standard course, which actually doesn't
24 help them identify the problems that they're going to be
25 coming across or their role within that.

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1 somebody to whom staff can go when allegations are made
2 about staff or allegations are made about the
3 proprietor?
4 MS SPIELMAN: I think it makes it more difficult than it
5 needs to be. I think having the clarity of embedding
6 this in a standard would push schools to address.
7 When we inspect, because -- we effectively -- we
8 report against the Independent School Standards, but we
9 also use a wider education inspection framework, so in
10 practice we are -- we will observe and discuss and
11 comment on arrangements that we don't think get the
12 right level of scrutiny in, but I think to have that
13 captured in an independent school standard for
14 independent schools would be helpful.
15 John Kennedy may have more views on this.
16 MS SCOLDING: Mr Kennedy, do you have any views on that?
17 MR KENNEDY: Yes, I think, just following on from what
18 Amanda was saying, the danger is that we just look at
19 the outcomes rather than the process and the quality of
20 the questions that are being asked, and I think
21 formalising it in a standard would be helpful.
22 MS SCOLDING: Thank you. Ms Humphreys, I could see you
23 nodding vigorously. Do you have anything else you would
24 like to add?
25 MS HUMPHREYS: Yes. Part of the nodding was that I agree

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1 MS HUMPHREYS: That's right. And then allegations. So very
2 often, when there's an allegation against staff that
3 can't be resolved, that goes to the governing body, and
4 if the governing body don't really know what they should
5 be looking for in terms of how to deal with a member of
6 staff where an allegation has been made against them,
7 then there can be collusion between the head and the
8 governing body.
9 MS SCOLDING: Ms Spielman, coming on from the issue about
10 governance and proprietor-owned schools, you indicate
11 some concerns about the way that the department
12 currently checks the suitability of proprietors in
13 independent schools. You say this in your most recent
14 witness statement at OFS012736_008-009, paragraphs 27 to
15 30. Danny, would you mind getting that up, please?
16 What you are telling us here is that there are fewer
17 checks upon individuals if they want to set an
18 independent school up than there are if they want to set
19 up a free school or an early years registration, because
20 you say in both those latter categories they have to
21 declare information such as connections with other
22 settings, convictions and cautions, but also any drug or
23 alcohol or other problems that go to their probity.
24 Could you tell us a little bit about your concerns with
25 the registration system for independent schools at the

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1 moment and your proposals to solve that?
 2 MS SPIELMAN: I think it was Baroness Berridge's statement
 3 that sets out the checks that are done and she's correct
 4 that there is a set of checks that are done, including
 5 an internet search. But that stops well short of
 6 the kind of referencing, sort of follow-up -- some
 7 greater level of depth and breadth of scrutiny that
 8 happens in relation to both early years and free
 9 schools, including material like references that isn't
 10 available in the public domain.
 11 I think it is a striking imbalance, given that, in
 12 the case of independent schools, we are putting just as
 13 much weight on, and often more, in fact, because these
 14 are schools that are outside the many kinds of
 15 controlling scrutiny that apply to state-funded schools
 16 and a substantial proportion of them are also boarding
 17 schools, with the obvious increase in risks.
 18 So, for me, there are some very good processes that
 19 have been established for both free schools and early
 20 years, and to me it feels like a no-brainer to upgrade
 21 the expectations around registration of individuals in
 22 relation to independent schools.
 23 The other point I would make is that we have got
 24 issues around both individuals but also corporate
 25 entities that may be proprietors and groups -- entities

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1 school.
 2 To the second point, the DfE can, and does,
 3 sometimes commission us to inspect in relation to
 4 a material change. I think I'm right in saying that it
 5 does sometimes commission us. If that was to be
 6 recorded as a material change, then that information
 7 would be available where experts in special needs could
 8 look and say, "This is something that requires
 9 significantly different type of staff or different kinds
 10 of arrangement", and say -- because in some cases, it's
 11 probably a no -- it's probably pretty certain that the
 12 same sort of resource and approach will cope with it; in
 13 others, it might be very clear that some questions
 14 should be asked to make sure the school would, in fact,
 15 be able to meet the needs of the children it was
 16 proposing to admit.
 17 So to introduce that level of -- if there is
 18 a requirement to notify that as a material change, then
 19 it creates the opportunity for that scrutiny. It
 20 doesn't say that an inspection would always be needed,
 21 but it would provide a check.
 22 MS SCOLDING: The next point I wanted to raise, which is
 23 something which the Independent Schools Inspectorate
 24 have raised but you, yourself -- you indicate that in
 25 a number of these cases, we have people who either

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1 of various kinds that may be deeply involved with
 2 a school without necessarily having an explicit
 3 governance or ownership role, and current arrangements
 4 also don't unpack that in the way that deeper enquiries
 5 and referencing might do.
 6 MS SCOLDING: You raise another issue, which is to do with
 7 material changes. So there can be a change in
 8 leadership and all there is is a DBS check, and then, if
 9 there's a change in the type of specialist educational
 10 needs, that doesn't amount to a material change. Now,
 11 that was a particular problem in Stanbridge Earls
 12 because, from what we saw of the facts of that case, the
 13 needs of the pupils got considerably more complicated,
 14 but yet there wasn't any change -- nobody needed to have
 15 a look at it and say, "Okay, is it a good idea for you
 16 to take this complexity of pupils?" What's your
 17 solution and suggestion?
 18 MS SPIELMAN: In relation to the first point, it is actually
 19 the proprietors, there's only a DBS check when a school
 20 changes proprietor, so a completely different entity can
 21 acquire control with nothing more than a DBS check on
 22 one individual, where there may be much deeper concerns
 23 and a considerable amount to dig out. Clearly, a change
 24 of proprietor should have the same level of scrutiny as
 25 a new registration, in the case of an independent

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1 deliberately concealed information or certainly were
 2 what Lord Clarke said, "economical with the actualité",
 3 to put it in his famous phrase. Their suggestion is to
 4 impose a duty of candour upon headteachers, to do that
 5 either by a primary statute or within the Independent
 6 School Standards, but I would say probably it needs to
 7 apply across the board, not just to independent schools,
 8 to all school staff.
 9 You are cautiously welcoming of that. Do you have
 10 any further thoughts you would like to share with us?
 11 MS SPIELMAN: It is a cautious welcome because we think it
 12 is good in principle. It is hard to translate into
 13 practice. I think -- we could end up in a sort of
 14 circularity: can you prove that you have met -- that it
 15 met the duty of candour, which would take us right back
 16 round to the inspection isn't an investigation. So
 17 I think it is a very important principle. I think
 18 embedding it in a duty in a way is something that people
 19 properly absorb as part of their sort of professional
 20 standards and the way they operate in their daily life
 21 in any kind of school has real power.
 22 The devil will be in the detail of implementing it
 23 in a way that it achieves what it should and doesn't set
 24 false expectations that it can prevent anybody from
 25 concealing anything ever again.

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1 Many of the cases you have looked at, the
2 individuals involved have known perfectly well what they
3 could and should have reported or told inspectors, and
4 have chosen not to do so. I'm not convinced that in
5 many of those cases a duty of candour would have stopped
6 the bad thing happening or brought it to light sooner.
7 MS SCOLDING: What a number of people would say to stop the
8 bad thing happening would be a mandatory duty for
9 professionals to report to the LADO. So any reasonable
10 suspicions, any allegations, all have to go to the LADO
11 and. If you don't do that, you either get struck off or
12 it's a criminal offence. What's your view about that?
13 MS SPIELMAN: Similarly, we support it, but cautiously,
14 because it has to be well implemented for it to be
15 workable in practice. Especially in conjunction with
16 some of the thresholds about sort of lowering thresholds
17 to pretty much zero. There is a danger of generating
18 sort of such floods of information that it becomes
19 extremely hard to process and sort of draw out the
20 things that are genuinely concerning.
21 So we support it in particular in relation to senior
22 leaders and those with safeguarding responsibilities in
23 schools. We are a little bit more cautious about the
24 concept of extending it to everybody who works in
25 a school, for those reasons. My colleagues may have

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1 criminalisation -- the stick is one thing, but that
2 carrot through building it into professional formation
3 is probably just as important, if not more important, in
4 making it something that is really part of the culture
5 in schools.
6 MS SCOLDING: We know we have teachers' standards, but we
7 are also in a position where a large number of teachers
8 might not have gone through the QTS route. So how do
9 you embed those ethical principles in people who might
10 not have gone through that sort of formation training,
11 Ms Spielman?
12 MS SPIELMAN: Well, this is where teaching is less developed
13 as a profession than professions like law, professions
14 like medicine, even accountancy. It is at an earlier
15 stage. I know that some of the professional
16 associations, like the Association of School and College
17 Leaders, have been doing work in this area on sort of
18 developing principles and sort of potential -- I think
19 they're working on some thoughts about training to
20 develop concepts of ethical leadership, but these things
21 don't come about overnight in any profession. You look
22 back and you can see an iteration of development.
23 I think encouraging teaching down that path of having
24 these explicit sort of concepts of professional ethics
25 and what they encompass is a big part of getting to

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1 something to add on that.
2 MS SCOLDING: Mr Kennedy?
3 MR KENNEDY: My view is that in Working Together and in the
4 statutory guidance the duty is there, actually. It is
5 not made explicit as a duty of candour but there is
6 a requirement on staff to share allegations and concerns
7 about safeguarding, so it is there. It is about how
8 that can be made -- I suppose how that can be made more
9 explicit in terms of describing it as a duty of candour.
10 I think the issue is about how you define a concern.
11 You know, what level do you pitch "concern" at? If it
12 is too low, as Amanda said, you can flood the system.
13 So I think there is an issue about the training around
14 that and what constitutes a level of concern that's
15 reasonable to share or not.
16 MS SPIELMAN: Can I add one more thing? I talked about
17 embedding it as a sort of -- in teachers' and staff's
18 mind-set as a professional responsibility. I think one
19 of the things that teaching, for example, has come to
20 later than many other professions is that concept of
21 a sort of set of professional standards, including sort
22 of ethical standards, that people absorb and are sort of
23 deeply trained in and work with in their first few years
24 that form them into professionals for whom that is
25 simply part of what they do, and the sort of

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1 where I think we would like the education system to be.
2 MS SCOLDING: That's very helpful. I wanted to sort of
3 focus on a slightly different topic, but it is about
4 changing standards, and I'm going to ask Ms Humphreys.
5 Ms Spielman, you identify it in your witness statement,
6 but I know Ms Humphreys is the residential special
7 schools specialist, so to speak.
8 We had a large debate in phase 1 about changing
9 minimum standards into Quality Standards. The
10 government has come back and said to us, "Actually, we
11 don't think we are going to change it into Quality
12 Standards, and we don't think that children's homes and
13 residential special schools should operate on the same
14 playing field".
15 Ms Spielman has been clear in her witness statement
16 she doesn't agree with that. I'm going to ask
17 Ms Humphreys if you can elucidate why that's the case,
18 why you think there needs to be Quality Standards?
19 MS HUMPHREYS: Because we believe that the majority of
20 children who attend residential special schools -- so
21 these are children who have got an education and
22 healthcare plan, they have some vulnerabilities, they
23 might have extremely complex needs, but they definitely
24 have some level of disability. Their needs are the same
25 as the children that we see in short-break children's

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1 homes and in children's homes for disabled children.
 2 We believe that their needs are the same. We
 3 believe that they therefore should be guaranteed the
 4 same level of care and responsibility from staff and
 5 should be cared for by qualified staff and deserve the
 6 same level of care and protection, which we don't think
 7 they are afforded through the National Minimum
 8 Standards.
 9 MS SCOLDING: And the other issue, to follow up on that, is,
 10 you also say that the head of care in a residential
 11 special school should have a relevant qualification. At
 12 the moment I think it is one of those "should be working
 13 towards" or "might need to" --
 14 MS HUMPHREYS: "Adequate". Yes, it talks about having
 15 "adequate experience". But "adequate" isn't specified
 16 anywhere.
 17 So if you are going to operate, say, a short-break
 18 children's home where children come on rotation one
 19 night per week, you know, perhaps 40 children, the
 20 manager of that children's home has to be registered
 21 with Ofsted and has to have an equivalent of a level 5
 22 qualification. They also have to go through the
 23 registration process with us for us to be able to say
 24 that they're fit to practice.
 25 A head of care in a residential special school that

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1 MS SCOLDING: Can I ask about non-special schools? So heads
 2 of care in boarding schools, do you think they should
 3 have some form of qualification or status? At the
 4 moment, what the NMS says is that staff who supervise --
 5 I think it is NMS 15.4 says staff who supervise in
 6 a boarding environment should have adequate experience
 7 and training, I think is the word, and there is another
 8 bit in 15.1 which says "must have adequate experience",
 9 but nowhere does it say what that means, whether or not
 10 there's any standard, how that's met.
 11 So do you think that, for boarding generally, if you
 12 are talking about people who are the heads of boarding,
 13 that they need to have some kind of qualification?
 14 MS HUMPHREYS: I think it's desirable. I think there are
 15 slightly different issues, in --
 16 MS SCOLDING: Yes.
 17 MS HUMPHREYS: -- that we are not talking about the
 18 vulnerabilities of disabled children, but they are
 19 looking after other people's children and there should
 20 be some way of them being able to demonstrate their
 21 competence in carrying out that role --
 22 a qualification -- or it's specified and what their
 23 level of experience should be would be able to
 24 demonstrate that competence and would be able to give
 25 confidence to parents when they are seeking to place

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1 could be operating a very similar model, with children
 2 coming one night a week, vulnerable, disabled, probably
 3 looking after more children than that manager who is in
 4 that short-break setting, doesn't have to go through any
 5 of those processes, and do not have to have a recognised
 6 qualification.
 7 MS SCOLDING: I'm assuming because, otherwise, it's just not
 8 safe, or it's potentially not safe?
 9 MS HUMPHREYS: Well, it brings in some questions over
 10 competence. It means that that person's competence has
 11 not been tested for us to be able to -- so in an
 12 inspection report that we would write about a short
 13 break children's home, we would say, "This person has
 14 been registered since such and such a date and has
 15 a recognised qualification". That's a mark for parents
 16 and commissioners to say, "Actually, yes, that person
 17 has passed the Ofsted test. They are fit to practise".
 18 We can't say the same about heads of care. That's not
 19 to say that -- there are some extremely good heads of
 20 care, but they don't -- and, also, they don't have that
 21 status either, because we give that status to
 22 a registered manager in a children's home. We say,
 23 "Yes, you are a registered manager. You are fit to
 24 practise". We cannot give that same status to the heads
 25 of care in a residential special school.

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1 their children in boarding schools.
 2 MS SCOLDING: Of course, the difference is that you are the
 3 regulator of social care provision, whereas you're not
 4 the regulator of boarding provision. If any of you were
 5 to go to an inspection and find that there were not
 6 satisfactory arrangements, you have no power to enforce
 7 the NMS or to enforce the Independent School Standards
 8 in any way; that's right, isn't it, Ms Humphreys?
 9 MS HUMPHREYS: That's right. So in a children's home, if we
 10 felt that the manager was not -- no longer fit to
 11 practise and be in that role, we could cancel their
 12 registration as a manager. In a residential special
 13 school, we might feel that there are weaknesses within
 14 the leadership and management, we can write about it in
 15 the report, we can say that the National Minimum
 16 Standard isn't met, but that is the end of what we can
 17 do. It is then for the department to make a decision as
 18 to what happens next.
 19 MS SCOLDING: Following up from that, Ms Spielman, in the
 20 last hearing you were quite clear that you had concerns
 21 about whether or not the Department for Education were
 22 taking suitable enforcement action, and you -- I think
 23 I described it as putting a hat in the ring, that maybe
 24 Ofsted would be more appropriate. Do you have any views
 25 or has your thinking moved on in terms of whether or not

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1 you want to take on that regulatory role or you think it
 2 would be appropriate for you to have that regulatory
 3 role?
 4 MS SPIELMAN: I have not gone as far as saying I want to.
 5 I merely said that we would be capable of it.
 6 The concerns that we raised about the delays, about
 7 the sort of stages of action plan and reinspection to
 8 see whether an action plan has been met, mean that there
 9 is a huge disparity between independent schools and
 10 state schools in terms of the speed with which
 11 underperformance is addressed and the sort of interests
 12 of children, the needs of children sort of put on
 13 a proper footing.
 14 There have been some signs, I would say, in recent
 15 months of some cases being dealt with with greater
 16 speed, but, nevertheless, the arrangements, as they
 17 stand -- in some respects, DfE has fewer powers than
 18 I think we have in relation to early years, for example,
 19 or children's homes, to act swiftly. I don't believe it
 20 is a satisfactory situation at the moment.
 21 A further point I would make is that I think
 22 political pressure is sometimes applied. I can think
 23 of -- I know of a number of inspections, for example,
 24 where a provisional judgment has been given which is not
 25 to a school's liking and, before the report has been

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1 oversight and monitoring; they're often very
 2 deeply-integrated organisations. Often that brings many
 3 strengths. I think we've reported in some of our
 4 briefings this autumn that schools in multi-academy
 5 trusts have often felt better supported in handling all
 6 the very complex guidance they have had to implement
 7 around COVID security, for example.
 8 Many larger academy trusts will have safeguarding
 9 expertise at the centre that often employ one or more
 10 safeguarding experts who make sure schools have good
 11 policies, procedures, help them with difficult cases
 12 providing various kinds of advice, who provide
 13 substantial -- contribute substantially to both quality
 14 and assurance of that quality within that MAT.
 15 This is true of many other aspects of teacher
 16 training, curriculum, there are many pieces that are
 17 often now significantly decided or influenced or
 18 implemented from the centre of MATs.
 19 As a result, an inspection model that essentially
 20 predates the emergence of these multi-layer structures
 21 puts us in the position of somebody who audits
 22 a supermarket chain only by visiting the branches. So
 23 my strong belief is that accountability systems need to
 24 evolve to match sectors as they actually operate and
 25 that a model of inspection that looked at multi-academy

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1 published, the school or a group associated with it has
 2 been lobbying sort of politicians quite widely, and we
 3 receive approaches from a number of directions. I think
 4 when ministers receive that in relation to -- political
 5 lobbying pressure in relation to regulatory decisions,
 6 there is no question that it makes it harder to take
 7 decisive action when you're a politician at the
 8 receiving end of political approaches.
 9 One of the reasons for the existence of independent
 10 regulators is to keep them at one remove from those
 11 kinds of political pressure.
 12 MS SCOLDING: Yes. I mean, the other issue that I suppose
 13 I wanted to raise is the unions raised yesterday about
 14 your role in inspecting or not inspecting multi-academy
 15 trusts, who obviously these days take on the vast amount
 16 of responsibility for the vast majority of schools in
 17 this country. I think it is something like 72 per cent
 18 of all schools are now academy schools, you know,
 19 significant -- certainly the majority of secondary
 20 schools and a significant minority of primary schools.
 21 Do you think that there's a gap in your oversight of
 22 multi-academy trusts, who are the people who are doing
 23 the oversight monitoring of often 20, 30, 40, 50
 24 schools?
 25 MS SPIELMAN: Multi-academy trusts are often doing more than

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1 trusts, not just sort of schools within them -- and
 2 similarly, actually, care homes, early -- chains of
 3 early years, that it is time that the law and policy
 4 evolved, or at least started to evolve, in the direction
 5 of looking at systems as they actually operate, because
 6 that makes it easier to ask the right questions of
 7 the right people, to have the conversations with the
 8 people who are making the tough choices, who might be
 9 making the bad choices, rather than the people who are
 10 several points down the line.
 11 MS SCOLDING: Of course it is also asymmetric, because you
 12 have a responsibility to inspect local authorities, so
 13 if the local authority were to maintain, you can ask the
 14 director of children's services, "What are you doing?
 15 What's your safeguarding? How is your oversight? How
 16 are you working at that from the centre?"
 17 MS SPIELMAN: I should just make the point, though, we
 18 inspect local authority children's services. We do not
 19 inspect local authority involvement in education. We
 20 used to do until about ten years ago, I think, nine or
 21 ten years ago, what was called a LASI, a local authority
 22 school improvement inspection, but those were suspended
 23 just about a decade ago.
 24 MS SCOLDING: I suppose, when I think about children's
 25 services, I think about education and social care. So

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1 you look at whatever the functions that they still carry
2 out as part and parcel of their children's services
3 function --
4 MS SPIELMAN: No, not education. The social care side and
5 the area SEND inspections pick up around provision for
6 children with SEND, but not the work with mainstream
7 schools.
8 MS SCOLDING: That's helpful. That's a helpful
9 clarification, Ms Spielman. I hadn't realised that.
10 Ms Humphreys, do you have anything to add to that,
11 particularly in respect of coming from the boarding
12 setting and the boarding sector and your ability to take
13 action against concerns you've got in that setting?
14 MS HUMPHREYS: We can't take action in the boarding schools
15 or the residential special schools. That's for the
16 department. But, equally, I think what isn't known so
17 much is that, whilst we also -- we do have the
18 multi-academy trusts and, like Amanda said, we can't
19 look at that -- the head office function.
20 Some of the independent schools are also owned by
21 organisations, so we have Priory, we have CareTech, we
22 have Cambian, who own more than one school, but the
23 legislation only allows us to look at that individual
24 school. We don't have the power to say, "Right,
25 CareTech, Cambian, Priory, we want to look at how you

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1 for example, to provide you with -- not to provide; to
2 carry out some kind of investigative function? So
3 instead of -- where there are allegations about child
4 sexual abuse in respect of school staff which don't meet
5 the police investigation criteria or don't meet the
6 social care criteria, whether or not it should be the
7 LADO rather than the school internally that should be
8 investigating? Do you have any views about that,
9 Ms Spielman? Ms Humphreys has got a look on her face
10 that says she wants to tell me something.
11 MS SPIELMAN: Let Ms Humphreys go first.
12 MS SCOLDING: Ms Humphreys?
13 MS HUMPHREYS: Two things I would like to say. As Amanda
14 said, yes, we do know about inconsistency in LADO
15 provision. That's set out in the independent -- so the
16 inspection that we do of local authority children's
17 services always include looking at the role of the LADO.
18 Those reports tell us about the inconsistency that we've
19 got. And the problem is where you've got a weak LADO
20 and you might have a school that is also weak in
21 safeguarding and chooses not to raise things with the
22 LADO, you've got some difficulties there.
23 Regarding LADOs doing investigations, you're
24 absolutely right. If an allegation reaches the
25 threshold for a section 47 investigation, that might

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1 manage your schools in a broader way". We don't have
2 that power.
3 MS SCOLDING: We were just talking about the role of
4 the local authority and the fact that the role of
5 the local authority, as you have identified, has been
6 sort of, shall we say, diminished somewhat in terms of
7 its oversight of educational provision, certainly in the
8 past sort of 20 years, would be the way I would describe
9 it.
10 We have heard from a number of local authority
11 designated officers, because that's one of the roles
12 they still do have, is in that oversight, and they have
13 told us about the fact that they would like national
14 guidance and a set of principles so there's consistency
15 as to what they have to do and how they have to do it.
16 Do I assume, from the collective head nodding, that
17 you all agree that that would be a good idea?
18 MS SPIELMAN: Yes, you do. We do see a level of
19 inconsistency and a lack of clarity for LADOs
20 themselves, and also I think for schools as to how they
21 should engage. Again, I think that's come through in
22 some of the cases that we have seen, that some schools
23 perhaps haven't fully understood what they should be
24 doing as well as some who have perhaps chosen not to.
25 MS SCOLDING: Do you think the LADO role could be expanded,

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1 well go ahead. But in lots of cases, the allegation
2 doesn't meet the threshold and it is then pushed back to
3 the school to investigate.
4 What we sometimes come across is a school will say,
5 "Oh, well, it didn't meet the LADO's threshold so we
6 didn't do anything about it". What we would like to see
7 more of is more of a tying up the loose ends in that
8 respect. So if the LADO says, "It doesn't meet our
9 threshold. We need you to do an investigation", that
10 the school has to then respond back to the LADO as to
11 what they have done, because that loop isn't always
12 made.
13 MS SCOLDING: Ms Spielman, Mr Kennedy, do you have anything
14 else you wish to add on that?
15 MR KENNEDY: I'd like to say that I think sometimes schools
16 will commission their own investigation into certain
17 situations, and that can be helpful. But I think there
18 can be a danger about lack of independence sometimes in
19 that. But I think it's about the jigsaw pieces, because
20 something may not meet the threshold for a section 47,
21 or whatever, but actually it's part of a picture of
22 growing concern about a member of staff.
23 So even the investigation may not establish what's
24 happened, but actually that's part of a bigger picture
25 about this particular member of staff.

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<p>1 MS SCOLDING: Ms Spielman, I know that you have to go, and 2 just in case you aren't able to come back or the meeting 3 goes on longer than anticipated -- I know we are 4 anticipating having you back this afternoon, but just in 5 case, one of the issues that I'd like you to deal with 6 is monitoring of the Independent Schools Inspectorate. 7 Now, you told us about your concerns about that last 8 time. Your current view is set out -- Danny, would you 9 mind getting up OFS012736_015. That's paragraphs 51 to 10 53. At paragraph 52 -- in fact, it is paragraphs 51 and 11 52. Don't worry about the next paragraph: 12 "I must continue to make sure that the new 13 arrangements do not allow Ofsted to provide any 14 assurance about the quality of the Independent Schools 15 Inspectorate's work ..." 16 And that you have got concerns about that. Is there 17 anything you would like to tell us over and above that 18 which is set out within your written witness statement, 19 in terms of, does this create any risks in respect of 20 safeguarding or child protection or is it simply that 21 you feel it's unfair that you're subject to greater 22 scrutiny by Parliament than the Independent Schools 23 Inspectorate is? 24 MS SPIELMAN: This is not a matter of sort of tit for tat 25 and everybody should be treated in exactly the same way.</p> <p style="text-align: center;">Page 77</p>	<p>1 It is because we have this obligation to report and 2 I want it to be absolutely clear that these new 3 arrangements would leave us unable to report as 4 originally intended under those provisions. I did not 5 want there to be any misapprehension at all. 6 We are doing this joint work. In practice, there is 7 an enormous difference in scale. ISI, as I understand 8 it, has on its permanent payroll only two inspectors, 9 its two deputy chief inspectors, so much of the -- who 10 do all their policy work. So, in practice, much of 11 the joint working consists of hooking ISI into our 12 policy and practice development work, which we are 13 entirely happy to do. But doing that, I just want it to 14 be crystal clear that this doesn't give -- that this 15 shouldn't be relied on by ministers for assurance, and 16 once or twice I have noticed statements being made that 17 imply that assurance would come from the joint working 18 arrangements, and I just want to be clear that I will be 19 able to give no assurance from doing it. 20 MS SCOLDING: Do you think that ISI should continue to 21 exist, or do you think you should take over the 22 functions of ISI? 23 MS SPIELMAN: In this, as so many other things, Britain is 24 a very permissive country, where, by default, we have 25 many ways of doing things. We have a sort of historic</p> <p style="text-align: center;">Page 78</p>
<p>1 reluctance -- as with a bigger and more diverse 2 independent schools sector than many countries, far more 3 freedom at individual school level, even within the 4 state sector, to do things in the ways that schools 5 choose. So it feels like part of that strong cultural 6 preference that we have had for more than 100 years to 7 allow multiple routes for doing things. 8 MS SCOLDING: I don't think -- I'm noting the time, chair. 9 I'm just identifying whether or not now might be an 10 appropriate moment to have the lunch break. We are 11 a couple of minutes early, but I think I don't really 12 want to start a new topic before lunch. But I wanted to 13 thank Ms Spielman, just in case she gets caught up. 14 I know we are due to have you back at about 2.15/2.20, 15 but just in case. 16 MS SPIELMAN: There was one small point, Ms Scolding, that 17 I could address extremely quickly that I haven't 18 mentioned, which is just, I think, a suggestion that was 19 floated in the questions you sent about a separate body 20 inspecting safeguarding. 21 MS SCOLDING: Yes. 22 MS SPIELMAN: I am very uncomfortable about that idea, for 23 several reasons. One is because safeguarding is so 24 deeply embedded in schools that I think to try to pick 25 it apart and say one thing is education done by these</p> <p style="text-align: center;">Page 79</p>	<p>1 people and another is safeguarding done by those would 2 create confusion, especially when there were conflicting 3 reports. I wouldn't be comfortable with having an 4 Ofsted report out saying that education was wonderful at 5 the same time as a report saying that safeguarding 6 absolutely wasn't. 7 Also, I think some of the historic examples that you 8 have looked at in that period, where ISI were inspecting 9 some aspects and we were inspecting others, show the 10 limitations of that model and the sort of resentment it 11 could breed where schools didn't feel they should be 12 being inspected by multiple organisations. 13 I think the simplicity of having a single 14 inspectorate working with a single school is greatly 15 preferable, and I think the competence that's been built 16 up -- not diminishing, but building on what we took on 17 when we merged with CSCI or the children's side of CSCI 18 does leave us very much fit to do that. 19 MS SCOLDING: Thank you very much, Ms Spielman. I hope to 20 see you back at 2.20 pm. I will just leave Ms Humphreys 21 with the fact I would like to ask her the question that 22 Ms Spielman has just answered immediately after lunch, 23 and, Mr Kennedy, if you have anything to add. 24 Chair, with your permission, may we have the lunch 25 break now?</p> <p style="text-align: center;">Page 80</p>

1 THE CHAIR: Yes, we will return at 1.45 pm. Thank you.
 2 MS SCOLDING: Thank you very much, chair.
 3 (12.44 pm)
 4 (The short adjournment)
 5 (1.45 pm)
 6 THE CHAIR: Good afternoon, everybody. Ms Scolding?
 7 MS SCOLDING: Thank you, Professor Jay.
 8 Ms Humphreys, I asked you a question just before
 9 lunch, but didn't give you a chance to answer it, which
 10 is about some victims and survivor groups have suggested
 11 that there should be a sort of separate safeguarding
 12 inspection body, and some of them have suggested
 13 something like CSCI which used to exist, and which you,
 14 in fact, worked for, so I think you have experienced
 15 both regimes. What's your view about the
 16 appropriateness of there being separate safeguarding
 17 inspections run by a body separate to Ofsted or any
 18 other sort of inspectorate?
 19 MS HUMPHREYS: Yes, I would agree with what Amanda has said
 20 about the added bureaucracy of two bodies. I think if
 21 this suggestion was to be taken forward, it would be
 22 quite difficult to navigate about what we would look at
 23 on an inspection and what a new safeguarding body might
 24 look at. In particular, in respect of schools, our
 25 powers that are rooted in the Children Act, section 87,

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1 would solve the problem of things falling between two
 2 stools, but, equally, we have to recall that, for
 3 residential special schools, we inspect annually, school
 4 inspection isn't the same frequency. There is a greater
 5 chance of alignment with boarding schools when the
 6 frequency is the same. But, equally, our frequencies
 7 aren't set in stone either because we need to be able to
 8 be fleet of foot and be able to respond very quickly
 9 when we have got concerns.
 10 MS SCOLDING: Thank you. Mr Kennedy, do you have anything
 11 you want to add to what Ms Spielman and Ms Humphreys
 12 have said?
 13 MR KENNEDY: Two things. One is safeguarding is so embedded
 14 within the existing framework that I think to take it
 15 out and have it placed somewhere else would actually
 16 undermine some of the stuff we are doing around the
 17 current framework around leadership
 18 management/behaviour, for example. It is quite
 19 difficult to separate out bullying in terms of whether
 20 it is behaviour, whether it is safeguarding. So I think
 21 we would be in some difficulty there, I think, in
 22 stripping out safeguarding.
 23 The second point I'd make is that we have powers to
 24 commission section 8, no formal designation inspections
 25 with a focus on safeguarding and we do that. We have

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1 say that we are required -- I'm sure you're familiar
 2 with it -- but:
 3 "The authority shall take such steps as are
 4 reasonably practical to determine whether the child's
 5 welfare is adequately safeguarded."
 6 So we are empowered to look at that. So we could be
 7 looking at it, the new safeguarding body could look at
 8 it. There's a complication as to then who -- which body
 9 is superior over the other, which body does the school
 10 report to. So there are layers of complexity, if such
 11 a body was to be brought in.
 12 MS SCOLDING: I suppose, on the other hand, as far as
 13 boarding is concerned, there was, prior to 2008, in any
 14 event, separate inspections, weren't there? So you
 15 would have had the boarding welfare inspection and then
 16 the education inspection, and they were by different
 17 bodies before 2008.
 18 MS HUMPHREYS: Yes. Yes, that's right, they were.
 19 MS SCOLDING: Could a return to that sort of system work?
 20 MS HUMPHREYS: We do have a framework for what we call an
 21 integrated inspection where the education and social
 22 care is inspected at the same time. Obviously, under
 23 the present situation, that's all been suspended, but we
 24 do intend to return to that, where we then would inspect
 25 both boarding and education at the same time. So that

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1 done some this term, for example, where we have gone
 2 into a school unannounced because of concerns about
 3 safeguarding. So we do have the power to do that. So
 4 it is a question of how we align and how we risk assess
 5 some schools where we might go in more frequently, for
 6 example.
 7 MS SCOLDING: I wanted to turn now and ask some specific
 8 questions about the three schools that we are looking at
 9 in this particular phase. I'm going to turn to
 10 Clifton College first, because that's the first in time
 11 that we looked at. That's you, Ms Humphreys, and
 12 largely the information comes from your witness
 13 statement. Chair and panel, for your information, it is
 14 behind tab 7, OFS012667_001.
 15 Now, a boarding welfare inspection, Ms Humphreys,
 16 was undertaken of Clifton College in 2009 and, as you
 17 identify at _004, paragraph 11 -- Danny, would you mind
 18 getting up OFS012667_004. Thank you. The overall
 19 quality rating was "outstanding" and the provision
 20 protecting children from harm and neglect, and in
 21 particular it identifies various things, which was
 22 policies, very good policies, strong and efficient staff
 23 team, good DSL, safeguarding training was given, one
 24 safeguarding referral, community was supportive,
 25 selection and vetting of staff was extremely robust.

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1 As we subsequently know, all was not well at that
2 particular point in time. In particular, when the ISI
3 go in, in 2015, they say, well, the child protection
4 policies were not good at all. So the first thing
5 I wanted to ask about is, in November 2009, what
6 material would the inspectors have had to make their
7 judgment about the quality or otherwise of child
8 protection policies?
9 MS HUMPHREYS: In 2009, the school would have been inspected
10 directly against the National Minimum Standards that
11 were in place at the time.
12 MS SCOLDING: Right.
13 MS HUMPHREYS: We have got the full evidence base from this
14 inspection. It's very clear in the evidence base that
15 the policy that the inspector looked at matched the
16 requirements as set out in the National Minimum
17 Standard.
18 MS SCOLDING: So that's all that they would have had to --
19 MS HUMPHREYS: That's all they had to do at that time.
20 MS SCOLDING: Do I assume that the criteria have now changed
21 in terms of the child protection policies, and how have
22 they changed?
23 MS HUMPHREYS: We have got an upgraded version of
24 Working Together, which would have had several
25 iterations since 2010; also, the introduction of

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1 MS HUMPHREYS: Yes, that's right.
2 MS SCOLDING: It could be something else, but let's call it
3 catfishing.
4 MS HUMPHREYS: Yes, and that had been dealt with effectively
5 and the member of staff had been dismissed.
6 She also talked to the prefects and she talked to
7 staff, all of whom were able to convince her that they
8 were keeping children safe.
9 We have to remember this was a boarding inspection,
10 so it would have just been in the scope of the boarding
11 provision. Thomson-Glover was a day housemaster.
12 MS SCOLDING: You say that, but this is the concern, that
13 although I know you were looking at the purely boarding
14 provision, in a school like this, where you've got
15 children who were on sort of almost like extended day
16 provision, in that it's kind of 7.00 am to 7.00 pm,
17 shouldn't boarding provision look at those sorts of
18 houses, particularly given how significant the role of
19 the housemaster was to day pupils?
20 MS HUMPHREYS: I think, if we were inspecting today, we
21 certainly would put that into scope. It wasn't in scope
22 then in 2009/10.
23 MS SCOLDING: When you say it wasn't in scope, is that
24 because in statute or because the framework said --
25 MS HUMPHREYS: The framework said we only looked at boarding

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1 Keeping Children Safe in Education. That document
2 didn't exist in 2009.
3 MS SCOLDING: Would they have forensically gone through the
4 policy, or would they just have looked at it and gone,
5 "Okay, this looks like this matches" --
6 MS HUMPHREYS: No, she matched it. You can read that in the
7 evidence base. It's there how she matched it.
8 MS SCOLDING: Obviously, it is one thing to have a policy.
9 It is quite another to follow it. The National Minimum
10 Standards said it should be followed and the staff
11 should also be given training, which turns out
12 subsequently not to have happened. Do you have any
13 understanding from the evidence base that you have got
14 how the conclusion was reached in 2009?
15 MS HUMPHREYS: She had several discussions with children
16 about safeguarding within the school, and that's when
17 she identified that there was a small problem with
18 bullying, which she then pursued and she took that to
19 the DSL and the deputy DSL and they had a separate
20 meeting in respect of bullying.
21 We also know that, through the inspection, that's
22 when it came to light that there was an incident
23 involving a member of staff using text messages,
24 pretending to be --
25 MS SCOLDING: Yes. I believe it's known as catfishing.

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1 provision and that the ISI would have been looking at
2 day provision.
3 MS SCOLDING: Can I also identify that you said as well that
4 in 2009, at paragraph 9 of your witness statement, over
5 into 10, OFS012667_003-004 -- now, this was the time --
6 we dealt with this in phase 1, didn't we? -- that you
7 had key standards and non-key standards, didn't you? So
8 you had a longer group of things but you didn't have to
9 inspect everything. What I'm interested in is, it says
10 here that you didn't have to consider this, by
11 inspectors, and it's: the boarders' complaints are
12 appropriately responded to; safeguarding is promoted by
13 appropriate records; crises -- there are sound
14 relationships; the welfare of boarders is safeguarded
15 when away from school on short-term visits. Is it still
16 the case that these things aren't looked at or has that
17 changed?
18 MS HUMPHREYS: The NMS referred to here were replaced in
19 2015 with the revised NMS, which is much shorter in
20 provision, and everything that's in the NMS is now
21 looked at. There are no key standards. We look at all
22 the standards.
23 They do include complaints and relationships, and
24 there isn't one about crises specifically, but it would
25 be scooped up into a leadership and management standard.

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<p>1 MS SCOLDING: I suppose the question I have to ask is, how 2 can you reach an overall judgment as to the 3 appropriateness of welfare provision if you are not 4 looking at those issues we have got set out from (a) to 5 (e) there? 6 MS HUMPHREYS: That was the decision that was made at the 7 time, that those standards wouldn't be looked at. There 8 were over 50 standards, and the view was taken that we 9 would only look at what they considered to be key 10 standards. The inspector always did have -- they could 11 look at them if it was something that came up against, 12 but that was the way that the inspection was done at the 13 time. 14 MS SCOLDING: The other issue I think I should raise with 15 you is, at the time, there was no National Minimum 16 Standards related to oversight by the governing body of 17 the welfare of students, so there was no minimum 18 standard that required the governing body, the trustees, 19 the local authority, the proprietor, or anyone who might 20 have run the place to have monitored the welfare of 21 the children in the school. That seems to be quite 22 a significant omission. 23 MS HUMPHREYS: Yes. Well, it was the Department of Health 24 that actually wrote those standards because that's where 25 they sat at the time when they were written in 2002.</p> <p style="text-align: center;">Page 89</p>	<p>1 Obviously, that got moved to the Department of 2 Education. But that must have been what the DOH wanted 3 at the time. 4 MS SCOLDING: Is that still the case or has that now 5 changed? 6 MS HUMPHREYS: It is stronger but it is not as strong as we 7 would like it to be. It is stronger in the NMS for 8 residential special schools but it is still not as 9 strong as we would want it to be in boarding schools. 10 MS SCOLDING: That's what we dealt with this morning with 11 Ms Spielman, the idea of having a specific governance 12 standard identifying what it is they are meant to be 13 doing and how it is they are meant to be doing it. 14 MS HUMPHREYS: Yes, and we would like that in the 15 Independent School Standards and in the NMS. 16 MS SCOLDING: One of the suggestions that was made in 17 phase 1 is that boarding schools generally, residential 18 special schools and other schools, should have somebody 19 who looks like a regulation 44 visitor. I know you have 20 come back and said, actually, we don't think that is 21 a good idea because we think it is a waste of resources, 22 but I suppose -- I mean that in the nicest possible way, 23 you have said -- you have dressed it up with a bow, but 24 that's fundamentally what you are saying. Do you think 25 that if there had been some kind of regulation 44</p> <p style="text-align: center;">Page 90</p>
<p>1 visitor in the school, he would have picked up on the 2 problems with Jonathan Thomson-Glover? I mean, 3 obviously, nobody could have picked up on the filming, 4 I think we all accept that, but all the issues that are 5 raised in the Penny Jones report, do you think if there 6 had been somebody coming in and speaking to the children 7 more regularly, that might have been picked up on? 8 MS HUMPHREYS: It might have been picked up on. It would 9 then depend what happened when that person then picked 10 it up and took it to the head. Because what we also 11 know is that some teachers did raise concerns about 12 Thomson-Glover's behaviour, but it wasn't taken forward. 13 So you could have had somebody in every week and every 14 week raising concerns about his behaviour, but if 15 everybody -- if the head and the senior leadership team 16 considered, "Oh, this is just boarding school behaviour, 17 this is just what he does, this is what happens in 18 boarding schools up and down the land", then actually 19 nothing was going to happen. 20 MS SCOLDING: We have obviously had evidence from Mr Moore 21 last week which talked about what normal boarding school 22 behaviour was and that that involved sort of visiting -- 23 having -- in effect, housemasters having pupils in their 24 rooms, housemasters taking people on holidays, there 25 being a kind of familial, I suppose, relationship.</p> <p style="text-align: center;">Page 91</p>	<p>1 As somebody who would have been inspecting boarding 2 provision, and who still does inspect boarding 3 provision, would you have considered that to be ordinary 4 boarding behaviour? 5 MS HUMPHREYS: There was a lot of blurring, definitely, and 6 very much minimum staff supervision in the boarding 7 houses, that the boarding supervisor or boarding 8 housemaster or housemistress lived in the boarding 9 house. Their method of supervision was quite long arm. 10 If children wanted the housemaster, they would go to the 11 housemaster's apartment, knock on the door and ask to 12 speak. They weren't active within the boarding houses. 13 That was very much the way that things operated. 14 MS SCOLDING: Was that acceptable? 15 MS HUMPHREYS: When we look back now, no, it wasn't 16 acceptable. But there was -- that is what happened. 17 I think the slight difference with this situation 18 is, it would be difficult -- I find it difficult for 19 them to say that some of his behaviours that were 20 reported on were considered normal boarding school 21 behaviour. I think being found fastened to a chair and 22 those sorts of things, I mean -- 23 MS SCOLDING: (Overspeaking) your pants, being tied up by 24 a group of sixth form boys as a kind of jape -- 25 MS HUMPHREYS: I think that is at the very far end of</p> <p style="text-align: center;">Page 92</p>

1 bizarre and couldn't possibly be acceptable as normal
 2 boarding school behaviour.
 3 MS SCOLDING: Do you know whether the inspector contacted
 4 the LADO or would have contacted the LADO at the time to
 5 identify whether there were any concerns or, in fact, if
 6 there hadn't been any referrals to identify that as
 7 a particular issue?
 8 MS HUMPHREYS: The information in the evidence base is that
 9 the LADO didn't report anything back to us.
 10 MS SCOLDING: So the LADO was contacted and didn't report
 11 any particular concerns, okay.
 12 The other thing I should identify about that is,
 13 within the inspection, the evidence base shows that the
 14 inspector said it was the most hostile environment she
 15 had ever inspected. Shouldn't that have raised alarm
 16 bells? I suppose it's interesting, how can you say that
 17 a school is outstanding when, when you go into it, it
 18 basically says, "Why are you here? Go away".
 19 MS HUMPHREYS: Yes, it's interesting. In the evidence base,
 20 the inspector talks about this and actually made an
 21 initial judgment of "good" but then, through the QA
 22 process and a challenge from the school, it was
 23 increased to "outstanding".
 24 MS SCOLDING: What do you mean, from a challenge from the
 25 school?

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1 done down. When complaints are made, people pursue them
 2 with considerable intensity.
 3 MS SCOLDING: At paragraph 33 of your witness statement --
 4 Danny, if you wouldn't mind getting it, Ms Humphreys --
 5 OFS012667_011, it says also:
 6 "The evidence base for the inspection showed that
 7 the school were very unhappy about discussions had by
 8 inspectors with pupils regarding bullying at the
 9 school."
 10 It is paragraph 33. You have already talked about
 11 the fact that you consider that the inspector followed
 12 up these bullying incidents appropriately and spoke to
 13 the boys and then spoke to the DSL about it:
 14 "The headteacher and the deputy headteacher
 15 indicated that the inspector should not have spoken to
 16 the boys who raised these concerns independently because
 17 they were concerned it may affect their overall judgment
 18 of 'outstanding'. The record records that the inspector
 19 felt threatened by school senior leaders and records
 20 that the school did not think Ofsted should inspect
 21 their school as it was an independent school."
 22 Again, I suppose I ask the question, a school which
 23 demonstrates such naked hostility and which takes
 24 obvious offence -- this isn't subconscious offence, it's
 25 taking conscious offence about the fact that somebody is

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1 MS HUMPHREYS: The school queried whether the judgment of
 2 "good" was right. They felt it should be "outstanding".
 3 MS SCOLDING: Does that happen very often?
 4 MS HUMPHREYS: Yes, it does, actually. Yes. We have --
 5 yes, it does. I don't know the percentages, but it is
 6 quite a natural process that settings, not just schools,
 7 will challenge the judgment if it's not the judgment
 8 that they want. They will challenge the evidence base
 9 or they will challenge the good conduct of
 10 the inspector.
 11 MS SPIELMAN: I can say a little bit more about complaints,
 12 if you like.
 13 MS SCOLDING: Ms Spielman, you are back?
 14 MS SPIELMAN: Yes. Sorry, I thought you could see me.
 15 MS SCOLDING: No, I couldn't. That's fine. Yes, please,
 16 carry on.
 17 MS SPIELMAN: In the long run, on average, somewhere around
 18 2 per cent of our inspections are complained about. In
 19 the great majority of cases, those complaints include an
 20 assertion that we got the judgment wrong, invariably too
 21 low. The vast majority of complaints -- and as
 22 a proportion of judgments, by far the greatest
 23 proportion of challenges comes for findings of
 24 "inadequate", but we do have a slice of people who are
 25 "good" who believe they are "outstanding" and have been

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1 doing their job, I just don't understand how it could
 2 have been given a judgment of "outstanding" in that
 3 context.
 4 MS HUMPHREYS: When you look back and read the evidence
 5 base, you have to question how much did the -- was the
 6 inspector able to probe what was going on? But I think
 7 you also have to put that into the context of what
 8 inspection was like in 2009, in that this was an
 9 inspection against the National Minimum Standards and if
 10 the National Minimum Standard was met, it was met, and
 11 if there were -- there was also what we call
 12 benchmarking guidance. We have talked about that
 13 before, which was a bit formulaic, which said, if this
 14 many standards were met, then it has to be this. So
 15 I think that's the way in which the inspector operated.
 16 MS SCOLDING: Would it operate in that way now?
 17 MS HUMPHREYS: No, absolutely not. We now inspect schools
 18 against the social care common inspection framework and
 19 we use the National Minimum Standards if we believe that
 20 there is a breach of the National Minimum Standards.
 21 That would be when you would refer to the standards. We
 22 now inspect against the SCCIF, which is a much broader
 23 inspection framework.
 24 MS SCOLDING: Again, that's very helpful. I suppose the
 25 only issue that I don't think we came back on was the

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<p>1 regulation 44 visitor and if -- whether, if there had 2 been somebody who would come in more frequently, those 3 issues -- no, in fact, you did answer that question 4 because you said it's unlikely to have made any 5 difference. 6 MS HUMPHREYS: Yes, (overspeaking). 7 MS SCOLDING: Ms Spielman? 8 MS SPIELMAN: On the hostility to inspection, I should also 9 put on record there is a small minority of schools where 10 we do encounter significant hostility, often because the 11 operators believe that inspection by a state entity 12 infringes their religious freedoms, for example, and 13 where we have to inspect and do our utmost to look at 14 the experience that children are getting and detach that 15 from the hostility that inspectors are experiencing. 16 But it is not an easy thing to do. 17 MS SCOLDING: No, and I think we spoke about that in the 18 context of a different investigation. 19 MS SPIELMAN: Yes. 20 MS SCOLDING: Mr Kennedy, can I pass on to you to deal with 21 the issues of Headlands that we see in terms of 22 inspection. Your witness statement, chair and panel, is 23 behind tab 8 of the bundle. The first thing I would 24 identify is, as far as Headlands is concerned, it was 25 inspected 14 times in 15 years, and the particular piece</p> <p style="text-align: center;">Page 97</p>	<p>1 about Headlands starts at _021 of OFS012669. So it 2 starts at paragraph 64 onwards. 3 So the school was inspected 14 times in 15 years 4 since it opened in -- since 2004. Why was that? 5 A. First of all, the first inspection was 2004, which was 6 done under section 10, which was quite a different 7 inspection to the ones that took place after that. And 8 then there was a four-year gap between that and the next 9 one, where it was put into a category of special 10 measures, and that triggered a range -- a series of 11 monitoring visits, which are inspections, so that 12 explains to some degree the number of inspections that 13 took place particularly from 2008. 14 MS SCOLDING: I want to have a look at the 2004 inspection 15 which said that safeguarding was satisfactory. You set 16 that out at paragraph 76 of your witness statement. 17 Danny, that's OFS012669_025. Paragraphs 76 through to 18 78. 19 Now, the first question I wanted to understand is, 20 if we go to paragraph 78, it says: 21 "Leadership and management were judged to be good 22 but governance was judged to be unsatisfactory." 23 What I don't understand is how you could have had 24 a good leadership grade if the governance wasn't 25 satisfactory, because that's part and parcel of</p> <p style="text-align: center;">Page 98</p>
<p>1 leadership, isn't it? 2 MR KENNEDY: Yes, and the reasons it was unsatisfactory were 3 around the curriculum and, if my memory serves me right, 4 it was to do with collective worship as well, which was 5 looked at quite closely. Governance wasn't a limiting 6 judgment in the sense that, if it was unsatisfactory, 7 leadership and management couldn't be as high as "good". 8 So it wasn't limiting in that sense. 9 MS SCOLDING: Is that still the case now or has that 10 changed? 11 MR KENNEDY: I think it would be very difficult to argue 12 that if there was a concern about governance, for 13 example, a significant concern, particularly around 14 safeguarding, that you could argue that leadership and 15 management were good overall. 16 MS SCOLDING: Obviously, you said that pupils' care was 17 satisfactory and the child protection arrangements were 18 described as secure, is what you say, and the member of 19 staff -- suitable health and safety measures, et cetera, 20 et cetera. However, during the inspection, a number of 21 concerns were identified in relation to health and 22 safety. Well, I don't think they had anything to do 23 with safeguarding. I think they were to do with the 24 sort of fabric of the building and were discussed with 25 the school.</p> <p style="text-align: center;">Page 99</p>	<p>1 I suppose the question is, at this time that the 2 inspectors reached this judgment, in fact we know that 3 there were at least four members of staff who were 4 engaging in sexual offending against pupils. So 5 I suppose the question is, how can Ofsted not have found 6 out about that? 7 MR KENNEDY: To some degree, it is dependent on the 8 information that's shared with Ofsted. Bearing in mind 9 this was a section 10 inspection, it was over a longer 10 period of time. Inspectors would have been in the 11 school before the date of the inspection and would have 12 met with parents and leaders and governors. So the 13 information from that would have informed, to some 14 degree, the trails they followed. Then, during the 15 inspection itself, the self-evaluation would have been 16 quite a significant part of that inspection. To some 17 degree, that's dependent on what the headteacher is 18 saying in relation to the school, and obviously 19 inspectors would test that out. 20 But unless information comes to light during that 21 testing out, for want of a better word, it's very 22 difficult to find the evidence then to say that the 23 self-evaluation was inaccurate. 24 MS SCOLDING: Are you saying, therefore, that you very much, 25 certainly at that time, relied upon self-evaluation, and</p> <p style="text-align: center;">Page 100</p>

<p>1 that, if that looked as if everything was okay, there 2 wasn't the triangulation process that we have heard 3 about in the context of other inspections, that that 4 didn't really happen? 5 MR KENNEDY: I'd say there was less of that. Bearing in 6 mind I don't -- I haven't been able to see the evidence 7 for this inspection, it's difficult to second-guess what 8 the inspectors looked at. But I think it's fair to say 9 that there's a far greater degree of triangulation now, 10 or cross-referencing is probably a better word, than 11 there was then. Also, I think it is important to stress 12 a significant focus on those inspections, section 10, 13 was on the quality of education, subjects -- curriculum 14 subjects, and financial management of financial 15 resources -- the use of financial resources. So it was 16 a different type of inspection in lots of ways than what 17 we currently do. 18 MS SCOLDING: One of the issues which came up in the major 19 enquiry in respect of Headlands is that the head ignored 20 advice in 2003 to suspend Mr Edwards given by the local 21 authority, but also had failed to refer various concerns 22 about teachers to the local authority. 23 Can we therefore assume that, given the nature of 24 the inspection as you have outlined, the inspector 25 wouldn't have contacted the Area Child Protection</p> <p style="text-align: center;">Page 101</p>	<p>1 Committee or whoever it was in the local authority that 2 would have had responsibility at that time to see if 3 there were any concerns that they had? 4 MR KENNEDY: It's common practice that inspectors would do 5 that now if they had concerns. I can't say, hand on 6 heart, whether that particular lead inspector would have 7 done it. It's possible they did. But circular 1095 8 which was around at that time, which was a key document, 9 made it really clear the expectation on headteachers to 10 refer concerns to the local authority. The problem 11 there is, unless you can test that out by checking with 12 the local authority, you're not in a position to say if 13 there are any concerns, and if the local authority 14 didn't have them in 2004, you know, it's difficult to 15 say to what degree that information could be made 16 available to the inspector. 17 MS SCOLDING: One of the issues, obviously, is that 18 certainly, at some points in time before 2010, Ofsted 19 had to have serious incident reports referred to it, 20 which included, obviously, incidents of child sexual 21 abuse. Did that only apply to residential schools or 22 did that apply to day schools as well? So should the 23 school have made a referral to Ofsted when there were 24 these rumours or issues around the potential behaviour 25 of staff?</p> <p style="text-align: center;">Page 102</p>
<p>1 MR KENNEDY: There was no requirement -- and there still is 2 no requirement -- on schools to do that. So I think 3 that's a significant potential weakness. 4 Secondly, as far as my understanding goes, Ofsted 5 were not asked to contribute to the major enquiry. 6 I think it would have been helpful if they had been. 7 Then that begs the question, you know, in the period 8 between 2004 and 2008, if we had that information, would 9 we have gone in in that intervening period? My view is 10 that, if we had that information about that level of 11 concern, we possibly would have gone in in that period 12 of time. 13 MS SCOLDING: We know that Ofsted weren't involved in the 14 major enquiry, but not only were you not involved in the 15 major enquiry, the 2008 inspection wasn't prompted by 16 the major enquiry, you were just going in in any event? 17 MR KENNEDY: That's correct. 18 MS SCOLDING: Again, we are back to information sharing 19 here, aren't we, Mr Kennedy: the local authority didn't 20 write to you or didn't send an email or whatever it was 21 they did to say, "Look, we have had all these problems. 22 We are having this massive enquiry. Can you go in and 23 have another look?" 24 MR KENNEDY: As far as I'm aware, we didn't have that 25 information and that would have determined, to some</p> <p style="text-align: center;">Page 103</p>	<p>1 degree, the focus of the inspection in 2008. 2 MS SCOLDING: Can I ask as well, in 2004, given the nature 3 of the inspection, would you have checked training 4 records of staff for child protection training, as it 5 would appear that the head hadn't attended the local 6 authority training and staff training was described as 7 cursory. Is that something that would have been looked 8 at in the context of the 2004 inspection? 9 MR KENNEDY: Certainly it's what we look at now and my 10 assumption would be that it would have been looked at 11 then because there was an expectation that staff would 12 have been trained. The question is, the quality of 13 the records around that, which can still be an issue, 14 actually, in some schools, the quality of those records. 15 MS SCOLDING: One of the things that the major enquiry found 16 was that record keeping was defective, so there weren't 17 necessarily records. Would there have been any guidance 18 for inspectors or for schools as to what records should 19 or shouldn't look like at that time? I'm thinking 2004 20 was about the same time as the Laming Report came out, 21 about the same time as section 10 and section 11 of 22 the Children Act 2004 came into force. There was some 23 information sharing guidance that I can remember, 24 inter-agency guidance on safeguarding children, which 25 was a kind of joint governmental issue about sharing</p> <p style="text-align: center;">Page 104</p>

1 information at that time. Can you remember there being
2 any record keeping guidance or any guidance for
3 inspectors or schools about what should be kept and
4 when?
5 MR KENNEDY: I can't comment on the guidance for inspectors,
6 but I can say that the school would have been expected
7 to follow the Area Child Protection Committee guidance
8 at the time, which should have set out the expectations
9 for schools around record keeping and sharing
10 information.
11 MS SCOLDING: That was the 2004 report. Ofsted then went in
12 in 2008, which identifies, again -- you set this out in
13 paragraphs 83 and 84 of your witness statement, that's
14 OFS012669_027.
15 I just wanted to ask, so none of those judgments in
16 2008 would have been against or in the knowledge of what
17 had come out of the major inquiry?
18 MR KENNEDY: Not that I'm aware of. I'm not aware that
19 Ofsted was made aware of the findings of that. This
20 inspection took place before the major inquiry report
21 was published. Even though the inspection report was
22 published in May, the inspection was in February.
23 MS SCOLDING: There is an issue here about the single
24 central record, and there was an issue about what was or
25 wasn't there. If I can take you to paragraphs 95 to 97

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1 a school have been seen as satisfactory when it's single
2 central register had all these different anomalies in it
3 in 2008, given the importance of the single central
4 register as you identify in your witness statement?
5 MR KENNEDY: I'll make a couple of comments about that, if
6 I may. One is, I think, by the way, two of the entries
7 are the same, which is the 9th and 10th, so my
8 assumption is it's probably 15, but that's
9 (overspeaking) --
10 MS SCOLDING: Okay.
11 MR KENNEDY: A couple of points. One is, some of the dates
12 when the CRB had been completed and postdated
13 the February inspection, so, in other words, staff who
14 started -- for example, number 4 there started on
15 9 April 2008. That was before the -- that was after the
16 inspection. So to some degree, the 2008 inspection
17 in February wouldn't have picked up some of this because
18 it wasn't evident in February.
19 MS SCOLDING: Right.
20 MR KENNEDY: The second point is, there seems from reading
21 this -- bearing in mind that I haven't got the details
22 about the staff. There seems to be a bit of confusion
23 about somebody who could start without a CRB clearance
24 and, you know, clearly -- and it makes no reference to
25 List 99. The assumption that I'm making is all the

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1 of the single central -- I think, in fact, you call it
2 the single central register. It's the single central
3 record. I think we all -- OFS012669_031. Again, when
4 did the requirement to have a single central register or
5 single central record come into place for schools?
6 I think it was 1 January 2007. Am I right about that?
7 MR KENNEDY: You are, and it was called the register in the
8 regulations. That's where the confusion comes. The
9 regulations refer to it as a register. In all our
10 guidance, we refer to it as a record.
11 MS SCOLDING: That's fine. That maybe resolves a discussion
12 my junior counsel and I have been having with each other
13 about what is the correct terminology.
14 MR KENNEDY: You're right, on 1 January 2007 -- there was
15 a period between January and April where schools were
16 expected to ensure the records were up to date. Bearing
17 in mind that this came in -- it was signalled in 2006.
18 There needed to be a period of time to make sure that
19 schools were actually able to complete the record as
20 required.
21 MS SCOLDING: If I look at paragraph 106, pages _034 to
22 _035, that finds, as I understand it, a significant
23 number of anomalies with the single central register, as
24 I am going to call it now, which finds -- I think there
25 are 16 different anomalies. So can I ask, how could

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1 List 99 checks had been done, which was a requirement,
2 before staff started.
3 But there was an allowance within the regs for
4 somebody to start so long as there was appropriate
5 supervision in place. So that does explain, I think,
6 some of the gaps between some of it, but I do -- my
7 view, from looking at this, if I was looking at this
8 now, I would say there's an issue about recording in the
9 school, as distinct from the fact, were staff checked
10 appropriately or not? I think there's two issues here.
11 I think, generally, from what I can see, that, actually,
12 staff were checked, there were issues around the clarity
13 around supervision, but I think there is clearly an
14 issue about record keeping, which is not the same as
15 saying staff have been employed in the school without
16 appropriate checks. Does that make sense?
17 MS SCOLDING: Yes, it does, Mr Kennedy. I would now like to
18 move on to Hillside. Firstly, I would like to ask you
19 about the 2006 inspection report of Hillside which
20 judged that the safeguarding was "good" and care,
21 guidance and support was "outstanding". You set this
22 out in your witness statement at paragraphs 5 and 6,
23 OFS012669_002. Paragraphs 5, 6 and 7, which go to the
24 top of _003.
25 This is 2006 in Hillside. School was judged to be

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<p>1 "good". Care and guidance was "outstanding". 2 Particularly if we go to paragraph 7, we can see the 3 care they receive is "outstanding" and a significant 4 factor. They are keenly aware of the danger of busy 5 roads. And, Danny, if we can go to the top of the next 6 page. In his letter to pupils, the lead inspector 7 wrote: 8 "Your school looks after you very well indeed and 9 this helps you to feel safe and well cared for." 10 The question is, how could that conclusion have been 11 reached in circumstances where both the headteacher and 12 the deputy head said that they felt that their training 13 was insufficient, that they didn't have enough oversight 14 of what was going on, the governors identified -- one of 15 the chair of governors identified that he didn't 16 consider he had sufficient oversight of what was going 17 on. How could that judgment have been reached? 18 MR KENNEDY: My only explanation, bearing in mind, again -- 19 it might sound a bit defensive -- I haven't seen the 20 records of the inspection because we don't have them, 21 but my assumption really, looking at the outcome of 22 the inspection with the information we now hold is that, 23 clearly, information that the headteacher or deputy held 24 wasn't shared -- or staff, for that matter, wasn't 25 shared with the lead inspector or the inspection team</p> <p style="text-align: center;">Page 109</p>	<p>1 and from what I can see from looking at the case study 2 over the last couple of weeks is, that seems to be 3 consistent with what, you know the IMR found as well, 4 that there have been some issues about the quality of 5 the information that was shared or not shared, as the 6 case may be, with the team. 7 MS SCOLDING: Again, Ofsted looked again in 2009. That's 8 OFS012669_003, and again identified -- paragraphs 8 to 9 10, please, Danny -- that the school was judged to be 10 "good" and specific judgments were made about 11 safeguarding which was found to be "outstanding". 12 MR KENNEDY: I'd like to make a couple of comments about 13 that because it goes back to an earlier question this 14 morning about the amount of time we have in a school for 15 inspection. This was a reduced-tariff inspection, which 16 was introduced for a period of time in Ofsted. You 17 know, if you look carefully at the inspection report, 18 there were 37 judgments that were made in that report 19 and six of them related either directly or indirectly to 20 safeguarding. 21 But the guidance to inspectors was really clear that 22 they were to start with the school's self-evaluation and 23 then focus on particular aspects of leadership and 24 management. If there was evidence that safeguarding was 25 an issue, they were expected to focus on that during the</p> <p style="text-align: center;">Page 110</p>
<p>1 inspection. 2 My view, from looking at the evidence again, and the 3 Serious Case Review, is, that information clearly wasn't 4 made available to the inspectors on that day. They were 5 only in the school for a day. There was two inspectors. 6 One of them would have been tasked with looking at early 7 years, in terms of the section requiring that, and even 8 in the report, we actually say other aspects of 9 the school's work were not investigated in detail. So 10 it was made clear to readers that this was quite 11 a focused inspection. 12 MS SCOLDING: What we have heard from both the governors and 13 other individuals is that they relied upon that 14 inspection to effectively identify that safeguarding was 15 sufficient. Do you think that's right? For people to 16 do that, Mr Kennedy? 17 MR KENNEDY: What I would say is that inspection is never 18 a guarantee. What it can do is say, "On the basis of 19 the evidence that we have been able to gather" -- and 20 that should be robust and rigorous -- "these are the 21 judgments we have made" but it can't be, ever, an 22 absolute guarantee of safeguarding in a school. 23 MS SCOLDING: The other issue is Ms Bamford said to us 24 yesterday in evidence, "I didn't really know what the 25 policies were" and other members of staff indicated in</p> <p style="text-align: center;">Page 111</p>	<p>1 the independent management review that they didn't know 2 what the safeguarding policies were or would have been. 3 Surely, in either 2006 or 2009 -- we saw, for example, 4 in Clifton, which was 2009, that there was a focus upon 5 what the policies were or weren't. How could it have 6 been the case that the inspectors asked no questions of 7 members of staff? Because even on a fairly cursory 8 examination, it would appear that everyone would have 9 said, "Well, actually, we don't know what we're doing". 10 MR KENNEDY: Bearing in mind again that I haven't looked at 11 the evidence, but the report says inspectors spoke to 12 the chair, the chair of governors, the vice chair, staff 13 and, you know, so you have to assume that they did probe 14 the range of aspects in the school, but I can certainly 15 say, as regards now, that if I was inspecting a school 16 where there was a level of ignorance, really, about 17 policy and practice, it would raise huge concerns for 18 me. 19 MS SCOLDING: In particular, the individual management 20 review found various concerns with the school, and we 21 set those out in a question to you, which is at 22 OFS012669_003-004. In effect, it found that the single 23 central register wasn't complete when it was reviewed 24 in January 2011. The fact that it wasn't complete 25 in January 2011, does that mean that it wouldn't have</p> <p style="text-align: center;">Page 112</p>

1 been complete in 2008, which was the last time you would
 2 have looked at it?
 3 MR KENNEDY: No, it doesn't imply that, because certainly
 4 our experience, my experience, in all my time as an
 5 inspector is that you can go into a school, and then,
 6 a couple of years later, go back into a school and you
 7 can find issues with the register the second time you go
 8 in which weren't there in the first because new staff
 9 would have been appointed and so on. So I don't think
 10 you can assume that because it wasn't complete in 2011,
 11 that that implies it wasn't complete in 2008.
 12 MS SCOLDING: Then, as well, there was a finding from the
 13 independent -- the school's individual management review
 14 that the governing body was ineffective, in effect.
 15 I suppose the question is, how could you have reached
 16 the conclusions that you did when, you know, during the
 17 course of the independent management review they found
 18 it was ineffective?
 19 MR KENNEDY: A couple of comments about that. One is, we
 20 weren't investigating. I think that's an important
 21 point. And I think I've read somewhere that the
 22 governing body only knew what they knew, something along
 23 those lines. To some degree -- and bearing in mind,
 24 I haven't seen the evidence -- you would expect that the
 25 inspector would probe with governors the kinds of

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1 staff and the leadership. But if part of that report --
 2 I think an annex wasn't shared with staff, it does call
 3 into question the range of evidence then inspectors were
 4 drawing on.
 5 MS SCOLDING: The last issue is the fact that Ms Bamford,
 6 who was the deputy headteacher at the time and was
 7 responsible, at least at some points in time, for child
 8 protection in the school, wasn't aware that she could
 9 report directly to the local authority, and instead
 10 reported to the headteacher, and the individual
 11 management review attributes this ignorance to the
 12 failure of training to robustly embed matters.
 13 Did the statutory guidance tell people at the time
 14 about the fact that anybody could report to the local
 15 authority designated officer, or was it just the
 16 headteacher that could do that?
 17 MR KENNEDY: My understanding of the guidance at the time
 18 was that all staff were expected to do that. However,
 19 I think it's been made more clear in Keeping Children
 20 Safe in Education. But it does raise the question for
 21 me -- and I can see why it would happen in a small
 22 school where the headteacher would also be the
 23 designated lead, which was the case in this school for
 24 some time. But it does raise for me the question, if
 25 all of the decision making is in the hands of one person

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1 questions they are asking the school about, satisfying
 2 them about the rigour of what's happening. So you have
 3 to assume, I think, that those questions were asked, but
 4 I suspect from what I know, listening to the last couple
 5 of weeks, governors weren't fully aware of some of
 6 the concerns that were raised with them.
 7 MS SCOLDING: The next issue is the fact that the
 8 headteacher was considered by junior members of staff to
 9 be unapproachable. Again, is that something you only
 10 know if somebody tells you that?
 11 MR KENNEDY: Again, I'm just going on current kind of
 12 expectations, really. We would want all inspectors to
 13 be looking at a cross-section of staff. I have
 14 mentioned that earlier today. Because it's quite easy
 15 to speak just to the head and come away satisfied that
 16 staff, you know, feel they can approach him and so on.
 17 That's only one piece of evidence. Not that you
 18 disbelieve it, but you do have to cross-reference that
 19 with the views of staff and, if staff don't share that
 20 with you, it's quite difficult, actually, to come to
 21 a conclusion.
 22 I read somewhere about the Investors in People
 23 report. It's quite interesting that inspectors would
 24 have used that piece of evidence, which was quite strong
 25 evidence, about the quality of the relationships between

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1 in a school setting, where there isn't a level of
 2 accountability or a degree of challenge that can be
 3 exercised, it does raise questions for me about how safe
 4 that might be potentially.
 5 MS SCOLDING: Do you think the inspectors should have looked
 6 at that and sat there and thought, is it right that
 7 Mr Hood is the DSL and the headteacher, even in the
 8 context of quite a small school?
 9 MR KENNEDY: If my memory serves me right, the Serious Case
 10 Review raised it as a concern, actually, that the head
 11 was also the DSL. My view is that in practice
 12 nationally a lot of very small schools have the same
 13 person as the DSL and the headteacher. I think the
 14 point is, who is holding that headteacher to account?
 15 That should be probably at the level of governance.
 16 MS SCOLDING: The other point that the individual management
 17 review raised is about the ICT policy. What appears to
 18 have been the case -- I don't think I need to take you
 19 to the Byron review or the work you did after the Byron
 20 review -- is pretty much no primary schools had decent
 21 e-safety policies in 2008. Nobody really knew what they
 22 were talking about when it came to e-safety. That was
 23 the conclusion I reached from reading the report. Was
 24 that the conclusion that Ofsted meant to put across at
 25 that time?

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1 MR KENNEDY: This is the survey we did in 2008. It was
 2 50 primary and 50 secondary schools. Our conclusion was
 3 that there was a long way to go, really, in terms of
 4 their understanding of the effectiveness of technology.
 5 I think we have moved a long way since then. We have
 6 moved certainly in the right direction in terms of
 7 training for staff since then.

8 Interestingly, you know, one of the questions in the
 9 self-evaluation form in 2007 would have been the extent
 10 to which learners adopt safe practices, including the
 11 internet. Now, I haven't got the SEF for that
 12 particular school, but I suspect the answer was yes.

13 MS SCOLDING: Yes. Well, yes. The impression I got both
 14 from what was said in the context of the Serious Case
 15 Review and what was said in your survey was that, at
 16 that time, nobody really thought about e-safety or ICT
 17 policies at all, despite the fact there had been quite
 18 a lot of focus on the internet, certainly for at least
 19 seven or eight years, prior to 2008.

20 MR KENNEDY: I think we have moved a long way since then.
 21 As I have said, there is mandatory training for all
 22 inspectors in all our remits in Ofsted around online
 23 safety and the specific training, also, for school
 24 inspectors.

25 MS SCOLDING: The other point I wanted to ask is that there

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1 was a Serious Case Review in this case, and -- but,
 2 despite that, and despite the fact that that was
 3 published in 2012, Ofsted still decided to defer an
 4 inspection of the school in March 2012. I don't
 5 understand -- there are very few Serious Case Reviews
 6 which focus upon schools. Ofsted would have been
 7 responsible for auditing the quality of the Serious Case
 8 Review, but yet nobody bothered to tell the schools
 9 department that that was the situation or that was the
 10 case. How did that happen?

11 MR KENNEDY: When I was preparing my statement, a couple of
 12 things jumped out at me in terms of what happened then
 13 and what would happen now.

14 You know, we did a risk assessment which would have
 15 been very much a desk exercise, but you would have
 16 expected that the person doing that risk assessment
 17 would have been aware of all the information that we
 18 held.

19 You know, we did inspect the following year, but
 20 actually to write an interim assessment letter saying
 21 that we weren't going to inspect for another year, you
 22 know --

23 MS SCOLDING: (Overspeaking) the Serious Case Review?

24 MR KENNEDY: What I can say is that our regional structure
 25 makes that not possible now because we would hold that

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1 information at a regional level and we wouldn't be in
 2 a situation that we'd be giving false assurance through
 3 an interim -- because we don't publish those interim
 4 assessment letters now.

5 I would say, if this happened now, in London, we'd
 6 be going in to inspect. I have no doubt about that.

7 MS SCOLDING: I also wanted to ask about the Serious Case
 8 Review, which is, Mr Oliver, who sort of led on the
 9 Serious Case Review, set out concerns he has about the
 10 Ofsted processes in his report at INQ005173, which is
 11 behind tab A23. He was concerned about certain matters.
 12 I think maybe if I just discuss them with you,
 13 Mr Kennedy, I don't think we necessarily need to get the
 14 document up.

15 But, at paragraph 36, he was concerned about the
 16 fact that Ofsted had thrown away the records I think six
 17 months after the inspection took place. Is that still
 18 the case?

19 MR KENNEDY: No, it is not. There is a distinction we make
 20 between paper records and electronic records and most of
 21 our inspection, almost all of our inspection activity
 22 now is electronic and they are held for six years as
 23 distinct from six months and that's been the case since
 24 2015. Obviously, while this inquiry is going on, we are
 25 holding on to -- obviously depending on the outcome of

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1 that, we are holding on to any records pertaining to the
 2 inquiry around safeguarding.

3 MS SCOLDING: There were various concerns which were raised
 4 and set out about Ofsted and various recommendations.
 5 Secondly, I think, in effect, what the SCR does is
 6 question the evidence base upon which Ofsted reached
 7 their conclusions both in 2006 and 2009. Do you agree
 8 that the Serious Case Review was right to question the
 9 adequacy of those conclusions?

10 MR KENNEDY: I think it was right to question them, and
 11 clearly if we had the evidence we would have been in
 12 a stronger position to respond, and I think the point we
 13 made is, you know, it's difficult to say whether or not
 14 the inspectors were as rigorous as they should have been
 15 in terms of the evidence, because we didn't have it.
 16 Now, that, again, might sound defensive, but that was
 17 the position at the time. I think we made that really
 18 clear.

19 I think we also made it clear that we would learn
 20 from the Serious Case Review and certainly the changes
 21 we made, particularly in 2009, in September 2009, were
 22 quite distinct in terms of the way we would focus our
 23 inspectors on safeguarding.

24 MS SCOLDING: In particular, the chair of the North Somerset
 25 Council Safeguarding Children Board wrote to Ofsted

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1 in January 2012 and referred to the specific
 2 recommendations to Ofsted, and these are set out at
 3 paragraph 44 of your witness statement, which is, Danny,
 4 if you wouldn't mind getting up OFS012669_014-015. They
 5 were -- the recommendations were: firstly, ensure that
 6 HMCI is aware of the inappropriateness of
 7 the safeguarding judgments; ask that Ofsted should
 8 review the methodology by which such judgments are
 9 reached and the policy on retention of records; suggest
 10 that Ofsted should take steps to encourage parents to
 11 remain alert and responsive; recommend that inspectors
 12 check staff and school managers' understanding of key
 13 processes, including ICT usage, LADO arrangements and
 14 safe practice guidance.
 15 What changes did you make following on from those
 16 particular recommendations?
 17 MR KENNEDY: In terms of the first one, obviously it's --
 18 (a), that's the inappropriateness of the judgments. In
 19 hindsight, there clearly is a mismatch between the
 20 evidence that came to light and the judgments that were
 21 made, and, clearly, we focused, in terms of our training
 22 and subsequent changes to guidance, on ensuring that we
 23 get under, as much as we can, the skin of the school, in
 24 terms of the culture which I have referred to earlier.
 25 I think the -- I've made comment about the retention

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1 appropriate help and advice when they need to; and are
 2 they managing concerns and allegations and the
 3 recruitment process around staff?
 4 So we have actually got inspectors focusing on, you
 5 know, much sharper spotlights than we had in the past,
 6 and I think that's helpful.
 7 MS SCOLDING: Thank you. I have no further questions, but
 8 I was wondering if any of the three of you had anything
 9 further you wanted to add. Otherwise, I will pass over
 10 to Professor Jay and panel.
 11 MS SPIELMAN: If I could just say one or two things.
 12 I think parents are very much aware that inspections
 13 don't look at everything in a school. We do get
 14 pressure sometimes to say that we would like inspections
 15 to look at everything. There is a tension here with
 16 public policy and resources.
 17 I also think parents are very aware that inspections
 18 have a shelf life and hence the understandable and
 19 absolutely justified pressure to remove the
 20 "outstanding" exemption.
 21 The periods, the frequencies of inspection, one,
 22 I think it is right that they are gradated according to
 23 the levels of risk, going from a year for residential
 24 special schools and children's homes through to sort of
 25 up to five years for sort of uncomplicated, mainstream

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1 of records, which we have reviewed since then, and we
 2 have made changes, and we clearly would be in a position
 3 to make more, if necessary.
 4 I suppose the issue with parents will be, we can
 5 only report on what the evidence shows at the time of
 6 inspection, and I suppose, you know, to some degree,
 7 there's a cautionary note there, I've made the point
 8 earlier that it's not -- an inspection outcome is not
 9 a guarantee, and I think, you know, parents need to
 10 understand the limitations of inspection, that it's not
 11 always a guarantee that, you know, what we have seen is
 12 always what's happened on the ground.
 13 But I think it's fair to say that the changes that
 14 we have made, particularly in 2009 and since then, have
 15 given us much greater emphasis away from compliance on
 16 to what's actually happening in terms of the rigour with
 17 which we look at things.
 18 I mentioned this morning looking at case records,
 19 which gives us a lot of rich evidence about how the
 20 school is acting on concerns, and we have tried to
 21 focus -- safeguarding can be too complicated, you know,
 22 it can be, actually, too busy a place. We focused on
 23 getting inspectors to look at three key messages: you
 24 know, are schools identifying those pupils at risk and
 25 are they doing something about it; are they getting

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1 schools, with boarding schools sitting in between.
 2 Having that gradation plus strong risk assessment
 3 and good intelligence sharing gives us the best chance
 4 of striking that balance of sufficiently frequent
 5 inspection without overstepping the line to where we
 6 become virtually managers of the school because we are
 7 there so much of the time. I do think it's important
 8 that we don't accidentally become de facto managers.
 9 The other point I would like to make that I think is
 10 an overarching one, cutting across a lot of this, is
 11 that balance between sort of thoroughness and
 12 specificity that's needed, but getting overprescriptive,
 13 overdetailed, at which point everybody loses the wood
 14 for the trees because they have got so many specific
 15 compliance activities to do.
 16 So we are constantly trying to find that right
 17 balance in this whole regime for both schools -- both
 18 schools in terms of the wider structure of government
 19 policy/law guidance and also for inspection in terms of
 20 how we inspect to give people the right focus to
 21 maximise the chance of them doing the best with the
 22 tools they have.
 23 MS SCOLDING: Thank you very much, Ms Spielman.
 24 Ms Humphreys, Mr Kennedy, anything else?
 25 MR KENNEDY: Nothing from me.

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1 MS HUMPHREYS: No, thank you.
2 MS SCOLDING: Professor Jay, I note the time. Would it be
3 helpful, Professor Jay, for these witnesses to come back
4 briefly after the mid-afternoon break for you to be able
5 to ask any questions?
6 THE CHAIR: No, I think we will just take questions now,
7 thank you.
8 MS SCOLDING: Okay. Thank you, chair.
9 Questions from THE PANEL
10 THE CHAIR: May I begin by making the observation that this
11 inquiry has recommended that there should be regulation
12 of the social care workforce in residential childcare
13 settings and, as you know, this has been in place for
14 many years in Wales, Scotland and Northern Ireland.
15 Could all or any of you comment on that?
16 MS HUMPHREYS: Yes. We have been in conversations with the
17 Department of Education as to how this could be taken
18 forward. We were also in consultation with Social Work
19 England as well as to how, again, this could be taken
20 forward. So we have been doing work on it.
21 We also have to take into account, and we probably
22 need to learn from the other countries as well into how
23 it works and the impact of that, because the concern
24 could be that it can create some bureaucracy that might
25 then limit providers the ability to recruit staff. So

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1 would improve your inspection of safeguarding?
2 MS SPIELMAN: In terms of tools, I think information sharing
3 is by far the most important. I don't -- there are
4 powers, in the context of unregistered schools and
5 children's homes, we would like to have in relation to
6 seizing documents, for example, which otherwise may
7 simply be taken out of the building in front of us. But
8 in relation to the inspections of registered schools and
9 provision, I don't believe that we need that. I think
10 the main thing that we need is to be sure that where
11 there is intelligence that's known to other authorities,
12 that we have it so that we can structure appropriate
13 lines of enquiry to cover the things that we ought to be
14 covering.
15 THE CHAIR: I know you've referred to earlier, but could you
16 give us examples of what information or data that you
17 would require?
18 MS SPIELMAN: We have talked about LADOs -- LADO information
19 and the fact that we don't necessarily get responses to
20 our enquiries there. I have talked about local
21 authorities providing wider information they have that
22 might give concerns about a school, for example, around
23 sort of offrolling or misuse of exclusions. I think
24 you're about to talk to the Teacher Regulation Agency
25 chief executive, information -- intelligence about

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1 we certainly need to learn from the other countries as
2 to how it works in practice.
3 THE CHAIR: I would only say that it has, of course, been in
4 place for many years and subject to various refinements
5 in the other three countries. Any other comments on
6 this?
7 MS HUMPHREYS: Not from me, no.
8 MR KENNEDY: Not from me.
9 THE CHAIR: Perhaps, Ms Spielman, would you care to say
10 whether you would support that, that the social care
11 workforce and residential settings should be regulated?
12 MS SPIELMAN: At this stage, we are very happy to continue
13 exploring. I don't think we are in a position to make
14 a strong recommendation at this stage, not having seen
15 it in practice. Helen, I think that is the case, is it
16 not?
17 MS HUMPHREYS: Yes, that's right. We are still in dialogue
18 with the Department for Education. We were -- the work
19 has sort of been a bit put on hold, as you can imagine,
20 with other priorities, but it's certainly not gone away.
21 As we said before, we certainly need to learn how it
22 works in the other countries.
23 THE CHAIR: Just a second question for Ms Spielman: you
24 referred to the tools at your disposal around the
25 safeguarding. What other tools would you seek that

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1 teachers under investigation there. Many kinds of
2 complaint and intelligence come to the Education and
3 Skills Funding Agency and Regional Schools
4 Commissioners.
5 I think we have reasonably good protocols at the
6 moment about Ofsted sharing information with those
7 organisations. I think the protocols to get information
8 flowing the other way are still under development.
9 Things that I think haven't yet been fully
10 contemplated include things like the Standard and
11 Testing Agency, because, going back to what I said about
12 inspection being a test of competence, it's predicated
13 on us being able to rely, to a considerable extent, on
14 information we're presented with and what we are told by
15 staff.
16 If another agency already knows that there is reason
17 not to place too much weight on a piece of information,
18 it's very unhelpful if we are inspecting and taking that
19 information at face value. So I would -- my ideal would
20 be a place where we knew that we had all the information
21 that was held by other authorities that could contribute
22 to making the best and most thorough inspection that we
23 can.
24 THE CHAIR: Thank you. I will ask my colleagues if they
25 have any questions. Ms Sharpling?

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<p>1 MS SHARPLING: No, thank you, chair. 2 THE CHAIR: Mr Frank? 3 MR FRANK: No, thank you. 4 THE CHAIR: Sir Malcolm? 5 PROF SIR MALCOLM EVANS: No, thank you, chair. 6 THE CHAIR: That concludes our questions. Thank you very 7 much to all of the witnesses. 8 (The witnesses withdrew) 9 THE CHAIR: We will now take our break and return at 10 3.05 pm. 11 (2.51 pm) 12 (A short break) 13 (3.05 pm) 14 THE CHAIR: Ms Bicarregui? 15 MS BICARREGUI: Thank you, chair. We are now going to hear 16 evidence from Mr Meyrick from the Teaching Regulation 17 Agency and Mr Llewellyn from the Education Workforce 18 Council. 19 MR ALAN MEYRICK (affirmed) 20 MR HAYDEN LLEWELLYN (sworn) 21 Examination by MS BICARREGUI 22 MS BICARREGUI: Thank you both for being flexible in the 23 time that you were able to give evidence. That's 24 greatly appreciated. 25 Just a few preliminary matters. It is not a test of</p> <p style="text-align: center;">Page 129</p>	<p>1 memory. You will have in front of you your witness 2 statement -- your witness statements in your case, 3 Mr Meyrick. If we need to get documents up on the 4 screen, then our evidence handler, Danny, will do that. 5 If either of you need a break, just let me know. If 6 there are any technical issues, don't worry, we will try 7 to sort them out. 8 In respect of your witness statements, Mr Meyrick, 9 you have provided the inquiry with two witness 10 statements, the first from 1 October 2019 is at tab A2 11 of your bundle. 12 MR MEYRICK: Yes. 13 MS BICARREGUI: That's already been adduced in phase 1 and 14 is available on the inquiry website. The second witness 15 statement from 21 September 2020 is at tab A1 of your 16 bundle. Can I check you signed both those witness 17 statements, Mr Meyrick? 18 MR MEYRICK: Yes, I did. 19 MS BICARREGUI: Are they still true, to the best of your 20 knowledge and belief? 21 MR MEYRICK: Yes. 22 MS BICARREGUI: Mr Llewellyn, your statement to the inquiry 23 should be behind tab A7 in the bundle in front of you 24 dated 16 March 2020. Can I check that you have signed 25 that witness statement?</p> <p style="text-align: center;">Page 130</p>
<p>1 MR LLEWELLYN: Yes, I did, that's correct. 2 MS BICARREGUI: Is it still true, to the best of your 3 knowledge and belief? 4 MR LLEWELLYN: Yes, it is. 5 MS BICARREGUI: Chair, with your permission, could 6 Mr Meyrick's second witness statement and Mr Llewellyn's 7 statement be adduced in full? Thank you very much. 8 Mr Meyrick, could you tell us your job title at the 9 Teaching Regulation Agency? 10 MR MEYRICK: Yes, I'm the chief executive. I'm also the 11 accounting officer at the Teaching Regulation Agency. 12 MS BICARREGUI: Mr Llewellyn, I believe you are also the 13 chief executive of the Education Workforce Council; is 14 that right? 15 MR LLEWELLYN: Yes, I am, yes. 16 MS BICARREGUI: Mr Meyrick, you were, in 2000, I think, the 17 first registrar for the General Teaching Council of 18 England, and you left that role, I think, in 2012, when 19 you were the chief executive and transferred to the 20 Department of Education; is that right? 21 MR MEYRICK: That's correct, yes. 22 MS BICARREGUI: Mr Llewellyn, you also, I think, joined the 23 General Teaching Council for Wales at its inception in 24 2000, and you held the post of deputy chief executive 25 and chief executive, before the body was renamed. Is</p> <p style="text-align: center;">Page 131</p>	<p>1 that right? 2 MR LLEWELLYN: Yes, that's correct. It was renamed in 2015. 3 MS BICARREGUI: Am I right in saying, then, that between you 4 you have, I think, about 40 years' experience, at least, 5 of teacher regulation in England and Wales? You're 6 nodding, so yes, thank you very much. 7 Is it also right to say that -- Ms Spielman 8 described the system of sort of safeguarding as being 9 made up of many parts, and the TRA and the EWC are 10 parts, if you like, of that sort of system of 11 safeguarding, of checks and balances. Mr Meyrick, would 12 you agree with that? 13 MR MEYRICK: Yes, I would agree with that, yes. We have 14 a particular role to play and we play that role 15 alongside others in the system as well. 16 MS BICARREGUI: Mr Llewellyn, is that something you agree 17 with as well? 18 MR LLEWELLYN: Yes, I would agree. The EWC's 19 responsibilities are set out in the Education (Wales) 20 Act 2014. 21 MS BICARREGUI: Mr Meyrick, you tell us in your witness 22 statement that TRA is an executive agency within the 23 Department for Education. Is it possible to explain 24 what that means in terms? 25 MR MEYRICK: Yes. So I think it gives us, interestingly,</p> <p style="text-align: center;">Page 132</p>

1 almost the best of both worlds. To some degree, I'm an
 2 arm's-length body within the department and that gives
 3 me a certain amount of autonomy. For example, when
 4 I take, on behalf of the Secretary of State, the
 5 decisions relating to prohibition, I have never, ever
 6 consulted with ministers or the Secretary of State on
 7 those individual decisions. They are entirely free of
 8 any political influence and I take those decisions,
 9 therefore, based entirely, and only, on the evidence
 10 before me.

11 On the other hand, I do report through the
 12 department and there is a governance structure in place
 13 including right the way through to the department's
 14 audit and risk committee. So, yes, that's the position.

15 MS BICARREGUI: Mr Llewellyn, the EWC is an independent
 16 regulator. What do you see as the advantages or
 17 disadvantages of being an independent regulator in
 18 Wales?

19 MR LLEWELLYN: There are some slight differences compared to
 20 England. Notably, in terms of decision making, the
 21 EWC's fitness to practise panel -- so its conduct
 22 committees and its competence committees -- take the
 23 decisions based on the facts in front of them, and those
 24 are the decisions. They are not then referred to
 25 ministers or government for any final decision. There

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1 maintain a register of education practitioners; to
 2 maintain a code of professional conduct and practice for
 3 the education workforce. Pausing there, Mr Llewellyn,
 4 you are responsible at the EWC, are you, for writing and
 5 maintaining a code; is that right?

6 MR LLEWELLYN: Yes, that's correct. There's a code of
 7 conduct and practice for the workforce and it's against
 8 that code that the EWC considers matters -- fitness to
 9 practise matters referred to it. Interestingly, in
 10 terms of professional standards in Wales, so, in effect,
 11 standards of competence, we don't own those standards.
 12 Those have been retained by government. But certainly,
 13 in terms of conduct, we develop the code. And that's in
 14 legislation that we have to do that and review it every
 15 three years.

16 MS BICARREGUI: What level of detail is there in terms of
 17 the sort of -- what you would expect from teachers in
 18 terms of professional ethics? Is that set out in detail
 19 in the code?

20 MR LLEWELLYN: It is. It is fairly high level. So the code
 21 is, I would say, four pages or so in length, so it's not
 22 a long code, and it's written at a high level, and the
 23 judgments are intended to be supportive to teachers, but
 24 also guide them very clearly. But we also publish good
 25 practice guides that give a lot further detail in terms

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1 is, of course, a right of appeal to the High Court. So
 2 there is that level of autonomy. I think, essentially,
 3 the systems in England and Wales, they just differ.
 4 There are pros and cons of both systems.

5 MS BICARREGUI: Mr Meyrick, the main functions of
 6 the Teaching Regulation Agency, you set them out in your
 7 statement, but if I could summarise them as: you
 8 regulate the teaching profession, so you consider
 9 allegations of serious misconduct?

10 MR MEYRICK: Yes.

11 MS BICARREGUI: You maintain a database of qualified
 12 teachers, and we will look at that in a bit more detail.
 13 You are also the competent authority for the purpose of
 14 mutual recognition of teacher qualifications from the
 15 EEA.

16 MR MEYRICK: Correct.

17 MS BICARREGUI: Are those the three main functions, as you
 18 see it?

19 MR MEYRICK: Yes.

20 MS BICARREGUI: Mr Llewellyn, you set out the main functions
 21 again in your statement. Danny, EWC000001_002 and focus
 22 on, I think, paragraph 7. I'm sure you don't need an
 23 aide-memoire, Mr Llewellyn, but just to go through
 24 these, because they are slightly broader, I would say.
 25 So we see there the main functions are to establish and

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1 of what the code is and how it should be applied. We
 2 also do a lot of training face to face with our
 3 registrants. So the code is written at a high level to
 4 help them, and built on with further guidance.

5 MS BICARREGUI: We see in the third bullet point you, too,
 6 investigate and hear allegations of unacceptable
 7 professional conduct, serious professional incompetence
 8 or relevant criminal offences. You also accredit
 9 programmes of initial teacher education and monitor
 10 their compliance with national criteria. And you
 11 provide advice to the Welsh Government; monitor
 12 induction appeals, and we will look at that in a little
 13 bit more detail when we look at the registration
 14 process; and promote careers in the education workforce;
 15 and undertake specific work. Thank you, Danny, that can
 16 come down now.

17 Mr Llewellyn, in paragraph 8 of your statement you
 18 talk about developing and hosting the professional
 19 learning passport. Could you tell us a little bit more
 20 about what that is?

21 MR LLEWELLYN: Yes, of course. That's an e-portfolio. So
 22 anybody registered with the EWC has an opportunity to
 23 use that. It's intended to help foster a culture of
 24 professional learning and development of those
 25 registered with the EWC. So the Welsh Government pay

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1 for that in terms of the cost for it, but the EWC hosts
 2 it and encourages its registrants to use it. It is not
 3 mandatory. It is optional to use. But it is intended
 4 to be a supportive and helpful tool for them.
 5 MS BICARREGUI: Are there elements of safeguarding training
 6 which would register, if you like, on this electronic
 7 passport?
 8 MR LLEWELLYN: It is entirely up to the individual as to
 9 what they record. So it's there for their own use and
 10 their own reflections.
 11 That said, the passport is mandatory for certain
 12 groups, notably trainee schoolteachers and those in
 13 their first year, their induction year, so there would
 14 be an expectation certainly in those entry programmes
 15 that there would be some safeguarding training that they
 16 would receive in those periods, and they're at liberty
 17 to record the information then in their e-portfolio if
 18 they choose.
 19 MS BICARREGUI: Mr Meyrick, you describe in your statement
 20 a decision in 2010 by the government to -- I think you
 21 describe it, just to quote, as "to introduce stronger
 22 and clearer arrangements in relation to teacher
 23 misconduct whilst giving teachers greater freedoms and
 24 reducing unnecessary bureaucracy". So the result of
 25 that decision -- I don't know if this is a fair

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1 MS BICARREGUI: Danny, could we get up EWC000001_005,
 2 paragraph 23(f). Mr Llewellyn, again, not for your
 3 benefit, but for mine, these are the sanctions that are
 4 available in Wales, as I understand it. So in England,
 5 we have just heard it is only a prohibition order, but,
 6 in Wales, it looks as though you can -- there can be
 7 a reprimand, where the registrant can continue to
 8 practice, but it remains on their record; a conditional
 9 registration order -- continue to practise as long as
 10 conditions are met. Mr Llewellyn, are you able to give
 11 us a sense of what those conditions might be? Are those
 12 to do with training that might be required, for example?
 13 MR LLEWELLYN: Yes, they could be. Training is one of
 14 the more common conditions that would be set. But it
 15 could be other things. So, for example, that one is not
 16 allowed to have a leadership role in future or be
 17 a headteacher, for example. So it is not solely
 18 training, but training is a fairly common condition.
 19 MS BICARREGUI: Thank you. A suspension order, so you have
 20 your registration suspended in effect, so you can't
 21 teach for that time or you can't be in the educational
 22 setting for that time. And then, again, a prohibition
 23 order, as we have seen. You, I think, also set a time
 24 period for that, where the teacher, to use a shorthand,
 25 can't be reconsidered. So there's a broader range of

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1 summary -- is that the disciplinary process was
 2 simplified, the range of sanctions previously available
 3 was reduced to a single ruling that the teacher was
 4 either prohibited or not prohibited. Is that right?
 5 MR MEYRICK: Yes. We focus our investigations and then our
 6 hearing process on the most serious level of misconduct
 7 or conduct that's likely to bring the profession into
 8 disrepute or where there's been a relevant criminal
 9 conviction, and by focusing on that most serious level
 10 we only look to take forward to a hearing those cases
 11 where we believe that, taken at their highest, the case
 12 would lead to a consideration of whether the teacher
 13 should be prohibited from teaching for life, and then
 14 there's an option for there to be a review period,
 15 a minimum of two years, where a teacher, if they're
 16 given a review period, can then apply to have their
 17 ability to teach again.
 18 MS BICARREGUI: How is it envisaged that lesser misconduct
 19 is dealt with under that system?
 20 MR MEYRICK: Lesser misconduct we believe should be dealt
 21 with within the school by the school, by the headteacher
 22 and by the governing body, the employer, and they should
 23 be looking to deal effectively with levels of misconduct
 24 that fall below that serious level that would lead to
 25 prohibition for life.

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1 sanctions available in Wales.
 2 MR LLEWELLYN: Yes, that's correct.
 3 MS BICARREGUI: Along with the list of sanctions I think
 4 comes a broader list of possible concerns that can be
 5 referred to the EWC. So we see, for example, that
 6 serious professional incompetence is still something
 7 that can be investigated by the EWC. Is that right?
 8 MR LLEWELLYN: Yes, that's right. We have retained the
 9 power for competence throughout our 20 years of
 10 regulatory work, yes.
 11 MS BICARREGUI: Mr Meyrick, was the idea -- I think it is
 12 from what you have said, but just so I am clear -- that
 13 serious professional incompetence wouldn't meet the
 14 threshold, if you like, for a prohibition order. Is
 15 that the rationale for taking that away from the
 16 jurisdiction of the --
 17 MR MEYRICK: I think the rationale was, ordinarily,
 18 incompetence is felt to be something that should be
 19 dealt with at a local level by the employer. I think,
 20 sometimes, there may be cases where, on the face of it,
 21 it looks as though the teacher or the headteacher has
 22 been involved in serious incompetence, but, actually, in
 23 some cases that incompetence is of such a serious nature
 24 that it really is misconduct and I suspect we may come
 25 on to talk about a particular case later on where what

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1 may have, on the face of it, looked like incompetence
 2 actually was examined and was alleged as serious
 3 misconduct and was taken forward on that basis.
 4 MS BICARREGUI: Yes, thank you. In fact, if we could get up
 5 INQ004552. We need to look at the bottom of _001 going
 6 over to _002. Exactly that, Mr Meyrick. So this is the
 7 case that we have been looking at this week and last
 8 week, where Mr Hood from Hillside First School was
 9 referred to a misconduct hearing and this is the
 10 decision, hopefully. If we look right at the bottom of
 11 _001 and then also on to _002, we can see here this is
 12 being dealt with under unacceptable professional
 13 conduct. Can you see that on the first part? It is
 14 alleged that Mr Christopher Hood was guilty of
 15 unacceptable professional conduct. Then, if we look at
 16 how it's particularised, we see a list of failures. So
 17 he failed to fulfil management responsibilities in
 18 a number of ways, so not taking appropriate action, not
 19 keeping accurate records -- I'm going through them
 20 rather quickly -- and that he didn't adequately meet his
 21 responsibilities as headteacher. So, yes, I think some
 22 people would say that this is an example of serious
 23 professional incompetence.
 24 Can you tell us what the thinking was -- I think it
 25 was the Teaching Agency -- or can you surmise what the

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1 and there is a variety. I don't think we need to go to
 2 the guidance. But, overwhelmingly, they tend to be
 3 things that the teachers themselves are doing. In this
 4 case, as you describe it, it was a failure to do things
 5 which were fundamental but nonetheless it was an
 6 omission. Is there a risk it is confusing for schools
 7 that this sort of very serious professional incompetence
 8 is no longer something which you need to refer? Do you
 9 think that's a risk, that they might --
 10 MR MEYRICK: I don't think so, because I think the guidance
 11 does make it clear. An omission to do something can be
 12 just as serious a failure as actually doing something
 13 itself. So I think, if there is doubt, then people can
 14 refer those cases to us. We will look at them and we
 15 will be able to reach a judgment as to whether we should
 16 take it forward. But I don't think there's cause for
 17 concern there, no.
 18 MS BICARREGUI: Mr Llewellyn, we know that serious
 19 professional incompetence is still considered under the
 20 Welsh system. Are you able to tell us if serious
 21 professional incompetence has led to prohibition orders
 22 in Wales?
 23 MR LLEWELLYN: Yes, it has, very much so, yes. We have had
 24 a number of those.
 25 MS BICARREGUI: Even classified as incompetence, there are

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1 thinking was?
 2 MR MEYRICK: This was a case that was initially referred to
 3 the General Teaching Council for England and, as part of
 4 the transition of the work across to the department in
 5 2012, this case transferred across. Because it was felt
 6 that the level of failure was not simply incompetence at
 7 all, it was misconduct, and very serious misconduct at
 8 that as well, it was a failure to make some -- as you
 9 will see at (d), for example, "Did not raise concerns
 10 about individual A", so that's not just an incompetence
 11 issue, that's a misconduct issue and a serious
 12 misconduct issue, and that was the basis on which the
 13 allegations were put to the panel and it was the basis
 14 on which the panel, when they considered those
 15 allegations, made their findings of fact, made their
 16 findings of unacceptable professional conduct and then
 17 made their recommendation to the Secretary of State, and
 18 I'm sure, if you go to the end of that document, you
 19 will see that the Secretary of State's decision was to
 20 prohibit Mr Hood on the basis of the findings made.
 21 MS BICARREGUI: Thank you, Danny, that can come down now.
 22 Is there a risk -- if we look at your guidance, for
 23 example, and we talk about -- it looks at misconduct and
 24 will say things like bullying or it will talk about
 25 actual sexual misconduct by the individual themselves,

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1 still things which meet the threshold, if you like, for
 2 prohibition?
 3 MR LLEWELLYN: Yes, absolutely.
 4 MS BICARREGUI: This is a difficult question to ask, but,
 5 Mr Meyrick, perhaps first, you have worked under both
 6 systems over a long period of time. So one where you
 7 have got sort of a broad range of things that can be
 8 referred, a broad range of sanctions, and the new
 9 system. Do you have a view which is better at ensuring
 10 that those who shouldn't be teaching aren't teaching?
 11 Obviously we have a particular remit here at the
 12 inquiry. Do you have a view on that?
 13 MR MEYRICK: Well, I think that the model that we are
 14 currently operating as the Teaching Regulation Agency
 15 ensures that where there are serious cases of
 16 misconduct, they get referred to us, they get considered
 17 effectively by an independent panel, and that panel then
 18 make their recommendation to the Secretary of State.
 19 Myself and a colleague on behalf of
 20 the Secretary of State will then make the actual final
 21 decision as to whether there should be a prohibition,
 22 and I think that that is an effective model for dealing
 23 with the level of misconduct that should lead to
 24 prohibition. I think conduct that falls below that
 25 level is being dealt with properly within schools.

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1 MS BICARREGUI: I suppose there's a reliance there, isn't
2 there, on the system is working locally? So it is more
3 of a reliance than might otherwise --
4 MR MEYRICK: We do get cases referred to us by schools where
5 our judgment is that, even proven at their highest, the
6 allegations, as we would frame them, would not lead to
7 prohibition and so -- for the most part, these teachers
8 have already been dismissed by their schools, so local
9 action of a serious nature has taken place for the
10 school to need to consider whether or not to make the
11 referral to us. So, no, I think that the system does
12 ensure that teachers who need to be prohibited are
13 prohibited by the system.
14 MS BICARREGUI: Mr Llewellyn, what's your view?
15 MR LLEWELLYN: I think, in terms of the system in Wales, it
16 gives a good level of flexibility. So it is a legal
17 requirement on any employer in Wales of one of our
18 registrants that they must refer a case to us if they
19 dismiss or somebody leaves employment where there is
20 a possibility of dismissal. So that's a legal
21 requirement.
22 The police also will refer matters to us where they
23 think it's of potential concern.
24 We then investigate those cases. We also have the
25 ability to self-refer to investigate anything that we

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1 provider has told you that someone's started training
2 and that will start a record.
3 MR MEYRICK: Yes.
4 MS BICARREGUI: Number 2, if Mr Llewellyn tells you
5 a teacher has been awarded QTS in Wales, that would go
6 on the register.
7 MR MEYRICK: Not the register, on the database.
8 MS BICARREGUI: Yes, on the database, no register. If you
9 are notified by teachers' pensions?
10 MR MEYRICK: Yes. Sorry, at paragraph 3, I think it is
11 important to note that the system that we operate for
12 misconduct means that unqualified teachers, if they are
13 engaged in unsupervised specified work, they do fall
14 within the jurisdiction of the Teaching Regulation
15 Agency in terms of considering misconduct action against
16 them, so long as it is that serious misconduct we
17 described earlier. So although we maintain a database
18 of qualified teachers, we aren't restricted in terms of
19 those teachers that we can take our -- initially
20 investigate the case and then take it through the
21 hearing process. We aren't restricted to only dealing
22 with the unqualified. We are able to deal with those
23 teachers who are -- so long as they are unsupervised and
24 doing specified work, then they fall within our
25 jurisdiction. I think that's an important point to

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1 think is a concern over and above those employer
2 referrals, and we do do that on occasion. Then, when we
3 receive the cases, we look at it -- at those against our
4 thresholds. As I mentioned, we have the flexibility of
5 the additional orders ranging from the reprimand through
6 to a prohibition. I think the system in Wales works for
7 Wales. It is flexible and it gives reassurance to
8 learners and the public and parents.
9 MS BICARREGUI: I'd like to look a little bit about the
10 registration process now, actually, and the two
11 different systems. Mr Meyrick, the TRA maintains
12 a database of qualified teachers, I think that's right.
13 MR MEYRICK: Yes. We have a database which has got,
14 I suspect, well over 2 million records of those people
15 who have achieved qualified teacher status. We also
16 hold the record of whether they have successfully passed
17 their induction, statutory induction, period as well.
18 And then, alongside that, we maintain a list of
19 the teachers who are prohibited.
20 MS BICARREGUI: Danny, if we could get up TRA000003_004 and
21 look at paragraph 24, because, yes, Mr Meyrick, this is
22 a little bit more complicated, isn't it, than simply
23 having a list of qualified teachers? I think you say --
24 you describe six scenarios for us. The first is where
25 someone -- an accredited initial teacher training

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1 make.
2 MS BICARREGUI: Absolutely. I think that's number 5. So
3 where you prohibit a teacher even though they may not
4 have been on the database in the first place, it looks
5 like that creates a record. So absolutely. So, for
6 example --
7 MR MEYRICK: Yes.
8 MS BICARREGUI: The last one, I think, is where you are
9 notified that someone without QTS has got a national
10 professional qualification in school leadership.
11 MR MEYRICK: Indeed, yes.
12 MS BICARREGUI: Those are the six ways. In fact --
13 MR MEYRICK: Just to say, this database doesn't just sit in
14 my office untouched by anybody else. This is fully
15 available to employers so that they can access that
16 database and, when they are doing the necessary checks
17 that are required under Keeping Children Safe in
18 Education, then they are able to see if it is
19 appropriate that they need to check that a person holds
20 QTS -- which, in many circumstances, they will need to
21 check that -- but also, of course, to check they have
22 not been prohibited.
23 It is also a place where employers would look and
24 also find out if there's been an international order
25 against the teacher as well. I am sure you will come on

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<p>1 to that.</p> <p>2 MS BICARREGUI: Yes, I do want to have a little look at</p> <p>3 international teachers later. That's useful, thank you,</p> <p>4 Mr Meyrick.</p> <p>5 Briefly to cover something you have just said, when</p> <p>6 it is -- unsupervised teaching you described as being</p> <p>7 the sort of threshold, if you like, for your</p> <p>8 jurisdiction; is that right?</p> <p>9 MR MEYRICK: Yes.</p> <p>10 MS BICARREGUI: For example, we have heard evidence recently</p> <p>11 about cover supervisors in respect of Headlands School.</p> <p>12 They wouldn't fall under your jurisdiction, would they?</p> <p>13 They would have to be checked -- I think you describe in</p> <p>14 your statement it is regulated activity, so the DBS</p> <p>15 could be involved, but it is not your jurisdiction?</p> <p>16 MR MEYRICK: Yes. If the specified work that they're doing</p> <p>17 is under supervision, then we would say that they should</p> <p>18 be regulated at a local level. But, of course, you're</p> <p>19 right that the Disclosure and Barring Service would be</p> <p>20 interested in many people who are working in school</p> <p>21 settings in terms of risk of harm.</p> <p>22 MS BICARREGUI: So, again, the database, it would look like</p> <p>23 qualified teachers both from abroad and this country,</p> <p>24 and also teachers who may not have been qualified but</p> <p>25 who have been prohibited from teaching. Those are the</p> <p style="text-align: center;">Page 149</p>	<p>1 sort of two main strands of it.</p> <p>2 Mr Llewellyn, the registration system in Wales is</p> <p>3 very different, I think, isn't it? First of all, could</p> <p>4 you tell us who is required to register in Wales?</p> <p>5 MR LLEWELLYN: Yes, in legislation, seven groups in the</p> <p>6 education and training workforce are required to</p> <p>7 register. So schoolteachers, school learning support</p> <p>8 staff -- that's a broad category that would include, for</p> <p>9 example, teaching assistants and cover supervisors.</p> <p>10 Then further education lecturers, further education</p> <p>11 support staff, work-based learning practitioners and</p> <p>12 then youth workers and youth support workers. So seven</p> <p>13 groups in total.</p> <p>14 MS BICARREGUI: Can you tell us what the rationale was for</p> <p>15 expanding the number of people who were required to</p> <p>16 register?</p> <p>17 MR LLEWELLYN: Yes. When the GTC was abolished ultimately</p> <p>18 in 2012, the Minister in Wales, so education devolved in</p> <p>19 Wales, recognised that increasingly education and</p> <p>20 training in Wales was delivered by others than just</p> <p>21 teachers, and also in other settings, so including</p> <p>22 further education, youth work and so on. So he made the</p> <p>23 decision to rename the General Teaching Council to</p> <p>24 become the EWC and also extend registration and</p> <p>25 regulation to those six other groups where,</p> <p style="text-align: center;">Page 150</p>
<p>1 increasingly, education and training was developed.</p> <p>2 I think it's interesting that learning support staff in</p> <p>3 schools in Wales, it's a higher number than the number</p> <p>4 of schoolteachers, so it's the biggest of our registrant</p> <p>5 groups now.</p> <p>6 MS BICARREGUI: Thank you. What's the process for</p> <p>7 registering? What do you ask from people when they</p> <p>8 register with you?</p> <p>9 MR LLEWELLYN: Our registration process is online. We don't</p> <p>10 take a DBS check anymore. We used to do that, but it's</p> <p>11 now self-declaration. So we ask for details of criminal</p> <p>12 offences, obviously dealing with the exemptions that</p> <p>13 people are allowed in that regard, and also we ask other</p> <p>14 questions around previous employment. So it is</p> <p>15 a self-declaration process.</p> <p>16 The reality is, I think, we find out more</p> <p>17 information from that process than we used to from DBS</p> <p>18 checks. So we find it very comprehensive.</p> <p>19 If any applicants for registration fail to declare</p> <p>20 certain matters and we become aware subsequently, which</p> <p>21 we often do, we, in effect, will add that to the tally</p> <p>22 of concerns that we would consider in deciding whether</p> <p>23 one should be registered or not. We do refuse</p> <p>24 registration on occasion.</p> <p>25 MS BICARREGUI: You have a different issue, I think, in</p> <p style="text-align: center;">Page 151</p>	<p>1 terms of who is covered because no independent</p> <p>2 schoolteachers are required to register with you at the</p> <p>3 moment, are they, Mr Llewellyn?</p> <p>4 MR LLEWELLYN: That's correct. We consider and have made</p> <p>5 representations to the Welsh Government. There are</p> <p>6 a small number of anomalies in our registration</p> <p>7 legislation. It includes staffing in independent</p> <p>8 schools. We also think there's some small gaps in the</p> <p>9 youth work staff who are required to register as well.</p> <p>10 But the independent schools staff is one that we have</p> <p>11 raised regularly with the Welsh Government over a number</p> <p>12 of years.</p> <p>13 MS BICARREGUI: I do want to come back to that, but that's</p> <p>14 sort of the biggest gap, if you like, I would say, in</p> <p>15 who is required to register with you?</p> <p>16 MR LLEWELLYN: I would agree with that, yes.</p> <p>17 MS BICARREGUI: Just briefly on the issue of information</p> <p>18 sharing, I know, Mr Meyrick, from your statement, that</p> <p>19 you talk about the relationship you have built with the</p> <p>20 DBS in terms of sharing information, so whenever there</p> <p>21 is a concern of a safeguarding nature that comes to the</p> <p>22 TRA, I believe you would share that with the DBS; is</p> <p>23 that right?</p> <p>24 MR MEYRICK: That's right, we would. The DBS also share</p> <p>25 with us information where it appears that it is the</p> <p style="text-align: center;">Page 152</p>

1 teacher who would fall within our jurisdiction, so where
2 they are teaching in either an independent or
3 a maintained setting, and as long as they are involved
4 in unsupervised teaching work, yes.
5 MS BICARREGUI: Mr Llewellyn, do you have a similar
6 relationship with the DBS in Wales?
7 MR LLEWELLYN: Yes, we do, it's the same arrangement:
8 sharing in both directions.
9 MS BICARREGUI: Thank you. We heard evidence from
10 Ms Spielman earlier on today about information sharing
11 with Ofsted, and she was very keen for there to be
12 a greater degree of information sharing between the
13 various different bodies that make up the safeguarding
14 framework. Mr Meyrick perhaps first. Do you think
15 there's scope for sharing more information with Ofsted
16 about possibly who's been referred, even if no action is
17 taken, or perhaps if there's been an interim order?
18 MR MEYRICK: Yes. I would certainly want to look into that
19 and take that further. We already have some of our
20 referrals come from Ofsted, so they're one of the groups
21 that can refer cases to us, and have done, and we are in
22 the process of, you know, looking at cases ongoing on
23 that basis. But I would certainly be very happy to look
24 at how we might, going forward, share information in
25 a timely way and in an appropriate way. We would

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1 dealt with under the English jurisdiction, so I will be
2 asking Mr Meyrick about them, but I'd be very grateful
3 if there were any views you had about how it would work
4 under the Welsh system.
5 Mr Meyrick, it is a little bit of an artificial
6 exercise, but we are going to try to look at what would
7 happen now as opposed to what happened then.
8 MR MEYRICK: Yes.
9 MS BICARREGUI: I'm afraid I'm going to have to do a brief
10 look at the system now, which will crash through some of
11 the subtleties, so you will have to forgive me on that.
12 If I could summarise it as there's a sort of stage 1,
13 which is an initial assessment where you establish
14 jurisdiction and you decide whether the case, if it were
15 proven, could lead to a finding of unacceptable
16 professional conduct or conduct that might bring the
17 profession into disrepute. I'm going to
18 (overspeaking) --
19 MR MEYRICK: Or a relevant criminal conviction, yes.
20 MS BICARREGUI: And could result in consideration of
21 a prohibition order. So there is a sort of, does this
22 kind of meet our thresholds, is there enough evidence,
23 if that were proven? So it is sort of case to answer.
24 Stage 2, you look at whether or not to impose an
25 interim prohibition order. Is that right?

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1 obviously need to ensure that any investigation that we
2 were involved in, that the sharing of the information at
3 that time recognised the risks, perhaps, to the ongoing
4 nature of that investigation, et cetera. But I'm sure
5 we can sit down with Ofsted and work out the framework,
6 and with the department as well, of course, who will
7 probably have the policy lead on that, but we can work
8 out a way forward to ensure timely and effective sharing
9 of information, yes.
10 MS BICARREGUI: Mr Llewellyn, of course it is Estyn in
11 Wales, and we will be hearing from them on Thursday. Is
12 there anything in place currently with Estyn or any
13 discussions under way?
14 MR LLEWELLYN: There isn't anything formally in place at the
15 moment, though we have started early discussions. We
16 have started a process of looking to put in place formal
17 MOUs with certain national bodies in Wales, like the
18 qualifications regulator, for them to pass information
19 to the EWC where they identify concerns regarding one of
20 our registrants. So it is a path we are beginning to go
21 down, actually.
22 MS BICARREGUI: Thank you very much. I'd like to look
23 briefly at two historic decisions, the case of RS-F71
24 and the case of Mark Moore.
25 Mr Llewellyn, these are cases which primarily were

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1 MR MEYRICK: Yes, that's correct.
2 MS BICARREGUI: Stage 3, you decide whether or not then to
3 refer to the professional conduct panel?
4 MR MEYRICK: The sort of interim bit of stage 1, which is
5 that, if it looks as though there are risks of harm
6 elements to the case, we would refer it to the
7 Disclosure and Barring Service, whilst continuing to
8 investigate the case ourselves, so that they could also
9 start any consideration under their regime too.
10 MS BICARREGUI: Then stage 3, should it go forward to the
11 professional conduct panel, the PCP.
12 MR MEYRICK: Yes.
13 MS BICARREGUI: I know there is a hearing and a meeting. So
14 a meeting might be where everything is admitted.
15 MR MEYRICK: Yes.
16 MS BICARREGUI: For the purposes -- we will talk about
17 a hearing. Then the last stage is where you would act
18 as the decision maker in terms of whether or not to make
19 the prohibition order. Is that broadly the stages?
20 MR MEYRICK: It is. That's broadly the stages, yes.
21 MS BICARREGUI: Looking at the case, then, of RS-F71, this
22 was the case of a teacher at an independent school who
23 had sex with one of his 17-year-old pupils in 2002. He
24 kept denying that that had happened but eventually
25 admitted it when she admitted it to the head of

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1 the school.
 2 It was referred to the DfES on 6 March 2003 and they
 3 took a decision in 2004 not to place him on List 99,
 4 which would have prohibited him from working with
 5 children, but instead issued him with what was called
 6 then a grave warning. I suppose, in employment terms,
 7 a kind of final written warning type situation.
 8 The headmaster at the time, it looked like he
 9 considered that when he referred it to the DfES, it
 10 would kind of onwardly be referred to the General
 11 Teaching Council, but that didn't seem to happen at that
 12 point. So we are looking at the DfES decision.
 13 MR MEYRICK: Okay.
 14 MS BICARREGUI: Again, just to summarise, we know,
 15 Mr Meyrick, that at the time that he had sex with the
 16 17-year-old pupil it was a criminal offence at that
 17 time, wasn't it?
 18 MR MEYRICK: Yes.
 19 MS BICARREGUI: Now, you say in your statement that -- you
 20 say it is likely that the matter would be referred to
 21 a PCP.
 22 MR MEYRICK: Yes.
 23 MS BICARREGUI: I suppose is it likely or do you think it
 24 would definitely be the case? Because we are talking
 25 about a case where someone has admitted a criminal

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1 MR MEYRICK: Not in this case, no. But, again, it is just
 2 one of those things that one has to ensure that one has
 3 taken account of any mitigating circumstance which might
 4 be in place. I can't think there would be any in this
 5 circumstance, but ...
 6 MS BICARREGUI: Because we have all the paperwork, I think
 7 we have it in Suzanne Smith -- if we could get up
 8 DBS000279_008-009. I think she starts at 6.17, just to
 9 get a sort of flavour of this. It says:
 10 "The circumstances put forward by RS-F71 in
 11 mitigation include relationship difficulties and a move
 12 to an independent boarding school which had led him to
 13 be unsure of boundaries ..."
 14 MR MEYRICK: They're offered as mitigating circumstances,
 15 but I don't think that they would be sufficient as to
 16 prevent the case going forward.
 17 MS BICARREGUI: No, and that's clear, isn't it? Having sex
 18 with a pupil is a complete transgression of boundaries.
 19 I think you would agree, Mr Meyrick?
 20 MR MEYRICK: It is, yes.
 21 MS BICARREGUI: On this case, then, is it more than
 22 likely -- so this would go forward to a PCP.
 23 MR MEYRICK: Yes.
 24 MS BICARREGUI: I will ask you the question, but do you
 25 think that having sex with a pupil can constitute

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1 offence, essentially.
 2 MR MEYRICK: I think where they have admitted the criminal
 3 offence, then it is almost definite -- almost certain,
 4 yes. I mean, clearly there is -- one always has to look
 5 at every case on its merits and one always has to look,
 6 you know, is it going to be a case, perhaps, where the
 7 witness isn't going to be willing to participate in the
 8 process and therefore -- I mean, on this one, as you
 9 say, you got an admission, but there are factors that
 10 would obviously have to be considered, but I am very,
 11 very confident that this particular case would be
 12 referred to a PCP, were it to be brought today, yes.
 13 MS BICARREGUI: I guess, in this stage, we are only really
 14 looking at the case -- you're only looking at, you know,
 15 is there enough for the hearing to consider "might
 16 constitute" --
 17 MR MEYRICK: With an admission and with the nature of
 18 the allegations, then certainly it would go through,
 19 yes.
 20 MS BICARREGUI: It is difficult to imagine any circumstances
 21 that this wouldn't be referred, isn't it, Mr Meyrick?
 22 MR MEYRICK: Yes.
 23 MS BICARREGUI: Okay. I think you do refer to mitigating
 24 circumstances, but, again, the mitigating circumstances
 25 don't really bear analysis on this case, do they?

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1 unacceptable professional conduct or conduct that may
 2 bring the profession into disrepute?
 3 MR MEYRICK: Yes, absolutely.
 4 MS BICARREGUI: Do you consider mitigation at the very first
 5 stage, the initial stage, or is that something more that
 6 the hearing should consider?
 7 MR MEYRICK: I think it is properly for the hearing to
 8 consider.
 9 MS BICARREGUI: So, really, at the first stage, it is just
 10 that he's admitted an offence.
 11 MR MEYRICK: Yes.
 12 MS BICARREGUI: I think we have agreed that it's pretty much
 13 definite, therefore, that this case should, if it were
 14 now, if you like, go forward to a hearing.
 15 MR MEYRICK: Yes.
 16 MS BICARREGUI: Although there is sometimes a distinction,
 17 isn't there, between the jurisdiction of the DBS and the
 18 jurisdiction of the TRA, in a case like this, of sexual
 19 misconduct, there are a number of factors. Obviously
 20 they are looking at risk of harm --
 21 MR MEYRICK: Yes, they are.
 22 MS BICARREGUI: -- and you are looking at a different
 23 question, but there are lots of factors in this
 24 particular case which are the same, aren't there,
 25 effectively, when you're considering it?

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<p>1 MR MEYRICK: Yes, there are. We are looking at what 2 happened and, yes, the Disclosure and Barring Service 3 are particularly looking at a future risk of harm. 4 MS BICARREGUI: Mr Llewellyn, I know that you haven't seen 5 all of the papers in this case, but perhaps you could 6 help us. This was an admission of a sexual offence, 7 a breach of trust offence. Can you help us at all about 8 how this would be dealt with in the current system in 9 Wales? 10 MR LLEWELLYN: Yes. If we have a case of this nature in 11 Wales, we would expect it to be referred to the DBS by 12 the employer in the first instance because of 13 the safeguarding concern. 14 My experience over the years has been that, where 15 the DBS bar -- so they would usually do that where there 16 is some form of police sanction, like a conviction; so 17 more likely than that they would bar. If the DBS bar, 18 that person then would be automatically removed from the 19 EWC register because they'd been barred by the DBS. We 20 regularly receive cases of this nature where the DBS 21 don't bar because maybe there's not been a criminal 22 conviction. 23 This sort of case in Wales I would expect to proceed 24 from an investigating committee to a professional 25 conduct committee. My experience would be this would</p> <p style="text-align: center;">Page 161</p>	<p>1 result in a prohibition. 2 MS BICARREGUI: Thank you, Mr Llewellyn. That can come down 3 now, Danny, thank you very much. 4 Secondly, I said we were going to touch on the case 5 of Mark Moore, and we heard evidence from Mr Moore last 6 week. Mr Meyrick, I know you have looked at the papers 7 surrounding this. Again, I'm just going to briefly set 8 out some of the facts which are uncontroversial from 9 your witness statement. 10 He was referred to the National College for Teaching 11 and Leadership, which was a predecessor of the TRA, 12 in August 2017. The referral arose from issues in 13 relation to Jonathan Thomson-Glover, who we also heard 14 about during evidence, at Clifton College. 15 We know that he pleaded guilty to 36 counts of 16 making, taking, possessing indecent images. But at this 17 point -- Mark Moore I think resigned in 2015 and later 18 an investigation was carried out into whether or not, if 19 he'd still been there, he should have been referred, and 20 a decision was taken to refer him. 21 At this point in time, the referral, I think, was 22 considered by the NCTL's external legal team and 23 allegations were drafted, and then at that point I think 24 the allegations were put to the person who had been 25 referred for their comments. Is that your understanding</p> <p style="text-align: center;">Page 162</p>
<p>1 of how the process worked? 2 MR MEYRICK: That is my understanding of what happened, yes. 3 MS BICARREGUI: If there is a case to answer, so the 4 panel -- that goes before the panel, where evidence is 5 called on both sides -- sorry, at the point we are 6 looking at the Mark Moore decision, it is stage 1, isn't 7 it, it is the determination panel? So they are really 8 looking at, are the allegations proven serious enough so 9 that prohibition might result? 10 MR MEYRICK: Yes. 11 MS BICARREGUI: And is there sufficient evidence to 12 establish a case to answer? So not to fully prove the 13 case, if you like, but just that there's a case to 14 answer. 15 In the case of Mark Moore, the determination panel 16 held that there was no case to answer, didn't it? 17 MR MEYRICK: It did, yes. 18 MS BICARREGUI: So it didn't go to a hearing. 19 MR MEYRICK: No. 20 MS BICARREGUI: Danny, if we could get up TRA000004_020-021. 21 If we could look at the first bullet point, so 71(1), if 22 you like, on page _020. These are the allegations that 23 were considered by the determination panel. I just 24 really want to focus, for the purposes of evidence now, 25 on the first one, which says:</p> <p style="text-align: center;">Page 163</p>	<p>1 "During one or more strategy meetings regarding 2 Mr Thomson-Glover, [Mr Moore] misled the professionals 3 at those meetings on one or more occasions by knowingly 4 providing inaccurate information." 5 That's only one of the four allegations, but if we 6 could focus on that allegation. In terms of 7 the evidence that the determination panel would have had 8 before it, they had, didn't they, the independent 9 investigator's report, which was Chris Few's report, and 10 that unambiguously said that Mr Moore did mislead the 11 multi-agency meetings. 12 MR MEYRICK: Yes. 13 MS BICARREGUI: They also had a letter from Mr Moore where 14 he didn't really address the question of misleading; 15 what he said was, it wasn't a safeguarding concern. Is 16 that a fair summary, Mr Meyrick? 17 MR MEYRICK: I think that's a fair summary of where the 18 determination panel were at that time, yes. 19 MS BICARREGUI: Actually, what happened was, the 20 determination panel agreed, if you like, with Mr Moore's 21 evidence, didn't they? They said, "Well, it wasn't 22 a safeguarding concern". They didn't really address the 23 question of whether or not he misled professionals. Do 24 you agree with that? 25 MR MEYRICK: Yes, I would. I mean, I think the point</p> <p style="text-align: center;">Page 164</p>

1 I would want to make about this case is that, I think,
 2 having looked at it again, and looked at it carefully,
 3 I think the determination panel probably gave too much
 4 weight to Mr Moore's own account of what had happened,
 5 rather than leaving those matters to be properly
 6 determined at the PCP stage of the process. So I think
 7 they went further in terms of giving weight to
 8 Mr Moore's statements and Mr Moore's own position, and
 9 I would expect now, following some changes that we have
 10 made -- we are always, as an organisation, very, very
 11 keen to learn lessons, we are very, very keen to ensure
 12 that where things don't work out and where we have
 13 criticism that we improve things going forward. We have
 14 changed the way in which we conduct those determination
 15 panels: we have involved our external legal firms and
 16 our internal legal advisors in training of the staff who
 17 undertake those decisions; we have increased the level
 18 of staff involved in taking those decisions; and we have
 19 emphasised to them the importance of looking much more
 20 at the likelihood of the allegations amounting to, at
 21 their highest, allegations that would likely lead to
 22 prohibition and not, at that stage, taking so much
 23 account and weight of the evidence and you might call it
 24 mitigation or the position put forward by the teacher.
 25 We also now put in place a quality assurance process

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1 I'd like to look a bit -- Mr Meyrick, we touched on
 2 this -- at the international qualification side of
 3 things and how that is dealt with in both countries.
 4 I think both of you are the competent authority, to use
 5 the shorthand.
 6 Mr Meyrick, the TRA undertakes checks on overseas
 7 trained teachers' qualifications, don't you, in order to
 8 put them on the database; is that right?
 9 MR MEYRICK: Yes, we do. At the moment, within Europe,
 10 that's a mutual recognition model. We also are able to
 11 award qualified -- the equivalent of qualified teacher
 12 status to teachers from America, Australia, New Zealand
 13 and Canada as well. And then, yes, if somebody applies,
 14 we will look at their qualification and then we are able
 15 to award them the equivalent of QTS, and then they would
 16 go onto that database of qualified teachers.
 17 MS BICARREGUI: Mr Llewellyn, in Wales, I think you are able
 18 to register teachers on that model from the EEA and
 19 Switzerland, but not from any other countries; is that
 20 right?
 21 MR LLEWELLYN: Yes, that's correct. That's the only
 22 difference, really, between the England and Wales model,
 23 is we don't cover the four countries Alan referred to.
 24 That said, the intention in Wales is to amend
 25 legislation to give us worldwide recognition powers

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1 where we regularly sample and review examples of
 2 the determination stage of the process, and we look at
 3 those now, and we are also subject to other internal
 4 reviews and internal audit as well, et cetera.
 5 So I think we have learned a lesson from that one,
 6 and, going forward, I'm confident that, under our new
 7 process, the case of Mr Moore would at least go forward
 8 to a PCP and it would be then for them to determine what
 9 steps and action to take.
 10 MS BICARREGUI: This was a 2018 decision, wasn't it?
 11 MR MEYRICK: It was, yes. We have recently -- we have taken
 12 account of those concerns and we have amended the
 13 process, yes.
 14 MS BICARREGUI: Mr Llewellyn, just briefly, at the stage 1
 15 of your process, again, the evidential requirement, I'm
 16 guessing, isn't that the case is proven fully, but
 17 simply that there is a case to answer; is that right?
 18 MR LLEWELLYN: Yes, very much so: it's, is there a case to
 19 answer, correct.
 20 MS BICARREGUI: Thank you. Chair, I am just looking at the
 21 time. There are five minutes until 4.00 pm. I think
 22 I probably have about just over 10 minutes more
 23 evidence. Can I ask to go over 4.00 pm, please?
 24 THE CHAIR: Yes, Ms Bicarregui.
 25 MS BICARREGUI: Thank you.

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1 from January.
 2 MS BICARREGUI: I'm interested in talking to you about the
 3 internal market information system, so the IMI system,
 4 and, really, just from a safeguarding point of view,
 5 because I think what you have both described is just
 6 simply a registration. So when you register them,
 7 you're just noting whether or not they have qualified
 8 teacher status in the country; is that right?
 9 MR MEYRICK: Yes. But the IMI enables us to -- is a system
 10 which operates across Europe and where, if another
 11 country in Europe takes action, regulatory action,
 12 against an individual teacher, then they put the fact of
 13 that information up on the IMI. We then will take that
 14 information from the IMI and put it onto our database of
 15 qualified teachers. That creates an alert.
 16 We also have, within our system of employer access,
 17 a particular report which comes up, which is a report of
 18 teachers from Europe who have had action against them,
 19 and that means that then the school is able to follow
 20 that through and determine what it wants to do.
 21 Because, obviously, different countries will have
 22 different levels of action that they will take against
 23 people.
 24 MS BICARREGUI: Yes, and I suppose that's the bit that the
 25 inquiry would be interested in, the safeguarding aspect,

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<p>1 if you like, of that. So if a teacher is prohibited, as 2 I understand it, in another EEA country, they are 3 required, or they are meant to, put that information on 4 the IMI. That will then go on your database and then 5 schools, I believe, when fulfilling their duties under 6 Keeping Children Safe in Education, are referred to the 7 database in order to check whether or not there's any 8 information about that teacher. 9 MR MEYRICK: If the country has put it on the IMI system, 10 then an employer going to our system will find that 11 information out there, yes. 12 MS BICARREGUI: Am I right in saying that, after December, 13 we at the moment don't know whether or not you will 14 still have access to that. So if there is no deal, as 15 I understand it, you will no longer have access to that 16 system, and if there is a deal, you may well have access 17 to that. Is that correct? 18 MR MEYRICK: I think that's a broad summary of the position, 19 yes. 20 MS BICARREGUI: Is that something that will need to be 21 recreated if it disappears? Is it useful safeguarding 22 information, in terms of teachers coming into this 23 country? 24 MR MEYRICK: I think we would look to have alternatives, so 25 we would be able to, for example, ask the country that</p> <p style="text-align: center;">Page 169</p>	<p>1 the teacher had originally qualified in and been working 2 in to provide them with a sort of equivalent of a letter 3 of professional standing. We, ourselves, provide those 4 letters to teachers from England who are going to teach 5 elsewhere and where the local regulatory authority 6 requires such letters. 7 So, yes, I think it is important that we continue to 8 try to understand where action has been taken so that we 9 can ensure that employers have the best information 10 possible. 11 Employers will also conduct other relevant checks of 12 their own. They will also want to look at any gaps in 13 people's history, et cetera. So there is a certain onus 14 on the employer to ensure that the checks that they're 15 undertaking are also thorough as well. 16 MS BICARREGUI: Thank you, Mr Meyrick. Mr Llewellyn, 17 I think you have some concerns, anyway, about how up to 18 date the IMI system is; is that right? 19 MR LLEWELLYN: I do. But I think it is important to point 20 out there's an important distinction in the Welsh system 21 compared to the English system, and it's the difference 22 between recognition of qualification versus the 23 application for registration. So somebody may seek 24 recognition of their teaching qualification, for 25 example, in a European country in Wales. So we will do</p> <p style="text-align: center;">Page 170</p>
<p>1 that. But there is the additional process then to apply 2 for registration. 3 So when the person applies for registration, they 4 need to go through our suitability criteria, declare any 5 criminal offences, declare any employment issues, so 6 there is that additional check. 7 In terms of IMI currently, I think the experience of 8 Wales, and certainly England as well, from talking to 9 Alan, is that we often don't see many additions to IMI, 10 in terms of disciplinary sanctions from other countries. 11 Post Brexit, we are moving to the same situation 12 Alan outlined there, whereby we will be seeking a letter 13 of professional standing from somebody that applies for 14 recognition of their qualification. It is something 15 that we adopted many years ago and we think there's 16 a robustness around that. 17 MS BICARREGUI: Thank you. Just lastly, then, to come back, 18 Mr Llewellyn, to this, we mentioned that the teachers in 19 independent schools aren't required to register in 20 Wales, and later this week we are going to be looking at 21 the situation in Wales and, in particular, some issues 22 that arose in an independent school there. Actually, 23 those issues impact on the jurisdiction both of the EWC 24 and, in fact, on the TRA. 25 So the headteacher of the independent school in</p> <p style="text-align: center;">Page 171</p>	<p>1 Wales was dismissed for concerns which were to do with 2 safeguarding, to do with inappropriate text messages to 3 one of the pupils. He was referred to the EWC, 4 Mr Llewellyn, but you don't have jurisdiction, do you; 5 there is nothing you can do about any misconduct from 6 a headteacher in an independent school in Wales? 7 MR LLEWELLYN: No, that's correct. We believe it to be one 8 of the anomalies in our legislation. We have raised it 9 consistently formally with the Welsh Government. 10 In 2015/16, the government did a review of 11 the matter, and it was passed from one administration to 12 the next. There was support in the consultation for the 13 EWC to have these additional powers. 14 In the legislation that underpins the EWC, there is 15 actually a statement in one of the schedules that gives 16 the ability for government to add additional categories 17 of registration, and it specifically refers to 18 independent schools. So we believe it is an anomaly. 19 Our view is, it shouldn't matter where a learner is 20 educated, whether it is in the maintained sector or the 21 private sector, they still need to be secure and 22 safeguarded. So we believe that's an anomaly. 23 As I referred to earlier, we believe there is 24 a small number of other anomalies -- for example, some 25 paid youth work staff in our legislation are not</p> <p style="text-align: center;">Page 172</p>

1 required to register, and we think that's inconsistent,
 2 for example, with the registration of our learning
 3 support staff in schools. So we have lobbied government
 4 on these matters.
 5 MS BICARREGUI: Mr Meyrick, to take up the story, the
 6 headteacher from the independent school in Wales then
 7 set up an online tutorial facility, and this matter
 8 I think was referred to the TRA, but the TRA -- although
 9 you would be able to look at a head of an independent
 10 school in England, the online tutorial facilities don't
 11 come under your jurisdiction, do they?
 12 MR MEYRICK: No.
 13 MS BICARREGUI: So in this case, he wasn't able to -- he
 14 wasn't under the jurisdiction of the EWC in Wales and
 15 then when he set up the new facility -- so that is,
 16 I think, something that is going to be explored a bit
 17 further on Thursday.
 18 Mr Meyrick, is that something that is going to need
 19 to be looked at, because I imagine, not least because of
 20 the effects of the pandemic, online tutorial facilities
 21 and other sort of online ways of teaching might become
 22 more prevalent. Do you think that's something which the
 23 TRA will have to consider?
 24 MR MEYRICK: I think you need to ask ministers that question
 25 when you talk to them. I think that will be a policy

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1 an interim prohibition order is necessary.
 2 MS BICARREGUI: Yes. And, Mr Llewellyn, you tell us --
 3 I mean, that can be critical in some cases, where, in
 4 effect, there's information from the police, for
 5 example, which suggests that there is some serious
 6 information about a teacher, but you're not able to
 7 immediately suspend their registration; is that right?
 8 MR LLEWELLYN: Yes, it is. We see two scenarios. We, on
 9 occasion, receive very serious safeguarding information
 10 from the police under their "pressing social need"
 11 powers, in effect, and we can't act, but the other
 12 scenario is sometimes the police forces say, "Look, we
 13 don't provide information of this serious nature to you
 14 because we know you don't have the interim suspension
 15 powers that other regulators do", which is why I believe
 16 it's so important that the Welsh Government amends the
 17 legislation.
 18 MS BICARREGUI: Thank you. We will be discussing that on
 19 Thursday, so thank you.
 20 Mr Meyrick, is there anything that you would like to
 21 say that I haven't covered?
 22 MR MEYRICK: No, I don't think so. I think it's important,
 23 just going back to the very beginning of the session
 24 today, when we said that we are part of a wider system,
 25 and so, you know, although we don't, ourselves, regulate

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1 issue for the Department of Education.
 2 MS BICARREGUI: Thank you very much, both of you.
 3 Mr Llewellyn, I know we haven't dealt with the interim
 4 suspension order, but that's something we are going to
 5 take up with the Welsh Government. I think that's also
 6 something which looks like there's been movement, in
 7 terms of your ability to impose interim suspension
 8 orders. Is that right?
 9 MR LLEWELLYN: There's a current consultation by the
 10 Welsh Government that closes on 11 December proposing to
 11 give the EWC these new powers. We are one of the very
 12 few regulators worldwide who doesn't have powers of
 13 interim suspension. The TRA has the equivalent in
 14 England, for example; same in Scotland and further
 15 afield. So we are welcoming the consultation and would
 16 hope it goes through to legislation.
 17 MS BICARREGUI: Thank you very much.
 18 MR MEYRICK: When you were talking at stage 3 of our process
 19 that one of the things we will consider is whether or
 20 not to impose an interim prohibition order, and actually
 21 we continue to look at whether there's a necessity to
 22 put an interim prohibition order right through the
 23 lifespan of the case, actually, right the way up to when
 24 the hearing would start, because sometimes additional
 25 information may come in which would suggest to us that

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1 certain people who are involved in -- as we have
 2 discussed, where they're involved in supervised
 3 teaching, they are regulated, it is not that they are
 4 unregulated. There is a local system in play, and the
 5 Disclosure and Barring Service remains in play if there
 6 is risk of harm as well.
 7 So I think it is important to understand that we
 8 play a particular role within a wider sort of tapestry
 9 of safeguarding, and we are supporting employers
 10 particularly to ensure that they are employing the right
 11 teachers with the right qualifications and who have
 12 behaved properly.
 13 MS BICARREGUI: Thank you. Mr Llewellyn, anything else
 14 you'd like to say?
 15 MR LLEWELLYN: No, thank you, nothing to add.
 16 MS BICARREGUI: Thank you. Chair, I have no further
 17 questions for these witnesses. I don't know if you or
 18 the panel do.
 19 Questions from THE PANEL
 20 THE CHAIR: Thank you. I have a question for Mr Llewellyn.
 21 Going back to your earlier evidence, what was the
 22 driving force for moving from DBS checks to
 23 self-declaration of offences?
 24 MR LLEWELLYN: It was essentially that we were finding
 25 issues with the DBS arrangement. So sometimes checks

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1 were taking some time to come to us, but also when
2 filtering of what was on a DBS was introduced, we were
3 seeing less and less information. There was also a time
4 where we used to receive quite detailed soft information
5 from police forces, and also that was taken away. So,
6 increasingly, we weren't seeing the value from the DBS
7 process.
8 As I referred to earlier, we adopt self-declaration,
9 which is quite similar to a number of other regulators,
10 and we do actually get detailed information from that.
11 As I referred to earlier, we have the additional ability
12 that, if we feel something has been kept away from us --
13 when we find out, if we find out, we can add that to the
14 tally.
15 So our experience of taking away the DBS check we
16 don't feel has been counterproductive.
17 THE CHAIR: Was it a political decision?
18 MR LLEWELLYN: No, not at all. It was entirely within the
19 ability of the EWC to do that; not political at all.
20 THE CHAIR: Thank you very much. Ms Sharpling, do you have
21 any questions?
22 MS SHARPLING: No, thank you, chair.
23 THE CHAIR: Mr Frank?
24 MR FRANK: No, thank you.
25 THE CHAIR: And Sir Malcolm?

1 PROF SIR MALCOLM EVANS: No, thank you, chair.
2 THE CHAIR: Thank you very much to both witnesses.
3 (The witnesses withdrew)
4 MS BICARREGUI: Chair, that completes our evidence for the
5 day, thank you very much. We begin again at 10.30 am
6 tomorrow.
7 (4.09 pm)
8 (The hearing was adjourned to
9 Wednesday, 25 November 2020 at 10.30 am)
10
11
12 I N D E X
13
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16 MS AMANDA SPIELMAN (sworn)1
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