

<p>1 Wednesday, 25 November 2020 2 (10.30 am) 3 THE CHAIR: Good morning, everyone, and welcome to Day 8 of 4 this public hearing. Ms Nield? 5 MS NIELD: Thank you, chair. We are going to hear first 6 this morning from Dr Suzanne Smith. 7 DR SUZANNE SMITH (affirmed) 8 Examination by MS NIELD 9 MS NIELD: Dr Smith, can you both see and hear me clearly? 10 A. I can. 11 Q. A few introductory remarks. First of all, please feel 12 free to refer to your bundles -- you have a paper bundle 13 in front of you -- and any notes that you have made. 14 Your paper bundle contains relevant witness statements, 15 including your own, and any documents that we may need 16 to refer to. But if we are going to refer to any 17 documents in any detail, then Danny, our evidence 18 handler, will be able to call those up onto the screen 19 and we will all be able to view those documents at the 20 same time. They can take a few seconds to arrive at the 21 screen, so just bear with us while we get those up. 22 We are going to continue in this session this 23 morning until 11.30 am. If you do need a break at any 24 point before then, please just let us know and we can 25 arrange for that to happen.</p> <p style="text-align: center;">Page 1</p>	<p>1 If we lose you or we have any technical 2 difficulties, then just wait there and bear with us, and 3 we will try and get those fixed as soon as we possibly 4 can. 5 I'm going to be asking you some questions this 6 morning and, when I have concluded my questions, I shall 7 hand over to the chair and panel if they have any 8 questions for you. 9 Dr Smith, can you please turn to tab A1 of your 10 bundle. We have a witness statement from you there 11 dated 29 June 2020. This is DBS000279. Could you 12 please turn to the last page of your statement and 13 confirm whether you signed that witness statement? 14 A. Yes, I did. 15 Q. Is it true, to the best of your knowledge and belief? 16 A. It is true, to the best of my knowledge and belief, yes. 17 Q. We are not going to go through that witness statement 18 line by line. I am going to ask the chair that we can 19 admit that witness statement in its entirety into 20 evidence. Thank you, chair. 21 But we are going to go through the topics that you 22 have covered in your witness statement. Dr Smith, 23 you're the executive director of safeguarding at the 24 Disclosure and Barring Service; is that right? 25 A. Executive director for barring and safeguarding, yes.</p> <p style="text-align: center;">Page 2</p>
<p>1 Q. The Disclosure and Barring Service, which we are going 2 to call the DBS, is a nondepartmental public body, and 3 it is accountable to Parliament through the 4 Home Secretary; is that right? 5 A. That's right, yes. 6 Q. You are, I think, a qualified nurse and health visitor. 7 You have a PhD in safeguarding? 8 A. Yes. 9 Q. And 29 years of experience in the safeguarding sector? 10 A. That's correct, yes. 11 Q. Dr Smith, you were kind enough to give us evidence 12 during phase 1 of this Residential Schools 13 Investigation. I am not going to ask you to repeat any 14 of that evidence. You gave your evidence, I think, 15 concurrently with Susan Young, who is the director of 16 the Public Protection Directorate, and she gave evidence 17 about the disclosure functions and you gave a little 18 evidence about the barring functions? 19 A. Yes. 20 Q. Whilst the DBS operate two lists, effectively, the 21 Children's Barred List and the Adults Barred List, our 22 focus here is going to be, of course, on the Children's 23 Barred List, and specifically where that might be 24 relevant in relation to adults who are working in 25 schools?</p> <p style="text-align: center;">Page 3</p>	<p>1 A. Yes. 2 Q. I think you set out that there are three routes to 3 barring as far as the DBS is concerned. The first of 4 those is automatic barring offences. So this is where 5 someone has been convicted of a relevant offence; is 6 that correct? 7 A. That's correct, yes. 8 Q. What happens if someone has a caution? 9 A. That comes through the route as well, and it will depend 10 on whether it's an auto bar with representations or an 11 auto bar without representations. 12 Q. Can you just explain the difference as to how that would 13 work? An auto bar without representation first? 14 A. Barring without representations, the individual doesn't 15 have to be in regulated activity, and it covers offences 16 which are sexual, violence, rape and nearly all 17 children's offences in that category. Then they are 18 automatically barred. 19 Automatic barring with representations will include 20 people who are in regulated activity, and we make 21 a decision based on the information before us, invite 22 them to make representations. If they don't make 23 representations, then they are automatically barred. 24 Q. Perhaps to give us a bit of an idea about what kind of 25 offences fall into that category of automatic inclusion,</p> <p style="text-align: center;">Page 4</p>

1 perhaps, if we call it, automatic inclusion with
 2 representations, I think that would include abuse of
 3 trust offences under the Sexual Offences Act 2003?
 4 **A. Yes. Other offences would be murder, kidnap, cruelty,
 5 supply of controlled drugs, female genital mutilation
 6 and, yes, abuses of positions of trust.**
 7 Q. So in terms of the sort of sexual offences against
 8 children, I think automatic barring without
 9 representations would include rape of a child and the
 10 sexual offences against children under the age of 13?
 11 **A. Yes.**
 12 Q. Offences such as sexual activity with a child where the
 13 child is over 13 would fall into the with
 14 representations category?
 15 **A. With representations.**
 16 Q. Also, voyeurism offences and possession of indecent
 17 images of children would also fall into the with
 18 representations category; is that right?
 19 **A. Yes, it is, yes.**
 20 Q. You also explain that another route to barring is
 21 through disclosure information. So is that where an
 22 organisation has applied for a check on someone's
 23 record?
 24 **A. That's right, yes, it's when an enhanced disclosure with
 25 barred list check has been made and information that**

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1 individuals are also permitted to make a referral if
 2 they wish to?
 3 **A. Yes, they are. Individuals can make referrals, yes,
 4 absolutely.**
 5 Q. So if somebody has got concerns about someone that they
 6 know about, they can refer that to you?
 7 **A. Anybody can make a referral, yes.**
 8 Q. It's mandatory for regulated activity providers to tell
 9 the DBS about anyone who's been dismissed from their
 10 organisation or has resigned from their organisation in
 11 circumstances where there's concern that they may have
 12 caused harm to a child or posed a risk of harm to
 13 a child, and, as I understand it, whilst that is
 14 a criminal offence not to do so, no organisation or no
 15 individual has ever been prosecuted for failing to do
 16 that. Is that right?
 17 **A. That's right. Nobody's been prosecuted for failing to
 18 make a referral.**
 19 Q. Can you help us with who has responsibility for
 20 enforcement and prosecution in those kind of
 21 circumstances?
 22 **A. Well, we would ask the police to bring prosecution on
 23 our behalf in those situations.**
 24 Q. Is the reason that there haven't been any prosecutions
 25 that the DBS simply doesn't know when referrals are not

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1 **appears on it suggests that that person should be barred
 2 from regulated activity.**
 3 Q. So they're not currently barred from regulated activity,
 4 but it comes to your attention that there's information
 5 that suggests they should be on that barred list?
 6 **A. Yes, that's right.**
 7 Q. Would that be, for example, where someone was convicted
 8 of an offence which would now be on the autobarring
 9 list, but, at the time they were convicted of
 10 the offence, it was before the Safeguarding Vulnerable
 11 Groups Act came into force, for example?
 12 **A. Yes. Yes, it would, yes.**
 13 Q. Then I think the third route, and probably the most
 14 common route, in terms of the amount of applications you
 15 deal with, is the referrals from an organisation or an
 16 individual; is that right?
 17 **A. Yes, that's right. The majority of referrals do come
 18 through the autobar route, but, yes, the referrals --
 19 that is another route. Discretionary referrals we refer
 20 to them as.**
 21 Q. Discretionary referral, all right. As I understand it,
 22 an organisation that provides regulated activity, such
 23 as a school, is under a duty to apply for an enhanced
 24 check with barred list check for anyone who wants to
 25 engage in regulated activity at their school, but

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1 being made in circumstances where they should be made?
 2 **A. That's right. You don't know what you don't know, is
 3 probably the best way to summarise that.**
 4 Q. Is there any obligation on, for example, local
 5 authorities and the LADO to notify you, as the DBS, when
 6 they become aware that there's been a safeguarding issue
 7 at a school that's led to an individual being dismissed
 8 or resigning?
 9 **A. Well, the LADO is really key in this space. The LADO
 10 has a power to refer and can make a referral themselves,
 11 but more recently they are encouraging the employer, who
 12 have the legal duty to refer, to do that. If they
 13 don't, and they know it hasn't been done, and very often
 14 speaking to the national LADO network they will check
 15 whether or not that referral has been made, and, if it
 16 hasn't, they will sometimes use their power to refer to
 17 make sure that we get the referral.**
 18 Q. If there's a late referral, so, for example, we heard
 19 about a case where a member of staff was permitted to
 20 resign, that situation had been later reviewed, about
 21 eight months down the line, and then a referral was made
 22 at that point, would the DBS pick up on that, in terms
 23 of concern that the organisation had not originally
 24 referred it at the time they should have done?
 25 **A. Yes, we do pick up on that. We can ask the LADOs to**

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1 **raise that, we can raise that with the supervisory**
 2 **authorities, the Ofsted or CQC, et cetera, if we were**
 3 **concerned that they'd left it a long time before they'd**
 4 **made that referral.**
 5 Q. I'd like to come on, please, to talk about liaison
 6 between the DBS and other organisations, particularly
 7 that are involved with schools and people working in
 8 schools. Looking, first of all, at the Teaching
 9 Regulation Agency, because the Teaching Regulation
 10 Agency, the TRA, has power to prohibit individuals from
 11 teaching in cases where they find serious misconduct, so
 12 in a child sexual abuse case that would clearly be
 13 something that could engage the TRA, if a school refers
 14 a staff member or a recently departed staff member to
 15 the TRA, do the TRA share that information with you, as
 16 the DBS?
 17 **A. Yes. We have a very -- a good relationship of sharing**
 18 **information between ourselves, so the TRA will check, on**
 19 **receipt of that case, that a barring referral has been**
 20 **made and, likewise, if we get a referral in, we'll check**
 21 **that the TRA have also been informed. So we have a very**
 22 **sort of symbiotic relationship in that sense and liaise**
 23 **regularly with each other.**
 24 Q. How would that work if both of you were aware of
 25 a referral of, let's say, a teacher: do you consider

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1 **barred and is still able to work in regulated activity.**
 2 **So there's a balance between searching forever for**
 3 **information and reaching a point at which we say, "We**
 4 **now have enough to make a decision".**
 5 Q. If, in that sort of example, you had reached
 6 a decision -- obtained extra information from, say, the
 7 police, you reached a decision not to bar in that
 8 particular case, and the TRA would go on to consider
 9 whether they should prohibit, would you be permitted to
 10 share information that you'd obtained from the police
 11 with the TRA to enable them to make a decision about
 12 prohibition?
 13 **A. Yes. Yes, we would, yes.**
 14 Q. Can I also ask you about information sharing with
 15 Ofsted, because you did mention them briefly. If you
 16 had a barring decision to consider for a school staff
 17 member and the information that you'd received indicated
 18 there were safeguarding concerns within the school --
 19 I mean really organisational issues, rather than simply
 20 relating to that particular individual -- are you able
 21 to then inform Ofsted and advise them to, for example,
 22 go in and have a look at safeguarding?
 23 **A. Yes. Yes, we are, and we do do that on occasions, yes.**
 24 Q. Now I'd like you, Dr Smith, to move on to -- we have
 25 asked you to consider two decisions that were made not

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1 that case before the TRA? Because, obviously, if
 2 someone has been placed on the Children's Barred List,
 3 they're not permitted to teach, so do you take
 4 precedence in that sense?
 5 **A. It almost depends on the case, but they can run in**
 6 **parallel. We wouldn't wait, necessarily, for TRA to**
 7 **arrive at a decision. If we think we have got all the**
 8 **information before us, we will make our decision, and it**
 9 **very much depends on the case. It depends on the**
 10 **evidence that we have got in front of us.**
 11 Q. In terms of the evidence that you receive, obviously,
 12 when a referring organisation -- so we are focusing on
 13 schools here. So if a school makes a referral, whether
 14 to the TRA or the DBS or both, they send information
 15 along with that, and you're able to go back and ask for
 16 more information, aren't you?
 17 **A. That's right, yes, we are.**
 18 Q. But I think you, as the DBS, can also request other
 19 organisations, such as the police or the local
 20 authority, to provide information?
 21 **A. That's right. We have a process of information**
 22 **gathering, and we keep reaching out for information**
 23 **until we have got enough information to make a decision**
 24 **on the balance of probabilities. We bear in mind that,**
 25 **whilst we are making that decision, the person isn't**

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1 to bar two particular adults from working with children
 2 in schools. Now, these were decisions made prior to the
 3 existence of the DBS, and, indeed, prior to the
 4 Safeguarding Vulnerable Groups Act, but we have asked
 5 you, in respect of each case, to look at how the DBS
 6 would approach those sort of cases now on identical
 7 facts and how you would apply your current processes to
 8 cases like that so that can sort of demonstrate, really,
 9 how your barring procedures work.
 10 First of all, we asked you to look at a decision in
 11 relation to RS-F71.
 12 **A. Yes.**
 13 Q. This was a decision of the Teacher Misconduct Unit of
 14 the Department for Education, and the decision was taken
 15 in 2004. That was a decision not to place that
 16 individual on List 99. List 99 was really one of
 17 the forerunners of the Children's Barred List,
 18 effectively, that was operated by the Department for
 19 Education.
 20 So, in a very brief summary, F71 was a qualified
 21 teacher. He had been teaching at an independent school
 22 and he admitted to the headmaster in 2003 that he had,
 23 in 2002, had sexual intercourse with a then 17-year-old
 24 pupil at the school. The headteacher accepted his
 25 resignation. There was no disciplinary process at the

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1 school. The police and the local authority were not
 2 informed by the headmaster, but the headmaster made
 3 a referral to the Department for Education and the
 4 Teacher Misconduct Unit at the department received
 5 detailed information from the school about the
 6 circumstances, and they also interviewed RS-F71 as part
 7 of the teacher misconduct process.

8 In that interview, F71 fully admitted having sexual
 9 intercourse with the pupil at her home and said that he
 10 knew it was wrong, although he didn't appear to be aware
 11 that it was a criminal offence at that time.

12 The action of the Department of Education was not to
 13 place him on List 99, but the Secretary of State issued
 14 a grave warning to F71.

15 Now, you have been very clear in your witness
 16 statement that, on the same facts, it would be very
 17 highly likely that the teacher would be placed on the
 18 Children's Barred List. Can we just go through and look
 19 at how you would approach a case like that.

20 There's a five-stage process, I think. Can you talk
 21 us through that?

22 **A. Yes. So we would start off by looking at whether or not**
 23 **the referred individual met the test for regulated**
 24 **activity and, in the case of RS-F71, he did, because he**
 25 **was a teacher in a specified place, teaching children in**

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1 could have been a referral to the police but there
 2 hasn't been, can you take any steps in relation to
 3 contacting the police? I mean in terms of referring to
 4 them you have evidence that a criminal offence has been
 5 committed?

6 **A. Absolutely, yes, we are able to make a referral to the**
 7 **police under the SVGA, under section 50A, and we are**
 8 **also able to do that under DPA and GDPR legislation for**
 9 **the protection, investigation and prevention of a crime.**
 10 **So, yes, we do do that.**

11 Q. You were explaining that you would have established that
 12 relevant conduct had taken place. I think there's some
 13 Secretary of State guidance on this. Can we get up,
 14 please, Danny, DBS000277_008, please. If we can see
 15 that relevant criminal offences are set out then in
 16 a list of criminal offences, and the Secretary of State
 17 considers that behaviour which is illegal under those
 18 provisions of the criminal law should be regarded as
 19 inappropriate behaviour for the purposes of
 20 the Safeguarding Vulnerable Groups Act. So where
 21 someone has effectively admitted a criminal offence,
 22 even if there hasn't been a caution or conviction, if
 23 what they have admitted to amounts to criminal
 24 behaviour, then that's considered to be inappropriate
 25 and therefore relevant conduct?

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1 **a specified place. So that's stage 1 of the process.**

2 **The next would be about establishing whether or not**
 3 **there had been either relevant conduct or whether or not**
 4 **the harm test had been met, and, again, in this case, by**
 5 **his own admission, the fact he had had sex with**
 6 **a 17-year-old pupil, that is relevant conduct, so that**
 7 **would have met stage 2 of our process.**

8 **We would have then moved on to stage 3, which would**
 9 **be about doing an assessment and doing more information**
 10 **gathering on the case, and using a tool like the**
 11 **structured judgment process, for example, which helps us**
 12 **assess risk, to establish whether or not we think that**
 13 **it would be appropriate to bar the individual, and, in**
 14 **this case, probably now we would have gone out for more**
 15 **information than was probably available at the time, so**
 16 **we probably would have gone back to the police and we**
 17 **would have gone to the local authority designated**
 18 **officer to get more information.**

19 Q. In this case, though, if I can stop you there, Dr Smith,
 20 there was no police or local authority involvement in
 21 the case. There had been no referral through the
 22 criminal justice process. So the information appeared
 23 to be limited to the school's internal investigation.

24 **A. Yes.**

25 Q. Where you are then made aware of a case where there

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1 **A. Yes.**

2 Q. Thank you. We can take that down, Danny.

3 So at that point, having established that the
 4 behaviour was inappropriate, that's when the referred
 5 individual can make representations; is that right?

6 **A. Yes. We would inform the referred individual that we**
 7 **are minded to place him on the barred list, on the**
 8 **Children's and/or Adults Barred List, and invite him to**
 9 **make representations, and he would have eight weeks to**
 10 **make those representations, and then we would, at**
 11 **stage 5 -- that's stage 4 of the process.**

12 **Stage 5 of the process is, on receipt of**
 13 **the representations, or if we didn't receive any, we**
 14 **would still look back over the whole case, ensure that**
 15 **we have got the right decision and, in this case, would**
 16 **have barred him.**

17 Q. Perhaps we can very briefly look at the representations
 18 that were made, because, effectively, there was
 19 a face-to-face interview between a member of the Teacher
 20 Misconduct Unit and F71, RS-F71, and he put forward,
 21 perhaps, what might be best described as mitigating
 22 circumstances in terms of the circumstances in which he
 23 came to have sexual intercourse with the pupil. These
 24 were set out, then, by the Teacher Misconduct Unit in
 25 advising the Secretary of State not to bar.

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1 There were four main strands. I think the first was
 2 that F71 had moved from the state education sector into
 3 the independent sector and that that meant he was unsure
 4 of boundaries. How would that representation be
 5 approached by the DBS?
 6 **A. Well, we would regard it as not making any difference.
 7 He is still in a position of trust with a child in
 8 a teaching establishment. It doesn't matter if it is
 9 state funded or privately funded. It doesn't make any
 10 difference. So we wouldn't change our minds on that
 11 one.**
 12 Q. He also set out that he had relationship difficulties
 13 with his girlfriend, with whom he lived. Would that be
 14 likely to change your minded to bar decision?
 15 **A. No, it wouldn't.**
 16 Q. He also put forward a number of testimonies from
 17 colleagues saying he was a very competent teacher.
 18 I think you deal with that in your witness statement by
 19 saying the value in having a competent teacher in
 20 a school cannot outweigh the need to safeguard children
 21 from sexual harm?
 22 **A. Yes.**
 23 Q. So that wouldn't really play a role in your analysis?
 24 **A. Not at all, no.**
 25 Q. Finally, RS-F71 put forward that the pupil concerned did

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1 not appear to be negatively affected by the sexual act
 2 itself, although she was adversely affected by the press
 3 reports of the case. How would that assertion likely be
 4 approached by the DBS?
 5 **A. Again, that wouldn't change the decision to go minded to
 6 bar. In fact, if anything, it would increase concern
 7 about the level of knowledge and insight into
 8 safeguarding and protection of children, et cetera, that
 9 RS-F71 has. So it wouldn't change our -- we would still
 10 go minded to bar on those representations.**
 11 Q. Finally, a certain amount of emphasis seemed to be
 12 placed by the Department for Education on RS-F71's
 13 claims to be remorseful, and he said that he had learnt
 14 his lesson. What would be the DBS approach to
 15 expressions of remorse in that sort of situation?
 16 I should say, he didn't, in fact, admit his conduct for
 17 about a year after it had taken place.
 18 **A. If somebody is expressing remorse in their
 19 representations and they have insight into the behaviour
 20 in general cases, that is something that we consider
 21 carefully. But in this incident, it doesn't take away
 22 from the fact that there is that lack of insight of
 23 the harm that it's caused a child and that it is simply
 24 something that you shouldn't do. So it wouldn't bear
 25 a huge amount of weight in our considerations.**

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1 Q. We can perhaps now move on to consider the case of
 2 RS-F3, and this is dealt with in your witness statement
 3 from paragraph 7.1 onwards, on page 10. If I can
 4 briefly summarise, F3 was referred to the Department of
 5 Health for inclusion on the protection of Children's
 6 Barred List by the Royal School for the Deaf Manchester
 7 in 2001, and he was a senior member of staff who had
 8 been dismissed from the school after a disciplinary
 9 hearing which found proved an allegation of sexually
 10 inappropriate behaviour with children, in that he
 11 regularly showered naked with children and young people
 12 at the school and assisted them in their personal care,
 13 and continued in this practice in relation to one young
 14 person even when requested not to do so by the parent,
 15 and he had also failed to report bruising to another
 16 child in his care.
 17 There was, in that case, additional information from
 18 the police that, in 2002, they had investigated an
 19 allegation that RS-F3 had masturbated a child at the
 20 school in 1973, but that allegation did not proceed to
 21 charge or prosecution of F3. It seems that the
 22 Department of Health provisionally placed F3 on the
 23 Protection of Children Act List and took the view that
 24 he should remain on that list permanently, but
 25 effectively -- so they took the view that he did pose

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1 a risk to children, but they passed the case over to the
 2 Department for Education for their view as to whether he
 3 should be included on List 99. The Department for
 4 Education took a different view, did not include him on
 5 List 99, and therefore he did not remain on the
 6 Children's Barred List
 7 This provisional listing isn't something that
 8 happens at the moment with the DBS, is it?
 9 **A. No, that was something that was repealed when the SVGA
 10 was brought into play, so, no, we don't have any
 11 provisional listings under the SVGA.**
 12 Q. In relation to this case of RS-F3, again, the five-stage
 13 process would apply.
 14 **A. Mmm-hmm.**
 15 Q. I think you said, in this case, you would need more
 16 information and particularly more information about the
 17 police investigation?
 18 **A. Yes.**
 19 Q. Are you able to obtain, effectively, any evidence that
 20 the police have gathered?
 21 **A. Yes. We ask the police to give us as much as they have
 22 available to them. Sometimes it takes a while to get
 23 it, but we can keep asking for everything that they have
 24 got. So we would be able to get witness statements,
 25 a transcription of the interview, et cetera; those sorts**

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1 **of things we're able to get from the police.**
2 Q. And then you're able to make your own assessment of that
3 evidence, applying the --
4 **A. Balance of probabilities.**
5 Q. -- balance of probabilities, rather than beyond
6 reasonable doubt. So you have got a different
7 assessment to make of the evidence, in that sense, from
8 the assessment that the police would have to make?
9 **A. That's exactly right, yes.**
10 Q. So, in this case, the regulated activity test would be
11 met, because this was someone who was caring for
12 children in a school setting.
13 In terms of relevant conduct, you explain in your
14 witness statement that, while the conduct could be said
15 to have endangered, or likely to endanger, a child,
16 there was no evidence to counter F3's assertion that he
17 had no sexual motivation in showering with boys and
18 showing them on his own body how to wash under their
19 foreskins. That's the sort of personal care that he was
20 demonstrating.
21 **A. Yes.**
22 Q. Would the DBS need to be satisfied, on the balance of
23 probabilities, that conduct is sexually motivated before
24 concluding that someone poses a risk of harm, or could
25 that conduct, even if it is not sexually motivated,

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1 **A. Absolutely.**
2 Q. And failure to follow parents' wishes?
3 **A. Yes.**
4 Q. I think in that case, in F3's case, in terms of
5 the representations that were made, there were some
6 written representations effectively made by F3 that
7 were -- there was a factual dispute between what F3 said
8 in his representations and the information provided by
9 the school.
10 Where you have that sort of factual dispute, how do
11 the DBS approach that?
12 **A. Where it's clear that there is that factual dispute, as**
13 **you describe, we would go back to the employer, the**
14 **school, and point out that there had been something in**
15 **the representations that the referred individual has**
16 **offered which counters what they have said, and offer**
17 **them some -- an opportunity to provide more information**
18 **to support their version of events, as it were.**
19 **We don't share the whole set of representations with**
20 **the employer, but we paraphrase what the issue is, what**
21 **the dispute is, and encourage further sharing of**
22 **information.**
23 Q. So if an individual made representations which were, as
24 I might say, fresh assertions, so it's not dealing with
25 any of the information that you have received from the

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1 nevertheless pose a risk of harm to children?
2 **A. Yes, it could -- the conduct could pose a risk of harm**
3 **to children. I think, in this case, it was that -- the**
4 **dismissal was about sexually inappropriate behaviour and**
5 **we were looking for that sexual motivation in the act of**
6 **showering with other pupils. As we said, the fact that**
7 **there wasn't anything to counter his assertion that that**
8 **wasn't the case and it was standard practice and lots of**
9 **other teachers also did the same thing, we needed to**
10 **have more to back it up if we were going to go down**
11 **a sexually-motivated route.**
12 Q. So, effectively, when you have information from other
13 organisations who may have made a finding of fact
14 themselves, you're not bound by that finding. You
15 effectively assess and evaluate the evidence yourselves?
16 **A. That's exactly right. We almost start with a fresh**
17 **sheet of paper and get everything together. We bear in**
18 **mind what -- especially competent bodies. You know, we**
19 **do take what they say as a finding of fact. But we**
20 **still arrive at our own decision as to whether or not,**
21 **on the balance of probabilities, it's appropriate to**
22 **place the referred individual on the barred list.**
23 Q. You pointed out that you would also be concerned about
24 the other allegations, for example, failing to report
25 bruising to another child?

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1 school but new assertions of fact are made, are you able
2 to go back to the school in that case and say, "What do
3 you say about this?"
4 **A. Yes. Yes, we are, yes, and offer them the opportunity**
5 **to share more information regarding that, yes.**
6 Q. We know that, in that case, the Royal School for the
7 Deaf Manchester were made aware of the department's
8 decision not to bar F3 from working with children, not
9 to place him on the barred list.
10 **A. Yes.**
11 Q. And they made it very clear that they were not happy
12 with that and they considered that he did pose -- they
13 said he was very unsuitable to work with children, was
14 their belief. But the DBS doesn't normally inform the
15 referring organisation of the decision that you've made,
16 and I'm wondering whether you think -- well, what's the
17 reason for that and why is it that referring
18 organisations aren't made aware of the decision?
19 **A. So the referring organisations usually dismiss somebody**
20 **before the DBS investigations have completed, so they**
21 **actually don't need to know that the referred individual**
22 **has been barred. It's under sort of data protection**
23 **principles, they don't have that necessary -- they don't**
24 **need to know. So that is why we don't share the**
25 **information with them.**

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1 **However, they can claim legitimate interest, or they**
2 **can put forward -- or certain individuals can put**
3 **forward a legitimate interest to say -- to find out that**
4 **information. So, for example, if they hadn't dismissed**
5 **the individual but moved him to another part of**
6 **the organisation which means that they are not in**
7 **regulated activity, then they could perhaps claim**
8 **a legitimate interest in finding out whether or not --**
9 **because the person is still working with them, whether**
10 **or not they're barred.**
11 **A LADO, for example -- LADOs very often will, on the**
12 **basis of legitimate interest, ask for that information**
13 **as they're covering the whole area.**
14 **So that's really the reason why we can't and how**
15 **that information can be shared.**
16 Q. Do you think it would be helpful if a referring
17 organisation had a right of reply to a decision of
18 the DBS?
19 **A. We apply the legislation as it's written. It would**
20 **lengthen the process, I think, if you had a situation**
21 **where you were going back to -- for a right of reply to**
22 **employers, and the longer it takes for us to arrive at**
23 **a decision, actually, if that person should be placed on**
24 **a barred list, then the greater the risk that is placing**
25 **on children and vulnerable adults because the decision**

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1 **regulated activity, we have asked the police -- it**
2 **doesn't happen often, but we can ask the police to**
3 **inform the employer.**
4 Q. I think it is actually an offence to apply to work
5 with -- in regulated activity if you are barred?
6 **A. It is a criminal offence, yes.**
7 Q. There have been prosecutions for that?
8 **A. There have, yes. It is also an offence to knowingly**
9 **employ somebody who is barred.**
10 Q. Can I just ask a little about regulated activity and how
11 that works in practice. Regulated activity is activity
12 that a barred person can't do, but in terms of
13 the school sector, if someone is working in a school and
14 comes into contact with children, if they're doing that
15 for four or more days in a 30-day period, then they are
16 doing regulated activity. So that can include catering
17 staff as well as teaching staff in a school.
18 But since the Protection of Freedoms Act 2012, that
19 doesn't include supervised volunteers, and obviously we
20 know that schools may use supervised volunteers quite
21 a lot -- parents or any other people who come into
22 school, to read with primary schoolchildren, for
23 example, would come under the definition of supervised
24 volunteers.
25 **A. Yes.**

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1 **isn't being made.**
2 **Conversely, you might be denying somebody their**
3 **right to work. So I think it would unnecessarily**
4 **lengthen a process.**
5 Q. I'd like to ask you, Dr Smith, about monitoring of
6 barred individuals. I think the Safeguarding Vulnerable
7 Groups Act 2006 had monitoring provisions which never
8 actually came into force and then were repealed by the
9 Protection of Freedoms Act 2012.
10 **A. Yes.**
11 Q. How would the DBS -- first of all, do you think the DBS
12 needs to be able to monitor barred individuals?
13 **A. I mean, there was a reason why it was repealed and, as**
14 **I said, we can only enforce the legislation as it's**
15 **currently written. We do get to -- there is a sort**
16 **of -- not a monitoring, but we find out if somebody who**
17 **has been barred, if they are attempting to enter**
18 **regulated activity, through the disclosure information**
19 **route that I described in my statement. So if they**
20 **apply for an enhanced disclosure with barred list check,**
21 **then we find out about it. And then we can consider**
22 **a barring decision at that point. So in that sense, we**
23 **are able to.**
24 **There have been occasions as well where, if we find**
25 **out that somebody who has been barred is working in**

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1 Q. According to the guidance, they have to be supervised at
2 all times?
3 **A. Yes.**
4 Q. But that places the onus on schools to make sure that
5 they are providing that constant supervision?
6 **A. Yes.**
7 Q. If someone is barred from regulated activity but they
8 are coming into regular contact with children, for
9 example, as a supervised volunteer in a school, then the
10 school doesn't have to do an advanced barred list check.
11 **A. No.**
12 Q. I just wanted to put to you an observation that's been
13 made by Meilyr Rowlands -- he's the chief inspector of
14 education and training in Wales. He makes a point about
15 concerns about the exemption of volunteers from the
16 enhanced record checks. I'm going to read from his
17 witness statement. We don't need to get this up. He
18 says this:
19 "Whilst supervision may protect the child from
20 molestation on school premises during the school day,
21 the volunteer could gain the child's trust and arrange
22 to meet outside school."
23 Sorry, this is what he says:
24 "The exemption for volunteers from DBS checks places
25 children at risk. This practice focuses on protecting

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1 the child from molestation whilst on the school premises
 2 during the school day. It does not consider the fact
 3 that the child has been introduced to a trusted adult by
 4 the school. The child will not know whether this person
 5 is a volunteer or some other form of part-time or
 6 temporary appointment. Over time, there is nothing to
 7 stop the trusted adult from getting to know personal
 8 information about the child, arranging to meet the child
 9 away from the school in order to exploit that existing
 10 relationship."
 11 Now, from a safeguarding perspective -- and I'm
 12 asking you now, perhaps, not so much as a representative
 13 of the DBS but as someone with a doctorate in
 14 safeguarding -- is that not a valid point to make and
 15 something of a loophole in the current scheme?
 16 **A. I can understand why the comment is made, but I suppose**
 17 **there's a few things I'd want to say about that.**
 18 **The DBS check is not in and of itself the thing that**
 19 **will prevent abuse of children, and organisations should**
 20 **have, you know, really robust safeguarding measures in**
 21 **place, where they have a strong safeguarding culture**
 22 **which encourages people to raise low-level concerns,**
 23 **which encourages children to say what is going on as**
 24 **well, so that they can share that and their voices are**
 25 **heard.**

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1 people who are quite determined to get into contact with
 2 children? So if there is a loophole there by which they
 3 can get into contact with children without anyone
 4 checking the fact that they have a relevant record,
 5 isn't that problematic? Those are the very people you
 6 want to know are not coming into contact with children,
 7 aren't they?
 8 **A. Yes, I would imagine that most schools would undertake**
 9 **available checks for volunteers where that's available**
 10 **to them and have them updated regularly as well. So,**
 11 **yeah, it's a possibility, but the evidence that people**
 12 **who want to get into positions such as supervised**
 13 **volunteers in order just to have access to children**
 14 **isn't that overwhelming, as far as I can judge from the**
 15 **literature. So I think it comes back to, you know,**
 16 **safeguarding is everybody's business and everybody needs**
 17 **to be aware to any concerns that are raised by anybody's**
 18 **conduct with children.**
 19 Q. I just wanted to ask, while we are still on the subject
 20 of regulated activity and that particular exemption from
 21 regulated activity, that when the Protection of Freedoms
 22 Act came into force, the government explained that they
 23 wanted to narrow the definition of "regulated activity"
 24 to make the burdens less onerous, really, on people both
 25 applying for positions and organisations who were

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1 **The other thing is that the DBS check -- the**
 2 **supervised volunteer, it's wrong to say that they aren't**
 3 **eligible for any DBS checks. They are. They are not**
 4 **eligible for an enhanced disclosure check with barred**
 5 **list check, but they are eligible for an enhanced check,**
 6 **which is exactly the same information but without the**
 7 **barred list bit on it. And there will probably be**
 8 **something in that, if somebody has been barred, that is**
 9 **available on the soft intelligence part of**
 10 **the certificate that would raise concerns about an**
 11 **individual.**
 12 **But I think it is also important to say that, you**
 13 **know, individuals with absolutely no criminal records**
 14 **and who haven't been barred will be able to befriend and**
 15 **abuse positions of trust and groom children. So it's**
 16 **not the only thing to look at.**
 17 Q. You've explained that supervised volunteers are eligible
 18 for an enhanced DBS check, but it is not compulsory on
 19 schools to obtain an enhanced DBS check for a volunteer,
 20 is it? They don't need to do any checks if they don't
 21 want to?
 22 **A. No. No, they don't.**
 23 Q. Isn't the concern that, if someone does have a relevant
 24 conviction for an offence against a child, for example,
 25 a sexual offence against a child, those may be the very

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1 recruiting people.
 2 **A. Yes.**
 3 Q. The Home Office at the time, in 2012, estimated that
 4 this restriction on the definition of "regulated
 5 activity" would mean that, instead of an estimated
 6 9 million people being required to have enhanced checks,
 7 only about 5 million people would require those checks,
 8 and so that's 4 million people who would previously,
 9 under the previous regime, have needed checks and now no
 10 longer did. So we are talking about quite large
 11 numbers. When we are talking about the statistics and
 12 the evidence of what sort of numbers of people we are
 13 talking about that potentially fall through the net, do
 14 you think that's got the balance right, the current
 15 definition?
 16 **A. Again, we have to apply the legislation as it is**
 17 **written, but I think I said in phase 1 that I do think**
 18 **the definition is -- it's the complexity of it and the**
 19 **difficulty of understanding it that I think presents**
 20 **a problem to employers, and I would repeat that there**
 21 **are still other DBS products that people can apply for**
 22 **which will still give them a significant amount of**
 23 **information that they can rely on in making those**
 24 **recruitment and employment decisions.**
 25 **But I think the complexity of it is something that**

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1 **is problematic.**
 2 Q. It's not immediately apparent always whether
 3 a particular role falls within or without the definition
 4 of "regulated activity" for employers?
 5 **A. No. We do have an eligibility checking tool that is**
 6 **available on the website, on the gov.uk website, that**
 7 **helps guide, and we have -- employers to decide whether**
 8 **or not a role falls within a regulated activity. That**
 9 **helps. We have a substantial amount of guidance as well**
 10 **that helps.**
 11 **There are still a lot of questions that people ask**
 12 **because there's always a "Yes, but ..." to the examples**
 13 **that are given.**
 14 Q. Just finally, Dr Smith, I wanted to ask about your
 15 quality assurance procedures within the DBS in terms
 16 of -- I understand you review 10 per cent of cases in
 17 terms of reviewing both the outcome, the decision, and
 18 the process by which that decision was reached.
 19 **A. Yes, that's right.**
 20 Q. How does that work? Can you reverse a decision if you
 21 find a problem with it?
 22 **A. Yes, we can. So we take a 10 per cent sample at the**
 23 **point where a case worker is about to close the case,**
 24 **and if -- and they can't do anything else with it until**
 25 **we have completed our check. If we think that they have**

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1 **regulated activity. Perhaps pointing towards regulated**
 2 **activity for adults is such simpler. It's the regulated**
 3 **activity for children which is more complicated. If the**
 4 **regulated activity for children was more like the**
 5 **regulated activity for adults, I think that that would**
 6 **make it much easier for people to understand.**
 7 PROF SIR MALCOLM EVANS: Are there any other elements of
 8 the systems, the different tiers, the different levels,
 9 et cetera, that, in your experience, you find cause
 10 complication, misunderstanding, lack of clarity, and,
 11 therefore, the lack of potential protection?
 12 **A. I think the understanding about validity of a DBS check**
 13 **is something which often gets raised, that people have**
 14 **a notion that it is valid for a period of time, when,**
 15 **actually, it's out of date pretty much the day after**
 16 **it's arrived. It only gives a snapshot at a point of**
 17 **time.**
 18 **I think, if that was better understood, that would**
 19 **help people understand that the DBS check is just one in**
 20 **a basket of measures that need to be developed, every**
 21 **employer needs to develop, in order to have some**
 22 **assurance that they are doing everything they can to**
 23 **protect children.**
 24 PROF SIR MALCOLM EVANS: Finally, as a result of that, do
 25 you feel that there's a danger that people are placing

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1 **made a "no action" decision, for example, and we think**
 2 **it should have been a bar, or vice versa, or that it's**
 3 **just very, very -- not well written, then we instruct**
 4 **the team manager and the case worker to rework the case**
 5 **so that it comes up to an acceptable standard.**
 6 MS NIELD: Thank you. I have no more questions for you,
 7 Dr Smith. Chair, do you have any questions for this
 8 witness?
 9 THE CHAIR: I have no questions. I will ask my colleagues
 10 if they have any. Ms Sharpling?
 11 MS SHARPLING: No, thank you, chair.
 12 THE CHAIR: Mr Frank?
 13 MR FRANK: No, thank you.
 14 THE CHAIR: Sir Malcolm?
 15 PROF SIR MALCOLM EVANS: Yes, chair, if I may, I have one
 16 question.
 17 Questions from THE PANEL
 18 PROF SIR MALCOLM EVANS: Dr Smith, you mentioned a few
 19 moments ago about the problem being the complexity of
 20 the system, and you give the example of what is/what
 21 isn't a regulated activity, et cetera, et cetera. Based
 22 on your experience, what would you think might help
 23 simplify the system?
 24 **A. Oh, gosh. I think just something that is more**
 25 **indicative of you're either in it or you're out of**

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1 too much emphasis on the results of a DBS check --
 2 clearly important though it is, but there is a danger of
 3 over-reliance?
 4 **A. I do. I do worry that there's an over-reliance on it,**
 5 **yes.**
 6 PROF SIR MALCOLM EVANS: Yes.
 7 MS NIELD: Chair, I wonder if I could just clarify a point
 8 briefly perhaps arising out of that?
 9 Further examination by MS NIELD
 10 MS NIELD: You explained about the DBS certificate
 11 effectively being out of date the day after it's been
 12 issued. I think there is also an update service that
 13 organisations can sign up for. Could you just briefly
 14 explain that, please?
 15 **A. Yes, there is an update service. In an update service,**
 16 **the status -- the update service status is updated from**
 17 **a criminal convictions point of view every week, and**
 18 **from a soft intelligence point of view every nine**
 19 **months. So if an employer wants to check -- they can**
 20 **check as frequently as they like -- the status of their**
 21 **employees, that does give a far more real-time example**
 22 **of -- not example, indication of recent -- any recent**
 23 **offences or allegations.**
 24 MS NIELD: Thank you, Dr Smith.
 25

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1 Further questions from THE PANEL
 2 THE CHAIR: Following on from Sir Malcolm's question, and
 3 indeed what Ms Nield has asked you, do you think that
 4 the requirement for individual professionals, for
 5 example, should be -- it should be their responsibility
 6 to update their own DBS checks when they're applying for
 7 other posts, or indeed employers requiring that this
 8 must happen in the course of their employment?
 9 **A. I think as much information as you can gather as an**
 10 **employer to be able to, you know, be assured that the**
 11 **person you're employing does not have any convictions or**
 12 **cautions or soft intelligence that would suggest that**
 13 **they're inappropriate -- that they're not appropriate to**
 14 **work with children or vulnerable adults is only a good**
 15 **thing.**
 16 **Having said that -- and that's why I think the**
 17 **update service is something that perhaps more people**
 18 **could avail themselves of the opportunity to use. But,**
 19 **having said that, again, it is still one thing in**
 20 **a suite of measures that should be taken in regard to**
 21 **safeguarding.**
 22 THE CHAIR: Thank you very much, Dr Smith.
 23 (The witness withdrew)
 24 MS NIELD: Chair, I note the time. We have two witnesses
 25 next, but I don't know whether you would wish to take,

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1 three volumes of bundles of material -- in front of you.
 2 Where necessary, I shall bring some of those documents
 3 up on screen by the assistance of Mr Hyde, who I will
 4 call "Danny". So if you hear me asking Danny to do
 5 something, that's who it is.
 6 If you can't see those documents, again, please let
 7 me know by raising your hand.
 8 Fourthly, as you are giving evidence together,
 9 I shall try and indicate which one of you I would like
 10 to answer first, but that doesn't stop the other one of
 11 you contributing. You have helpfully identified from
 12 the evidence proposal we have sent you which person you
 13 think is most appropriate to give that evidence.
 14 I shall try and remember that, but please forgive me if
 15 I get the wrong person in the wrong question.
 16 Again, if you'd like to contribute, please put your
 17 hand up, to a question after your colleague has
 18 answered.
 19 First, Lady Berridge, if I can turn to you, behind
 20 tab A1 of your bundle I am hoping is your witness
 21 statement dated 27 July 2020. Can I ask you to confirm
 22 that you signed that witness statement?
 23 BARONESS BERRIDGE: Yes, I did.
 24 MS SCOLDING: Is it true, to the best of your knowledge and
 25 belief?

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1 perhaps, a slightly earlier break?
 2 THE CHAIR: Yes, we will do that, Ms Nield, and return at
 3 11.40 am. Thank you.
 4 MS NIELD: Thank you.
 5 (11.26 am)
 6 (A short break)
 7 (11.40 am)
 8 THE CHAIR: Ms Scolding?
 9 MS SCOLDING: Good morning, chair. Good morning, panel.
 10 Our next witnesses are Mr Nicholas Gibb and Baroness
 11 Elizabeth Berridge, whom I shall call Lady Berridge, two
 12 ministers from the Department for Education.
 13 BARONESS ELIZABETH BERRIDGE (sworn)
 14 MR NICHOLAS GIBB (sworn)
 15 Examination by MS SCOLDING
 16 MS SCOLDING: Good morning, both. Before I ask you to look
 17 at your witness statements, just a few introductory
 18 matters. Firstly, this is not a test of memory. We
 19 shall be ranging over a number of topics during the
 20 course of the day, and please feel free to look at your
 21 notes or your witness evidence at any time.
 22 Secondly, we shall have a break every hour, so we
 23 will be breaking for lunch at approximately 12.40 pm,
 24 but if you need a break sooner, please let me know.
 25 Thirdly, you should both have a bundle -- in fact,

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1 BARONESS BERRIDGE: Yes, it is.
 2 MS SCOLDING: Mr Gibb, you are behind tab 2. Again, this is
 3 a witness statement from you dated 27 July 2020. Again,
 4 did you sign this witness statement?
 5 MR GIBB: Yes, 23 July 2020.
 6 MS SCOLDING: Mine says the 27th. Is it true, to the best
 7 of your knowledge and belief?
 8 MR GIBB: Yes, it is, yes.
 9 MS SCOLDING: I think I assume for these purposes that the
 10 23rd and the 27th are not materially different. Thank
 11 you very much.
 12 Mr Gibb, turning to you first, you are the Minister
 13 for Education (School Standards). Can you tell us what
 14 that means and what you're responsible for within the
 15 Department for Education?
 16 MR GIBB: Yes. It means I'm not responsible for the
 17 structural side of things and, indeed, a number of other
 18 areas that Baroness Berridge is responsible for. I'm
 19 responsible for the recruitment of teachers -- retention
 20 of teachers, including their qualifications, supporting
 21 a high-quality teaching profession, reducing workload,
 22 the Teaching Regulation Agency, admissions and school
 23 transport, school revenue and school funding, curriculum
 24 and qualifications, the Standards and Testing Agency,
 25 primary assessments, school accountability, support for

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1 raising standards, school sport, the pupil premium,
 2 relationship and sexual health education and behaviour
 3 and attendance and early education curriculum.
 4 MS SCOLDING: If that's of any assistance, we will publish
 5 both your witness statements in full, but you set that
 6 out at _002 of your witness statement.
 7 Can I ask, Mr Gibb, before I pass on to
 8 Lady Berridge, I understand you are the longest-serving
 9 minister in this government in one particular
 10 department; is that right?
 11 MR GIBB: So it is alleged.
 12 MS SCOLDING: Because, as I understand it, you served from
 13 2010 to 2012 as Minister for Schools and then
 14 from July 2014, again, as Minister of State for School
 15 Standards. So you've been in role on and off for around
 16 a decade. Is that right?
 17 MR GIBB: Yes, about eight and a half years if you combine
 18 the two periods, yes.
 19 MS SCOLDING: Prior to entering the world of politics, were
 20 you involved in the world of education or child
 21 protection at all?
 22 MR GIBB: No, I was a chartered accountant at KPMG.
 23 MS SCOLDING: Thank you very much. Lady Berridge, turning
 24 to you, your official title is the Parliamentary
 25 Under-Secretary of State for the School System and

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1 on issues to do with social care, which may also have
 2 a safeguarding -- which may well have an impact on some
 3 of the things that we are talking about today. Is that
 4 right, Lady Berridge?
 5 BARONESS BERRIDGE: Yes, that is right. Minister Ford also
 6 leads on special educational needs students as well.
 7 MS SCOLDING: The first question I wanted to ask you, and
 8 this is to both of you, but as Lady Berridge -- I have
 9 just finished asking her questions, maybe if I turn to
 10 you first. What impact has COVID and the pandemic had
 11 on the ability of schools to protect children and on
 12 your ability, as a department, to keep children safe?
 13 BARONESS BERRIDGE: Well, I don't think anybody
 14 underestimated the effect of the momentous decision that
 15 we had to take the first time of closing schools. We
 16 were acutely aware that schools are a protective factor
 17 for many students, particularly vulnerable students, and
 18 so we did put out interim guidance, statutory guidance,
 19 for schools, a temporary Keeping Children Safe in
 20 Education, which really emphasised, particularly in
 21 regard to what the inquiry is concerned about, enabling
 22 schools to keep safeguarding front and centre and deal
 23 with some of the practical implications that the
 24 pandemic brought for them, such as what to do if your
 25 designated safeguarding lead was self-isolating, was not

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1 you're also the Minister for Women, having held this
 2 role since February 2020; is that correct?
 3 BARONESS BERRIDGE: That's correct, yes.
 4 MS SCOLDING: You have been a member of the House of Lords
 5 since 2011, as I understand it. Prior to your entry
 6 into the House of Lords, did you have any prior
 7 experience in respect of education or child protection?
 8 BARONESS BERRIDGE: No.
 9 MS SCOLDING: I understand you have -- again, you have
 10 identified in your witness statement a large number of
 11 things for which you are responsible. As I understand
 12 it, those which are relevant for the purposes of today
 13 are free schools and studio schools, academies and
 14 multi-academy trusts, including the governance of them,
 15 faith schools -- is that right?
 16 BARONESS BERRIDGE: Yes, that's right.
 17 MS SCOLDING: Independent schools, home education and
 18 supplementary schools, intervention in underperforming
 19 schools, school capital investment, counter-extremism,
 20 safeguarding in schools and efficiency, including that
 21 of the department.
 22 BARONESS BERRIDGE: Yes, I am. Yes.
 23 MS SCOLDING: So both of you have a very broad role and, as
 24 I understand, there is also another minister, Ms Ford,
 25 who is the Minister for Children, who I understand leads

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1 on the premises, how to keep in touch with children, and
 2 also particularly vulnerable children and making sure
 3 that you kept in touch with them, and particularly we
 4 highlighted, of course, online that we were aware very
 5 early on, of course, that most -- much of education was
 6 going to move online and, as the minister who is also
 7 responsible for countering extremism, I was particularly
 8 aware of this flood, literally, of online education that
 9 was going to be happening and the risks and how to help
 10 schools deal with safeguarding when most of their
 11 students are online. I know that we also obviously
 12 didn't close schools entirely, vulnerable children,
 13 those children who were in contact with a social worker,
 14 there was to be an assessment of them and only if it was
 15 in their best interests not to be in school were they
 16 not to be in school. So a school place was held open
 17 for all vulnerable children.
 18 MS SCOLDING: Lady Berridge, just following up before I come
 19 to you, Mr Gibb, if you have anything to add, we heard
 20 from Ms Spielman and Ms Humphreys, who I suspect you
 21 have met, both from Ofsted, and they raised two
 22 particular concerns they had which have come out of
 23 the surveys and the work they have been doing on behalf
 24 of schools and also looking at social care and SEN
 25 issues, the first of which is that vulnerable children,

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1 or children who we would consider to be vulnerable, so
 2 those with special educational needs, those who have
 3 a social worker, are still not going back into school
 4 and there are higher levels of those children not being
 5 in school than other children, and there's also higher
 6 levels of non-attendance generally. I think it's
 7 something like 20 per cent, schools estimate, overall,
 8 of their children are not yet back in the setting.
 9 What, if anything, are you thinking about doing about
 10 that?
 11 BARONESS BERRIDGE: We obviously gave schools guidance in
 12 terms of how to reopen and what to do with schools that
 13 are self-isolating, and it's been very clear -- in fact,
 14 Secretary of State gave a direction in relation to
 15 remote education. So schools are in a much better place
 16 and have been funded and resourced considerably to have
 17 the likes of Google Classroom, et cetera. But for the
 18 vulnerable children or those who are absent at the
 19 moment, we have been concerned about, and
 20 Amanda Spielman has raised with us, the number that
 21 might be choosing to home educate at the moment. So we
 22 have put out particular advice on that and particularly
 23 for those children who -- I think the danger in the
 24 pandemic, and now, is not for children already known to
 25 Social Services and are under children's social care, it

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1 is those children on the cusp. So the advice included
 2 that schools should really consider whether they have
 3 met the referral threshold and for there to be a meeting
 4 between the local authority, parents and the school if
 5 a child -- particularly where there are any issues to do
 6 with vulnerability, where the parents are seeking to
 7 home -- choose home education, to make sure that that is
 8 suitable education, but that also any safeguarding risks
 9 have been thought through.
 10 I have been very clear in all of the advice I've
 11 seen that -- we need to make it very clear that home
 12 education, elective home education, is very different to
 13 the delivery at the moment of school curriculum under
 14 the authority of the school via Google Classroom. It's
 15 very different. So we want to make sure that parents
 16 are aware that they make the decision in the best
 17 interests of their children, but that any safeguarding
 18 issues hopefully are highlighted before the child is
 19 removed from the school roll.
 20 MS SCOLDING: Can I just follow up on that, because one of
 21 the issues that you were consulting on just before the
 22 pandemic was about creating a register for home tuition.
 23 It is only of tangential interest in this investigation,
 24 but can I say that might be a way forward if that
 25 legislation were implemented with alacrity, given that

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1 it looks like you've got quite a strong element of
 2 people choosing to home educate in circumstances where
 3 Social Services or the school may well not think it's
 4 the most appropriate thing for the child concerned.
 5 So has any thought been given to bringing forward
 6 that legislation in the timetable?
 7 BARONESS BERRIDGE: There will be a response to the
 8 consultation. Unfortunately, that was delayed due to
 9 COVID. But even though this was, as you've highlighted,
 10 an issue before the pandemic, we are aware that home
 11 education has moved from -- there are many parents out
 12 there who do a great job in home education but, even
 13 before the pandemic, the vulnerabilities of children to
 14 exploitation, to county lines, to actually there being
 15 a choice that it's easier, when a child is troublesome
 16 at 14/15, to remove them from the school and then the
 17 school stops sending you those letters, but also we were
 18 aware, and Amanda has been very keen on offrolling, that
 19 certain schools -- a minority, I might add, might want
 20 to remove those children from their roll. So we were
 21 aware of this and, yes, we will be responding soon to
 22 the consultation in relation to the register. But
 23 certain local authorities already have registers,
 24 actually, so we have been looking at where is the best
 25 practice, but it's not a statutory requirement.

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1 MS SCOLDING: I was going to say, there's no compulsion.
 2 You can operate a voluntary register, but there's no
 3 compulsion at present for any parent to be required to
 4 register their child.
 5 BARONESS BERRIDGE: No, there isn't. But when the local
 6 authority -- we have reminded local authorities of what
 7 legal duties they currently have, which is that, if
 8 a child is in school and they are not satisfied that
 9 home education is a suitable education, they can make
 10 a school attendance order, and there are cases that come
 11 to me about -- the parent comes and asks me, on behalf
 12 of Secretary of State, of course, to revoke that order,
 13 and I have to be satisfied, of course, that the local
 14 authority hasn't made a good decision there. So it is
 15 about also making sure local authorities use the current
 16 powers they have of issuing school attendance orders.
 17 MS SCOLDING: Do you think they use those powers suitably at
 18 the moment, because lots of people in the system would
 19 say that those powers are little used, in reality.
 20 BARONESS BERRIDGE: I don't have a complete picture of each
 21 local authority, but we have put out guidance and we
 22 have emphasised to local authorities, "You have these
 23 powers to make a school attendance order whilst a child
 24 is still on the school register", so we have reminded
 25 them of that. If you needed any detail in terms of

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1 which local authority is doing how many, I'd have to
 2 come back to you with further information.
 3 MS SCOLDING: That's absolutely fine. The other issue is to
 4 do with the vulnerability of those in residential
 5 special schools. Firstly, it may well not be possible,
 6 given the complexity, often, of their physical
 7 disabilities, for them to return to the residential
 8 special school setting. Secondly, those schools have
 9 had to reduce their capacity quite considerably, and, as
 10 we know, this is a very small number of children with
 11 a very complex series of needs. What thought has been
 12 given to try and provide assistance to those particular
 13 groups of children and their parents and the schools
 14 concerned, if any?
 15 BARONESS BERRIDGE: Yes. I mean, during the pandemic
 16 itself, we asked for -- in relation to children with
 17 EHCP for an individual assessment to be made of their
 18 particular needs and we encouraged flexibility and, for
 19 those children who have particularly complex needs and
 20 needed particular equipment, we encouraged schools to
 21 consider putting that into the home so that the parents
 22 would have that. But we are not under any illusions
 23 about the pressures that parents have been under with
 24 those children not being in school, and obviously some
 25 of them are back in school, but not as many as we would

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1 want. But we have also been trying to equip schools to
 2 help parents where they -- it's a health concern that is
 3 preventing the child being in school.
 4 At the end of the day, we really have to just equip
 5 those schools to do that role with parents. It is not
 6 something that essentially we can do, because
 7 particularly those children, their needs will be very
 8 individual and so it is best done by the residential
 9 special schools. But we did ensure that when we gave
 10 additional money to schools, that it was weighted
 11 towards special schools and they got a greater
 12 allocation of funds.
 13 MS SCOLDING: Mr Gibb, do you have anything you wish to add
 14 to that which Lady Berridge has told us about?
 15 MR GIBB: When we had to close schools back in March, it was
 16 a very difficult decision. One of many key things we
 17 were worried about was vulnerable children. That's why
 18 we took the decision to keep schools open, not just for
 19 the children of critical workers but also for the
 20 children -- for vulnerable children. But then we were
 21 worried about the poor attendance rates, and they were
 22 poor. In the early weeks, it was something like
 23 5 per cent of vulnerable children were attending. It
 24 went up to about 10 per cent. But that remained
 25 a worry.

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1 We established regional teams called the regional
 2 education and child teams based on our regional schools
 3 commissioner officers around the country, about eight or
 4 nine teams, and they were charged with liaising with the
 5 local authority to make sure they were doing a good job
 6 at keeping in contact with those vulnerable families and
 7 they would highlight to us in meetings those authorities
 8 they were still worried about and they would get extra
 9 support. So that was always a concern. You are also
 10 right that now schools have gone back, attendance rates
 11 overall -- 99 per cent of schools are open, but about --
 12 attendance varies overall between about 83 and
 13 86 per cent but for vulnerable children it is
 14 80 per cent. Again, that's a figure we keep a close eye
 15 on.
 16 MS SCOLDING: Thank you. Lady Berridge, turning back to
 17 you, one of the other issues that's been raised is the
 18 fact that, obviously, as a result of the pandemic, there
 19 was some relaxation, shall we say, of the obligations on
 20 local authorities, both in respect of special
 21 educational needs and particularly for those in
 22 residential special schools. They may well be looked
 23 after at the same time. Is there any proposal to
 24 continue with those relaxations or -- I know with the
 25 special educational needs legislation that's now back to

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1 what it was. As far as the other factors, what
 2 consideration, if any, is being given to going back to
 3 normal, so to speak, to try and encourage those
 4 vulnerable children to get back to school and to have
 5 the provision that they so desperately need?
 6 BARONESS BERRIDGE: I'm not aware that at the moment there
 7 is any statutory change. I haven't -- I believe there
 8 was a case in the courts only a couple of days ago --
 9 I haven't yet had the opportunity to read that.
 10 MS SCOLDING: Yesterday, the Court of Appeal.
 11 BARONESS BERRIDGE: I'm aware of it. So as far as I'm
 12 aware, the statutory situation is back to where it was.
 13 But if that's incorrect, then obviously we will write to
 14 the inquiry. But Minister Gibb is correct that we did
 15 seek to resource, and Ofsted were deploying their
 16 inspectors into local authorities to backfill children's
 17 social care where staff were off due to COVID,
 18 et cetera. So we did practically resource them.
 19 MS SCOLDING: Lady Berridge, I think this question comes
 20 mainly to you again, but I will ask Mr Gibb if he wishes
 21 to contribute as well. One of the issues that's been
 22 raised by this investigation is the fact that there has
 23 been a significant focus and an understandable focus
 24 upon academic attainment in schools over the past
 25 20/25 years, shall we say; a very strong focus upon

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<p>1 them. But one of the issues or one of the consequences 2 of that, as we have found in the schools that we have 3 looked at in this phase, is that maybe there hasn't been 4 sufficient attention given to the way that schools look 5 after their children, and to the welfare, care and 6 protection of children. 7 Now, a way forward for that would be to restate 8 within primary legislation the primacy of the best 9 interests of the child within the education setting, in 10 the same way as happens under section 1 of 11 the Children Act 1989, which says the best interests of 12 the child are paramount and then you have a great big 13 long list under sort of (a) to (i). 14 Has any thought been given to strengthening the 15 primary legislation to emphasise the centrality of 16 welfare? 17 BARONESS BERRIDGE: No, there hasn't, and that is because, 18 in our view -- and I have the unusual part of what 19 happens inside the school building, safeguarding and 20 counter-extremism, whereas everything else happening in 21 the building is Minister Gibb. But in relation to 22 safeguarding, it's very clear that that duty from the 23 Children and Families Act of best interests is embedded 24 into Keeping Children Safe in Education, it is the legal 25 requirement, for instance, over maintained schools about</p> <p style="text-align: center;">Page 53</p>	<p>1 promoting the welfare of children, and it's, as far as 2 I'm aware, embedded in teacher standards. So best 3 interests of the children is throughout, it's embedded 4 throughout the guidance. 5 In relation to the inspection machine, which is 6 obviously important here, an academically educationally 7 successful school -- a state school this is -- can 8 plummet all the way down to "inadequate" in Ofsted's 9 judgment, which brings intervention from the department 10 purely on the grounds of safeguarding. So I think it's 11 very clear to schools that we will not -- we will not 12 tolerate, you know, that you can do brilliant 13 academically and have a culture in which children are 14 not safe, and I think those leaders will obviously -- 15 parents want their children not just to succeed 16 academically but to be safe in that environment. It's 17 very clear in terms of enforcement and inspection that 18 safeguarding and welfare is key. 19 MS SCOLDING: Just sort of picking up on what you said about 20 the legislation, my understanding is, the primary basis 21 upon which Keeping Children Safe in Education is issued 22 and implemented would be section 10 and section 11 of 23 the Children Act 2004. Section 11 says that there is 24 a duty on a range of organisations to make arrangements 25 for ensuring their functions and any services are</p> <p style="text-align: center;">Page 54</p>
<p>1 discharged with regard to the need to safeguard and 2 promote the welfare of children. So I think, if I were 3 being a pernicky lawyer, I would say -- as I know you 4 were in a former existence, so to speak -- that that's 5 a diluted duty, because that's a "have regard to" duty 6 rather than what's set out in section 1 of 7 the Children Act, which is "must take into account". 8 Do you think, particularly given the reemphasis that 9 the pandemic has brought into such sharp focus of 10 the mental health needs of children, of their emotional 11 well-being and of the need to protect them, that there 12 may be some space for primary legislation in this 13 regard? 14 BARONESS BERRIDGE: The question of whether there's space 15 for primary legislation is obviously beyond my pay grade 16 in terms of (overspeaking) decisions. But, honestly, 17 when I look at the inspection reports and when I meet 18 the chief executives of academy trusts, I have no doubt 19 that what they want and are seeking to deliver is for 20 the best interests of their children. And we, as 21 lawyers, might think, "Oh, if we put it in a piece of 22 legislation, it will change and have this amazing effect 23 across the whole system". I actually think that's an 24 overestimation. I really do think the regulations at 25 the moment -- and also the guidance has developed in</p> <p style="text-align: center;">Page 55</p>	<p>1 terms of mental health needs; there are now many more 2 trained practitioners in schools, much more counselling 3 has been offered in schools. And that can happen much 4 more quickly on the ground for children, making 5 a difference for them, than actually, I think, changing 6 something in legislation. So I'm confident that 7 actually changing it from "have regard to" to "must", 8 I think our trust in our school leaders out there and 9 those who lead independent schools are motivated by the 10 best interests and I'm not sure that changing a piece of 11 primary legislation would really have the effect that we 12 sometimes think it does as lawyers. 13 MS SCOLDING: We always like more laws, as lawyers. Always 14 keen on that. Mr Gibb, is there anything you would like 15 to add to that? 16 MR GIBB: Yes. I don't accept the premise of the question. 17 I just think there has been a step change in attitudes 18 to safeguarding in schools. If you look at the -- we 19 brought in the Keeping Children Safe in Education 20 guidance in 2014. It's regularly updated. It's updated 21 in fundamental ways as attitudes change, as concerns 22 come to light. You have the chief inspector saying that 23 Ofsted has safeguarding as central to its work. As 24 Elizabeth has said, there's a limiting judgment. If 25 your safeguarding isn't right in school, you can be</p> <p style="text-align: center;">Page 56</p>

1 excellent in everything else but you will be regarded as
 2 "inadequate" and put into special measures if your
 3 safeguarding isn't right.
 4 We have introduced the RSHE curriculum, relationship
 5 sex and health education curriculum, that has major
 6 modules about safeguarding and issues that we want
 7 children to be aware of, to keep themselves safe. So
 8 I think there has been a greater emphasis on
 9 safeguarding in schools over the same period during
 10 which we have also sought to raise academic standards in
 11 schools.
 12 MS SCOLDING: Thank you. I'm going to come back to you
 13 later about Keeping Children Safe in Education and sex
 14 and relationship education, but I wanted to ask you now,
 15 Mr Gibb, what do you think are the current strengths and
 16 weaknesses in the system, the school system, in respect
 17 of child protection?
 18 MR GIBB: Well, it's a hard question for me. I think there
 19 is -- I mean, the strength is, as Elizabeth said, that
 20 the culture in schools is about safeguarding. I have
 21 not met a headteacher or a teacher in the extensive
 22 visits I've made to schools over the years who doesn't
 23 regard safeguarding as an absolute fundamental element
 24 of what the school does. I remember visiting schools --
 25 when I first started going to schools in 2003 as

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1 a safe safeguarding culture in a school. What the
 2 Independent Schools Inspectorate have said to us and
 3 Ofsted and lots of other people as well is that maybe
 4 there isn't enough focus within Keeping Children Safe in
 5 Education at the moment on creating that culture, and so
 6 I suppose I wanted to ask questions. Firstly, what
 7 creates a good safeguarding culture? Secondly, how do
 8 you, as the ultimate regulator and overseer of every
 9 part of the school system, ensure that that safeguarding
 10 culture is embedded in every institution over which you
 11 have oversight?
 12 MR GIBB: The KCSIE guidance, the opening line almost, is
 13 "Safeguarding and promoting the welfare of children is
 14 everyone's" -- in bold -- "everyone's responsibility".
 15 That's how you create the culture. It's not just the
 16 designated safeguarding lead, it's not just the
 17 headteacher, it is everyone from top to bottom in the
 18 institution. Actually, Ofsted is a major force for
 19 change in the school system and the fact that it is
 20 a limiting judgment will focus the minds of every
 21 headteacher that they cannot, however good their maths
 22 is and their GCSE results, if they don't pass on
 23 safeguarding, that school will be graded as
 24 "inadequate".
 25 I think we have good systems in place, but of course

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1 a member of the Education Select Committee, you would
 2 just come to a school, walk through the gate, go to the
 3 reception. Now you have to buzz to get through the
 4 gate, you buzz at the door to the school, you sign in,
 5 you're photographed, you wear a badge. There's a much
 6 greater sense of safeguarding in all schools now than
 7 there was, you know, 10/15 years ago.
 8 There's always room for improvement, and we listen
 9 to the advice of inquiries like yours and other
 10 sources -- other advice about how we can improve things
 11 further, which is why we keep the guidance always
 12 updated and renewed and we have got a new section --
 13 a new part 5 to the guidance to deal with child-on-child
 14 abuse as well.
 15 The weakness? Well, you're dealing with human
 16 fallibility, of course, and -- so we always need to be
 17 vigilant, we always need to make sure that culture of
 18 safeguarding is embedded in every school, and that every
 19 person working in a school, whether they're a teacher or
 20 teaching assistant or an ancillary worker or caretaker
 21 or working in catering, that everybody involved in the
 22 running of a school takes this issue seriously.
 23 MS SCOLDING: Mr Gibb, following on from that, one of
 24 the things that everybody has said to us is, the most
 25 important thing, as you've identified, is creating

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1 there's always room for improvement when we identify
 2 weaknesses in the system.
 3 MS SCOLDING: Lady Berridge, the same question to you: what
 4 do you perceive to be the strengths and weaknesses of
 5 the architecture, shall we say, of the child protection
 6 system in schools in this country and how do you create
 7 a good safeguarding culture within those institutions
 8 you oversee?
 9 BARONESS BERRIDGE: I think the fundamental thing -- we keep
 10 referring to the guidance, the statutory guidance, but
 11 the fundamental thing is that that applies to all
 12 schools. It is very simple, very straightforward,
 13 whether you're a residential special school, an
 14 independent school, a middle school or an infant school,
 15 this is the guidance, this is the framework that you
 16 need to take -- have regard to or the legal obligations
 17 are very clearly stated for you.
 18 In terms of creating that culture, it's about the
 19 leadership, it's about the governor who has got senior
 20 board responsibility and it is about the senior
 21 leadership, creating that space for everybody. But
 22 I think it is important. I know Ofsted are looking at
 23 how they inspect culture, which of course is a different
 24 thing to inspect than educational performance in a PAA 8
 25 kind of way, but around the system now, which we didn't

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1 have to the same extent 15/20 years ago, is we have
 2 a culture, actually, if you don't get the answer or you
 3 raise a concern and you don't get the result at the
 4 school, there are other places you can go to to report
 5 that. In the department, we have thousands of calls
 6 a year in relation to whistleblowing generally, some of
 7 that will be in relation to money, finances, but many of
 8 those calls are in relation to safeguarding and so that,
 9 I think, also, as well, you have not just got the
 10 periodic inspections going on, schools -- and when we
 11 get those reports, we feed them into the inspectorates.
 12 And so that is also an important part, that you've got
 13 the framework for the school to create that culture, but
 14 actually, there's more external routes to challenge and
 15 bring in the external voice if the culture is not what
 16 the parents expect, and we do get, you know, quite a lot
 17 of, you know, letters and calls, et cetera, into the
 18 department or into our regional offices around schools
 19 and their culture.
 20 MS SCOLDING: Mr Gibb?
 21 MR GIBB: Just one other thing. I mean, it's now embedded
 22 in teacher training, it's in the teacher standards. So
 23 if you look at part 2 of the teacher standards, the
 24 personal and professional conduct, it says that
 25 "Teachers must uphold public trust in the profession

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1 by ...", and then it says, "... having regard for the
 2 need to safeguard pupils' well-being in accordance with
 3 statutory provisions". So it goes to the fundamental
 4 element of teacher training as well. The safeguarding
 5 is there.
 6 MS SCOLDING: I'm going to pick up on the teacher training
 7 point now. We had the unions -- well, we had the NEU,
 8 the NASUWT and the NAHT come to see us on Monday. All
 9 their written witness statements raise concerns about
 10 the consistency and adequacy of child protection
 11 training within the concept of initial teacher training.
 12 Is that something they have raised with you and is that
 13 something that you have looked at or you're intending to
 14 look at?
 15 MR GIBB: Well, we are doing quite a lot of new work in
 16 teacher training. So we are bringing in an
 17 independent -- an ITT, initial teacher training, core
 18 framework and that ensures that trainees are fully aware
 19 of their duties in respect of safeguarding. The teacher
 20 standards I have referred to. We are also redrafting
 21 a whole new suite of national professional
 22 qualifications and, again, safeguarding content is being
 23 strengthened in those professional qualifications.
 24 So, again, you know, all the revisions that we are
 25 making to initial teacher training and to the national

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1 professional qualifications for leadership and other
 2 specialist national professional qualifications all
 3 feature strengthened elements of safeguarding within it.
 4 MS SCOLDING: As far as teacher standards are concerned,
 5 Ms Spielman and Ms Humphreys, who gave evidence to us
 6 yesterday, described a situation -- because obviously we
 7 have been faced with -- we have looked at quite a number
 8 of schools within this investigation because we have
 9 sought not just to focus on one particular type of
 10 school or one particular problem or concern, but to
 11 look -- you know, as broadly as is feasible in the
 12 context of different sorts of schools in different sorts
 13 of situations. One of the issues that we found is
 14 a sort of really putting the reputation of the school
 15 above the needs of children and also, frankly, being
 16 deceitful or lying to regulators, to inspectors, to
 17 local authorities, or, if not lying, then certainly, as
 18 Lord Clarke said, "being economical with the actualité",
 19 shall we say, at various points in time.
 20 One of the things Ms Spielman said is that might
 21 come in part because the teacher standards are
 22 relatively new and they are not as developed as, for
 23 example, as a former chartered accountant, you had
 24 a code of conduct, you would have had to abide by that,
 25 you had a professional body which would have picked you

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1 up on that, and that has not been as developed in
 2 teaching. Do you agree with Ms Spielman's analysis of
 3 that and what do you think you can do to try and improve
 4 what I would call the sort of ethical framework which
 5 underpins teaching?
 6 MR GIBB: I was very heavily involved in the new teacher
 7 standards, and I wanted there to be an ethics element
 8 because what defines a profession is that it has a code
 9 of ethics.
 10 That's what part 2 is. It's called personal and
 11 professional conduct. But it is, in essence,
 12 a statement of the ethics of the teaching profession.
 13 So putting it into that statement of ethics I thought
 14 was very important. Those teacher standards, although
 15 they were finalised in 2011 or 2012 --
 16 MS SCOLDING: 2012.
 17 MR GIBB: 2012, thank you. They have stood the test of
 18 time. That's quite a long period of time for a document
 19 like that to have not been fundamentally changed,
 20 because it is a well-drafted document and it forms the
 21 basis of achieving qualified teacher status and it also
 22 forms the basis of performance within a teacher's
 23 professional career. The same wording is used, no
 24 matter how many years of experience you have, you just
 25 expect more from that wording if you are a more

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1 experienced teacher. So I think those teacher standards
 2 are delivering what Amanda Spielman is talking about.
 3 Then we had the Teaching Regulation Agency, which
 4 is, you know, receiving more referrals than its
 5 predecessor, the GTCE, and does deal with serious
 6 misconduct of teachers, and it also applies to all the
 7 schools that you're talking about. It applies to the
 8 independent sector as well as to the state sector, which
 9 the GTCE didn't, of course.
 10 MS SCOLDING: I suppose let's sort of raise the issues as
 11 they come up at this stage. It is slightly taking them
 12 out of turn, but as far as the issues in respect of
 13 teacher training and teacher standards are concerned,
 14 firstly, teachers in academies and independent schools
 15 do not have to have qualified teacher status, do they?
 16 So they won't necessarily have done initial teacher
 17 training. I'm right in thinking that, aren't I?
 18 MR GIBB: You are correct. In academies, I don't know what
 19 the exact figure is, but over 90 per cent of teachers in
 20 academies do have qualified teacher status.
 21 MS SCOLDING: As well, the teacher standards only apply to
 22 those who have qualified teacher status. I'm right in
 23 thinking that, aren't I, or am I wrong about that?
 24 MR GIBB: I think that's right, yes.
 25 MS SCOLDING: So you still have a situation whereby there is

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1 a proportion of teachers who don't have to abide by the
 2 code of ethics and won't have received any initial
 3 teacher training. Now, there may well be nothing wrong
 4 with that in terms of their ability to teach, but in
 5 those situations, do you not think it would be
 6 appropriate that they had to have some kind of level of
 7 competency or, alternatively, that everyone has to
 8 register with the TRA, whether they were a qualified
 9 teacher, whether they had QTS status or not, so that
 10 they would all be bound by the teacher standards?
 11 MR GIBB: The TRA will apply to them even though they won't
 12 be on the list -- the registry of QTS teachers. The TRA
 13 applies to anybody engaged in teaching work and that
 14 will apply to non-qualified teachers in the independent
 15 sector and in academies as well as to those that have
 16 QTS.
 17 So if they are referred to the TRA on allegations of
 18 misconduct, they will be dealt with by the TRA and, if
 19 they are found guilty, in essence, they will be on the
 20 prohibited list, they will be prohibited from teaching,
 21 and schools will be able to discover that.
 22 MS SCOLDING: But that assumes -- I mean, there are two
 23 issues with that, I would suggest, Mr Gibb. Firstly,
 24 it's not necessarily about -- we know that the TRA have
 25 an ability to oversee all people who perform teaching,

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1 no matter whether or not they have QTS status. But it
 2 is about embedding the culture of ethics. So if you are
 3 coming into teaching and you don't have to go through
 4 the teacher standards and, you know, firstly, I would
 5 imagine it causes problems with the TRA if somebody
 6 says, "Well, I have never heard of those teacher
 7 standards" -- one would hope everyone would have done.
 8 But, secondly, also, isn't it about embedding the
 9 ethical culture you, yourself, say is so important by
 10 having everybody sign up to it whether they have QTS
 11 status or not?
 12 MR GIBB: Well, the reason why we don't require QTS in
 13 academies, and the reason why the independent sector --
 14 well, the reason why we don't require it in academies --
 15 and having said that, as I said, over 90 per cent, it
 16 may even be 95 per cent, do have QTS -- is because we
 17 wanted the same freedoms for academies as the freedoms
 18 that independent schools have. So they are free to
 19 employ, you know, an ex-scientist from AstraZeneca to
 20 come and teach their students, whereas a maintained
 21 school is not. So in order to, you know, give them that
 22 freedom, that's why we don't require it.
 23 But, of course, when you are being performance
 24 assessed by your line manager in an academy, they will
 25 of course lean on the teacher standards, whether or not

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1 you have QTS. So it does form not just the basis of
 2 QTS, it also forms the basis of all appraisals that take
 3 place in schools up and down the country.
 4 MS SCOLDING: I suppose what I still don't understand --
 5 Lady Berridge, I will come to you in a moment, of
 6 course -- whilst I can understand entirely why you have
 7 the policy approach of there should be the same freedom
 8 in academies as in independent schools, and obviously
 9 there can be examples of excellent teachers who don't
 10 have a PGCE, I'm not suggesting that. But surely one
 11 could have everyone signing up to the teacher standards
 12 or having it as part and parcel of something that you
 13 do. Just as, when you became an accountant, you would
 14 have had to sign up to a code of conduct, and when
 15 I became a lawyer I had to sign up to a code of conduct,
 16 a similar kind of system should be implemented simply in
 17 order to centralise and make clear in everyone's minds:
 18 "This is what you are signing up for".
 19 MR GIBB: But they are all required to abide by the
 20 statutory guidance. That applies to everybody who works
 21 in a school. So they have to abide by all the measures.
 22 You know, it is an extensive and a well-drafted
 23 document. It is easy to use. It is not some sort of
 24 tedious government document that's impenetrable. It was
 25 drafted in a way that it would be read. There's

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1 a requirement to read part 1. There is a requirement on
2 schools to make sure that their staff are familiar with
3 how it works. So it is not a document that sits on
4 a shelf. It will apply to everybody, whether they have
5 QTS or not, in a school.

6 MS SCOLDING: Let's just identify that. I will come back to
7 you in a moment because I know Lady Berridge wanted to
8 get in. I will come back to you in a moment when we
9 talk about Keeping Children Safe in Education or KCSIE,
10 as I think some people call it.

11 BARONESS BERRIDGE: I just wanted to add that there's very
12 clearly a requirement within the guidance that all staff
13 have appropriate training, and the reason why we say
14 "appropriate training" is to give the schools
15 flexibility, because the training that a caretaker will
16 need is very different to the training that a member of
17 teaching staff would need in this regard.

18 You know, having looked at the cases in detail that
19 have formed the background to the inquiry and the cases
20 that I see in terms of enforcement, I haven't seen
21 a case yet that is, "Oh, the issue here was that the
22 teacher didn't know this was a standard and that
23 explained their conduct or explained why, when their
24 conduct was given to the leadership team, it was not
25 reported properly through the system". I think

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1 document rather than a sort of directive document, if
2 one puts it that way?

3 MR GIBB: I would defer to Baroness Berridge, it is her
4 policy area, the document, but I would say this: we
5 continually seek to improve it. It's had a number of
6 iterations since 2014, some of them quite fundamental.
7 If there is a strong case to be made for, you know,
8 replacing the word "should" with the word "must" in more
9 places in the guidance, then that's something we would
10 consider and consult on and, if it was appropriate, we
11 would implement.

12 MS SCOLDING: Lady Berridge, since it is your policy area,
13 is there anything you would like to say about the
14 "must/should"?

15 BARONESS BERRIDGE: There are only, I think, two or three
16 examples of "must" when they have done the word count on
17 this. Teachers must refer to the police when it is FGM
18 and you must make a referral to the Data Barring
19 Service, and that's because we are trying to help
20 schools deal with when there is a legal requirement --
21 that is the word "must" -- and when they should -- and
22 this is not a low bar. This is statutory guidance.
23 They should be doing these things unless there is a good
24 reason -- so we place the burden on them to show to us
25 why you wouldn't be acting in this way. I think it is

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1 sometimes although -- as a lawyer, we know Bar Council
2 Standards, codes of conduct, you know, I think sometimes
3 we can be reaching for a panacea that might not give the
4 change and that actually this has not been part of what
5 I have, in my limited time, seen as a key issue
6 explaining the kind of conduct that, unfortunately, your
7 victims have explained to the inquiry before us.

8 MS SCOLDING: I suppose there are two issues there.
9 Firstly, I will come back to you about the issue of
10 training. As you can imagine, we can have a very
11 interesting discussion about that. But, Mr Gibb,
12 I wanted to come back to you first about Keeping
13 Children Safe in Education, because there is some
14 discussion about how much "must" and how much "should"
15 is there. Victim and survivor groups have done the
16 counting and have said there are far fewer "musts" than
17 there are "shoulds". There are other forms of code, I'm
18 thinking in particular the exclusions code and the
19 admissions code where there are far more "musts" and
20 things which say, "You must do this", ie, it is
21 mandatory, rather than, "You should do it", ie, in legal
22 speak, you must have regard to it unless there are
23 exceptional reasons not to follow it. Would you think
24 about going down the route of strengthening KCSIE in
25 terms of making it a mandatory -- more of a mandatory

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1 very important that the guidance is clear. This is the
2 law and this is the guidance which you should follow
3 unless there is a very good reason. So I think that
4 clarity is important in the document. We are never
5 closed to, you know, being more detailed, being more
6 prescriptive, in the guidance, but that's one of
7 the things that keeps the document, I would say, very
8 simple and clear and easy to use, for everybody to be
9 given part 1 -- whether you're the cleaner, the
10 caretaker, et cetera -- and read it and that is a core
11 part of your induction training.

12 MS SCOLDING: I think I'd like to come back to you in a bit
13 about how important the caretaker and the cleaner are,
14 as we have found in very many of our investigations in
15 terms of the fact they often know a lot more about what
16 is going on and are often such savvier about concerns
17 than other people. What I want to ask you about that
18 is, that leads on to, of course, you must report female
19 genital mutilation, you must report issues under the
20 prevent duty, as you know, Lady Berridge, with your
21 counter-extremism. But there is no mandatory duty to
22 report things to either the LADO or to the police if
23 there are reasonable suspicions or allegations of child
24 sexual abuse.

25 So do you not think that, given the requirements in

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1 other circumstances to make mandatory referrals, that
 2 there should be a mandatory requirement backed, if
 3 appropriate, by criminal sanctions -- victims and
 4 survivors would say it has to be backed by criminal
 5 sanctions and it has to be something where everyone in
 6 regulated activity is responsible, not just the head or
 7 not just the DSL. I know you had a long consultation
 8 about this but now I think may be the appropriate moment
 9 to discuss where are you now as a department?
 10 BARONESS BERRIDGE: Well, we are in the process of
 11 reviewing. This goes alongside -- there are a number of
 12 issues here. The duty of candour and mandatory
 13 reporting and then the offence of concealment. These
 14 are all sort of a spectrum. The consultation on
 15 mandatory reporting that we got the response to in 2018,
 16 as you have referenced, it's -- what you are reporting
 17 is something that's been disclosed. So one has to look
 18 at this situation. To keep children safe, there must be
 19 an environment in which they are free to disclose to the
 20 caretaker, the cleaner, whoever. And some of
 21 the evidence that we received back as a result of
 22 the consultation was that this mandatory reporting --
 23 not intentionally, obviously -- could have an effect
 24 down the funnel of not enabling children, and vulnerable
 25 adults, obviously, as well, to disclose what has

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1 happened to them and that's a very core concern.
 2 Obviously it's Disclosure and Barring, we need to have
 3 that culture. So this is not straightforward. And
 4 we're back again -- I think we have a theme here -- if
 5 you make it mandatory, therefore you will get more
 6 reports. That's not always the case. What we are
 7 focused on when we look at this -- and we are still
 8 reviewing that; we want to take into account what
 9 conclusion the inquiry comes to in relation to this --
 10 we will take action if we are convinced on the evidence
 11 that this will make children safer in school, and in
 12 other educational settings, obviously. If we are not
 13 convinced of that, and the consultation response did not
 14 produce a clear picture -- I believe evidence to you has
 15 also not produced a clear picture in relation to this.
 16 In relation I think, which is slightly -- obviously,
 17 as lawyers, conceptually different, the concept of
 18 concealment, which is much more to do with positive
 19 behaviour of the individual, we have been working, as we
 20 said we would, across government departments to look at
 21 what's the state of the current law, what offences do we
 22 currently have that catch this behaviour, like
 23 perverting the course of justice. Unfortunately, that
 24 stream of work, and I mention it because I believe they
 25 are all interconnected, we need to look at this as

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1 one -- mandatory reporting, duty of candour, the offence
 2 of concealment -- to see what would be most effective to
 3 keep children safe. Unfortunately, COVID came into that
 4 frame, and so, unfortunately -- I'm not saying to people
 5 it is not important for us to consider, but we had to
 6 reprioritise during the pandemic. So we will get that
 7 stream of work, cross-departmental work, particularly on
 8 concealment, but we are determined as well that if it
 9 comes to mandatory reporting -- I know your inquiry has
 10 had an issue to do with residential special schools.
 11 Any duty would be across all schools. Because special
 12 educational needs children, even those with EHCP plans,
 13 half of them are educated in mainstream schools and the
 14 same protection and the same law should apply to those
 15 children regardless of what setting they are in. These
 16 things are complicated: who should have the obligation;
 17 what kind of abuse should be reported; should it just be
 18 sex abuse or should it be any abuse? And also what the
 19 penalties should be for this are all, as you will be
 20 aware and I'm sure the inquiry panel is, it is really
 21 complicated to look at. We are looking at it. And we
 22 will act if we are convinced it will make the system
 23 safer.
 24 MS SCOLDING: What I'm going to say on behalf of victim and
 25 survivor groups is that they would say, "Well, look at

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1 the examples in Australia. Look at the examples in
 2 states in America. Where concerns, the concerns that
 3 you have raised -- maybe about the number of complaints
 4 and whether or not people will be overwhelmed and
 5 whether or not it stops people complaining or making
 6 disclosures -- have both been looked at and examined and
 7 it's been perceived that those particular mandatory
 8 reporting orders have worked, and I know there are
 9 several other European countries where that's the case.
 10 I mean, I think what victims and survivors would
 11 want me to ask you is that it's firmly on your agenda
 12 and they would want you to implement it now.
 13 BARONESS BERRIDGE: Yes. I mean, unfortunately, we can't be
 14 immediate about all these things, because, as a member
 15 of the House of Lords, the constant phrase is sometimes
 16 you legislate and cause unintended consequences. That's
 17 why, unfortunately, the process takes longer on
 18 virtually all of these things -- the Coronavirus Act
 19 being an obvious exception -- takes much longer. I can
 20 assure your victims that we will look at everything, but
 21 when I have looked at the cases here, many of them --
 22 you know, reports were made and then it was -- the
 23 action was not taken appropriately, and obviously, as
 24 Minister Gibb said, we are dealing with human frailty
 25 here. Any system we have will depend on people doing

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1 their job professionally. But, yes, we will look at
2 this and consider whether it would make the system safer
3 for future children, to avoid -- we all want to avoid
4 any repetition -- as much repetition -- we can't
5 guarantee a perfect world in our school system, but we
6 are motivated, and safeguarding, I can assure people
7 when it comes to -- and you may want to talk to us about
8 it later -- enforcement, safeguarding failures in our
9 school come to me. They don't come to the department.
10 Ofsted failures, ISI failures come to me. That's how
11 seriously I personally view a school that has failed
12 against the standards, because I recognise how serious
13 that is for the children who are currently in that
14 institution.

15 MS SCOLDING: We will come on to talk about enforcement
16 later, Lady Berridge and Mr Gibb. I wanted to ask,
17 obviously the offence of concealment of abuse, you have
18 set out in some detail in your witness statement the
19 work that you are doing. But, obviously, just because
20 we have people who follow along, just to identify --
21 just to clarify for their purposes, the offence of
22 concealment of abuse would be in circumstances where
23 people have deliberately not told authorities that there
24 had been abuse going on. So the obvious example would
25 be a teacher who sees another teacher engaging in an act

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1 listening, but you do get into making sure that you
2 don't capture people in a legislation that you think
3 actually, no, they weren't under an obligation, we are
4 going a step too far, in what is actually going to be
5 the criminal law.

6 MS SCOLDING: Yes. I mean, that's why, for some people, the
7 easier option, rather than the introduction of
8 concealment, which is a sort of an offence of kind of
9 malice aforethought almost, there needs to be an element
10 of intention, I suspect, in the concept of concealment.
11 That's why mandatory reporting, they would say, is an
12 easier solution. I mean, we can't just say it is
13 victims and survivors who want that. The Boarding
14 Schools Association, the Independent Schools Council,
15 even Ofsted yesterday in their evidence to us didn't say
16 no, they just said, "Well, we need to think carefully
17 about how that law would be framed". But plainly there
18 are lots of examples from Commonwealth jurisdictions
19 where legislation is similarly introduced and where
20 there are often similar problems, which your department
21 could look at, aren't there?

22 BARONESS BERRIDGE: I will make sure that they look at the
23 comparable jurisdictions, not just the
24 cross-departmental work in relation to this.

25 MS SCOLDING: Yes. As far as the duty of candour is

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1 of sexual abuse and does nothing about it and doesn't
2 tell anybody else -- that would be an act of deliberate
3 concealment -- or a headteacher who said to teachers,
4 "If you say anything, I will sack you".

5 BARONESS BERRIDGE: Then you've immediately got into the
6 group -- who do we put that duty on? What is a positive
7 act to conceal? If that was the caretaker who walked
8 past, are we putting the same duty on them? It is one
9 of those things, and I put it in my witness statement,
10 it sounds simple, but, actually, do we want people who
11 have particular positions of authority to be in
12 a different position in relation to that offence?
13 Concealment is a coverup. I think that's also the more
14 colloquial -- it is when people are doing something
15 positive to prevent it. We are moving away, as you all
16 know, from basic principles of our law here. You are
17 obliged not to commit an act, but, actually, having an
18 obligation to report is a very different thing. We have
19 that in certain professional situations, not generally
20 usually on a member of the public. Unfortunately, you
21 can walk past somebody --

22 MS SCOLDING: There is no "good Samaritan" legislation.

23 BARONESS BERRIDGE: Exactly. Unfortunately, commission and
24 omission, those who have responsibility, I'm afraid --
25 I'm sorry to bore any of your ordinary folk who are

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1 concerned, this is something -- I think let's deal with
2 this now, while we are on the spectrum. This is
3 something which the Independent Schools Inspectorate
4 have identified as being something which they would like
5 to see introduced into the Independent School Standards
6 or into the National Minimum Standards or -- I think,
7 probably, the Independent School Standards would be the
8 place to put it, in effect, because what they say when
9 they have come to give evidence to us, and Ofsted
10 I think similarly, you know, they only know what they
11 know. If they are not told that there have been
12 problems in a school, they can't do anything about it,
13 and we do have quite a lot of examples of being
14 economical with the truth, shall I put it that way? You
15 only show the good bits, you don't see the bad bits.
16 What, obviously, they are saying is, as inspectors, they
17 want to see the whole picture, the good and the bad. So
18 can you see, even if the work that you do doesn't look
19 at mandatory reporting, that a duty of candour to
20 inspectors and to you as a department, if you remain --
21 if the decision is made that you should continue to be
22 the regulator, as is the position at the moment, that
23 there should be that indication?

24 I mean, obviously NHS Trust since the
25 Mid Staffordshire inquiry have had that duty. I think

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1 that was the inspiration for the Independent Schools
 2 Inspectorate. What view, if any, do you have about
 3 that?
 4 BARONESS BERRIDGE: We will look at all these things. As
 5 I say, I consider them to be a bucket of potential
 6 interventions. I believe it is currently the case,
 7 though, that those -- when inspectors go in, there is
 8 a duty to co-operate and provide information to the
 9 inspectors when they go in. So it is something -- in
 10 relation to the ISS, that's, I think, the only set of
 11 standards at the moment that isn't either out for
 12 consultation or about to go out for consultation,
 13 because we do it -- not like KCSIE, we do it over a few
 14 years. At some point in the next -- I can't give
 15 a timeframe, but those standards will probably come up
 16 for consultation. So -- but in relation to that, any
 17 KCSIE consultation, we will look at if the sector or
 18 victims groups or other representative bodies give us
 19 a feedback on that, we do take that on board and there
 20 are many examples of how we have updated guidance. It
 21 is quite an open door. Obviously, you know, if the duty
 22 of candour shows that we would safeguard children better
 23 in our schools, then we would obviously seriously look
 24 at it.
 25 MS SCOLDING: I think sort of following on from that what

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1 as I'm aware -- if there are any gaps, I will look
 2 seriously at them -- there is a lot of information
 3 sharing between the regional Ofsted officers, the
 4 regional DfE officers called the regional schools
 5 commissioners or the regional delivery directorate,
 6 which includes ESFA, and also the local authorities. So
 7 there is this -- a lot of what I get in is reports that
 8 are as a result of all of that soft intelligence there.
 9 Conversely, for the independent school system, if
 10 you are not inspected by Ofsted -- obviously I'm meaning
 11 the ISI situation -- anything that happens to come into
 12 our regional office comes straight here to London. So
 13 I am sort of looking at, is there more that we can do
 14 for information sharing? We do obviously get
 15 whistleblowing in relation to the independent sector as
 16 well.
 17 So, you know, I can say, you know, there is guidance
 18 on information sharing, and, you know, but -- you know,
 19 if there is anything that we have that other witnesses
 20 have identified of gaps in that arrangement, then next
 21 time I meet Amanda -- we have a regular update -- I will
 22 be talking about to her about what -- "Are there
 23 examples where you didn't get information from us that
 24 the RSCs didn't pass on to you?", then I would obviously
 25 deal operationally with that in the department, because

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1 I would say is one of the issues is about who has to
 2 tell whom when. We are going to come back to the LADO
 3 after lunch. But one of the issues that Ofsted raised
 4 yesterday was difficulties with information sharing from
 5 various government bodies -- so that's ESFA, which, for
 6 those who don't know, is the Education Standards and
 7 Funding Agency, I think -- I think -- or the Standards
 8 Agency; from yourselves, the Department for Education,
 9 who, as you say, get thousands of concerns and
 10 complaints; and from the Teaching Regulatory Agency.
 11 That Ofsted -- what Ofsted is saying is, there isn't
 12 necessarily the kind of information sharing that you
 13 would expect in order -- so that they have the kind of
 14 soft intelligence that things might be going wrong.
 15 What, if anything, have you thought about doing
 16 about that? Maybe enhancing protocols or creating sort
 17 of further protocols about information sharing?
 18 BARONESS BERRIDGE: If you are meaning not the obligations,
 19 like, on a LADO when it is part of that --
 20 MS SCOLDING: Yes.
 21 BARONESS BERRIDGE: (Overspeaking) after lunch. In terms of
 22 information sharing, I have actually thought about the
 23 comparison of that soft intel between the independent
 24 sector and the state sector, because the way in which it
 25 is organised out there is that there is a lot of, as far

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1 it is a key thing, you know, disclosure/information
 2 sharing about the instance is key and, if there are any
 3 problems there, I would look to make sure they are
 4 solved.
 5 MS SCOLDING: I note the time. When I come back, I am going
 6 to be asking you about data protection and the
 7 difficulties there might be, or that schools might
 8 perceive there are, with information sharing. But
 9 I note the time and I'm going to ask the chair. Chair,
 10 may we have a lunch break now?
 11 THE CHAIR: Yes, of course, Ms Scolding. We will return at
 12 1.40 pm.
 13 MS SCOLDING: Thank you very much.
 14 (12.40 pm)
 15 (The short adjournment)
 16 (1.40 pm)
 17 THE CHAIR: Good afternoon, everyone. Ms Scolding?
 18 MS SCOLDING: Good afternoon, chair. Good afternoon, panel.
 19 Welcome back, Lady Berridge and Mr Gibb. Just before
 20 the break, Lady Berridge, we were talking about
 21 information sharing with other agencies and I was
 22 discussing what Ofsted had said to us yesterday about
 23 that. One of the other things that both them and the
 24 Independent Schools Inspectorate have raised with us is
 25 the fact that certainly since the implementation of

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1 GDPR -- that's the general data protection regulation --
 2 there has been a concern that schools are not sharing
 3 information and not writing proper records because
 4 they're worried about subject access requests or about
 5 the role of the Information Commissioner.
 6 Is this something which has been brought to your
 7 attention? If it has, are there any proposals to
 8 provide some clarification maybe alongside the
 9 Information Commissioner to try and dispel what's
 10 obviously incorrect information about what can be shared
 11 and what can't be?
 12 BARONESS BERRIDGE: Yes. We are aware of these issues.
 13 I think the issue really relates not to Keeping Children
 14 Safe in Education, because that guidance is actually
 15 very clear around information sharing, and in fact, you
 16 know, not to overemphasise, but the relevant paragraphs
 17 because of that issue are in bold. There is no
 18 intention to prohibit the sharing of information when it
 19 comes to children's welfare. But we are aware that we
 20 need to strengthen the advice in Working Together, which
 21 is the inter-agency statutory guidance. We also have
 22 non-statutory advice in relation to information sharing,
 23 whether that's for parents or schools, and we are
 24 looking to strengthen that as well. So, yes, the issue
 25 has been brought to our attention and obviously

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1 the evidence that we have heard so far. One is that
 2 Ofsted and the ISI have suggested that there should be
 3 reintroduction of what were known as serious incident
 4 reports. Now, I think they only existed in the boarding
 5 sector and for residential special schools, but they
 6 were kind of, basically, if somebody was arrested, if
 7 there were serious -- which included sexual abuse but
 8 wasn't limited to that, there had to be a report to
 9 Ofsted and -- to Ofsted or to the ISI. In fact, I think
 10 it was -- in reality, it was Ofsted to whom it came
 11 because it was before ISI had responsibility for
 12 boarding welfare in sections. They have asked for that
 13 to be reinstated.
 14 Do you think that you are going to be able to do
 15 that in the next iteration of NMS or introduce that into
 16 the Independent School Standards?
 17 BARONESS BERRIDGE: That's a matter on which we are
 18 consulting. The reason why that obligation was removed
 19 was because what we wanted schools to focus on was
 20 reporting those type of incidents to the body that was
 21 responsible for investigating it, which obviously isn't
 22 Ofsted and ISI, although they have an important
 23 inspectorate role. It needed to get to the local
 24 authority or the police. So that was the rationale
 25 behind that. But, of course, when we receive

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1 information sharing is also a key part of the role
 2 descriptor within Keeping Children Safe in Education for
 3 DSL, so they should be aware as well and GDPR is
 4 mentioned within that that they should be the key
 5 individuals who should also, on the ground, dispel any
 6 misunderstanding and they should fully understand their
 7 duties to share, early and promptly, information with
 8 the local authority when various thresholds are met.
 9 MS SCOLDING: Because, for example, the ISI has given us
 10 some examples of, for example, somebody saying, "We
 11 can't disclose to you issues around domestic violence
 12 because that would be breaching the person's rights" to
 13 the inspectorate when obviously that is part and parcel
 14 of the inspectorate's ability to understand how the
 15 school is operating safeguarding effectively, just to
 16 give you an example.
 17 BARONESS BERRIDGE: Yes. I think it is important to note
 18 that, obviously, information like that, although the
 19 inspectorate should look at it, when you look at
 20 inspection reports, of course, that kind of information
 21 doesn't appear. It is just for their -- but I think,
 22 yes, so staff being aware of that, but we are on it,
 23 shall we say.
 24 MS SCOLDING: Okay. There are two sort of other
 25 information-sharing issues which come out of

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1 information like that, it is currently -- we are about
 2 to consult on the National Minimum Standards for
 3 boarding schools and RSS. I believe it is within that
 4 consultation that we are about to put out rather than
 5 the KCSIE one, but I could stand corrected. I think it
 6 is within that. So we are taking views again on that.
 7 MS SCOLDING: I think the issue was, again, I think this is
 8 a sort of an information-sharing issue, and this is
 9 where the LADO comes in. Because, as well, I don't
 10 think there has ever been an obligation for schools to
 11 inform the DfE of serious incidents, has there, because
 12 I'm just thinking about Clifton, for example. They
 13 didn't tell the DfE about -- and I don't think there was
 14 any obligation for them to do so; whether it was
 15 sensible for them to do so -- when
 16 Jonathan Thomson-Glover was arrested. So, in fact,
 17 I think the Department for Education only became aware
 18 of it after the LADO said, "Well, haven't you told the
 19 Department for Education about this?" So, again, do you
 20 not think it would be sensible for schools to have to
 21 report not just to the LADO, but also to yourself, who
 22 could then send in the inspectorate to have a look if
 23 there were concerns or problems?
 24 BARONESS BERRIDGE: I think my query there would be around
 25 "should". Again, we are getting into the realm of

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1 creating, I would say, a situation about who do you give
 2 this information to, how many multiple people do you end
 3 up then giving it to. We obviously get certain of that
 4 information as you have outlined -- whether that's from
 5 the LADO or whistleblowers, et cetera -- in relation to
 6 incidents.
 7 So what we want to make sure is that obviously
 8 the -- there's early action as quickly as possible to
 9 the appropriate agency, so that I don't think there ever
 10 has been an obligation to tell us, nor is it proposed --
 11 I think the proper place for that information and
 12 a central coordinating role is the LADO within the local
 13 authority and that is their role, to co-ordinate, but,
 14 obviously, schools have to make the decision in certain
 15 cases, emergency-type cases, "Do I call -- do I tell
 16 children's social care, which have a 24-hour turnaround,
 17 or do I call the police here and now".
 18 So I don't think creating multiple reporting
 19 obligations on schools would actually help keep children
 20 safe in that situation. But, as I say, we are
 21 consulting on that serious incident reporting
 22 requirement to Ofsted and ISI, but there's good
 23 coordination anyway as well, not perfect, but the
 24 practice, as I understand it, from Ofsted and ISI is
 25 that they always call the local authority before they go

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1 and inspect a school so that they pick up that
 2 intelligence and, as I say, there's information sharing
 3 from RSCs in relation to academies as to what is
 4 actually happening and, obviously, we may cause them to
 5 go in in the first place.
 6 MS SCOLDING: But, of course, what ISI tell us, as do
 7 Ofsted, is there is to obligation for the LADO -- I can
 8 understand you saying, "Look, the LADO should really be
 9 the fulcrum to whom reporting is made" -- unless you are
 10 talking about an emergency situation where the police
 11 are going to be involved straight away, the LADO is the
 12 fulcrum. The difficulty is that the ISI say there is
 13 only about 45 per cent of LADOs ever bother to respond
 14 when they ask for pre-inspections. Ofsted also say
 15 that's the case. I mean, they say they have a little
 16 more leverage because they obviously also inspect the
 17 local authority, so that can be a black mark against
 18 them in that perspective. But one of the other things
 19 is whether or not the LADO, even if the schools
 20 themselves aren't under a responsibility for serious
 21 incidents, that the LADO is under a responsibility to
 22 tell you and the inspectorate when there have been
 23 serious incidents, and by that I don't just mean when
 24 a -- what could be called kind of a live allegation
 25 first comes out, but say, for example, in the

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1 Jonathan Thomson-Glover case, he'd been arrested --
 2 BARONESS BERRIDGE: Yes.
 3 MS SCOLDING: -- there was an ongoing police investigation,
 4 but neither the DfE nor the ISI would have known
 5 anything about that from the school other than if they'd
 6 read it in the paper. I suppose what kind of concerns
 7 us is that there is quite a lot of that that goes on.
 8 We have seen quite a lot of that in the files, of people
 9 saying, "I saw an article in the Daily Mail about
 10 somebody being in court. Can we have a look at this
 11 school, please?" I suppose one would hope that schools
 12 would be under an obligation -- schools or the LADO --
 13 that when those sorts of issues happened, people
 14 actually told you, because, ultimately, you're the ones
 15 who are interested in the students who are still in the
 16 school and working out whether it's, you know, something
 17 which has happened or whether it shows larger, more
 18 organisational problems.
 19 BARONESS BERRIDGE: Yes. If I can unpack that. The LADO,
 20 although there's not an obligation, they are one of
 21 the ways in which the local authority fulfils its
 22 section 10 duty to work in co-operation with others who
 23 are there to safeguard children's interests as well.
 24 That information may come to us under the legal -- well,
 25 come to the Home Office through the DBS requirement, the

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1 legal duty there. So it might come in under that.
 2 But in relation to the situations I have been aware
 3 of, you know, we are often in those serious allegations
 4 meetings when they relate to -- yes, they might be there
 5 in relation to an academy, a school. So, you know, I'll
 6 take that away in terms of the LADO and how we make sure
 7 that we get information, but the LADO -- the school
 8 would be under that duty, as I say, to tell DBS, which
 9 hopefully should get the situation in terms of
 10 the workforce sorted out, but I do see your point in
 11 terms of the coordination of information.
 12 MS SCOLDING: Going to sort of LADOs more generally, we have
 13 had two LADOs and a director of children's services come
 14 to give us evidence, and we have also had evidence from
 15 the national LADO association. One of the things they
 16 say is, there aren't a set of principles and there
 17 aren't a set of national guidelines, and the
 18 institutions -- so that's the unions or the ISI and
 19 Ofsted -- who have the most to do with LADOs on a kind
 20 of day-to-day basis have all said to us, it's variable.
 21 Some of them are excellent, some of them are less
 22 excellent. But there is not enough clarity about what
 23 it is they are meant to be doing and how it is they're
 24 meant to be doing it.
 25 Is there a space for statutory guidance or a set of

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1 principles for LADOs so that everybody is clear about
 2 what it is they're meant to be doing and when?
 3 BARONESS BERRIDGE: That is -- the extent of their role is
 4 covered in -- would be in the Working Together section,
 5 rather than the Keeping Children Safe in Education.
 6 All I can say is, you know, I will take that back as
 7 a suggestion. That's not something that I can comment
 8 on at the moment. As you say, it has just arisen in
 9 evidence to you, so I will write to the inquiry in
 10 relation to whether there is any descriptor of the role
 11 of a LADO. But I do hope, to help the inquiry, that
 12 I have, in my role, just become inquisitive about the
 13 data that we have: what do we know about how many
 14 schools go to the LADO; are there schools that go too
 15 frequently -- I have had cases of that -- that
 16 safeguarding is not as strong as it should be because
 17 they are over-reliant on the LADO and not taking those
 18 conscious decisions. Then we have other schools I'm
 19 aware of in the system who have never referred to the
 20 LADO. Is that an issue? So I am looking to see whether
 21 the data equips me better to look at whether there are
 22 trends in the system regarding referrals to the LADO and
 23 particularly obviously -- obviously in relation to
 24 workforce issues.
 25 MS SCOLDING: Just on that data retention front, one of

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1 the issues really is that, at the moment, LADOs don't --
 2 wouldn't necessarily collect data about, "This is from
 3 a school. This is from another investigation". So it
 4 is not possible at the moment to work out, for example,
 5 how many referrals -- I mean, when we have asked LADOs
 6 about things, they have had to go through the files
 7 individually, because there's no obligation on any kind
 8 of data collection so that you can see, you know, this
 9 many schools are having that, and also so that you can
 10 identify schools which might fly under the radar, not
 11 just over-relying on the LADO but, in circumstances that
 12 we have had, never contacting the LADO.
 13 BARONESS BERRIDGE: I have, as I say, just on a case-by-case
 14 basis, we are aware that in the system there are
 15 sometimes schools who don't -- who have never reported
 16 anything to the LADO. Now, obviously data only takes
 17 you so far. It raises your human curiosity, is that
 18 a problem that you have never gone to the LADO, or is
 19 that -- or is that just exemplary practice, et cetera?
 20 So we are -- to the extent we have the data, I am sort
 21 of trying to sort of collate and see whether they're
 22 enquiries I should make as a result of the limited data
 23 that we do have. So the data I have on over-reliance is
 24 on specific cases I then can dig out, "Oh, well, over
 25 what frequency has this school reported issues to the

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1 LADO?", and then, of course, you sometimes find that the
 2 wrong things are going to the LADO, the things that
 3 should be in children's social care are going through
 4 the LADO as well.
 5 MS SCOLDING: But I suppose the other option to that is,
 6 LADOs would say -- Ms Laird, who is a LADO from Bristol
 7 and whose practice helped -- certainly she identified
 8 the right issue, shall we say, in respect of Clifton.
 9 She said she wants to be an open door, she wants schools
 10 to phone her up, she wants to be the sort of "phone
 11 a friend", so to speak. Therefore, I suppose she would
 12 say, "Well, maybe there can't be too much reliance on
 13 the LADO". I mean, you don't maybe want to phone them
 14 up every single time, but she's there for those
 15 difficult cases, those grey areas, those complex areas,
 16 and that that's what every LADO should be doing.
 17 BARONESS BERRIDGE: I can see that, you know, the good
 18 relationship and the double-checking, "I think that this
 19 is the situation that I've got in front of me and I'll
 20 be doing X", it seems a good practice for the LADO and
 21 the DSL, particularly, to be in that kind of place, but
 22 obviously not taking away the authority and the decision
 23 making that is the school's; sometimes you can have
 24 queries about the strength of the system in the school
 25 by an over-reliance, not a -- just take a bit of advice

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1 here and there. You get into things like, actually, the
 2 system in the school is tilting into the local authority
 3 and too much. But, yes, I will take away the suggestion
 4 in regards to LADOs, and it actually matches further
 5 enquiries I've been making in relation to what do we
 6 know about the LADOs, what do we know about schools
 7 referring to them and the types of incidents they are
 8 referring to them.
 9 MS SCOLDING: One of the other issues that's raised by some
 10 of the victim and survivor groups is about what role the
 11 LADO has, because the LADO has no investigative role.
 12 BARONESS BERRIDGE: No.
 13 MS SCOLDING: Things either go to social care for
 14 investigation, if there is a -- if the section 47
 15 threshold is met or things go to the police, if there is
 16 a potential criminal offence, or things stay in-house in
 17 schools. Now, under previous versions of Keeping
 18 Children Safe in Education, it basically said, where
 19 there was suspicion of harm meeting the section 47
 20 threshold, then there should be referral to the LADO.
 21 But in this iteration, the 2020 iteration, of Keeping
 22 Children Safe in Education, it provides a greater
 23 explanation sort of saying, "There will be lots of cases
 24 where you won't be referring to the LADO", and it says
 25 there should be local arrangements made.

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1 Now, I think, on behalf of victims and survivors,
 2 they're saying, "Well, what does that mean? Does that
 3 mean that the LADO won't be informed of concerns which
 4 meet a threshold?"
 5 BARONESS BERRIDGE: No. Once a school is satisfied that it
 6 reaches the threshold, they should be referring that to
 7 the LADO, and the LADO is the coordinating role. We
 8 don't believe that the LADO should have an investigative
 9 role within the school, that we need the governing body
 10 and the headteachers to be doing their role -- also
 11 because, of course, we have placed on them the "should
 12 consider going to TRA/must go to DBS". So it is
 13 important that they are the disciplinary for those of
 14 the investigation and the LADO is not the investigator,
 15 they are coordinating and obviously involving the police
 16 and it is important to note as well that when you have
 17 met the threshold to go to the LADO, there might -- many
 18 of these will be dual reports. They will obviously go
 19 into children's social care if there's been harm to the
 20 child as well as to the LADO. So that coordinating role
 21 we think is very important.
 22 There obviously is good practice around but
 23 sometimes schools may want help with investigations. We
 24 are aware that the system, the sector, does have support
 25 when schools have asked for independent help to

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1 BARONESS BERRIDGE: No, I think -- unless a school -- and
 2 I know that in the maintained sector the local authority
 3 often do have this service that they offer --
 4 MS SCOLDING: (Overspeaking) an HR service, in effect.
 5 BARONESS BERRIDGE: Yes, it's part of that. No, I don't
 6 think -- I think schools -- because they are the
 7 employer, and this is a very common scenario that we
 8 get. You have the regulator, like the TRA, et cetera,
 9 but you have the initial investigation by the employer
 10 when it's not a criminal threshold or, for whatever
 11 reason, they have decided not to charge. I think it is
 12 appropriate. This is about -- you know, this is the
 13 senior leadership team of the school. It is about
 14 trusting those professionals. Obviously, a teacher will
 15 often have union assistance in terms of legal advice.
 16 It is a thorough -- the HR process should be thorough in
 17 relation to this and overseen by the governor. So
 18 I don't think that taking what is an essentially HR out
 19 to independent investigation. What I am, you know, very
 20 keen, and you will know we are consulting on, is also
 21 those concerns that we have that haven't met the
 22 threshold to go to LADO and are the low-level concerns
 23 and I know you have received a lot about those and how
 24 much more help we think the system might need in terms
 25 of low-level concerns.

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1 investigate a particular issue, and the LADO is very
 2 important in coordinating when the police are involved
 3 and there's a police enquiry concurrent. Obviously one
 4 has to be very careful about not prejudicing a current,
 5 ongoing police investigation.
 6 MS SCOLDING: I think we are probably looking at, if there's
 7 been a police investigation and somebody is charged,
 8 somebody is then convicted, then the disciplinary
 9 process is quite straightforward. The position is, if,
 10 for example, there isn't a charge, there isn't --
 11 somebody is investigated but, for whatever reason,
 12 there's a determination and then you're in a situation
 13 where you're saying, under my understanding of KCSIE,
 14 which has just been confirmed by you, is that the school
 15 would internally investigate that to determine whether
 16 there were disciplinary issues which arose. Obviously
 17 the balance of -- the threshold is different so
 18 something might be on the balance of probabilities but
 19 not beyond a reasonable doubt for the process of whether
 20 a prosecution should be brought.
 21 Do you think that heads and senior staff have got
 22 the right skills and training to conduct those sorts of
 23 investigations, or do you not think that there should be
 24 a referral to, as you've described, independent experts
 25 to carry out that investigative process?

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1 MS SCOLDING: Well that's --
 2 BARONESS BERRIDGE: (Overspeaking) the threshold.
 3 MS SCOLDING: Yes, well, that's the issue that comes on to
 4 that, which is, in a number of the cases that we have
 5 seen and also, obviously, we heard expert evidence from
 6 Mr Erooga last week, who has done a lot of work around
 7 this, and we sent you all the bump that he's produced,
 8 the various reports and documents he's produced. He's
 9 saying, "Look, in all the cases we have seen" -- in
 10 fact, in Hillside, there were some pretty obvious signs
 11 of grooming, but in others there were kind of general
 12 problems which should have made everybody alert, but
 13 nothing which said, "These people may well be abusing
 14 children"; just general problems.
 15 It is not a solution, but it is an option to have
 16 a sort of low-level concerns policy. Is that something
 17 which you can see pursuing by way of adding to Keeping
 18 Children Safe in Education or any other kind of
 19 documentation, to have it as, at the very least,
 20 a possibility for schools?
 21 BARONESS BERRIDGE: Yes. I mean, it is one of the major
 22 areas I am looking at, at the moment, and that's one of
 23 the reasons it's in the consultation that will go out.
 24 We had to suspend the consultation due to COVID. In
 25 relation to, do -- KCSIE is very clear how -- when

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1 you're over the threshold, how to report and what you
 2 should be doing. At the moment KCSIE just refers to all
 3 concerns. Do we need KCSIE to be specifically referring
 4 to low-level concerns as a concept and then how to
 5 record and report those and use them usefully and justly
 6 vis-a-vis teachers as well as everybody else in the
 7 system?
 8 So it is a matter -- and I -- because we talk about
 9 the cases that you have seen. I personally have yet to
 10 come across a case where everybody goes, "Oh, I never
 11 suspected anything". It is usually, "Oh, actually,
 12 this -- I had this instinct that ..." something. So
 13 I do think this is similar to how the guidance has
 14 evolved with peer-to-peer. We are at the beginning
 15 stages, and I know that Mr Erooga's work that I've seen
 16 in summary is very helpful, but there's no clear-cut way
 17 to do this. But I think it is essential, because we --
 18 what we are ideally wanting to do here, bearing in mind
 19 we can't create a fool-proof system, is, is there a way
 20 to use low-level concerns such that you could -- even
 21 the discretion is there under DBS to look at other
 22 appropriate information. Would it be appropriate to use
 23 low-level concerns, say, if somebody went from school to
 24 school and we had a pattern, to get somebody onto the
 25 barred list before they have harmed a child? That, to

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1 me, if we can get there, is -- would be major progress.
 2 I can't promise you, because obviously it's
 3 developmental and it comes with all kinds of risk --
 4 data protection, what do you put on a teacher's record
 5 that's not proved, all of those caveats, but I think it
 6 is vital because, as I say, usually -- well, of all the
 7 cases I've seen, other people have usually sensed
 8 something about an individual who we then end up having
 9 a serious problem that they have harmed a child.
 10 MS SCOLDING: I think certainly all the Serious Case Reviews
 11 identify that that's nearly always the case, that
 12 there's a pattern of concerning behaviour which people
 13 either ignore or decide reputationally it's not worth
 14 investigating, because they put -- and that's, I think,
 15 what the victims and survivors have concerns about,
 16 internal investigations by schools, that it is too
 17 convenient for schools to then brush those concerns
 18 under the carpet, which is one of the reasons why they
 19 advocate for external bodies to come in and do that
 20 investigation, because there's less likely to be that
 21 sort of cosy club, "Well, we know he's done something
 22 a bit wrong, but it doesn't really matter, really, he's
 23 one of us". Clifton is the most obvious example I can
 24 think of of that, where even behaviour which was
 25 perceived as concerning, so somebody being taped to the

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1 chair as a jape by the sixth formers, wearing only their
 2 pants, was just seen as one of those boarding
 3 school-type things rather than being taken as kind of
 4 a serious sign of blurred boundaries.
 5 BARONESS BERRIDGE: The guidance is very clear here, and we
 6 want the responsibility to be with the leadership of the
 7 school. I honestly -- it is obviously -- school culture
 8 is not perfect now, but in terms of the reputation,
 9 I think the system has moved to the fact that if you --
 10 arguably, your reputation is more deeply damaged if you
 11 cover something up and do that kind of "chumocracy", for
 12 want of a better term, attitude to this than if you have
 13 a very robust and I would say within the schools I see
 14 that those that I would applaud are those that have
 15 rigorous disciplinary processes across all matters, not
 16 just safeguarding.
 17 MS SCOLDING: Which maybe comes on to -- which maybe we can
 18 deal with next, which is about training and codes of
 19 conduct and about those issues as they are currently set
 20 out in Keeping Children Safe in Education. Because we
 21 have had the unions and, in fact, everyone has pretty
 22 much said to us, "Well, Keeping Children Safe in
 23 Education says people should have adequate training.
 24 What it doesn't say is what that's made up of", and it
 25 doesn't say that for staff, it doesn't say that for

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1 governors and it doesn't say that for designated
 2 safeguarding leads. There is more of a description in
 3 Keeping Children Safe in Education of the role of a DSL,
 4 but there is nothing which says that.
 5 Now, do you not think there's a place for, "This is
 6 core content", for some kind of syllabus, even if you
 7 are saying, "Look, everybody has to have this", and, as
 8 well, making sure that there are courses available --
 9 because, for example, if you are a governor, you will
 10 need a course in: how do I ask the headteacher difficult
 11 questions; how do I understand safeguarding? We have
 12 had, for example, Mr Tolchard from Clifton, who was
 13 a very senior member of asset management and knows all
 14 about compliance, who said, "Well, before I had had lots
 15 of training, I didn't really know how to ask those
 16 questions, I didn't know what questions to ask".
 17 Do you not think there is a place for proper
 18 national guidance and standards for training in this
 19 area?
 20 BARONESS BERRIDGE: We are obviously always listening to the
 21 views from the sector, but we took a deliberate decision
 22 in 2014 that the way in which we were going to approach
 23 safeguarding in schools -- this is part of a wider
 24 issue, what you have just outlined -- is that we had
 25 come to a detailed tick-box exercise and an

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1 over-reliance on process and structure, and we
 2 deliberately moved to a framework to outline to schools
 3 and then enabling them -- because of the nearly 22,000
 4 different state school settings that you have, whether
 5 that's geographical or whether that's due to cohort
 6 needs, that, actually, the training that was best suited
 7 for each school was determined by the -- in terms of
 8 safeguarding by the senior leadership team. It is
 9 obviously now the headteachers -- the national
 10 professional qualification does include a section on
 11 safeguarding. But that actually -- they are the people
 12 who can devise the appropriate training for their
 13 particular cohort of pupils.

14 To use your classic example, your small, remote
 15 rural primary schools, safeguarding training will look
 16 probably completely different to a busy secondary school
 17 in inner London where you've got issues potentially of
 18 criminal exploitation, et cetera. You will just have
 19 a very different approach to the risks of harm to your
 20 pupil cohort.

21 That is our position. I'm not saying we won't --
 22 you know, we hear the views of the sector.

23 In terms of governors, we offer through the
 24 department -- we expect governors to get training and we
 25 do provide that, though it's DfE-provided training.

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1 I think, since 2018, over 5,000 governors, as the
 2 gentleman you mentioned outlined, have received that
 3 training. But we are not proposing to move to a core
 4 content out. We are confident, at the moment, that
 5 schools know their duty to provide appropriate training
 6 to all their staff.

7 MS SCOLDING: If I could deal with the issue of governors
 8 first. Firstly, there is no requirement for them to
 9 have training. It says it would be a good idea, is what
 10 KCSIE says. I think the first thing is, shouldn't, at
 11 the very least, the safeguarding governor have some
 12 training?

13 BARONESS BERRIDGE: We would expect them to have training.
 14 We are now back, I'm afraid, into our mandatory or
 15 guidance point. We would expect -- and we see good
 16 take-up. But it is in our consultation on Keeping
 17 Children Safe in Education, where out there -- I don't
 18 want us, when we have -- we have obviously certain
 19 considered positions that we have come to, but we are
 20 always listening to the sector and it is specifically in
 21 the guidance, and if that information comes back to us
 22 and we look at the responses to the consultation that we
 23 will put out soon, then we will look at it. It is not
 24 a completely closed door. But at the moment that is our
 25 position.

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1 MS SCOLDING: I know that that's your position, but I'm
 2 going to say to you that we have absolute unanimity of
 3 view about this. We have the unions, we have the ISI,
 4 we have Ofsted, we have schools, we have the Association
 5 of Independent School Governors, we have Ms Lynch, we
 6 have everyone, we have LADOs. Nobody has said to us
 7 that the current position in respect of governors is
 8 acceptable. So I suppose I'm just putting that back to
 9 you, as to, I don't think we have got anything -- there
 10 are lots of other areas where nobody agrees with each
 11 other in this sector. The one area where everybody
 12 agrees with each other is on the need for governors to
 13 have adequate training, given the responsibilities that
 14 they now have in respect of safeguarding and management.

15 BARONESS BERRIDGE: As I say, it is in the consultation, so
 16 what we will be expecting, bearing in mind what you have
 17 said in your question, is for that to come back to us
 18 through the consultation response, and that's why it is
 19 there.

20 MS SCOLDING: Can I ask about sort of staff, in terms of
 21 that. I can understand why you're saying that different
 22 schools would need different sorts of training, but
 23 I think what we are looking at here is, across the board
 24 there being a baseline of understanding. Now, you might
 25 need additional training, so, for example, you're right,

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1 if you are a large urban secondary school in
 2 Tower Hamlets you're going to need a lot of work on
 3 maybe things like female genital mutilation, on forced
 4 marriage, in a way you might not need, but you might
 5 need, even in a remote area, because we are sort of
 6 maybe making assumptions about the problems that people
 7 come across. Something like child sexual exploitation
 8 is just as likely to happen in a village in Cumbria as
 9 it is in the middle of Tower Hamlets.

10 What we are looking at here really is just
 11 a baseline. You know, at the very least -- you can add
 12 to it, you can have more glamorous, exciting courses and
 13 components, but just so that everybody who is in
 14 a school, whether they are the caretaker, whether they
 15 are the teacher, has got a core content and you can sit
 16 there and say and know that that has been provided to
 17 everyone, rather than leaving it to headteachers, who
 18 might do a brilliant job, but also the ISI, for example,
 19 and Ofsted have said to us, well, there is a lot of
 20 variability in terms of course provision and in terms of
 21 what's on offer.

22 BARONESS BERRIDGE: Yes. I mean, all of those people that
 23 you have outlined, the requirement is that they all have
 24 induction training into -- when they have their
 25 induction training that safeguarding is covered and they

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1 all read part 1. That is very clear that they should
 2 all be reading part 1 and all staff should have that.
 3 So there is -- whether you call it training or
 4 information giving, there is a basic requirement there
 5 that all the staff have. We want to leave it to schools
 6 to devise and implement the training, the safeguarding
 7 training, that they believe is appropriate for their
 8 particular cohort. So, at the moment, the position is
 9 not to have a core content, save for what obviously is
 10 within the NPQ.
 11 MS SCOLDING: I know. I suppose I am going to push you on
 12 this.
 13 BARONESS BERRIDGE: Yes. It is an important point, of
 14 course.
 15 MS SCOLDING: It is just, obviously the position that we
 16 will then see is, good schools will organise good
 17 training. Poor schools will organise poor training.
 18 The problem is that, if there is no core content, basic
 19 content, basic syllabus, we all understand there would
 20 need to be variations in some different situations, but
 21 if you don't have that core -- that irreducible minimum
 22 of, "This is what needs to be done" and "This is what
 23 people need to know" -- because, let's face it, we could
 24 all read part one of KCSIE and put it in the bin
 25 afterwards and not really know anything about it.

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1 'inadequate". I'm very keen that -- to get in and
 2 deliver the change for those children in terms of
 3 safeguarding and other things is about improving the
 4 strength of the institution, not providing, necessarily,
 5 core content on any sector. But you're obviously just
 6 dealing with safeguarding; to me, it is about
 7 strengthening that institution.
 8 MS SCOLDING: But, on the other hand, we have got
 9 institutions -- other than Headlands, where there were
 10 issues more generally which led the school to go into
 11 special measures, both in the case of Hillside and in
 12 the case of Clifton, educationally they were
 13 "outstanding", they were extremely good schools. They
 14 produced very good academic results. I can think of
 15 a number of other schools in phase 1, you think about
 16 Chetham's, a brilliant school in terms of music, really
 17 not very good. All the music schools we have seen, some
 18 of the special schools we have seen, were good in terms
 19 of their educational outcomes. So one does not lead to
 20 another.
 21 As well, the thing about training is, I'm not
 22 suggesting it's the panacea for all ills. Of course it
 23 isn't. It is one small part. But what it can do is,
 24 you can then get that teacher, that Michelle Bamford,
 25 who, after the training, sits there and thinks, "Ah,

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1 I understand the balance between autonomy and
 2 centralisation, but haven't we tipped too far into the
 3 autonomy balance and not had adequate oversight of
 4 what's going on on the ground?
 5 BARONESS BERRIDGE: Obviously we have oversight through
 6 Ofsted and ISI. My experience, as a minister dealing
 7 with the poor schools, is that core content is just not
 8 going to solve that. What you have got there is a wider
 9 issue that you need to solve in terms of the quality and
 10 the strength of the leadership in that institution,
 11 because you can produce, in Mr Gibb's field, core
 12 content for this curriculum and core standards here, and
 13 you will still see education performance is low. In
 14 that scenario that you have put to me, the poor
 15 leadership, again, I doubt -- obviously, I can't prove
 16 that, I doubt whether that is solved by core content.
 17 What I would want to be seeing in that situation is an
 18 improvement generally in the strength of that
 19 institution because, if it is poor, as you outline, it
 20 will be poor -- often, it is poor in relation to
 21 education performance, it is poor in relation to its
 22 money, it is poor in relation to health and safety, and
 23 that is what I am seized with and very much is -- and we
 24 sometimes do talk -- I say to Mr Gibb, "You get the
 25 'good' and 'outstanding' schools and I've got the Ofsted

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1 I can go and speak to the LADO. Ah, I can challenge the
 2 head. Ah, I can have those difficult conversations".
 3 That's what us, as an inquiry, were very concerned
 4 about, making sure that those people are able to stand
 5 up, to be the "brave teacher", as Ms Humphreys and
 6 Ms Spielman said yesterday.
 7 BARONESS BERRIDGE: Yes, and I would say to you that
 8 appropriate training, as we have said in cases -- not
 9 that we ignore the issue of training, we have asked
 10 schools to provide appropriate training, and KCSIE does
 11 cover the fact that everybody should be speaking up and,
 12 if you are not listened to, KCSIE signposts you to an
 13 external point or the school should signpost you to
 14 whether it is whistleblowing or the LADO directly or to
 15 other, sometimes, charities to raise your point. So
 16 that confidence building and that equipping is through
 17 the guidance and the appropriate training. I think we
 18 are back here, again, to the issue to do with mandating
 19 and, in a lot of the terrible situations you have
 20 outlined, it is often, again, the leadership. In many
 21 of these cases, reports were being made and they weren't
 22 being acted on by the leadership. You can have core
 23 content and training and reporting and it is not
 24 necessarily, as you said, the panacea to all this. We
 25 are not closed to this but, at the moment, KCSIE is

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<p>1 a general consultation as well. People can tell us on 2 anything within the document not just the questions we 3 ask, but we have outlined appropriate training and 4 that's the view we have taken at the moment. 5 MS SCOLDING: One of the issues that comes out of it in 6 terms of more specific training is whether or not the 7 designated safeguarding lead should be someone who 8 should have some kind of qualification. The most 9 obvious analogy is with children with special 10 educational needs, where the SENCO started off being 11 a voluntary role and now, I think it was in the 2014 12 Act, it was -- it became compulsory. You had to have 13 some kind of qualification. Given the importance of 14 the DSL role, at the very least, I would say, in 15 secondary education -- well, it is important in every 16 school, but I can see maybe rolling it out first, having 17 some kind of mandatory qualification for somebody who 18 may well be spending all their time dealing with child 19 protection and safeguarding and actually not do any 20 teaching at all, whether or not it would be useful for 21 those staff to feel valued by having a professional 22 qualification. 23 BARONESS BERRIDGE: Well, KCSIE, in this area, actually 24 there is much more detail in relation to the DSL. 25 MS SCOLDING: There is.</p> <p style="text-align: center;">Page 113</p>	<p>1 BARONESS BERRIDGE: In relation to the fact that -- this 2 isn't a member of the teaching staff necessarily, this 3 is a senior leadership position. 4 MS SCOLDING: Exactly. 5 BARONESS BERRIDGE: You're almost -- so that, in terms of 6 qualifications and experience. So this is a senior 7 leadership position. But we do think that, for that 8 DSL, we have outlined core content and what should be 9 covered in the role and that they should have training 10 and how often it should be updated. 11 So, again, we come back, though, to the variety of 12 situations in which you are a DSL, whether you are a DSL 13 in a residential special school or a DSL in a small 14 infants' school, that actually what they need is more 15 specific and should be delivered in the school context. 16 So there isn't a proposal at the moment to produce 17 a specific qualification or -- in relation to designated 18 safeguarding leads. 19 MS SCOLDING: Let me sort of come on to another -- let's do 20 all the qualifications and experience stuff all at once. 21 We have then got the issue of boarding staff. So the 22 National Minimum Standards say everyone who has 23 responsibility in a boarding house should have adequate 24 training and experience. There is no definition of what 25 that means. Now, the ISI and Ofsted have both said to</p> <p style="text-align: center;">Page 114</p>
<p>1 us, "We don't think that's good enough. We think there 2 does need to be some kind of explanation of what's meant 3 by that because you are looking after other people's 4 children, in a boarding setting. There are some 5 different responsibilities that come with that". Is 6 that something which you would think about clarifying 7 and maybe providing what the sort of adequate training 8 and experience is, from your perspective? 9 BARONESS BERRIDGE: I think I'm right in saying there is 10 a level 3 qualification needed if you are in 11 a residential special school. 12 MS SCOLDING: Yes, there is if you are care staff. But this 13 is nonresidential special schools. 14 BARONESS BERRIDGE: In what will shortly be issued, the 15 consultation on the National Minimum Standards for RSS 16 and for boarding schools, we are sending out to 17 consultation whether there is a need for somebody in the 18 boarding sector to have a qualification. So we are 19 taking that out and see what -- you know, obviously, 20 when the responses come back in, we will evaluate them. 21 MS SCOLDING: The next thing following on from that is 22 whether or not the head of care in a boarding school, 23 not a residential special school, but in a boarding 24 school, whether there should be some kind of 25 qualification for the person who is leading boarding.</p> <p style="text-align: center;">Page 115</p>	<p>1 Most boarding schools have somebody who is called head 2 of boarding, head of care. At the moment, none of them 3 have to have any qualifications whatsoever. Do you 4 think it is something that there should be someone who 5 should have that? In residential special schools it is 6 different. There is a requirement at the moment for the 7 head of care in a residential special school to have 8 a level 3 qualification or to get it. The difference is 9 that in children's -- we will come on to residential 10 special schools in a moment because Ms Humphreys raised 11 an issue with us yesterday about that. 12 Do you have any views about that? 13 BARONESS BERRIDGE: Sorry, I hope there's not been some 14 confusion here, but what we sent out to consultation is 15 that in relation to boarding schools about whether there 16 should be a qualification for head of care in a boarding 17 school. 18 MS SCOLDING: Fine, thank you. That ticks that box. That's 19 fine. Then, as far as residential special schools are 20 concerned, Ms Humphreys said to us yesterday -- and she 21 isn't the only one; Dame Christine Lenehan, who is the 22 very eminent Council for Disabled Children; we have had 23 Mencap come along to give us evidence, the National 24 Autistic Society; even the residential special schools 25 themselves have said they would like a similar system to</p> <p style="text-align: center;">Page 116</p>

1 children's homes in that you have somebody who is
 2 a registered manager in terms of -- to have oversight
 3 and that that's important, given the nature of children
 4 you are looking after in a residential special school.
 5 BARONESS BERRIDGE: Well, as I'm sure has been outlined to
 6 you, the situation currently at the moment is, some of
 7 those residential special schools will also be dual
 8 registered as children's homes if they are accommodating
 9 children more than 295 days of the year. But for the
 10 remaining -- I think it is about 130, there isn't that
 11 requirement. So I'm afraid I'll have to write to you
 12 further in relation to the registered manager position.
 13 I'm afraid I'm not --
 14 MS SCOLDING: That's absolutely fine. I'm sure somebody is
 15 taking a note in the background. I don't think you
 16 should be expected to do so. Which comes on to my next
 17 question, which is about standards. Again, I think this
 18 is, Lady Berridge, one for you, about standards in
 19 residential special schools.
 20 Why aren't you going to make them Quality Standards?
 21 Again, Ms Humphreys was very eloquent on this yesterday,
 22 Dame Christine was very eloquent on this and has
 23 provided us with a witness statement which basically
 24 says, I know you think that somebody at the DfE and
 25 I had a chat and said it was okay that it was minimum

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1 outcome sooner, because minimum, as a word, is in
 2 primary legislation, is we are about to send out the
 3 consultation on the National Minimum Standards for RSS
 4 that will significantly raise the bar in relation to how
 5 the standards are constructed and how the standards are
 6 framed. So we will have the introduction of a quality
 7 marker, perhaps, for want of a better word, sooner and
 8 change the outcome for the children and parents and
 9 staff in those homes than we would do if we were to jump
 10 straight away to let's go to primary legislation.
 11 We are achieving this outcome through the --
 12 changing the National Minimum Standards, it's quicker.
 13 If we don't get the outcome through that method, then of
 14 course, as I said at the start, we have not closed the
 15 door and we will come back to it.
 16 So we are in agreement on what we need to achieve.
 17 I think the disagreement here is how we get there. Our
 18 strong view is, we can get there sooner by this method
 19 than by legislation.
 20 MS SCOLDING: Thank you, Lady Berridge. I think I have
 21 probably -- I think I'm going to give you a break for
 22 a while. You've answered 50 minutes' worth of questions
 23 in one go and we have Mr Gibb with us. I'm not going to
 24 deal with the rest of special schools, I will deal with
 25 that later.

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1 but I can assure you that isn't the case.
 2 As you identify, we are talking about maybe 3,500
 3 children in the country who go to a residential special
 4 school. Obviously, we are identifying -- it is a very
 5 small number of children who have extremely complicated
 6 needs which cross, often, into health, they have
 7 behavioural challenges, in a number of cases they have
 8 attachment problems, behavioural problems. Shouldn't
 9 they be subject to exactly the same standards as those
 10 whom we look after in children's homes?
 11 BARONESS BERRIDGE: In relation to Quality Standards, we
 12 have not closed the door to actually legislating in
 13 relation to Quality Standards. However, that is, as we
 14 have all -- I'm sure you're aware, a lengthy process.
 15 We need to achieve the outcome here of reports and
 16 inspections in those homes that are more based on
 17 quality judgments.
 18 So we have -- there's been some miscommunication
 19 with Dame Christine so the department will be
 20 re-engaging obviously with her. We have spoken to
 21 Ofsted to encourage them that when they go in to do
 22 their reports, similarly to when they inspect
 23 independent schools against those minimum standards,
 24 they can make quality assessments and quality judgments.
 25 So what we have done, in order to achieve the

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1 I'd like to turn to inspection now, Mr Gibb, which
 2 I believe you are responsible for or you are largely
 3 responsible for. We heard yesterday, Mr Gibb, from
 4 Ms Spielman, who has made it absolutely clear -- and ISI
 5 have as well -- that, really, there have been enough
 6 funding cuts and that they are really operating at the
 7 bare level of what's adequate in respect of inspections.
 8 I understand that a commitment was made before the
 9 last election for there to be a reinstatement of
 10 slightly longer inspections. Can you tell us where we
 11 are about this now, Mr Gibb?
 12 MR GIBB: Well, Ofsted has its own arrangement with the
 13 Treasury in determining its settlement. We are -- as we
 14 speak, the spending review is being announced --
 15 MS SCOLDING: Can you tell us anything?
 16 MR GIBB: No, I'm afraid I can't. We had a problem to deal
 17 with in 2010. We had the financial crash, it led to
 18 a huge budget deficit, an end-year deficit of
 19 150 billion each year and that had to be dealt with.
 20 They protected three areas: the health service; schools
 21 aged 5 to 16; and international development. Ofsted and
 22 post-16 education and a whole raft of other areas across
 23 Whitehall did have to help address that deficit, and by
 24 doing so, we became in a much stronger position to be
 25 able to deal with the current crisis. During that

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1 period, standards rose in our school system and people
 2 like Michael Wilshaw and Amanda Spielman did a huge
 3 amount to reform Ofsted to ensure that actually the
 4 quality of inspection rose by, for example, the sort of
 5 subcontractor of a subcontractor approach to Ofsted
 6 inspectors, non-HMI inspectors, that was removed so that
 7 those inspectors had a direct contractual relationship
 8 with Ofsted. They had centralised training.
 9 Amanda Spielman has also improved the training of
 10 inspectors. So, actually, they're getting more from
 11 less in terms of the quality of inspections.
 12 But, of course, every sector of Whitehall wants to
 13 be better funded, and let's see what comes out of
 14 the current spending review.
 15 MS SCOLDING: I suppose, Mr Gibb, what Ms Spielman has been
 16 absolutely clear about with us, and to you,
 17 I understand, is, we are not talking about doing more
 18 with less anymore. No more can be cut. Otherwise,
 19 you're not dealing with a level of assurance. I think
 20 she described it as a very thin level of assurance at
 21 the moment.
 22 Shouldn't there be greater assurance, given the
 23 importance of schools to our children's lives?
 24 MR GIBB: Look, you know, you're talking to a spending
 25 minister in a spending department. We have to live

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1 which leads to, you know, a letter. But -- and the plan
 2 has been to resume inspections in January, although
 3 that's also under review.
 4 So all these issues are -- you know, have taken
 5 a step back during the pandemic. But we want to fulfil
 6 our manifesto commitment.
 7 MS SCOLDING: One of the other issues Ms Spielman raised is
 8 both bigger teams and longer visits, but also increasing
 9 the frequency of routine inspections in boarding
 10 provision generally because of the greater vulnerability
 11 of children within boarding provision. Obviously
 12 residential special schools are inspected on an annual
 13 basis. Boarding provision, the welfare element of it is
 14 inspected once every three years. Would you consider
 15 introducing more frequent inspections for boarding
 16 schools? We are only looking at probably around 1,000
 17 schools out of the 24,000, I think, that exist in total
 18 in England.
 19 MR GIBB: I don't really want to bring Baroness Berridge in
 20 straight away after her long stint, but this is more an
 21 issue for her.
 22 MS SCOLDING: I will deal with that for her. What I think
 23 is more of an issue for you is about the oversight by
 24 Ofsted of the Independent Schools Inspectorate. Now,
 25 Ofsted, again, has been clear with us, because

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1 within the strictures that we are given in order to --
 2 you know, to maintain the strength of the public
 3 finances and the strength of the economy which generates
 4 the funding that we all want to spend.
 5 Amanda Spielman, HMCI will be having their own
 6 negotiations with Treasury, but of course we all want
 7 more. We want Ofsted inspections to be longer, we want
 8 them to be looking at other things like behaviour, like
 9 extracurricular activities. These are commitments we
 10 gave in the manifesto and we want those to be inspected
 11 and those come at a cost.
 12 MS SCOLDING: So the commitment, as I understand it, that
 13 was made in the manifesto is that it would go from two
 14 to three days, the inspection. Is that something which
 15 has now been kind of worked out in terms of -- because
 16 I know you give Ofsted instructions to say there should
 17 be inspections once every X years on a routine basis and
 18 they should be this length. Is that something which has
 19 now been worked through or is that something which is
 20 still being discussed?
 21 MR GIBB: It is still being discussed and a lot of these
 22 things were put on hold due to the pandemic. We
 23 suspended inspections of schools from March. They are
 24 still essentially suspended. There are discussions
 25 happening between Ofsted and a selection of schools

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1 Lord Agnew, who was a colleague of yours, who was
 2 a minister, in the previous government, in education --
 3 I think he's a minister for something else now --
 4 MR GIBB: Yes, he's in the Cabinet.
 5 MS SCOLDING: -- in the Cabinet Office, isn't he? -- brought
 6 to our attention that it no longer provides any
 7 oversight of ISI for you. Is there any oversight of
 8 ISI, then, by anyone?
 9 MR GIBB: It does continue to have oversight of ISI's work
 10 and it does contribute to, you know, the
 11 Secretary of State's sort of periodic approval of ISI.
 12 That more formal oversight work that was taking place
 13 really didn't identify any concerns over a decade of
 14 monitoring ISI and it wasn't a good use of resources.
 15 It was very time consuming.
 16 So instead they have a kind of programme of joint
 17 activity between Ofsted and ISI and the early signs of
 18 that approach were very encouraging. I think it is
 19 better -- they are both very accomplished inspectorates.
 20 This oversight business really came in because of some
 21 newer inspectorates that we did have and no longer have,
 22 Bridge and the SIS. So it's far better for these two
 23 eminent inspectorates to be working together, to learn
 24 from each other and to help each improve its own
 25 approach to inspections.

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1 MS SCOLDING: I suppose the question is, Ms Spielman has
 2 been absolutely clear with us that the joint working
 3 they do does not amount to oversight. I mean, they have
 4 gone -- I think a lot of that work obviously stopped
 5 with the pandemic, but I think they both did what they
 6 have both described as very helpful discussions with
 7 each other, they have shadowed each other's inspections,
 8 but they have been absolutely clear, Ms Spielman was
 9 with us, that that does not amount to oversight. So
 10 I ask again: who is overseeing ISI? Who is quality
 11 assuring their work?
 12 MR GIBB: Well, the department, of course. They have,
 13 internally, discussions with ISI, they see the reports.
 14 So that's where that happens. But that's also fed into
 15 by Ofsted, and the work that they are doing jointly with
 16 ISI also helps to inform that oversight provision. But,
 17 as I said, when there was that formal oversight, no
 18 problems were identified over a period of ten years. So
 19 it is not a good use of resources or time to resume that
 20 approach to the oversight of ISI.
 21 MS SCOLDING: I suppose I ask the question, well, if you did
 22 it -- I mean, what I don't understand is, of course it
 23 may well have been marvellous and everything was good,
 24 but that doesn't mean you stop doing it. I suppose
 25 that's my concern. I mean, everybody -- well, I suppose

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1 that was the problem, wasn't it? If we are coming at
 2 things from a slightly different angle, in that, with
 3 the outstanding exemption, you did have a situation
 4 whereby I think it is over 1,600 schools weren't
 5 inspected at all for six years, and you had nearly 1,000
 6 schools which weren't inspected for a decade.
 7 I mean, I understand the desire to release people
 8 from unnecessary regulation and unnecessary burdens, but
 9 hasn't the burden shifted a bit too far?
 10 MR GIBB: Yes, that exemption didn't apply to the
 11 independent sector.
 12 MS SCOLDING: No, it didn't, and it didn't apply to the
 13 boarding sector either.
 14 MR GIBB: Nor to special schools either. The reason why we
 15 had that exemption which we introduced when we came into
 16 office in 2010 was twofold, really. As part of our
 17 philosophy of earned professional autonomy, that here
 18 are schools that are, you know, "outstanding", and, by
 19 the way, "outstanding" schools, 99 per cent of them were
 20 also "good" and "outstanding" in their safeguarding.
 21 And we want them just to get on with it. At that time,
 22 back in 2010, only 68 per cent of schools were graded
 23 "good" or "outstanding", which means that 32 per cent
 24 were not. It was far better to focus Ofsted's
 25 resources, the system's resources, on dealing with those

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1 32 per cent. Now, that 32 per cent has now reduced to
 2 14 per cent. 86 per cent of schools are now "good" or
 3 "outstanding" in the state sector.
 4 Given the length of time that has elapsed since
 5 then, we do feel now is the time to remove that
 6 exemption, to try and restore confidence in the
 7 "outstanding" grade, and given, as you have said, 1,000
 8 schools haven't been inspected for ten years, it is now
 9 time to remove that exemption.
 10 MS SCOLDING: Lady Berridge, I saw your hand. I'm going to
 11 come back to you in a moment because I have a couple of
 12 follow-up questions for Mr Gibb.
 13 Did anybody think about the safeguarding
 14 implications when they thought about that "outstanding"
 15 exemption? I understand, in 2010, if you were running
 16 a school that was "outstanding", but did nobody sit
 17 there and think, "Well, what about what's going on with
 18 safeguarding? What about what's going on with child
 19 protection?" Did anybody think about that before the
 20 decision was made or think about it at any point before
 21 this year when I know the position has now changed?
 22 MR GIBB: Yes, we did. That's why special schools were not
 23 included. That's why independent schools were not
 24 included. Because there are other oversights of state
 25 schools. There's the local authority in terms of

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1 maintained schools, there's the academy trust in terms
 2 of academies. As I said, 99 per cent of these schools
 3 were graded "good" or "outstanding" for safeguarding so,
 4 yes, of course we did. Even if you are exempt -- even
 5 if you are "outstanding" and therefore exempt, that
 6 didn't necessarily mean you weren't inspected. There
 7 was a risk-based approach that Ofsted took. If there
 8 were whistleblowers or if information did come to Ofsted
 9 about concerns in safeguarding in particular, then they
 10 would go and inspect an "outstanding" school.
 11 MS SCOLDING: Can I pick you up on the 99 per cent say that
 12 they were "outstanding" or "good". Ultimately, what our
 13 investigations demonstrated is simply having an Ofsted
 14 inspection of "outstanding" and "good" doesn't actually
 15 mean that your child protection was good. All it simply
 16 meant was that you were able to sort of demonstrate, at
 17 the time of the inspection, that that was the case. So
 18 I think we have to be quite careful before automatically
 19 saying that, because there was an "outstanding" or
 20 "good" inspection, that therefore meant that child
 21 protection practice was acceptable in the context of
 22 the school. Would you accept that?
 23 MR GIBB: Yes, of course. That's an inherent weakness of
 24 just the whole concept of inspection. That applies to
 25 all the gradings of an Ofsted judgment.

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1 MS SCOLDING: But the other issue is, you have talked about
 2 the fact there used to be other inspectorates. The
 3 Independent Schools Inspectorate really came about as
 4 a sort of quirk of history, didn't it, because there
 5 wasn't any oversight of independent -- well, HMCI
 6 ostensibly could look at independent schools, and
 7 occasionally did, and then Ofsted came in and they
 8 didn't have any responsibility for independent schools,
 9 but then, I think, possibly as a result of
 10 the Robin Lindsay case -- we are not entirely sure --
 11 there was a decision made by one of the previous
 12 governments in 2002 to introduce independent education
 13 standards, and one therefore needed an inspection
 14 service that could do that.

15 Do you think that there is still a place for the
 16 Independent Schools Inspectorate and why is it needed?
 17 Couldn't Ofsted just do all this work itself? We are
 18 only talking about 1,000 schools -- 1,000 extra schools.

19 MR GIBB: The independent sector is independent, and that is
 20 its very nature, it is its strength and it is its
 21 weakness. If you then bring in the state inspector,
 22 Ofsted, you do chip away at that independence, and you
 23 do chip away at its independence through the Independent
 24 School Standards, but that was something that, you know,
 25 it was right to do, to make sure that we had all those

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1 a good system and we can learn from that.

2 MS SCOLDING: I'm not going to indicate or make any judgment
 3 about the quality or otherwise of the system. I'm just
 4 asking a series of questions. What I suppose I want to
 5 sort of unpack from the answer that you have given is,
 6 there are plenty of other -- I'm thinking about other
 7 independent organisations. The most obvious one would
 8 be private hospitals, private healthcare, general
 9 practitioners, dentists, all of whom operate completely
 10 privately, largely as a result of the way that the
 11 sector grew up in the light of -- from 1944 and
 12 afterwards in a similar way to the independent school
 13 sector, so they are sort of creatures, but they are all
 14 inspected by the Care Quality Commission. There is
 15 Monitor, which deals with foundation trusts, but they
 16 are, in essence, public bodies. So I can't think of
 17 another -- I'm sure people will write in and say but
 18 there are at least 50 million other people, but I can't
 19 think of another sector which deals with such central
 20 parts of people's lives where there is a sort of choice
 21 of regulator, so to speak. So that's issue number 1.

22 Issue number 2 is, Ofsted do inspect approximately
 23 1,000 independent -- I think it is approximately 1,000
 24 schools. They inspect basically all non-association
 25 independent schools. So it is not the case that all

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1 safeguarding issues, which is -- and there is also an
 2 education quality in the standards as well.

3 But, you know, we do want there to be -- I mean,
 4 when we were in opposition, I was quite critical of
 5 the approach that Ofsted took to inspections. We were
 6 worried about the sort of Ofsted standard lesson about,
 7 "There must be a plenary, there must be group work,
 8 there must be this or that" and since we came into
 9 office in 2010 Ofsted has improved, and there is no
 10 standard Ofsted lesson now. They are much more
 11 objective in the way they look at schools.

12 But it is better to have -- if you want to have an
 13 independent sector, which we do, you know, they can
 14 learn from each other. You have two different systems
 15 learning from one another and improving, not a one size
 16 sort of system, and that's the strength of
 17 the independent sector, that we can learn from for the
 18 state sector and vice versa, and the same then applies
 19 to inspection. You could undermine that very
 20 independence if you insisted they had the same type of
 21 inspection, and I've always been confident that ISI
 22 inspections are very good. They are quite long. They
 23 use a serving headteacher, it's part of the deal with
 24 the ISC that they need to release headteachers so many
 25 days a year to do inspections of another school. It is

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1 independent schools are inspected by one body and all
 2 nonindependent schools are inspected by another. It is
 3 sort of very much a mixed market. So I suppose the
 4 question is, what's the point of that anymore?

5 MR GIBB: When civil servants are proffering policy
 6 suggestions, and when all I can see is the only virtue
 7 is neatness, I reach for my red pen, because neatness is
 8 not a policy solution to everything, it really isn't.

9 You know, you reminded me of an argument that
 10 I didn't make and why the ISI system, I think, is worth
 11 preserving, is that they are association schools. So
 12 all the schools inspected by ISI have to be a member of
 13 their own associations -- whether that's -- is it HMC --

14 MS SCOLDING: Yes (overspeaking).

15 MR GIBB: -- or the Independent Schools Association, all
 16 those associations, which of course will have their own
 17 standards and their own discussions and how to improve
 18 their schools, and the reason why the other half are
 19 inspected by Ofsted is because they don't have such
 20 associations that we respect.

21 But, you know, I never feel that neatness and having
 22 a monolithic approach is necessarily a policy option
 23 unless there are problems that you're seeking to address
 24 by changing the system.

25 MS SCOLDING: I think we identify -- certainly we have cases

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1 of examples of concerns that have been raised about the
2 quality of inspections, about their independence.
3 Furthermore, it is not about neatness, it is about
4 consistency.
5 MR GIBB: They are consistent because they both inspect
6 against the same Independent School Standards. So they
7 may have different frameworks in how they inspect, but
8 they inspect against the same ISS. So there is
9 consistency in what is being inspected and against what
10 standards.
11 MS SCOLDING: I think I might have a couple more questions
12 for you when I get back about that, Mr Gibb, but I'm
13 noting the time.
14 Chair, in fact, we have gone about five minutes
15 over -- I do apologise -- our allotted timescale.
16 Chair, would now be an appropriate moment for a break?
17 THE CHAIR: Yes. We will return at 3.00 pm.
18 MS SCOLDING: Thank you very much. thank you, Mr Gibb.
19 (2.45 pm)
20 (A short break)
21 (3.00 pm)
22 MS SCOLDING: Mr Gibb, just before the break, we were
23 talking about inspection and the Independent Schools
24 Inspectorate. You said that the department carries out
25 an oversight role. Does that involve looking at the

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1 Independent Schools Council and, you know, what it is
2 not is accountable to Parliament in the way that Ofsted
3 is, of course.
4 But of course, you know, you put a layer of trust in
5 the chief executive, to the chief inspector of each of
6 those organisations, which we do with Ofsted. We are
7 just about to appoint, or have appointed, a new chief
8 inspector of the Independent Schools Inspectorate,
9 Vanessa Ward, and those people are chosen very carefully
10 and she will be overseeing all the inspections in that
11 organisation.
12 MS SCOLDING: One of the other issues that some of
13 the victims and survivors have raised with us is, they
14 are not happy with either the inspections by the
15 Independent Schools Inspectorate or by Ofsted. They
16 think there should be a separate safeguarding
17 inspectorate partly because they think the ISI is a bit
18 too cosy. I mean, I know that there is operational
19 independence from the ISC but there's a view that
20 it's -- as you, yourself, have indicated, it's
21 headteachers inspecting other headteachers, so there may
22 well be too much back scratching or "chumocracy", as
23 I think Lady Berridge called it -- that's a new one on
24 me. It is a little bit too "chumocracy" for their view,
25 that they think it can't really deal with real

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1 quality of inspections and, if so, who performs that
2 role within the department? Is there someone who has
3 some sort of inspectoral oversight who can do that for
4 you?
5 MR GIBB: I think -- my understanding of the situation is
6 that ISI needs approval and that the last review was in
7 2017 and there will be another one in 2022. But, also,
8 there are termly meetings between ISI and departmental
9 officials, and it is this periodic full review that
10 takes place every five years is my understanding. If
11 I'm incorrect, I will send the inquiry a note.
12 MS SCOLDING: Of course. When you're talking about termly
13 meetings, they aren't going to tell you whether or not
14 the quality of inspection is adequate or not. I mean,
15 I'm not suggesting it is inadequate. I'm just saying
16 that is a good opportunity for them to say to you,
17 "Look, these are the things we are seeing"; for you to
18 say, "What are you finding". But you can't necessarily
19 rely on quality assurance in those termly meetings, I'm
20 assuming, or am I wrong about that?
21 MR GIBB: They are looking at systems, aren't they? Of
22 course the department will see ISI reports. The
23 department is the regulator of all the schools in the
24 country. So they will see those reports.
25 ISI, my understanding is it's accountable to the

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1 independence and it is all too back scratching. Do you
2 have any views about that?
3 MR GIBB: The independent sector wants to maintain its
4 reputation, and, you know, they will want an
5 inspectorate that works.
6 The argument about having a separate inspectorate
7 for safeguarding -- I mean, there are arguments on both
8 sides. You can have a more specialised group of
9 inspectors who are well trained and well experienced in
10 this particular field. The downside to the approach is
11 that, actually, you may well come across indications of
12 safeguarding concerns by a more general inspection, by
13 inspecting areas that haven't traditionally shown --
14 given rise to safeguarding concerns. You know,
15 inspecting a maths lesson, inspecting a geography
16 lesson, a field trip, a trip to the theatre. In these
17 other areas, they could well yield evidence that shows
18 that there are safeguarding issues that need to be
19 addressed and you wouldn't necessarily see those if you
20 were only inspecting those areas that were traditionally
21 of concern in a safeguarding sense.
22 So I think that having these generalised inspections
23 that also include safeguarding, and, as I said earlier
24 in our evidence session, safeguarding is a limiting
25 judgment so far as Ofsted is concerned. So these

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<p>1 inspectorates do take safeguarding very seriously and so 2 I'm not necessarily in favour of having a separate 3 inspectorate for safeguarding. 4 MS SCOLDING: Thank you, Mr Gibb. Lady Berridge, I think 5 you were desperate to come in just before the break and 6 I asked for Mr Gibb to continue with that line of 7 questions. I don't know whether or not -- if maybe you 8 could come in now if there was something you wanted to 9 add? 10 BARONESS BERRIDGE: In terms of -- obviously, I'm the 11 minister who is responsible for enforcement across the 12 school system. So regardless of how many inspectorates 13 we are talking about here, which you have adequately 14 obviously covered with my colleague Minister Gibb, I am 15 aware that the quality of those reports -- and 16 Ms Spielman probably is not going to like this evidence. 17 But I have been asking the questions about who regulates 18 the regulator and how would I be aware if Ofsted went 19 off the boil -- I'm not suggesting they are. But if 20 that were to happen, what would be the safeguards in 21 that regard? And so, at the moment, that is one of 22 the reasons why I have asked officials to bring to me 23 all reports from whichever inspectorate where they fail 24 on safeguarding so that I can read those and various 25 other reports in relation to institutions so that I --</p> <p style="text-align: center;">Page 137</p>	<p>1 I'm not a quality assurer by background, but that I can 2 read -- and I read those reports and I read what 3 evidence has been given to me in the report as to 4 whether or not standards have been met and whether or 5 not there is any reason to doubt conclusions based on 6 evidence -- I sound like judicial review there, but in 7 some ways that's the way I'm looking at them. And in 8 relation to intervention in our schools I have been 9 drawing in outside people with expertise from other 10 departments or who have advised other departments on 11 regulation. 12 For instance, how would Department for Health and 13 social care spot if CQC were a quality problem. So I am 14 asking those questions and I am very aware and -- I'm 15 very aware that the quality of those reports, and 16 particularly for your victim groups, is the key that 17 I need obviously to base lawfully any enforcement. So 18 it is front and centre in my priority list to guard 19 against and to have some idea as to the strengths or 20 weaknesses of the reports from either inspectorate, and 21 I'm not shy in challenging when I think there is an 22 issue, and then, of course, we get into issues, you 23 know, one problem on one particular case does not 24 necessarily lead you to a system problem, but I just 25 want to assure the inquiry that it is -- the theoretical</p> <p style="text-align: center;">Page 138</p>
<p>1 question of regulating the regulators is something that 2 I have asked and I'm looking into to assure myself of 3 the quality of what I have before me. 4 MS SCOLDING: Because I think that would be an issue that we 5 would raise, both in respect of the Independent Schools 6 Inspectorate but obviously Ofsted. There is no kind of 7 quality assurance mechanism, in effect, at the moment, 8 other than yourself, which, with the greatest of 9 respect -- you're obviously very expert in a number of 10 areas but I don't think you've ever inspected a school. 11 BARONESS BERRIDGE: No. 12 MS SCOLDING: This comes on to the other question which 13 I don't know whether you or Mr Gibb -- I think it was 14 for you, enforcement action. Am I right? 15 BARONESS BERRIDGE: I am. 16 MS SCOLDING: Ofsted has said to us -- they said to us 17 last October and they have said now -- that they have 18 concerns about the asymmetry of enforcement action, 19 particularly when it comes to the independent schools 20 sector. As you have identified, anything which fails an 21 Ofsted inspection in the state sector, an academy or 22 otherwise, either gets transferred to another academy 23 trust or it becomes an academy. That happens within 24 a sort of six-month period usually, a six-month to 25 a year period. Well, that's what should happen. Let's</p> <p style="text-align: center;">Page 139</p>	<p>1 just put it that way. Your regulatory guidance, that's 2 what it says -- 3 BARONESS BERRIDGE: Unfortunately, schools, unfortunately, 4 do present problems sometimes with their land and other 5 issues that might lengthen that time. Generally, yes, 6 that is the government's framework. 7 MS SCOLDING: However, we are in a situation, not with every 8 school, but I think Ofsted had a sort of hit list of 9 about 30 schools. The difficulty is, the way you 10 regulate the independent sector in effect means you are 11 completely reliant on ISI and Ofsted going in, telling 12 you what the situation is. They then have to look at 13 the action plan. The action plan then has to be 14 implemented. There is then another period where ISI 15 will go in and do another inspection. Obviously we have 16 seen this in a number of schools. I'm going to think 17 about Stanbridge Earls, which was an independent school 18 which had a lot of pupils with special educational 19 needs, where I think they went in six times in an 20 18-month period. So I think Ms Spielman's concern -- 21 I think the ISI may at least in part -- I will discuss 22 this with them on Friday -- share that, is that it's too 23 long a timescale for intervention, and that there are 24 too many schools which are sort of floating around in 25 a sort of pool of bad, shall we say, but not quite</p> <p style="text-align: center;">Page 140</p>

1 problematic enough to be immediately closed.
 2 Do you agree with that analysis?
 3 BARONESS BERRIDGE: To some extent, yes, and that's why we
 4 have got a consultation out. One of the -- which has
 5 identified the issue of a school that is probably just
 6 above the relegation zone. It crawls itself up and
 7 meets the standards and then it goes down again and it
 8 comes back up again. We are looking, as I'm sure you're
 9 aware, at amending the appeal process so that an appeal
 10 would be a JR-type appeal, not a full merits appeal.
 11 But, yes, I am looking at the speed at which we do
 12 enforcement in the department generally and the speed at
 13 which we intervene and looking at our processes in terms
 14 of both in the academy sector and in the independent
 15 sector, and, yes, unfortunately, also, when we get to
 16 enforcement in the independent sector, the difference in
 17 the regime is that, once we issue the notice, if the
 18 school appeals to the First-tier Tribunal, the
 19 enforcement notice doesn't bite in law. In practice,
 20 obviously, what is happening underneath that is that the
 21 school is usually desperately improving, so we then
 22 reinspect it before the hearing and often find it's
 23 sorted itself out.
 24 But, yes, we do need to look, and I am looking, at
 25 the speed at which also it's partly dependent on how

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1 Minister Gibb probably -- you're "good" or
 2 "outstanding", all applause, all support. But when you
 3 have crossed that line, whether, in the academy sector,
 4 into FN -- what we call financial notice to improve land
 5 or whether you have breached the standards in ISS,
 6 intervention should be proportionate, just and swift.
 7 That is what I am trying -- and obviously,
 8 unfortunately, a proportion of the department's
 9 resource, and a large proportion, since I took office,
 10 has been occupied obviously with COVID, but we have made
 11 improvements and it is a priority for me that we are
 12 swift in intervening for those children. Whether it's
 13 failed educationally or for safeguarding, those children
 14 should be in a weak institution for as little time as
 15 possible.
 16 MS SCOLDING: The other issue that comes here is you don't
 17 quite have the same powers as Ofsted does in respect of
 18 children's homes where they are the regulator, in that
 19 you have to go to the Magistrates' Court if you want to
 20 suspend a school's registration pending the outcome of
 21 anything else.
 22 BARONESS BERRIDGE: Yes.
 23 MS SCOLDING: You can only do so where a child is at risk of
 24 harm. Now, Ofsted can do that internally. There is
 25 then a right of appeal, but they can do that themselves

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1 quickly we turn things around internally. I am looking
 2 at that, as I have been with the academies sector.
 3 At any one time, I will have probably just under 100
 4 that are on what we call regulation in the independent
 5 sector, so that's the action plan and they improve
 6 something. I probably have about 12 to 15 that have
 7 tipped into enforcement at any one time in relation to
 8 that.
 9 So I think there is some merit in what has been said
 10 to you there and it is something that I have as --
 11 again, as part of my priority list.
 12 MS SCOLDING: I think Ms Dixon, when she came to give
 13 evidence, she was one of your officials last October,
 14 I think she accepted that the DfE had not been the
 15 swiftest of enforcers, shall we say, in the past.
 16 I think that would be the most polite way to put it.
 17 That there was a degree of supineness, shall we say, in
 18 the approach that the DfE took to the regulation of
 19 independent schools, certainly until the past five
 20 years. Would you agree with that assessment?
 21 BARONESS BERRIDGE: I can't comment, as I wasn't in office
 22 then. All I can say is that intervention, both in the
 23 academies and the independent sector, is a priority and
 24 this Secretary of State is very keen that -- we have an
 25 approach to our schools which is where you're "good" --

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1 without needing to get a warrant from the Magistrates'
 2 Court. Is that something that you would consider,
 3 having that power for yourself or whoever it is who is
 4 the regulator, in that context, which I am going to come
 5 on to in a moment?
 6 BARONESS BERRIDGE: In relation to that power, if a child is
 7 at risk, you're right, we can go immediately to the
 8 Magistrates' Court and close the school. We can also
 9 deregister the school, though, under a section 116
 10 action as well. So we do have that option. Although
 11 that does take longer. Whether -- I have obviously also
 12 been considering -- one seems to be a bit of a --
 13 a colloquialism here -- sledgehammer and the other seems
 14 to be quite lengthy, to be polite, and so this is
 15 obviously we have got the consultation out and the right
 16 of appeal but this is something that -- I'm looking at
 17 enforcement in the round.
 18 But, you know, we do take action where we need to.
 19 As I say, safeguarding breaches in the independent
 20 sector are viewed very seriously by the department.
 21 So, yes, but I think there is more to look at.
 22 MS SCOLDING: As well, obviously the Charity Commission has
 23 power. The Charity Commission is not the primary
 24 regulator of the schools sector, you are the primary
 25 regulator of the schools sector. But, for example, the

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<p>1 Charity Commission has the power to put in place an 2 interim manager. So one of the things that you don't 3 really have the power to do in independent schools at 4 the moment, but which you could have the power to do 5 potentially, is to act in the same way as the 6 Charity Commission, in that, if you have serious 7 concerns, you could bring someone else in to try to run 8 the governance and management which is what you can do 9 in academies and state schools but you can't really do 10 in the independent sector at the moment. Have you 11 thought about that as a possible way forward? 12 BARONESS BERRIDGE: No, I think in certain situations the 13 Charity Commission have shown they obviously will do 14 that in the school sector. 15 MS SCOLDING: Very rarely. 16 BARONESS BERRIDGE: Rarely, but they will do it. But in 17 relation to academies, yes, we have the opportunity 18 through financial notice to improve to put requirements 19 on governance, on, you know, taking on board other 20 governors that we might recommend to them, but, yes, we 21 can involve, but, again, it goes back to Minister Gibb's 22 point that these are independent schools, although 23 academies are independent schools, we have the lever 24 through the funding agreement because they are state 25 funded and it is a contractual -- we are getting into</p> <p style="text-align: center;">Page 145</p>	<p>1 regulation here. One of the main ways we regulate them 2 is through the contract and what's in the contract. 3 Obviously serious failure of governance is a clause in 4 every funding agreement, as far as I'm aware, with every 5 single school in a multi- or single academy trust -- 6 (overspeaking). 7 MS SCOLDING: It is in your standard terms and conditions, 8 they have a governance failure. 9 BARONESS BERRIDGE: Yes. But we don't -- the situations I'm 10 aware of where we have put in different directives 11 are -- also, we obviously have some of the powers that 12 can arise on insolvency. So we have a whole -- in terms 13 of the academies, and (inaudible) that's not the main 14 focus (inaudible), there is a raft of contractual 15 insolvency and charity legislation that pertains to 16 those academies. 17 MS SCOLDING: Can I ask, however, about this, because 18 obviously it's gone from a situation -- I'm going to ask 19 two things. I'm going to ask about multi-academy trusts 20 in a moment. But, firstly, I'm going to ask about your 21 role in the DfE as regulator, because you're the 22 regulator of independent schools kind of by default, 23 because, historically, years ago, HMCI and that's how 24 it's happened. You're obviously the -- you are the 25 ultimate regulator of maintained schools, and you are</p> <p style="text-align: center;">Page 146</p>
<p>1 the ultimate regulator of academies. 2 BARONESS BERRIDGE: Yes. All schools. 3 MS SCOLDING: All schools, in effect. I suppose the 4 question is, when practically every part of 5 the governance and oversight of management of schools 6 happened locally, via local authorities, you can see the 7 role of the DfE as the kind of assurer of last resort, 8 or the individual of last resort. 9 Now, given the fact that I think there's something 10 like 73 per cent -- it might even be more than that -- 11 of secondary schools are academies, about 33 per cent of 12 primary schools are academies, as the DfE, you have 13 a much more direct role, even if it is via ESFA, of 14 basically running these schools on a day-to-day basis. 15 Doesn't that give rise to issues around conflict of 16 interest and maybe the need for some kind of independent 17 regulation which didn't really exist 15 or 20 years ago 18 because, in a way, you were the independent regulator? 19 Now you are the front-line controller of what academy 20 schools do on a day-to-day basis. You are, as you have 21 said, the people who sign the contract, you set the 22 terms and conditions. 23 Given the sort of issues around having independence 24 in -- of a regulator, doesn't it run the risk that you 25 are not independent enough, particularly in the state</p> <p style="text-align: center;">Page 147</p>	<p>1 sector? 2 BARONESS BERRIDGE: That's never been an issue that has been 3 raised with me previously, that we might lack 4 independence. It was a deliberate decision, obviously, 5 to move to a more direct contractual relationship 6 with -- but it is with a different legal entity. And 7 I assure you that the trustees of those legal entities 8 are aware of their autonomy and are not -- 9 MS SCOLDING: (Overspeaking). 10 BARONESS BERRIDGE: Although we regulate by way of 11 the contract, it's never been a question of our 12 independence. There's lots of things, you know, 13 obviously in relation to the contract, those contracts, 14 for instance, are publicly available, the standard 15 agreements are there. So there is a lot of transparency 16 in the system. But our independence has not been 17 questioned in terms of how we execute that enforcement, 18 and I think it is proper accountability, particularly of 19 the amount of public money, and there is more 20 transparency in terms of how academy trusts spend their 21 money than there is actually in the local maintained 22 sector. So it has just not been a criticism that's made 23 of the system currently that we lack independence 24 because it is very clear what those schools need to 25 achieve and then there's Ofsted inspecting them.</p> <p style="text-align: center;">Page 148</p>

1 MS SCOLDING: What Ms Spielman has said is, in some cases,
 2 one of the other issues is the fact that -- obviously,
 3 you are a minister. I mean, obviously, you're in the
 4 House of Lords, so you're not subject to the electorate,
 5 so to speak, but a number of ministers will be in the
 6 House of Commons. They have said, particularly in cases
 7 involving relatively high-profile schools that Ofsted
 8 and, they know, the DfE, receive a large post bag from
 9 constituents, unhappy individuals, and that political
 10 pressure can be put on them. I suppose one of
 11 the reasons you have a regulator is to keep them out
 12 of -- so that politicians can't interfere or so that
 13 political interference can't take place or other people
 14 can't interfere with the regulator through -- in the way
 15 that they can potentially with an elected
 16 representative. That's something that she said that the
 17 pressure can be considerable, they have said, from
 18 Ofsted and that MPs and ministers have had considerable
 19 pressure from certain groupings to say, "Why are you
 20 doing this? Why have you failed this school? Why are
 21 you taking enforcement action? What's this happening?"
 22 Do you think that you are able, when you're acting as
 23 the regulator, as a minister, to separate the political
 24 from the regulatory?
 25 BARONESS BERRIDGE: Ofsted and I and obviously the other

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1 obviously hear colleagues, et cetera, but I would --
 2 that would be my initial line -- response to them, is
 3 this, "Thank you for making your representations. This
 4 is a quasi judicial matter", because it has to be done
 5 properly and I'm obviously also aware that if I take
 6 into account things I shouldn't, then I -- the decision
 7 I make on behalf of the Secretary of State will be
 8 judicially reviewed.
 9 MS SCOLDING: Can we turn now to the inspection of
 10 multi-academy trusts? Ms Spielman used the analogy
 11 that, at the moment, it is like she can inspect the
 12 Holborn branch of Sainsbury's but not the headquarters
 13 that's next door. Let's be honest, multi-academy trusts
 14 basically run the majority of secondary schools in this
 15 country, they are often very large, they are often
 16 significantly larger than local authority areas ever
 17 were. They turn over tens of hundreds of millions, in
 18 some cases, of pounds a year, but yet there is no real
 19 oversight of their governance and no necessity, no real
 20 regulation of them in any formal way, and no real
 21 inspection of them.
 22 Don't you think that the inspection system needs to
 23 reflect that reality?
 24 BARONESS BERRIDGE: I have not had a CEO of a multi-academy
 25 trust tell me that they feel underregulated as a result

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1 ministers are accountable to Parliament and accountable
 2 to the people. Those activities that you have described
 3 to me are a healthy, vibrant democracy. As long as, of
 4 course, those activities take place in a transparent,
 5 accountable way, and that is why the Cabinet Office is
 6 very strict on requirements for me to disclose every
 7 quarter who I have met with and my office of civil
 8 servants are aware of those duties. So the fact that,
 9 yes, MPs may put -- have a number of constituents who
 10 write to them, that is our process. As long as it is
 11 done in a transparent way, that is how a democracy
 12 should work.
 13 I don't think the fact that -- I don't see that as
 14 the word "political". I hold office. Anybody can write
 15 in to me and lobby me and, you know, that -- we respond
 16 to that and I take -- if they're relevant, I'll take
 17 those considerations into account and obviously
 18 sometimes it causes me to refer things in department,
 19 send an inspectorate out. If somebody says, you know,
 20 "Ofsted did this, that and the other", we might,
 21 obviously, raise complaints with them. These are just
 22 appropriate processes and in relation to enforcement,
 23 though, in our schools, and particularly the independent
 24 schools, I view that as a quasi judicial function that
 25 I am performing and therefore, you know, I would

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1 of that. This is done by ESFA. They are highly
 2 regulated. When one looks at the information that we
 3 require from academy trusts in relation to all kinds of
 4 things, like the names of their members, the financial
 5 information that they have to supply to us is
 6 comprehensive and ESFA deal with many safeguarding
 7 matters. We do regulate them by way, as I say, when
 8 they come -- outside of inadequate schools, we regulate
 9 them when they get into issues to do with finances or
 10 governance. So we do have strong powers to look over
 11 them. But, no, at the moment, Ofsted's role is --
 12 I think we have them doing what we call summary
 13 evaluations of the overall structure and, of course,
 14 Ofsted can go into any school and do a no notice -- can
 15 go into any school for a routine inspection or if they
 16 have grounds for a safeguarding inspection they can do
 17 that.
 18 So it is obviously one of those issues that's been
 19 bandied around at the moment. It is whether there
 20 should be some kind of inspection. At the moment, we
 21 have done the summary evaluations and we are reviewing
 22 what that reveals to us of their -- that's not an
 23 inspection of the MAT, but of their analysis is probably
 24 a better word for it.
 25 MS SCOLDING: Otherwise, isn't there, again, some asymmetry?

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1 Because local authorities are -- I mean, the education
 2 side of things is not expressly, but a lot of
 3 the back-office functions to do with special educational
 4 needs are inspected by Ofsted in respect of local
 5 authorities. Surely multi-academy trusts should be
 6 subject to the same level of accountability as, you
 7 know, all other schools -- independent schools are
 8 subject to that. So, I mean, shouldn't it be the case
 9 that those kind of chains, that the sort of Arks and
 10 various others -- I can't think of any other chains off
 11 the top of my head. But those sorts of -- who are large
 12 organisations, should be willing to be subject to
 13 transparency and accountability.

14 BARONESS BERRIDGE: As I say, they are incredibly
 15 transparent. We are -- for instance, you know, this is
 16 a much more wider issue about the transparency in terms
 17 of local authorities and how they run their schools and
 18 there aren't the inspections that there were in relation
 19 to their provision of their schools at local authority
 20 level, as I understand it.

21 But they are -- for instance, we have, for quite
 22 a few years now, had a series of excessive executive pay
 23 letters, related party transaction reporting, which only
 24 now is being introduced in relation to maintained
 25 schools. So this is part of a wider issue in relation

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1 to the two systems that we have and there are areas
 2 where, quite clearly, the local authority, there's less
 3 transparency around some of their data than there is in
 4 the academy trust situation. So it's not an apples and
 5 pears situation to say, these academy trusts aren't
 6 really looked at and those are. It depends what
 7 particular aspect of school operations you are talking
 8 about. So it is quite a complicated system at the
 9 moment.

10 MS SCOLDING: When we are talking about oversight more
 11 generally, we are looking at -- Ms Spielman talked about
 12 the need for an independent schools standard in respect
 13 of governance and, in fact, it could be also replicated
 14 in the context of academy schools and in maintained
 15 schools, in terms of the fact that in her most recent
 16 witness statement -- maybe it would be helpful for me to
 17 get that up for you. It's ISI012736_004, paragraph 14.
 18 Danny, it's OFS012736_004. Mr Gibb, if you are more
 19 appropriate to deal with this issue, please feel free to
 20 come in as well.

21 Do you want to have a quick read of it,
 22 Lady Berridge?

23 BARONESS BERRIDGE: Yes.

24 MS SCOLDING: Do you have any views about that?

25 BARONESS BERRIDGE: It is the first time in relation to ISS

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1 that this has been raised. Obviously, we introduced the
 2 standard a while ago on leadership and management. But,
 3 as I say, in the future, we will periodically be sending
 4 ISS out for consultation and, therefore, it's something
 5 I will ask the department to consider, whether we should
 6 include that in the consultation on ISS when the time
 7 comes.

8 MS SCOLDING: There are some -- a couple of other issues,
 9 which are to do with proprietor-owned schools, which
 10 I think it would be sensible to deal with you at the
 11 same time. Danny, can we go to that same document at
 12 OFS012736_008-009. Could you enlarge, please,
 13 paragraph 27 to begin with, and then I'm going to ask
 14 you to enlarge some other bits of it, Danny.

15 I don't know whether, Lady Berridge, you have had
 16 a chance to read paragraph 27 before. Do you want to
 17 have a quick read for a couple of minutes?

18 In effect, what she's saying is that, again, there's
 19 an asymmetry of information. I know, obviously, you may
 20 not have seen that before very recently because this is
 21 a fairly recent statement that was put in. Is that
 22 something that you are willing to, at the very least, go
 23 back and have a look at and consider?

24 BARONESS BERRIDGE: Yes. She wants us to -- we changed the
 25 system in 2002, so we have -- and we have more checks on

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1 proprietors. But whether we would introduce those
 2 additional checks, we will -- I will take it back to the
 3 department and consider. But, as I say, I don't think
 4 that there's been any issue in terms of the cases you're
 5 talking about of the checks having been a problem at the
 6 moment, the new level of checks, that is.

7 MS SCOLDING: I think the question, really, is that I think
 8 potentially not in respect of any of the cases that we
 9 are particularly looking at now, but certainly in the
 10 past, the absence of adequate checking caused some
 11 absolutely monstrous individuals to be able to educate
 12 in schools and abuse at will. In particular, I think,
 13 again, it is the asymmetry. So if you are a free
 14 school, which, you know, most academy -- not all
 15 academies are free schools, but you know what I mean,
 16 a lot of the (interference) schools that are opening,
 17 and if you are a nursery, there is a much wider level
 18 and it seems that that's possibly as a result of history
 19 rather than as a result of design. So, again, I think
 20 what Ms Spielman is saying is that it is worthwhile
 21 looking at to make sure that it is as a result of design
 22 rather than historical accident.

23 BARONESS BERRIDGE: I would say that the onus is on the
 24 applicant to demonstrate they are suitable because we do
 25 do not just DBS checks, we do do some checks on them in

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<p>1 terms of propriety and checks on rights to work in the 2 UK and checks on due diligence-type checks in addition 3 to DBS. So it is not correct to say we just do DBS 4 checks. We do have a system of checking proprietors in 5 the department and also people -- if you sell an 6 institution and you're a new proprietor, you get checked 7 as well and the chair of the body corporate gets 8 checked. So there are more checks than just the DBS 9 that she outlines in the statement there. I will look 10 at that, but I also do want to say we are also just 11 trying to focus on where we have got issues and 12 directing our attention to that, so Ofsted's involvement 13 with unregistered schools is a priority for me, and 14 illegal schools and making sure we have got our focus on 15 where we have got risk in the system. 16 MS SCOLDING: I think what she would probably say is, there 17 is a great potential for risk in the system in terms of 18 independent schools by not having the same level of 19 checking as there is within the context of free schools 20 or nursery schools, particularly in terms of the wider 21 sort of soft intelligence, I suppose, about drug or 22 alcohol problems, connections with other settings, so 23 that there can be those sorts of checks, which 24 I understand don't happen at the moment. Although I do 25 recognise that the level of checking has gone up over</p> <p style="text-align: center;">Page 157</p>	<p>1 the past 20 years. 2 BARONESS BERRIDGE: Certainly, yes. 3 MS SCOLDING: The other issue that she raises is the issue 4 to do with -- which I would call the sort of 5 Stanbridge Earls issue, which is that, at the moment, 6 although it's set out in the Education and Skills Act 7 2008 that you can have a change in the type of special 8 educational needs being one which is subject to 9 a material change, ie, Ofsted have to go in and inspect 10 before they say it is okay for that change to be made, 11 it hasn't actually ever been brought into force and that 12 that was the concern that was raised in 13 Stanbridge Earls, in that it had gone from a school 14 which dealt with a certain sort of individual to 15 a school which dealt with a much more complicated sort 16 of individual, and there hadn't been anyone have a look 17 at that to say, "Look, do they have the right sort of 18 qualifications? Do they have the right kind of 19 background? Are they making this work?" 20 Again, I think this is an area where we have got 21 obvious risk here. Is that something where you would 22 consider bringing into force that piece of legislation 23 which already exists? 24 BARONESS BERRIDGE: I will go and take specific advice on 25 that piece of legislation which I was not aware was</p> <p style="text-align: center;">Page 158</p>
<p>1 lacking implementation. But also the issue to do with 2 material change and special educational needs children 3 is part of the consultation that we have sent -- that is 4 currently out. It's the consultation that is actually 5 out there, in relation to the change in relation to 6 special educational needs in independent schools. So 7 there is work ongoing in relation to that. But I will 8 write to the inquiry about that specific piece of 9 legislation, should it not be part of the consultation. 10 MS SCOLDING: Lady Berridge, again, I have given you quite 11 a lot of questions. I'm going to turn to Mr Gibb to ask 12 him a couple of questions, but then -- 13 BARONESS BERRIDGE: I'm very grateful. 14 MS SCOLDING: -- (overspeaking) to ask about special 15 schools. Mr Gibb, coming to you, I'm going to ask you 16 about sex and relationship education, both for children, 17 neurotypical children, but also for children with 18 special educational needs, as Lady Berridge has 19 obviously identified, at least 50 per cent of those, 20 even with the most complicated special educational 21 needs, are educated within the mainstream sector at the 22 moment. 23 The unions have said to us that the current quality 24 of training and information, both in respect of, shall 25 we say, neurotypical sex and relationship education</p> <p style="text-align: center;">Page 159</p>	<p>1 but -- and Dame Christine has said in respect of special 2 educational needs teaching on sex and relationship 3 education is inadequate, shall we put it that way. 4 I know that there is -- the pandemic has therefore meant 5 there had been quite a big hiatus and I know that you're 6 only going to check this towards the end of this 7 academic year, but can you tell us how much further 8 forward you are in terms of the provision of adequate 9 resources in this area for sex and relationship 10 education? 11 MR GIBB: Well, it is a very good piece of work, I have to 12 say. We have guidance that sets out the curriculum and 13 this is ground-breaking curriculum that covers 14 relationships, sex, health, it is knowledge-rich, it 15 is -- it covers a vast area of really important parts of 16 preparing young people for adult life, and I think will 17 help deal with a lot of issues that you are enquiring 18 into with the sections in here about helping children to 19 identify, you know, the kind of abuse you are rightly 20 enquiring into. 21 The training is being rolled out through the 22 teaching schools. We've developed 15 modules. There is 23 provision for children's special educational needs as 24 well to help -- all the training modules actually cover 25 safeguarding and support for pupils with special</p> <p style="text-align: center;">Page 160</p>

<p>1 educational needs and disability. Those training 2 modules will help schools to know how to teach this 3 material to those children as well as to all the other 4 children, the neurotypical children. 5 We use special schools to help us deliver it. 6 MS SCOLDING: Have you had any specialist help or assistance 7 from, for example, the National Autistic Society or 8 Mencap or the Council for Disabled Children in the work 9 you have developed in respect of those with special 10 educational needs? 11 MR GIBB: You mentioned specific organisations and I will 12 check those, but we consulted a vast group of experts in 13 constructing this curriculum and in constructing the 14 training modules that help deliver it in schools as 15 well. I will write to the inquiry just to make sure 16 those particular organisations were involved. 17 MS SCOLDING: I think we could spend the rest of 18 the afternoon as to the content of the curriculum for 19 sex and relationship education, but it is not of direct 20 relevance to this inquiry, so I will leave that question 21 there. 22 The next issue I wanted to raise is about the 23 Teachers Regulation Agency. I know they have powers 24 over everyone who teaches, but what they don't have, 25 which is different in Wales, is, they have no power over</p> <p style="text-align: center;">Page 161</p>	<p>1 sort of learning mentors, support staff, who these days 2 may well play quite a central role in schools. So they 3 cannot -- their sort of -- they cannot be subject to any 4 kind of prohibition orders. I know they can be referred 5 to the DBS if there is misconduct demonstrated of that 6 nature. But do you not think, a bit like the Education 7 Workforce Council in Wales which made the decision that 8 certain kind of pastoral staff should be subject to 9 their regulation and registration, that the same should 10 happen in England? 11 MR GIBB: We moved away from the approach Wales has taken. 12 We had the GTCE. Our approach is that anybody engaged 13 in teaching work is covered by the TRA. So although the 14 TRA has a role in keeping a list of people who have QTS, 15 qualified teacher status, they also -- the regulatory 16 side of it will also regulate anybody who is engaged in 17 teaching work, and that can be teaching assistants, 18 learning support assistants, and so on, in schools. But 19 it is meant to -- it doesn't extend beyond that to other 20 staff that work in school and there's a whole raft -- as 21 we have been discussing today, there is a whole raft of 22 measures to ensure that those people are safe to work in 23 the school environment. 24 The other thing about the TRA and how it differs 25 from the Welsh is that the Teaching Regulation Agency</p> <p style="text-align: center;">Page 162</p>
<p>1 covers all teachers, including teachers in the 2 independent sector, which the Welsh system does not, and 3 I think that would be something that, you know, we 4 should be asking them, why doesn't it include 5 teachers -- 6 MS SCOLDING: Don't worry. We are asking them that question 7 tomorrow, Mr Gibb. They have the pleasure of my company 8 tomorrow. That exact question is one of the ones that's 9 going to be asked. 10 Mr Gibb, thank you very much for that. I want to 11 pass back now to Lady Berridge, if I may, just to run 12 through some issues to do with residential special 13 schools and then some issues to do with changes to the 14 National Minimum Standards. 15 Firstly, in respect of residential special schools, 16 I just wanted to clarify something which one of my 17 juniors brought to my attention. I think I may well 18 have mangled a question to you for which I sincerely 19 apologise, Lady Berridge. As far as residential special 20 schools are concerned, Ofsted considers that the head of 21 care in that institution shouldn't just have a level 3 22 qualification, but should be a registered manager in the 23 same way as happens in children's homes. Do you have 24 a perspective on that at the moment? 25 BARONESS BERRIDGE: No, that is a matter I'll have to write</p> <p style="text-align: center;">Page 163</p>	<p>1 to you about, in relation to care homes. The only thing 2 I can say is that we do maintain the position that the 3 homes are a different environment, as they're homes, to 4 schools, and so they are a separate institution. But in 5 terms of the registered manager, I will write to you 6 about that. 7 MS SCOLDING: I think the only thing that I would say is, we 8 would say, as I think I identified with you earlier, 9 there isn't much difference -- in fact, children in 10 residential special schools often have as complicated, 11 if not more complicated, needs as children in children's 12 homes. So, in terms of the complexity of what people 13 are dealing with on a day-to-day basis, there can be 14 a need for very specialist intervention and care, as we 15 all know. 16 BARONESS BERRIDGE: Yes, there can be, but I think there's 17 also the difference that is relevant here which is that, 18 in a children's home situation, often those children -- 19 that is their home. There isn't the protective fact of 20 -- having a parental home that you also go to. That's 21 why -- obviously some residential special schools are 22 also dual registered as children's homes when they go 23 over that 295-day limit, but there are schools where -- 24 you know, it might be weekly boarding or might be 25 that -- where the child also has a home, and so the</p> <p style="text-align: center;">Page 164</p>

<p>1 protective element of having a home is an important 2 factor that also informs the regulatory framework that 3 you have around an institution. 4 MS SCOLDING: I understand that to a degree, but I suppose 5 I would say to you, firstly, at least 20,000 children 6 who are looked after voluntarily -- ie, section 20, 7 accommodation, of the Children Act 1989 -- are children 8 with significant disabilities whose parents -- it is not 9 that -- it is just no parent would be able to care for 10 them, and they often are the children who end up in 11 residential special schools. So they are in a slightly 12 different situation in that they might not go back to 13 their parents in that concept, they might go somewhere 14 else. 15 Secondly, they are unable to communicate, often, 16 effectively what might have happened to them. So, 17 unlike normal boarding schools, where you can text your 18 mum and say, "I want to get out of here, I hate it", 19 they don't have that option. 20 Thirdly, we are talking about a very small group of 21 students with very complicated needs, because it's only 22 that group of students who currently board. Luckily, 23 the inclusion agenda has meant that lots of students who 24 30/40 years ago would have boarded now are happily 25 accommodated within mainstream maintained settings.</p> <p style="text-align: center;">Page 165</p>	<p>1 Given that complexity, isn't it the case that you 2 should be sort of considering them in the same light as 3 those who are in children's homes? And, also, their 4 parents often can't come to visit them. You know, 5 you've got lots of homes -- for example, a child might 6 live in Rochester in Kent, but their school might be in 7 the middle of Lincolnshire, and mum and dad might be on 8 universal credit and they literally cannot afford, or 9 are unable because they have other children and are 10 working, to visit their children in that setting. 11 So we are looking at quite a different picture than 12 the picture for an ordinary boarding school. Would you 13 agree? 14 BARONESS BERRIDGE: They are different. But, again, we have 15 to take into account that, whatever might be the 16 particular circumstances, those children have a home and 17 they have parents. So we are clear about the 18 distinction. And there is no plan to change the 295 day 19 that residential special schools are schools and there 20 are some that are dual registered where they become more 21 like that situation of a home, and those children that 22 you have just described to me -- I can't obviously name 23 every child -- are more likely to be in the institution 24 that is already registered as a care home, but there is 25 a clear distinction for us between a school where the</p> <p style="text-align: center;">Page 166</p>
<p>1 child will be going home often enough that -- and 2 that's -- obviously I'm thinking of the comparison as 3 well of looked-after children where you have that 4 protective factor and obviously you've got the 5 independent visitors as well that go into residential 6 special schools that is there that isn't in -- and 7 that's why it's called a children's home because that is 8 their primary home and they are often without any other 9 family -- that protective regime and those people to 10 speak up for their needs. 11 MS SCOLDING: I suppose what I would say to you is, those 12 individuals who advocate on behalf of the individuals 13 who attend those schools, Ofsted who inspects those 14 schools, those schools themselves, all -- a number of 15 them considered -- and a number of them have voluntarily 16 decided to become children's homes even if they don't 17 meet that standard because they feel it is a more 18 appropriate standard for the complexity of child they 19 have to deal with. 20 So I suppose I put that to you, that the sector is 21 telling you that they are like a children's home and 22 therefore they should be treated in the same way. 23 BARONESS BERRIDGE: I will take that back and look at the 24 statistics as to how many have voluntarily gone into the 25 different regime.</p> <p style="text-align: center;">Page 167</p>	<p>1 But we are clear about -- if an institution chooses 2 that, we are clear that there is a difference between 3 a school and a home. 4 MS SCOLDING: The other issue to do with special educational 5 needs is really to do with the National Minimum 6 Standards. You have raised the idea of the independent 7 visitor. 8 One of the issues that's come up, both in respect of 9 residential special schools, but also boarding schools, 10 is whether or not there should be the equivalent of 11 a regulation 44 visitor, and I know that's something 12 that you were consulting on before the pandemic 13 happened, or you were proposing to consult on. 14 Where are you in respect of that proposal? 15 BARONESS BERRIDGE: We are going to consult within the 16 National Minimum Standards consultation that will be out 17 soon on the independent visitor, in relation to the RSS 18 though, not in relation to boarding schools, because we 19 have consulted the sector and our information from the 20 sector is that they don't feel that there is a need to 21 enhance that role within their provision. 22 If we get information different to that, we would 23 consider it in the future, but, again, it's -- as I hope 24 has been clear to the inquiry, there is a constant 25 dialogue going on in these matters with the sector, with</p> <p style="text-align: center;">Page 168</p>

<p>1 representatives, not just through consultations, but 2 through meetings. So that's our position at the moment, 3 that we will look at an enhanced role for the 4 independent visitor within the RSS regime. 5 MS SCOLDING: I wanted to ask as well about the Independent 6 Listener service, which currently exists, which every 7 single person we have asked about has basically said 8 nobody ever uses it; whether or not that service should 9 kind of be consigned to the kind of "good idea but 10 didn't really work" and maybe a new set of advocacy 11 standards be used so that we really listen to children, 12 we really hear their voices in the context of where they 13 don't live at home, whether it's in a boarding school, 14 whether they have parents or not, whether they are in 15 a children's homes, whether they are in a boarding 16 school. What are we going to do about that? 17 BARONESS BERRIDGE: There are national standards, in fact, 18 for children's advocacy services, and we are reviewing 19 and looking at that, and I will take away your comments, 20 because, of course, it is very important for children 21 that these are effective, and there is no point, 22 obviously, if they are not effective. 23 Then, what we have agreed is that, once we have 24 reviewed those, they will, I think, also go out to 25 consultation, but then they will be, in their new,</p> <p style="text-align: center;">Page 169</p>	<p>1 reviewed, effective format, incorporated into the 2 National Minimum Standards for residential special 3 schools, once they are reviewed/consulted. So that's 4 a piece of work that is ongoing. 5 MS SCOLDING: The next thing I wanted to ask you about is 6 the fact that, again, Ofsted, the unions, various 7 schools have said to us that they don't think KCSIE 8 really works in terms of providing the right kind of 9 advice about those with special educational needs and 10 disabilities; particularly, as you, yourself, identify, 11 so many of them are in a mainstream setting, issues to 12 do with social communication, peer on peer, harmful 13 sexual behaviour, you know, what's a grey area, what 14 isn't. IICSA, itself, did some research which 15 identified that there were kind of ten times as many 16 concerns raised about pupils in special school settings 17 and about what was appropriate, what wasn't. 18 A lot of mainstream school staff might have an idea, 19 but it might not be terribly sophisticated, about some 20 of the issues which might arise in terms of 21 communication and understanding, especially of 22 teenagers. 23 What, if any, ideas are there to try and improve 24 KCSIE and guidance generally about sexual abuse and 25 sexual identity of disabled young people?</p> <p style="text-align: center;">Page 170</p>
<p>1 BARONESS BERRIDGE: As I say, this is an ongoing dialogue 2 with the sector. 3 In 2016, we did update the guidance, you will have 4 seen, in relation to special educational needs, and it 5 is part of the role descriptor in relation to the 6 designated safeguarding lead that they should be aware, 7 and obviously we would expect, in relation to 8 appropriate training, that that training includes -- 9 that safeguarding training related to the particular 10 cohort that they have got. 11 And we expect, when we get the KCSIE consultation 12 out there, for those organisations to express those 13 views to us through that consultation process, and we 14 will consider all those responses when we have the 15 consultation finished. 16 MS SCOLDING: I think we could probably go on having 17 discussions about different issues for the rest of 18 the day, but I'm noting the time, and I know that the 19 panel are likely to have some questions both for 20 yourself and for Mr Gibb, so I have no further questions 21 for you, or for Mr Gibb, and I would like to thank both 22 of you very much for giving up your time in what I know 23 is a very busy time for you and for the government. 24 I pass over to Professor Jay and the panel. Thank you. 25 Thank you both very much.</p> <p style="text-align: center;">Page 171</p>	<p>1 THE CHAIR: Thank you, Ms Scolding. I will begin. 2 Questions from THE PANEL 3 THE CHAIR: I have a question for Lady Berridge, although 4 I do recognise it may be outwith the scope of your 5 remit, and Mr Gibb may also want to comment. 6 In April 2018, this inquiry recommended that there 7 should be regulation of the social care workforce in 8 residential settings for children, which of course has 9 been in place for many years in Wales, Scotland and 10 Northern Ireland, and this would include special needs 11 children's residential settings anywhere where social 12 care workers are employed as social care workers. 13 I understand the DfE had a call for evidence on this 14 issue, which ended in August 2019. I wondered if you 15 had any observations on the matter in general, but also 16 on the progress of this issue and the response that your 17 department might make? 18 BARONESS BERRIDGE: Chair, I'm sorry, I'm not aware of that 19 particular consultation, but we will write to you and 20 give you the full detail that you need. 21 THE CHAIR: Do you have any comment to make on the issue 22 about the regulation of individual members of the social 23 care workforce in residential children's settings? 24 BARONESS BERRIDGE: Sorry, is that meaning children's homes? 25 Sorry.</p> <p style="text-align: center;">Page 172</p>

1 THE CHAIR: It does, but it may also include any settings
2 where social care workers are employed as social care
3 workers, and of course involve a scheme of regulation of
4 individuals, which would cover not just qualifications,
5 which you have referred to in terms of registered
6 managers, but it is also about conduct and misconduct,
7 complaints and continuous professional development.
8 Essentially, it professionalises the kind of work that's
9 being done and, of course, should increase the quality.

10 BARONESS BERRIDGE: I do apologise, but, in the hundreds of
11 pages I've got here, I haven't got anything on that
12 issue. So I would be remiss if I tried to give you any
13 information.

14 THE CHAIR: I thought that might be the case, but thank you
15 very much. Mr Gibb?

16 MR GIBB: No, it is the same answer.

17 THE CHAIR: Thank you. Well, we hope to hear from you on
18 that matter. Ms Sharpling?

19 MS SHARPLING: Yes, please, chair. I'm a little uncertain
20 to whom I should address this question, but no doubt
21 somebody appropriate will be able to answer it.

22 Throughout this investigation -- indeed, the inquiry
23 as a whole -- we have heard examples of where a school
24 has been assessed by Ofsted or the ISI as "good" or
25 "outstanding" in all material matters. However, when

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1 was happening to them.

2 So I view it as a very high priority to try to
3 ensure that the quality is such that parents and the
4 community can have confidence in the inspections.

5 MS SHARPLING: Thank you. Mr Gibb, do you want to add any
6 observations?

7 MR GIBB: Yes. I mean, the inspection process is
8 continually evolving and improving.

9 In my former role, I was an auditor before becoming
10 a tax consultant with KPMG. Very often, audits would
11 miss things, and the same happens with Ofsted
12 inspections, because, you know, they are human beings
13 who are conducting the inspection. They have systems
14 they use, they have inspection frameworks, they have the
15 Independent School Standards, so they have things to
16 look at and they have methods that have evolved and have
17 been developed by those inspectorates over many years,
18 but they always can be improved; absolutely no question
19 about that.

20 So we do work with Ofsted -- I have worked with
21 Ofsted over the years as they have gone through various
22 reforms to try to improve the quality of the inspections
23 and the quality of the inspectors -- better training;
24 I mentioned earlier in the evidence that Michael Wilshaw
25 remove the layers of subcontractor companies from the

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1 a scandal arises and the inspectors return, the
2 assessment is often markedly different. There may be
3 very good reasons for such a change within limited time,
4 but that may be little consolation to a parent who is
5 relying on Ofsted to give good guidance on the quality
6 of their local schools. Is the department doing
7 anything to improve public confidence in the whole
8 system?

9 BARONESS BERRIDGE: I would say that, in relation to
10 overall, there is very widespread awareness of Ofsted,
11 obviously, and their quality judgments, but I would just
12 have to refer you back to the fact that, overwhelmingly,
13 you know, we don't find a huge number of that kind of
14 situation, but when it arises, I assure you -- and
15 that's what I'm trying to also get a handle on through
16 reading the reports, particularly safeguarding failures,
17 is to try and work out how to prevent that happening
18 again, and I'm aware, though, that ISI and Ofsted in
19 those scenarios that you talked about have often
20 dismissed inspectors and done their own internal, but it
21 is, of course, essential that people have confidence
22 that the department is also playing its part in quality
23 assuring, and I can only say that it is harm upon harm
24 for those who are victims that they then see that
25 somebody else came through the door and didn't spot what

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1 system so that non-HMI inspectors were contracted
2 directly with Ofsted, they could have central training
3 to improve, and that's ongoing. Amanda Spielman is
4 doing the same to try to improve the quality of
5 inspections. That's something that both ISI as well,
6 I'm sure, as Ofsted seek to do.

7 It is tragic when an inspection does miss something
8 that could have, you know, prevented other children from
9 suffering the kind of harm that your inquiry will have
10 been looking into.

11 MS SHARPLING: Thank you.

12 THE CHAIR: Mr Frank?

13 MR FRANK: No, thank you.

14 THE CHAIR: Sir Malcolm?

15 PROF SIR MALCOLM EVANS: Yes, one question, if I may, and if
16 I may turn -- I think this is to Lady Berridge, but
17 return to the issue of National Minimum Standards and
18 Quality Standards.

19 If I understood you correctly, you were indicating
20 that the primary legislation refers to minimum
21 standards, so one has to work within the framework of
22 minimum standards, but you spoke of both raising the bar
23 of what those minimum standards were, but then, in your
24 statement, you mentioned trying to inspect beyond those
25 standards.

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1 What I was wondering is if you could say a little
 2 bit about what you meant by "inspect beyond the
 3 standards", whether that is, shall we say -- how would
 4 one do that, I suppose, in practice and in a consistent
 5 way, but were you, through that, trying to suggest that
 6 that would be a way of achieving the equivalence of
 7 Quality Standards but within the existing statutory
 8 framework?
 9 BARONESS BERRIDGE: Yes, I was. I think the best analogy is
 10 how the Independent School Standards are used. If you
 11 read the reports of the inspections against those
 12 standards, you will have, like -- it's called "minimum",
 13 but it is actually quite a high bar to actually exist as
 14 a school.
 15 But the reports themselves will use the frameworks
 16 of "outstanding", "good" and the other measures, so this
 17 was the dialogue we had with Ofsted to say, "Why is it
 18 that in our assessed setting you think that the minimum
 19 standard means you just have to say 'pass' or 'fail'",
 20 whereas in the ISS situation, which is a similar type of
 21 standard, when they inspect their 1,000 or more
 22 independent schools, we have reports that look more akin
 23 to an Ofsted report.
 24 So it is that practice that we are wanting to instil
 25 and the changes to the standards in the consultation

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1 that will go out, it will raise the bar in that sense,
 2 in terms of introducing quality measurements, not just
 3 "adequate" or language of -- they don't use "pass" and
 4 "fail", but that basic language. They will talk about,
 5 "What can you do to improve? What can you do to get up
 6 to a higher level of quality?" So use that language.
 7 This is what we are trying to do to, as I say,
 8 achieve that outcome. If that doesn't work, then the
 9 door is not closed to doing it by primary legislation to
 10 remove the word "minimum" and change to a quality
 11 standard like the care home situation.
 12 PROF SIR MALCOLM EVANS: Thank you very much.
 13 THE CHAIR: Thank you. We have no further questions. Thank
 14 you very much, Lady Berridge and Mr Gibb.
 15 BARONESS BERRIDGE: Thank you.
 16 MR GIBB: Thank you.
 17 (The witnesses withdrew)
 18 MS SCOLDING: Chair, we have no further evidence for today.
 19 I'm sure you will be very pleased to hear that. May we
 20 resume again tomorrow morning at 10.30 am, with your
 21 permission?
 22 THE CHAIR: Thank you, Ms Scolding. We will do that.
 23 MS SCOLDING: Thank you very much.
 24 (4.01 pm)
 25 (The hearing was adjourned to

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1 Thursday, 26 November 2020 at 10.30 am)

2

3

4 I N D E X

5

6 DR SUZANNE SMITH (affirmed)1

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