evidence to support a prosecution, assuming that those who made complaints in the 1960s still wished to pursue them, and also if a prosecution would be viable in light of the DPP's original decision.

Relevant developments in law and practice between 1970 and 1998

65. In the meantime, there had been significant developments in the law concerning the prosecution of offences in England and Wales.

The prosecution of offences

66. In 1978, a far wider review of criminal procedure was undertaken by a Royal Commission. The Commission's report was to provide the blueprint for the modern criminal justice system, the twin pillars of its construct being the Police and Criminal Evidence Act and the Prosecution of Offences Act. It was said that:

> *"without a truly independent prosecutor, able to ignore police instructions, a weak or poorly investigated case would often proceed only to fail at court. This was unfair to victims who would be given false hope…unfair to defendants whose reputations and liberty may be at stake…..and unfair to the public purse."*

67. The Commission reported in 1981 and in 1983 a White Paper was published entitled 'An Independent Prosecution Service for England and Wales'. The White Paper proposed a national prosecution service accountable to the DPP. The result was the Prosecution of Offences Act 1985 which created the Crown Prosecution Service.

68. Once the 1985 Act came into force, the ultimate decision as to whether a prosecution would be instituted was no longer that of the police but rather the Crown Prosecutor, a professional lawyer, separate from the investigation and independent of the police, acting on behalf of the DPP.

Corroboration

69. There had also been significant developments in relation to the law and practice concerning corroboration. The requirement for a corroboration warning in relation to the unsworn evidence of children was abolished by s.34 of the Criminal Justice Act 1988 while the Criminal Justice and Public Order Act 1994, sections 32 and 33 abolished the obligatory common law need for warnings about convicting on the uncorroborated evidence of a person because they were charged with a sexual offence (or an accomplice), following criticism in the Court of Appeal and House of Lords. Those rules were said by the Courts to be;

- inflexible and only concerning certain categories of evidence,
- the case law had evolved to such an extent that the rules were said to be "very complex" and unintelligible to the ordinary person.
- It was also said that there had been a significant change of perception as to the reliability of evidence given by children.
- Further, the corroboration direction in sexual cases was seen as being particularly offensive to women.

70. However in other areas such as identification and the evidence of co-defendants, the common law, strictly, remained unchanged. It was said in the 1998 edition of Archbold that the attitude of the Court of Appeal was that it was a matter for the Judge to decide exactly what to say in the light of the evidence and the issues in the particular case, although there was, however, no obligation on him to use the word 'corroboration'.

> *"It is a moot point whether these categories have survived the abolition of the rule requiring a full corroboration direction to be given in the case of children, accomplices and complainants in sexual offences."*

71. The 1994 Act is plainly important in this respect: it recognised that the following criticisms of the practice that had grown up were valid:

i. The law relating to corroboration had become increasingly technical;
ii. The rules were inflexible;
iii. The warnings might be, on any sensible appraisal, inappropriate;
iv. In a sexual case, there might be no dispute that the offence had taken place, with the only issue being whether it was the Defendant who was the culprit;
v. The rules had become so complex that they bordered on the unintelligible
vi. That they created anomalies;
vii. There had been a significant change of perception as to the reliability of evidence given by children;

viii. The corroboration direction in sexual cases was seen as being particularly offensive to women;

72. However in *R v Makanjuola* (1995) 2 Cr. App. R. 469 (convictions for indecent assault), it was said that the Judge retained a discretion to warn the jury if he thought it necessary, but determined that any warning given just because a witness complains of a sexual offence or is an accomplice had been abolished.

73. The remaining *discretion* to warn the jury might arise where a witness has been shown to be unreliable or to have lied, to have made previous false complaints, or to bear some grudge. The focus was on the reliability or otherwise of the witness, and should only be given when there was some *evidence* that the witness might be unreliable.

Analysis of Crown Prosecutor Peter Watson's decision

74. It is against this background that on 17 June 1998 Peter Watson set out his conclusions and the reasons for them **[Exhibit GM/2]**. The following opinions of his, and aspects of the background and evidence he was presented with and to which he referred are worth noting (and taken from his Minute dated 17th June 1998).

i. All the complainants were aged 15-16 at the time of the alleged assaults,

ii. They were vulnerable. They were living away from home and dependent on CS for employment and/or other support.

iii. The misconducted complained of was very similar in each case; very similar pretexts were used to enable the abuse to take place, which was either for a "medical examination" or for "punishment".

   a. Each of the events took place in the quiet room" at the hostel,

   b. in private with no-one to observe,

   c. the behaviour stopped at handling the genitalia of the boys,

   d. the "punishment" behaviour involved spanking the boys' bare buttocks,

iv. The complainants did not report CS's actions but given his position of authority this was regarded as unsurprising to Mr Watson in 1997.

v. He concluded that there had been no conspiracy between the boys, and therefore, as I read it, no collusion (although he does not say as much). Whilst this was never in fact tested (for example in court), he pointed to the fact that the complaints were made a few years after the events and the