

Independent Jersey Care Inquiry

Day 108

November 17, 2015

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1 Tuesday, 17 November 2015

2 (10.08 am)

3 THE CHAIR: Good morning, Mr Le Marquand.

4 A. Good morning.

5 THE CHAIR: Good morning, Mr Sadd.

6 MR SADD: Good morning, Madam Chair. This morning we resume
7 the evidence of Mr Le Marquand who gave evidence on
8 Wednesday 4 November and for personal reasons had to
9 leave at quarter to midday. I had reached the end of my
10 questions and, Madam Chair, the Panel were going to ask
11 questions, but in reaching the end of my questions on
12 4 November I had had to go very rapidly through the
13 questions I had prepared and as a consequence of that
14 there were certain topics that I missed out,
15 Mr Le Marquand, and with your patience I'm going to go
16 back to some of those topics and of course give you the
17 time to read the relevant passages in your statement,
18 the paragraphs.

19 THE CHAIR: Just before we start, just to remind and for the
20 note that Mr Le Marquand, as I'm sure you appreciate,
21 you are still under oath.

22 A. Of course.

23 MR IAN LE MARQUAND (still under oath)

24 Questions from COUNSEL TO THE INQUIRY

25 MR SADD: The witness statement is {WS000648} please and

1 where we're going to go to is page 15 and paragraph 49
2 {WS000648/15} and this is in the context,
3 Mr Le Marquand, of your speaking about sentencing of
4 young offenders and you may or may not remember that
5 when you were last here you did speak about -- you say
6 six lines down:

7 "I recall that we had one panel member who had
8 worked with young people and felt that
9 Children's Services' staff were not up to the job of
10 caring for young people."

11 And when I asked you could you remember their name
12 it didn't come to you at the time. What I wanted to
13 take up with you is you go on to say -- this is in
14 relation to Children's Services:

15 "They were perceived to be inexperienced and unable
16 to relate well to those in their care. Additionally, it
17 was clear that Children's Services was hugely under
18 pressure and under resourced, a fact evident from the
19 volume and nature of presentations we were seeing at
20 Youth Court."

21 It may be that you have answered the question I'm
22 about to ask you, but just if you can help the Inquiry
23 with this: on what do you base your view that
24 Children's Services were, to use your phrase, "hugely
25 under pressure"? Were you aware of this at the time or

1 is this something you have reflected on?

2 A. No, the numbers of young people who were in the care
3 homes at the time, all the care homes at certain times
4 were over their maximum numbers, as it were, and this
5 was part of the difficulties which they were facing.
6 Now clearly if you've got a large number of young people
7 in care homes then you've got a large number of families
8 with serious issues and it's almost the tip of the
9 iceberg.

10 Q. From your perspective as magistrate was this a pressure
11 that you felt that they were able to cope with, or one
12 that they were not coping with?

13 A. I think they were really struggling.

14 Q. And what gave you the impression that they were
15 struggling?

16 A. Well, first of all there was the difficulty of actually
17 managing the youngsters within the children's homes,
18 which I mentioned before, which led to cases of
19 prosecutions being referred to -- being brought and
20 referred to the Court for relatively minor matters which
21 normally would be dealt with in-house within a home.
22 It's difficult to remember precisely, but I got the
23 impression that the caseloads per person were quite
24 high. I mean I subsequently know from my period as
25 Minister that we have never had appropriate ratios of

1 staffing to caseload. This is one of the
2 recommendations of one of the reports which I still
3 unfortunately can't remember the name of and was never
4 fully implemented. I think there may have been some
5 increase in numbers, but the ratios of cases to
6 caseworker were always too high.

7 Q. Turning to a broader issue on sentencing, I think it's
8 right that before you became the magistrate for the
9 Youth Court you were for a time in the adult court, is
10 that right? Sitting as magistrate, or am I wrong about
11 that?

12 A. When I became the Magistrate, job title Senior
13 Stipendiary Magistrate --

14 Q. You covered both courts?

15 A. I potentially covered both, but in reality, as
16 I explained before, I didn't generally sit in the
17 general sittings of the Youth Court until my colleague,
18 Mr Trott, had resigned. There will have been occasions
19 when I did sit. I suspect I sat whenever he was on
20 holiday because I would have had -- I wanted to build up
21 some understanding and because I was -- otherwise I was
22 going to call upon a part-time.

23 Q. So in your role as the Magistrate, Mr Le Marquand, you
24 would no doubt have received a large number of probation
25 reports?

1 A. Yes.

2 Q. The Inquiry has heard evidence from a Marilyn Carré who
3 was a probation officer in the 1990s -- I know that's in
4 a period before you took up your role, but you may --

5 A. She was a probation officer after that again because she
6 specialised in youth work for a time.

7 Q. But from what follows in my question --

8 A. Sorry.

9 Q. No, that's fine. I don't think in her youth work this
10 would have occurred. She gave evidence to the effect
11 that in some of her probation reports her clients would
12 relate the time that they had spent in
13 Haut de la Garenne and the negative experience that they
14 had had there, some relating that they had been abused,
15 and I wondered whether from your memory you can
16 recollect seeing in probation reports references being
17 made to Haut de la Garenne and the treatment --

18 A. No, I can't. I mean by the time I came to be
19 a magistrate, late 1999, I think Haut de la Garenne had
20 closed -- I'm not sure of the date, do you know the
21 date?

22 Q. In 1986.

23 A. Well, therefore almost by definition they would have
24 been -- there would have been very few who would have
25 been in the Youth Court, but I can't remember that.

1 Q. That's why I asked you, Mr Le Marquand, whether you also
2 presided over adults?

3 A. Yes, indeed.

4 Q. So my question is directed to you presiding over the
5 adult court and whether in your recollection in looking
6 at probation reports reference would be made to
7 Haut de la Garenne?

8 A. I cannot recall any, but it's quite a long time ago, and
9 it's possible there were but I just don't recall any.

10 Q. Was there ever a situation, Mr Le Marquand, where
11 children who appeared before you complained about their
12 treatment at any of the children's homes in the Island,
13 or at Les Chenes?

14 A. I can't recall any complaints in relation to the
15 children's homes, although obviously I'm well aware that
16 there were frequent occasions where youngsters were
17 running away. In relation to Les Chenes I mentioned in
18 my statement one particular incident where a prosecution
19 was being brought against an individual and was
20 subsequently dropped, for reasons I have mentioned in my
21 statement. I think that the complaint would have been
22 about the length of time that perhaps they were spending
23 there, but my general impression of Les Chenes was that
24 the youngsters who were there were happy with the
25 regime, until it began to get overcrowded and

1 pressurised.

2 Q. Still on page 15 please, Mr Le Marquand {WS000648/15},
3 you come on to discuss the Youth Court and Les Chenes
4 and prior to Kathie Bull, as the title has it, and if we
5 go please to paragraph 53, this is page 16
6 {WS000648/16}, where you have been discussing a letter
7 that you had written to the principal of Les Chenes at
8 paragraph 52.

9 A. Yes.

10 Q. You're looking at the options that were available to you
11 and you tell the Inquiry at paragraph 53 of options
12 eventually being:

13 "... achieved many years later through the Criminal
14 Justice (Young Offenders) (Jersey Law) 2014. This gave
15 greater flexibility as to the location to which young
16 people can be remanded."

17 You say:

18 "It took six years of work as a Minister to create
19 this flexibility although I had started discussions on
20 this as Magistrate in about 2003."

21 So can the Inquiry conclude that at least some of
22 that legislation is down to your work?

23 A. Yes, I think so.

24 Q. And what options are now available, just for the record?

25 A. It's not just remand, it's also sentencing. The

1 sentencing is always more key. Basically the system
2 that has been set up in relation to sentencing for
3 a certain age group -- I'm struggling at the moment to
4 remember which age group it is, I think it's 16-year
5 olds in the statute, it may be under-18s -- enables
6 a panel to determine whether they should be placed for
7 sentencing either at Greenfields or at the Young
8 Offenders Institution. Now, this was an important issue
9 in two different directions: firstly because the fact
10 that we had to sentence -- if we sentenced to youth
11 custody we had to sentence to YOI meant people were --
12 youngsters as young as 15 might be mixing with offenders
13 as old as 20, 21 and perhaps slightly older if they had
14 a long sentence; and secondly, in the other direction,
15 there was the problem of youngsters who would
16 actually -- although young were quite sophisticated
17 offenders and had spent some time there and who then
18 came back into Les Chenes, or Greenfields, and were
19 disruptive because they were more sophisticated
20 offenders.

21 So I identified quite early and worked with number 2
22 at the Probation Department, I remember, from about 2003
23 trying to create a methodology by which there would be
24 the ability to decide what was appropriate for that
25 particular individual.

1 Q. And the consequence of that was the Jersey law in 2014,
2 is that right?

3 A. Yes, it was, yes.

4 Q. This is not a test of your memory of the legislation,
5 but for the record it is something that we could have up
6 on screen, but what options are now available that
7 weren't prior to this legislation coming into force?

8 A. Well, certainly in terms of sentencing I have explained
9 it's an either/or. I'm afraid I'm just struggling to
10 remember whether that's the same in terms of remand or
11 not. It may be, it may not be. I just can't recall.

12 Q. Mr Le Marquand, not to worry, it is something that
13 the Inquiry --

14 A. Hopefully it is, because I think that was our intention.

15 Q. Could we then have up on screen please {WD008353}.

16 Mr Le Marquand, this is a tabular format of remand
17 admissions. I know it comes with your qualification
18 repeatedly made on 4 November that the Inquiry really
19 ought to see the charging records, but with that
20 qualification if we look at the figures we can see that
21 the levels of remands from 2004 to 2009 remain
22 relatively high, aside from 2006, and then from 2010 to
23 2013 we can see that there is a drop. I wondered if you
24 were able to assist the Inquiry in understanding what
25 accounts for that drop in remands, given your role as

1 Home Affairs Minister?

2 A. Yes I can, because I put out figures half-yearly on
3 behalf of the three ministers, because it was a huge
4 success story that there was just a massive drop-in
5 youth crime, a huge and completely unexpected drop-in
6 youth crime, which caused the figures to go way way
7 down: 2010, 2011, 2012, 2013, 2014 was also pretty low
8 from memory.

9 Can I just make a comment here? If one's looking at
10 the issue as to why Greenfields was getting
11 overpopulated, the relevant time when the letters were
12 being written to me was 2000 and 2001 and although there
13 is an increase, it's not massive, which fully supports
14 what I have been saying, that actually it wasn't change
15 in remand policy that created the issue, it was actually
16 an increase in numbers.

17 But then you see the 2004 situation. Now, I had to
18 estimate what was causing that. It's come back to my
19 memory, for instance, that once the regime in relation
20 to Les Chenes in terms of people being placed on
21 probation orders and so on, once that regime ceased to
22 exist we then had some very very real problems and very
23 real issues and obviously the only sentencing option
24 then became, for the 15-year olds, to YOI. Now,
25 I recall in one of those years -- I cannot tell you

1 whether it was 2004 or 2005, but I recall that there was
2 one individual, a girl who was so prolific in her
3 offending that I think -- again I'm struggling with
4 exact numbers -- I think she was presented before the
5 Youth Court something like 12 or 13 times in one year.
6 I actually produced a tabular form of that for former
7 Deputy Bob Hill, who incidentally I'm sorry to hear
8 about his illness, but for former Deputy Bob Hill's
9 proposition to the States. Now, if you think about that
10 girl who was persistently offending she may well have
11 accounted for 13 remands in one particular year because
12 of the fact that whereas under the previous regime she
13 might have been placed there for a year or so on
14 a probation order and would have counted as one entry,
15 suddenly she was offending, being sentenced, coming out,
16 reoffending, etc, etc. Now that's an extreme extreme
17 case but it's an illustration of why numbers might have
18 jumped.

19 The other thing I wanted to say which I should have
20 said last time is if there are those who are trying to
21 imply that it was down to Ian Le Marquand that the
22 numbers jumped, which I think was implied by some
23 witnesses and they are incorrect on that, then why in
24 2009 do we have the highest figure? Because I ceased to
25 be Magistrate in the middle of 2008; that's my point.

1 Q. Could you remind the Inquiry, Mr Le Marquand, 2003
2 brought to a close the ability of the Youth Court, as
3 I understand your evidence, to impose probationary
4 orders with conditions of residence? Have I understood
5 that rightly?

6 A. Yes. I'm doubtful about the time because if you recall
7 from the correspondence attached to my statement, it's
8 clear that there's a decision to shut it down apart from
9 for the purposes of a remand centre and then there's
10 a very strong letter from me making representations and
11 it's clear from subsequent letters attached that it was
12 reopened for a time in terms of the other functions. So
13 the other functions would have been those on probation
14 or binding over orders on conditions of residency and
15 also there were always a number of people who were there
16 voluntarily with the agreement of parents -- I'm talking
17 about in the residential area. So I think there was an
18 on/off, on/off, on/off, but I think probably the final
19 "off" must have taken place some time in 2004. I'm
20 deducing that from the way the figures suddenly go.

21 Q. Paragraph 60, Mr Le Marquand, this is page 18
22 {WS000648/18}, this is where you comment on an extract
23 from Tom McKeon's evidence, Tom McKeon then Director of
24 Education -- and I should say the period is in relation
25 to 2001/2002 -- and he says:

1 "The Court was adopting an increasingly inflexible
2 approach to the way in which the children could be
3 provided for and it added to the pressure that the
4 school was facing, hence my meeting with Ian Le Marquand
5 to try and resolve this issue."

6 And you comment:

7 "I do not agree with this comment. It is nonsense
8 that the problems faced by Les Chenes arose as a result
9 of inflexibility of the Youth Court. Particularly as of
10 2001, the Youth Court found that it had to respond to
11 serious repetitive crime."

12 Something you elaborated on on 4 November.

13 A. Yes, I did.

14 Q. "Save for the natural variance between magistrates'
15 decisions, or Youth Court decisions, a consistent
16 approach had to be taken to the cases presented before
17 the Youth Court."

18 Then you conclude the paragraph as follows:

19 "The problems at Les Chenes required political
20 intervention rather than a change in Youth Court
21 decisions."

22 A. Yes.

23 Q. I think you and I looked together at correspondence,
24 minutes of meetings, over what appears to have been
25 about a three year period, certainly from 2000 up to

1 2003. The Inquiry needs to get an understanding of
2 political intervention, political awareness. In your
3 position as Senior Stipendiary Magistrate, what role, if
4 any, did you see in influencing politicians about what
5 was happening?

6 A. I would say that I was unusually political in this.
7 A lot of magistrates would have just done the job and
8 gone home and whatever happened outside was not down to
9 them, but I was clearly concerned, you can see that even
10 from my first letter, which is very early in 2000, and
11 the methodology I used was to engage with officers.
12 I can't remember seeking to engage directly with
13 politicians, that would have been unusual. Also of
14 course the courts make comments during the course of
15 cases which it hopes are then passed back to people --
16 they're less likely to be passed back perhaps in the
17 Youth Court because the fact is the reporting is not so
18 great, but clearly I was trying to engage.

19 Having seen some of the correspondence which I was
20 very helpfully taken through when I was preparing my
21 statement, it became apparent to me that some of the
22 senior officers in the Education Department had formed
23 the view that it was down to a change of policy in
24 the Court and it's really really unfortunate that they
25 actually weren't up front about that if that was their

1 view because I then could have showed them the figures
2 and said "No actually, look at the volume of cases, look
3 at the seriousness of them, you've got this wrong". And
4 that seems to be what happened. It was paradoxical: if
5 you recall last time I gave evidence you showed me
6 a statement from [543] who I think was then principal in
7 which he claimed there had been a fivefold increase in
8 numbers and that was a letter written internally, so it
9 was putting, as it were, the senior management on notice
10 that there was an issue of volumes and I don't know why
11 they ignored that. It wasn't fivefold, but I do find it
12 quite odd that they formed a particular view and of
13 course that view then would have been conveyed to
14 politicians and of course I didn't know that was the
15 view that had been formed because they don't seem to
16 have ever put it to me quite in that way.

17 Q. You will be aware, Mr Le Marquand, that in August 2006
18 Jersey opened the new Greenfields.

19 A. Yes.

20 Q. Which was in effect a secure children's home and indeed
21 the first person to be recruited to work in the new
22 Greenfields, as I'm going to call it, was Simon Bellwood
23 who came from a background of having worked in secure
24 children's homes in the UK, I think his was in Essex,
25 and that those homes had been established in the 1990

1 I think, certainly if not before, in the UK.

2 A. Yes.

3 Q. What is your understanding of why the new Greenfields
4 opens in 2006, what accounts do you think for the time
5 lag?

6 A. Could I just correct you, because you called it a secure
7 children's home. It's primary function was a remand
8 centre. It did also function as a secure children's
9 home for those who were placed by the Royal Court on
10 secure placement orders.

11 Q. If we stick with my understanding of one of the purposes
12 of Greenfields.

13 A. Yes.

14 Q. My question still holds in relation to a secure
15 children's home as one of the roles of Greenfields and
16 I want to understand what your thoughts are on why it's
17 only in 2006 that such a facility is available in
18 Jersey?

19 A. Well, it takes time to do things, it takes time to get
20 money for a capital project, it takes time to line up
21 the site, the money and the political will to do it and
22 I'm afraid any new building in Jersey takes a long time
23 to produce. That's a political comment and statement
24 based upon my observations both as Magistrate and as
25 Minister. It took something like 26 years to produce

1 a new Magistrates Court and 22 years, if my calculations
2 are right, to produce a new police headquarters, so this
3 actually by Jersey standards was actually very fast.
4 And I think it was a direct response to the work of
5 Kathie Bull, a recognition that there had to be
6 somewhere. And also another issue that arose of course
7 was the secure placement order, but it was a recognition
8 at last that the old premises were not secure and hadn't
9 functioned effectively.

10 Q. Can we move please to paragraph 69 and that's page 21
11 {WS000648/21}. I just want to invite your comment on
12 a document that's exhibited in relation to some of the
13 comments that you are making here. This is your exhibit
14 number 14 and this is page 61 please that's
15 {WD008320/61}. If we go to the next page please, and
16 the next {WD008320/64}. We can see from that file note,
17 very obviously, Mr Le Marquand, this is a meeting to
18 consider the problems arising -- at the top of the page
19 there:

20 "(a) remand terms for school age offenders; and

21 "(b) ultimate disposal of school age offenders."

22 And this is a meeting in which you amongst others --
23 we can see Inspector Barry Faudemer was there,
24 Tom McKeon was there, Bridget Shaw was there,
25 Anton Skinner was there and you appear, Mr Le Marquand,

1 fourth name down and I would just want to go please to
2 page 66 {WD008320/66} and the record of the discussion
3 where we look at "Conclusions" please. This is
4 discussing Dr Bull's report. Reading paragraph 16:

5 "It was agreed that long-term solutions should be
6 left for HMI Bull's review and recommendations. There
7 would however be at least a year, possibly more, before
8 those recommendations were even made, and once they had
9 been made there would be further delay while they were
10 considered at political level."

11 Then you are recorded at 16.2, just at the bottom of
12 the page there, Mr Le Marquand:

13 "The Magistrate raised the need for multi-agency
14 input when remands are being considered. This is
15 a matter which will be dealt with operationally."

16 What were you meaning by that? Do you remember?
17 I recognise it's a long time ago, but do you remember
18 the thrust of what it was you were saying?

19 A. Yes, I think the difficulty we were getting is sometimes
20 we were making remand decisions, we would have people
21 from what had then been Les Chenes, or we would have had
22 people from the children's homes, or whatever, people
23 who were able to advise us as to whether they could cope
24 with the youngster back in the children's home, or
25 whether it was appropriate, and sometimes we didn't, and

1 so particularly on initial remands what I called the
2 single judge, if it was a single judge, would be having
3 to make a decision without complete information pro tem.
4 Now, he could then remand for a short period for the
5 information to be got, but it was certainly very helpful
6 what developed later whereby we were regularly getting
7 information and opinions being expressed, and if you
8 recall there was a note that you put to me at the last
9 hearing which was a note I think from
10 a Children's Officer in relation to discussions that
11 were taking place between different agencies, and some
12 wanted this and some wanted that but at least it shows
13 that they were all engaged.

14 Q. But you've told us a moment ago this morning that when
15 Children's Services were involved, certainly as far as
16 you were concerned, their involvement was not
17 satisfactory as far as you were concerned.

18 A. I think to be fair primarily what I'm focused on -- one
19 of the difficulties I had with my statement is that it
20 has sections on remand and sections on sentencing and
21 I had to reorganise those and I'm not sure I actually
22 got them absolutely right in the right places because
23 I didn't want to rewrite the whole thing. But I think
24 what I'm talking about is the area of perceived weakness
25 was more so in the area of the standards of reports for

1 sentencing purposes.

2 I'm sorry if that's -- I think my statement is
3 ambiguous on that for the reasons I have said. I missed
4 a trick there.

5 Q. Paragraph 73 to 74 {WS000648/22}, at 73 you deal there
6 with an issue we have already touched on this morning,
7 which is the removal of your ability to impose
8 a probation order with a condition of residence. We
9 have looked at what you say was the consequence of that
10 by looking at the figures on remand.

11 A. Yes.

12 Q. What in practice happened? Once that was removed what
13 would happen to children?

14 A. Well, it depends on the age group. If they were 15 --

15 Q. Let's limit it please, if we could, to those under 15.

16 A. Okay, limited to those under 15 then in practice all
17 the Court could impose would be either a probation order
18 without a condition of residence or a binding over order
19 and I explained to you how the embarrassing case had
20 occurred in the Royal Court where a youngster declined
21 to consent to either of those in relation to a serious
22 charge and the Court finding itself having to give the
23 criminal an unconditional discharge.

24 But if I could just comment on the 15s and over, it
25 actually then put us in the situation of having to

1 consider whether to sentence to the YOI and we had
2 a reluctance to do that because of the paucity of the
3 educational and training facilities there, particularly
4 for those of school age.

5 Q. At paragraph 78 to 81 -- this starts at page 24
6 {WS000648/24} -- you discuss the meeting that we have
7 just briefly looked at, the minutes of that meeting, and
8 you say that you were proactive in reducing the length
9 of remands. My understanding of your evidence on the
10 last occasion on 4 November was that -- and forgive me
11 if I'm paraphrasing it unfairly -- effectively you
12 increased the efficiency so that you reduced the time
13 between hearings; is that what it comes down to?

14 A. The standard remand period was reduced -- it didn't just
15 happen in the Youth Court, it happened right across the
16 board. It was reduced from four weeks to two weeks.

17 Q. And did that work?

18 A. Yes. It was also part of moving towards a case
19 management approach because I had inherited a structure
20 in all the courts which essentially left it up to
21 prosecutors as to the pace that matters went at and
22 I disagreed with that, I think perhaps a modern judge in
23 the sense of understanding that it was important that
24 a court ran the cases and ensured that they were going
25 at a proper speed, and so by changing to two weeks we

1 could better hold to account the centeniers and other
2 prosecutors if there were unnecessary delays.

3 Q. On a point of detail please, Mr Le Marquand, this is
4 page 25 of your statement {WS000648/25}, paragraph 83,
5 you are discussing an issue raised in the Kathie Bull
6 report where it was recommended:

7 "'the period between the first court appearance and
8 disposal is used to undertake a thorough assessment of
9 need on each young person ...'. In essence it seems
10 that Kathie Bull was trying to speed up the process and
11 shorten remands. I do recall that there was a period
12 where not young people were not being presented to the
13 Youth Court prior to any reports being prepared."

14 Clearly the syntax has gone awry there. What is it
15 you are saying?

16 A. Okay, when I first became magistrate, when I first got
17 involved with the Youth Court seriously there was
18 a practice which had grown of delaying the first
19 presentation to the Court until a probation report had
20 been produced so that if they pleaded guilty they could
21 be sentenced on the same day, but this was not helpful
22 because, firstly, it delayed the process of a person
23 first coming before the Court and one of the things
24 anyone who has dealt with youth offending will know is
25 that youngsters need to be appropriately challenged

1 early and the cases need to be dealt with quickly
2 because they change so rapidly, for good or for ill.
3 You can have a youngster who has been in a pattern of
4 behaviour, of offending and three months later he has
5 completely come out of that, or vice versa. So
6 I persuaded Probation not to go down that route because
7 I wanted the matters to be first presented to the Court
8 earlier.

9 Now, I think, thinking logically, that that was not
10 ever applied to situations where youngsters were
11 presented in custody, it can't have done because they
12 must have been presented in custody as soon as possible,
13 so it would have only applied to cases where they were
14 not presented in custody.

15 Q. Paragraph 89 please, Mr Le Marquand, this is page 27
16 {WS000648/27}, where you are invited to comment on
17 a newspaper article in the Jersey Evening Post in 2003.
18 That's at page 89 please {WD008320/89}. We will just
19 have that on screen.

20 A. Gosh, don't I look young.

21 Q. We can see there this is an Article 5 March 2003, "News
22 focus special: the Kathie Bull report" and the quote
23 from you to head the article, "There are young people in
24 Jersey who think that they are untouchable" and I just
25 wanted to invite your response -- this is not the whole

1 of the article because we can see that it is continued
2 from page 9, but in the first column on the left-hand
3 side --

4 A. First column on the left-hand side, yes.

5 Q. In the first column, the third paragraph down you are
6 quoted in this way by the journalist:

7 "Above all, said Mr Le Marquand ..."

8 Do you have that?

9 A. Sorry, I'm looking in the third paragraph --

10 THE CHAIR: It is the last paragraph above the heading
11 "Probation", the paragraph above that.

12 A. Thank you very much.

13 MR SADD: "Above all, said Mr Le Marquand, it was absolutely
14 necessary that the Youth Court should retain the power
15 to sentence young offenders to custodial terms."

16 Then you are quoted:

17 "'The courts must have such power', he said, 'I am
18 not prepared to see that power solely vested in social
19 agencies'."

20 You say elsewhere in your statement, Mr Le Marquand,
21 that you used the word "custodial" to raise political
22 awareness and that it isn't a reflection, I think
23 I understood your evidence, of your own views. Here you
24 are saying "I am not prepared to see that power solely
25 vested in social agencies." What was your concern about

1 social agencies being responsible for looking after
2 young offenders?

3 A. Well, I'm talking about sentencing --

4 Q. I know you are.

5 A. -- here, aren't I, so I'm talking about criminal
6 sentencing. Again it's difficult for me to remember
7 exactly where I was at the time because my knowledge has
8 increased and I now know it would be wrong ... for
9 human rights purposes the involvement of a court is
10 actually quite important in relation to these kinds of
11 issues. I can only assume that there was some kind of
12 kite being flown which would have removed the youngsters
13 completely from the criminal justice system. I'm
14 guessing because I really cannot remember.

15 Q. And what was your view of that as a policy proposition,
16 removing youngsters out of the criminalisation of
17 offending and sentencing?

18 A. Well, it doesn't work. It doesn't work. You always
19 need to have a criminal sentencing aspect of it, but
20 also you need to have courts making decisions not just
21 social workers, with the greatest of respect.
22 The Courts make decisions on advice, but that's what
23 courts are there for. I'm afraid I can't remember
24 precisely what was the proposal, the thought that
25 provoked me to say that, but as a general proposition

1 it's absolutely right. You can't completely
2 decriminalise youth matters.

3 Q. You conclude your statement, Mr Le Marquand, at
4 paragraph 113 {WS000648/33}, by reflecting on the
5 far-reaching consequences of abuse and young people that
6 you think the courts were dealing with were victims of
7 abuse and you say this:

8 "I mentioned above that I now suspect some repeat
9 young offenders ..."

10 And you identify a particular individual:

11 "" ... may have been the victims of abuse. I didn't
12 identify that at the time. There was less awareness
13 then of the signs of child abuse."

14 And this is a reflection on your time as
15 a magistrate in the early 2000s, is that right?

16 A. This is a reflection on my time as Magistrate, yes --

17 Q. In the early 2000s?

18 A. I left in 2000.

19 Q. And you say "there was less awareness then of the signs
20 of child abuse".

21 A. Yes.

22 Q. I just want to understand from you in your role as
23 Stipendiary Magistrate what was the level of your
24 awareness of the consequences of child abuse?

25 A. Very very low. I can remember attending a study day

1 with the jurats which was in relation to the nature of
2 paedophile offenders and the way they operated and so
3 on. I can also remember Probation receiving some
4 training, some induction on that, but actually
5 understanding the effects on the victims themselves
6 I don't think I had any -- I don't think anybody in
7 Jersey really understood that at that time.

8 Q. So may I return to a point that we have just looked at
9 together by reference to the article and the role of
10 Children's Services and Social Services generally in
11 relation to that group, if you want, of those young
12 people who offend whose own backgrounds are of abuse.
13 Do you see there to be a role for Social Services in how
14 to address such offending and what to do when sentencing
15 such young people?

16 A. Well, even then we would receive background information.

17 Q. Sorry, my question was aimed at the present. Do you
18 think there is a role for Social Services -- here you
19 are reflecting on your lack of knowledge in the past,
20 now you're saying "If I had known then what I know now"
21 as I understand it your approach may have been
22 different, although we haven't explored how it might
23 have been different, but --

24 A. There certainly needs to be training for magistrates and
25 other core members. That may have happened because my

1 understanding developed partly as a result of
2 presentations from -- they have changed their name,
3 I can't remember their name, safeguarding board or
4 whatever, they have changed their name. There have been
5 some excellent presentations to help us understand that,
6 but also partly as a result of my contact with my cousin
7 who happens to be a GP and is now a senator. And
8 certainly courts need to have knowledge of this kind of
9 thing.

10 Now, one of the things I was going to come on to
11 when I got to the point of being asked if there was
12 anything else I wanted to say, which I will leave until
13 then but just to flag it up, was there has been
14 a persistent weakness in the system in identifying the
15 signs of abuse.

16 THE CHAIR: But just to come back to counsel's question, do
17 you think there is a role now in 2015 for
18 Social Services, reflecting as you have done in your
19 concluding paragraph, on your past experience?

20 A. Yes, it should be part of the background information
21 provided to the courts.

22 MR SADD: And it is to that extent, or any further?

23 A. Well, if we're dealing with the criminal justice system
24 then the courts are going to make the ultimate
25 decisions. Now, there might be issues in cases in which

1 problems and issues of a youngster are so extreme that
2 in fact there would be a case for persuading prosecutors
3 not to bring a prosecution in relation to that. We have
4 talked about the discretionary element, that's a matter
5 that would have to be discussed with the Law Officers'
6 Department and so on, but there might be I suppose
7 a decision made in some cases that in that particular
8 time it wasn't in the public interest because of the
9 degree to which the youngster had been emotionally and
10 psychologically damaged.

11 Q. We know that in August 2003 the regime at Les Chenes was
12 changed in as much as those who had been staffing
13 Les Chenes, educationalists, to give them that phrase,
14 were then supplemented by care staff and there was
15 a strict division of responsibility. What was your
16 reaction to the introduction of care staff at Les Chenes
17 in 2003?

18 A. I think it was positive, but I remember that there was
19 an individual who had actually had quite a lot of
20 experience at the Young Offenders Institution who --
21 [286], who was part of the team that was brought in at
22 that time, but I think -- I can see the enormous
23 difficulties of educationalists, I think [543]
24 particularly felt this, who actually found themselves
25 having to exercise a disciplinary function and an order

1 function, as it were, within the premises and I think
2 again the case I mentioned in my statement was an
3 indication of the kind of difficulties they had, lack of
4 training they had in how to deal with restraining
5 youngsters and so on.

6 Q. At paragraph 104 please, Mr Le Marquand, this is page 31
7 {WS000648/31}, again something that we covered in part
8 when you gave your evidence on 3 and 4 November. This
9 is in relation to funding. You say:

10 "Matters of funding always come down to
11 prioritisation. In this particular area, Jersey has
12 a problem. It is impossible for the States to maintain
13 its low income tax and GST rates and also maintain
14 a level of public service comparable with other
15 developed countries. Fundamentally, the squaring of
16 this circle is difficult. With the prioritisation of
17 low income tax and GST rates, spending on public
18 services falls behind, and Children's Services falls
19 into this area."

20 We know that during the relevant period that you
21 were Home Affairs Minister there were a raft of reports,
22 we touched on those previously. There was
23 Operation Rectangle which concluded in 2010 and there
24 had been the Williamson Report.

25 A. Ah, Williamson is the person I keep on failing to

1 remember.

2 Q. And indeed I should make it clear the Williamson Report
3 wasn't prompted by Operation Rectangle --

4 A. No.

5 Q. -- it was in fact commissioned in 2007. But be that as
6 it may, would this not have been a unique opportunity
7 for Children's Services to achieve priority status?

8 A. Well, one of the first things that was happening when
9 I became Minister was consideration was being given to
10 extra resourcing in relation to the Williamson Report
11 and decisions were made, I think at
12 a Council of Ministers level, that although the total
13 package required X million that in practice a lesser
14 sum -- my impression is about half, it might be
15 60 per cent -- would be given and so a decision then
16 having been made essentially by the Health and Social
17 Services Minister, the Department, as to which parts
18 would be implemented and to what extent and that's my
19 point in relation to the ratio between the number of
20 children's workers and the caseload; that part was not
21 implemented and I'm not sure it was implemented at all,
22 from memory. As I say, I'm on oath and I'm not
23 absolutely certain it wasn't implemented at all, but it
24 was substantially not implemented.

25 Q. So do you understand that aside from commissioning

1 reports the momentum was there to achieve what those
2 reports recommended?

3 A. Desire was there but it was being restrained by
4 budgetary considerations.

5 Q. Paragraph 106 please, Mr Le Marquand, at the bottom of
6 that page {WS000648/31}. You set out the question that
7 you have been asked to respond to:

8 "I have been asked to explain why certain issues,
9 such as training, staffing levels and the introduction
10 of professional foster care, might seem to recur as
11 themes in reports published over the years. I have
12 described above the difficulties associated with
13 obtaining additional funding. I would add that, whilst
14 the various reports were taken seriously, there is
15 sometimes a degree to which implementation is treated as
16 a tick box exercise, rather than there being a focus on
17 implementing recommendations to the highest degree."

18 There you are, Mr Le Marquand, Home Affairs
19 Minister; you sit, as I understand it -- I'm sure you
20 are going to correct me if I'm wrong -- on the
21 Council of Ministers?

22 A. Yes.

23 Q. And you are a member of the Child Policy Group?

24 A. Yes.

25 Q. What would prevent you from making implementation

1 a focus, as you describe it in that last line?

2 A. Part of the difficulty is that although the Child Policy
3 Group was set up in order to bring about better
4 coordination between departments, you still had the
5 fundamental problem that it didn't control resources,
6 the resources remained under the control of the
7 individual ministers and although therefore I had the
8 ability, working with the Police Chief, to do something
9 about the resourcing and staffing to do with
10 police work, I didn't have the ability to say to the
11 Health and Social Services Department "You must find the
12 extra X million."

13 The other problem, this being relevant to the Health
14 and Social Services Department and Minister during the
15 whole period, is that they had been facing rising
16 expenditure in other areas, partly to do with the aging
17 population, and so they have always been under financial
18 pressures, indeed they have been receiving more money
19 than other departments because of that, but they have
20 always been faced with this difficulty of having to
21 prioritise their expenditure between health services and
22 social services, which took priority.

23 Q. Finally, Mr Le Marquand, as far as my questions are
24 concerned, I want to look at the transcript of your
25 evidence on Day 106, page 70 {Day106/70:4} please, and

1 this is where you were responding to my questions in
2 relation to the suspension of Graham Power.

3 A. Yes.

4 Q. We can see from line 4:

5 "It is suggested that the justification for
6 Mr Power's suspension seemed to shift as time went on
7 and that I used concern regarding the creation and
8 retention of secret files regarding States members as
9 the basis for Mr Power's suspension. This is
10 inaccurate. There were two distinct issues impacting on
11 the decision to suspend Mr Power."

12 So that's a quotation from your statement.

13 And I ask you:

14 "Question: if I have understood those two distinct
15 bases, the first is inadequate oversight of Lenny Harper
16 during Operation Rectangle?

17 "Answer: Yes.

18 "Question: And is the second the creation and
19 retention of secret files?

20 "Answer: Yes.

21 "Question: Do you accept that the second distinct
22 issue [which is the retention of secret files] played no
23 part in the original suspension?

24 "Answer: Yes."

25 Then you elaborate on that. My one question to you

1 is you were looking at the inadequacy of the management
2 of Operation Rectangle de novo as I understand it, you
3 were looking at that afresh?

4 A. Yes.

5 Q. And you were looking at that afresh as a reason for
6 suspension?

7 A. I was looking at it afresh in order to decide whether or
8 not to maintain the suspension.

9 Q. And did it cause you any discomfort that you were
10 looking at issues that had occurred -- at the time that
11 you were looking at them, I think primarily first
12 in February 2009 and then later on in 2009 -- events
13 that had occurred effectively over a four month period
14 from February to June 2008; was there any concern for
15 you that there was a delay, a time lapse between events
16 justifying suspension and you looking at it afresh?

17 A. No. What had triggered the original suspension had been
18 the press release at a press conference held by
19 Messrs Warcup and Gradwell. That is what triggered it
20 because once that came out it became clear there were
21 potential issues. Now, that didn't come out until --
22 I'm struggling to remember the exact date, but I think
23 it may well have been November of 2008.

24 Q. It was November 2008.

25 A. Yes.

1 Q. All right, Mr Le Marquand. I have no further questions.

2 Madam Chair. Thank you.

3 THE CHAIR: Thank you, Mr Sadd.

4 Mr Le Marquand, we will now take our morning break,
5 so we will take a 15-minute break and you will be
6 provided with coffee or tea.

7 (11.00 am)

8 (A short break)

9 (11.23 am)

10 THE CHAIR: I am going to ask Ms Leslie to start with
11 the Panel's questions.

12 Questions from THE PANEL

13 MS LESLIE: Good morning, Mr Le Marquand. You have
14 explained to us that as a result particularly of the
15 assistance of your cousin you now have a much better
16 understanding of what I think would now be called
17 a trauma focus approach to young people, understanding
18 the impact of their background on their subsequent
19 behaviour.

20 A. Yes.

21 MS LESLIE: And you have explained that that was not
22 something that was ever discussed or presented to you in
23 your time as a magistrate. Can I ask you a bit more
24 about what sort of training did you have for taking on
25 the role of Magistrate. I mean obviously you've got

1 your legal background, but was there any specific
2 regular training?

3 A. Can I tell you, I was the first judge to receive any
4 training in Jersey and that consisted of being sent on
5 a -- I think it was a three day course in the UK which
6 was really designed for what we would call relief
7 magistrates, I think they're called assistant
8 magistrates -- sorry, assistant district judges
9 Magistrates Court now, so just the relief people, as it
10 were. As far as I'm aware I was the first judge who
11 actually received any formal training and that's what it
12 consisted of. Now, in addition to that I visited
13 various departments, including the Probation Department,
14 and received some input from that, but I don't think --
15 can I just clarify?

16 MS LESLIE: Yes.

17 A. And I think at that time I would have seen youngsters as
18 being damaged individuals, but my understanding of the
19 methodology of that damage and the causes and issues of
20 normal brain development and psychological development
21 were completely unknown to me.

22 MS LESLIE: On the three day course was there any discussion
23 of sentencing tariffs and so forth and the approach to
24 take particularly with young people?

25 A. Well, I think -- are you talking about on the training

1 course?

2 MS LESLIE: Yes.

3 A. No, no, it wasn't specifically youth orientated. In
4 fact I don't think the people who were being trained
5 there would have sat on a youth court because I think in
6 the UK there was a specialist course.

7 MS LESLIE: Did you have any training during your tenure as
8 Senior Magistrate in youth justice?

9 A. I cannot recall having had specifically youth justice
10 orientated training at any particular time. I think
11 I said in my statement that one of the things I had to
12 adjust to was the differences and particularly in the
13 early stages I was very reliant upon the panel members,
14 until I could start to formulate my own views.

15 MS LESLIE: You have explained in your statement -- it's at
16 paragraph 45 {WS000648/13} -- that in respect of the
17 issue of a determination of probation with a condition
18 of residence that this is something which you say you
19 accept was legally questionable. Was that something
20 that you had uncertainties about at the time when you
21 were using that as a disposal?

22 A. No, not originally, no. It was there, it was what was
23 happening, it was what had been happening for some time
24 and I slotted into that and we were getting
25 recommendations in reports for that and so on and so

1 forth. It's only a reflection and it's quite
2 interesting that counsel sort of questioned whether my
3 reservations were right or not in as much as they had to
4 consent, but it -- I think from a purist's point of view
5 I think there are probably issues. There was also the
6 practical issue I mentioned in relation to the fact that
7 they weren't strictly speaking in custody and therefore
8 you had a mixture of those who would be on remand and
9 therefore in custody and those who were voluntary and
10 not in custody and those who were on a probation order
11 and therefore not in custody as such.

12 MS LESLIE: If you had uncertainties about any disposal or
13 any approach to youth justice would you be reliant
14 mainly on your panel members, or were there other
15 members of the judiciary in Jersey that you would and
16 could approach?

17 A. I could have spoken to senior judges about it, but my
18 impression is that the Royal Court, when it was
19 occasionally sentencing youngsters, was also making the
20 same orders and so it wasn't exceptional.

21 MS LESLIE: If a situation -- I don't have a legal
22 background, but if a situation arises where a member of
23 the judiciary is imposing a sentence which is unlawful,
24 what sort of regress is open to --

25 A. They can appeal, there would be an appeal. All the

1 matters that we dealt with in the Youth Court were
2 appealable to a panel which consisted of normally either
3 the Bailiff or the Deputy Bailiff and two other members
4 of the Youth Panel who hadn't sat on the original
5 matter.

6 Similarly with bail applications, I should have made
7 clear: although there was no formal appeal process it
8 has always been accepted that there was the equivalent
9 of a judicial review process in criminal matters to
10 appeal against bail decisions.

11 MS LESLIE: And did that happen, particularly in terms of
12 appeal against sentence?

13 A. Occasionally there were appeals against sentence, but
14 not a huge number that I can recall.

15 MS LESLIE: If there was a disposal that was being used that
16 was unlawful and a magistrate was continuing to use
17 this, was there any overview or oversight of your
18 sentencing decisions where someone could say "Look,
19 I don't think that's right" or "Can you explain to me
20 why you're using this?", was there any kind of review --

21 A. The appeal process would have been the normal process
22 for questioning a court decision.

23 MS LESLIE: And was anything ever raised with you around the
24 use of probation with a condition of residence?

25 A. I don't think so.

1 MS LESLIE: We have identified from the data that has been
2 provided by Health and Social Services that has been
3 compiled by Mr Le Sueur, that there were certainly
4 upwards of 20 young people who had this kind of
5 disposal. Is this something -- again I'm asking as
6 a non-lawyer -- that people would have some sort of
7 redress even now against the fact that they've got on
8 their record this conviction or that they have been in
9 a sense unlawfully sentenced?

10 A. I'm not saying they are unlawfully sentenced. No,
11 they -- you are confusing conviction and sentence, if
12 I may say so gently. What goes on the record is the
13 conviction. The sentence is the method of disposal, as
14 it were, of the case. Differentiation between
15 a probation order with a condition of residence and
16 a probation order without I don't think would be
17 particularly picked up as being relevant in terms of
18 a criminal record.

19 MS LESLIE: Okay, that's what you say in terms of conviction
20 and record. In terms of someone's loss of liberty,
21 unjustly, is that something which those who have endured
22 that might yet still have some form of redress?

23 A. I think it would be prescribed because the prescription
24 period in tort is three years in Jersey from the time
25 when you become of age. But it would have to be

1 established that it was unlawful. And of course they
2 will have consented to it.

3 MS LESLIE: You have mentioned that you thought for a number
4 of young people that Les Chenes was the best solution,
5 if I can put it that way.

6 A. Yes.

7 MS LESLIE: What were your expectations about what you
8 thought Les Chenes could and should achieve with young
9 people?

10 A. As I said, the impression I had in the early period
11 actually was that the regime was a happy regime and that
12 the youngsters quite enjoyed being there; it gave them
13 a sense of identity, they had their own football team
14 and things like that. It wasn't a sense of stigma in
15 relation to it. Clearly at the time the only options
16 really available for youngsters who had been excluded
17 from the general educational system were either
18 Les Chenes but not residential, or Les Chenes
19 residential, or another place which I think my memory
20 tells me was called D'Hautree House, except that there
21 was another place for those excluded who were at primary
22 school level which I think was at the back of St James'
23 Church, I'm not quite sure what it was called.

24 So as far as -- it's not just myself, as far as
25 the Panel were concerned -- you will have seen a letter

1 I wrote on behalf of the whole Youth Court when it was
2 first suggested unilaterally that the functionality
3 other than remand centre would be withdrawn. We
4 genuinely did feel that the best work in terms of
5 training, education, rehabilitation, whatever words you
6 want to use in that area, was being done there.

7 MS LESLIE: You've given us the example this morning of
8 a young woman who was remanded perhaps 12, 13, 14 times
9 and again from the data we have we have seen that up to
10 half of all young people in Les Chenes had repeat
11 admissions, some of them, as you have described, many
12 times --

13 A. Yes.

14 MS LESLIE: -- I think the most we have come across was 17.

15 A. Yes.

16 MS LESLIE: Does that not suggest that the regime wasn't
17 working, that young people were coming out and the same
18 behaviour was persisting?

19 A. Well, there was greater stability in the early years
20 when you had a lower number of youngsters and when you
21 had it functioning quite well as a group. Obviously the
22 structure began to break down and the difficulty is that
23 there were no other options other than considering
24 sending people off Island and sending people off Island
25 was an exceptional case, I mean it did happen but only

1 in very very exceptional cases. I remember a youngster
2 who had serious issues in relation to sexual offending
3 who was sent away to a special school to help
4 counselling and so on in relation to those kind of
5 issues. It's a real difficulty. Our sister island in
6 Guernsey at the parallel time I think was sending people
7 off Island, but if you do that then of course you have
8 the problems of non-contact with families and so on and
9 so forth. It's not easy.

10 You must understand that small communities, and
11 Jersey is still a small community, have very real
12 problems in providing a range of specialist institutions
13 because the cost of running them is very high and
14 sometimes you will end up with very small numbers. It's
15 not just in this area, the same applies also in relation
16 to areas such as secure psychiatric wards and so on. We
17 have exactly the same kind of issue.

18 MS LESLIE: Is one of the factors involved in the decision
19 to remand not where you set the threshold for remand?
20 I mean, for example, in the English jurisdiction the
21 Ministry of Justice, as it now is, the guidance for
22 remand was that under-18s should only be remanded as
23 an absolute last resort and if there was an evidenced
24 danger to the public. Were all the remands that were
25 happening in Jersey reaching that threshold?

1 A. No. No. And when did that come in? I have not heard
2 of that threshold. When was that brought in?

3 MS LESLIE: It was in effect before 2010. And in terms of
4 sentencing, some of the criteria again used in
5 England -- and as we know England still locks up more
6 children than virtually any other country in Europe, but
7 the guidance is around looking at offences which in the
8 adult court would attract a custodial sentence of
9 14 years and above. So the threshold for remand in the
10 jurisdiction with the most similar legal framework is
11 much higher it would seem than in Jersey.

12 A. Yes, but that's because -- as I said before, that's
13 because the UK has always had secure children's homes
14 and has therefore operated secure children's homes in
15 parallel with the criminal justice system and we didn't
16 have that, we didn't have that capacity during the
17 relevant period and we still don't have that capacity
18 apart from a secure placement order.

19 MS LESLIE: What kind of offences would you say are such
20 that they require a custodial remand?

21 A. It wouldn't necessarily be the seriousness of the
22 individual offence, it could be the persistence of the
23 offending as well.

24 We didn't -- we've never operated a simple system in
25 terms of it's got to meet a threshold of this degree of

1 seriousness in order to warrant a custodial remand.
2 That was never the system. But obviously there had to
3 be a degree of seriousness, or a degree of
4 repetitiveness of offending, or a degree of a risk to
5 the youngster themselves to warrant it.

6 MS LESLIE: How do you match that sort of absence of looking
7 at the seriousness with the likely impact on the child
8 of a period of remand or a custodial sentence?

9 A. Well, as I explained to you, in relation to Les Chenes
10 one of the issues was of course that most of the
11 youngsters already knew each other. If you've only got
12 two places where those who are excluded from education
13 are going to go, they're going to be meeting together in
14 one or other of these places. I have to say we were far
15 more concerned about the potentiality of adverse results
16 of those who might be sent to the Young Offenders
17 Institution because of the mixing of much wider age
18 groups and so on.

19 But I think that you also have to take into account
20 the need to protect the public. This has always been
21 a tension in the criminal justice system. The fact is
22 that some of the offences that young offenders commit
23 are serious offences in terms of their effects on the
24 public. I mean if I give you two examples, for
25 instance, one would be breaking and entering of a house,

1 a private house, and we're all very well aware of the
2 emotional damage which is done to the occupants of that
3 house, particularly women, in terms of a violation in
4 terms of privacy and so on, and the other one is very
5 serious dangerous driving which was actually quite
6 a prevalent offence amongst young men in the 2001 period
7 when the danger of the driving can be putting not only
8 themselves and their passengers but also other members
9 of the public at risk. So there are very real issues
10 which have to be balanced there.

11 I would say in Jersey that the balance has always
12 been stronger in favour of protection of the public than
13 it might be in other jurisdictions and that's part and
14 parcel of our culture and approach to the criminal
15 justice system, but nevertheless -- the other issue of
16 course is sometimes youngsters are actually -- we're
17 talking about serious assaults and so on. Very often
18 the victims are other youngsters and so you're having to
19 balance -- you're having to look at the risk in terms of
20 damage to other youngsters as well.

21 MS LESLIE: You have indicated that unfortunately you
22 weren't given access to training about the effects of
23 trauma and so forth. Presumably you also weren't given
24 access during your tenure as a magistrate to training on
25 the effects of the incarceration of young people, be it

1 in secure children's homes, or secure accommodation, or
2 remand centres?

3 A. I think that's probably right.

4 MS LESLIE: No doubt you've been following the Inquiry and
5 you will have heard the accounts of the very significant
6 number of young people who have told us their stories of
7 their time in Les Chenes and Greenfields, of the impact
8 that had on them, of the kind of experiences they
9 endured. Having heard that what do you feel now about
10 the approach that puts the public interest ahead of
11 perhaps the needs of young people?

12 A. Well, they're mixed together, aren't they? There's
13 an argument that the interests of the child is always
14 the same as the public interest, that I understand
15 fully, but nevertheless in the case of certain offences
16 or repetitive offences there has to be a mechanism for
17 stopping the pattern of reoffending.

18 MS LESLIE: But clearly Greenfields and Les Chenes weren't
19 doing that because children were going back again and
20 again.

21 A. Well, yes, but the question is which period are we
22 looking at?

23 MS LESLIE: We're looking at the period of your tenure as --

24 A. Yes, but we have this clear differentiation between the
25 early functioning and the subsequent functioning when it

1 changed suddenly to a remand centre.

2 I think that -- I think it's a balancing issue in
3 relation to this.

4 There's another issue I want to talk about, which is
5 the interests of the child in another sense. I've
6 always taken the view that it was not in the interests
7 of a child for them to be forming a pattern, a habit of
8 persistent criminal offending because a pattern, a habit
9 of criminal -- persistent criminal offending became
10 exactly that, a habit, and that was liable then to lead
11 them on in later years to serious and longer sentences
12 and so on and so forth. So to a certain extent what we
13 were seeking to do in relation to the sentencing policy
14 was actually to help youngsters to turn their lives
15 around so they didn't form this kind of a pattern or
16 habit.

17 MS LESLIE: Finally can I ask you, at the end of last week
18 the Safeguarding Partnership Board published what they
19 described as a thematic serious case review. Have you
20 had a chance to look at that?

21 A. No, I haven't, but I had of course seen at least two of
22 the reports confidentially and in fact I comment on them
23 in my statement -- I wanted to say something about
24 those.

25 MS LESLIE: Because the report is critical of partnership

1 working to protect children over a very long period in
2 Jersey, including the period that covers your tenure as
3 Home Affairs Minister.

4 A. Yes.

5 MS LESLIE: And I just wondered if you had been aware of any
6 of the difficulties that that report highlights?

7 A. Yes. Obviously I see things from the point of view of
8 the Minister for Home Affairs. I mean during the period
9 when I was Minister my impression is that standards were
10 improving within the Police Force, certainly a great
11 deal more in the way of resources were going into the
12 Public Protection Unit than had ever happened before,
13 and that with the arrival of Superintendent Stewart Gull
14 that actually things then moved up a further stage. Now
15 my impression -- again I could be biased because I'm
16 seeing this as Minister -- was that in fact it was
17 improvement in standards in the police working which
18 actually started to raise standards elsewhere. And
19 there were very clear areas of tension, again which is
20 exactly the area I wanted to talk about, very clear
21 areas of tension in relation to the whole area of
22 identification of signs of abuse, which is the key issue
23 highlighted by the report, where the Police were saying
24 "We think we're seeing signs of this" and actually the
25 alleged experts in Jersey were saying "No, we don't".

1 But that's a -- do you want me to talk about that now?
2 Because it was an area I did want to talk to the Panel
3 about.

4 MS LESLIE: I think if you can focus it very much on the
5 joint working aspect, that would be most helpful to us,
6 and particularly what you were aware of.

7 A. I think my impression is things have improved over the
8 period of time, but a key issue in the improvement has
9 been the improvement of the functioning of the Police in
10 this area, that's my understanding. I'm not just saying
11 that because I'm Minister, that's my general belief.

12 MS LESLIE: Thank you, those are my questions.

13 THE CHAIR: Mr Le Marquand, can I just pick up one theme
14 from Ms Leslie's questions until I ask Professor Cameron
15 to ask his questions, and this was on partnership
16 working. You said on 4 November that the
17 Children's Service reports, at the time when you were
18 a magistrate, were "wishy-washy", the quality of
19 reporting inferior to that of the Probation Service
20 {Day104/53:7}. First question, what do you mean by
21 "wishy-washy"?

22 A. I think the difficulty is very rarely did they actually
23 suggest any solution to the issue.

24 THE CHAIR: So what did you do about that? Did you address
25 it with them at the time?

1 A. Well, courts are actually sentencing individual cases
2 and if you're not being given sensible options which you
3 think are going to lead to a solution, there's not much
4 you can do about it.

5 THE CHAIR: What about talking to Children's Services and
6 suggesting that there might be a way of improving the
7 quality of their reports that would assist the Court?

8 A. I can't recall doing that to be honest.

9 THE CHAIR: Just the other point, you have been asked about
10 remand and you have explained on 4 November and again
11 today about why the need to remand was felt and the lack
12 of facilities et cetera, that I understand, but my
13 question is what, if anything, were the Probation
14 Service doing about the number and duration of remands
15 of young people? Did they raise any concerns?

16 A. The Probation Department?

17 THE CHAIR: Yes.

18 A. The difficulty I've got is because I wasn't generally
19 dealing with matters until about March/April 2001 --
20 I might have sat occasionally -- I don't know what was
21 being raised with my colleague and subsequently, as
22 I say, I took the steps to try to reduce the standard
23 remands and so on to speed up the whole process.
24 I can't specifically remember them raising issues -- it
25 doesn't mean they didn't, but I just can't remember.

1 THE CHAIR: Professor Cameron.

2 PROFESSOR CAMERON: Thank you. Can I just carry on on the
3 theme of remand. Am I right in thinking that the
4 purpose of remand is to enable the Court to get
5 information that it requires to enable it to dispose of
6 the case, or for a case to be ready?

7 A. It could be in order for the person to have time to
8 decide how they're going to plead to the case, it might
9 be, if they were pleading not guilty, in terms of
10 setting up a trial and so on and so forth, although
11 generally speaking there were relatively few trials in
12 the Youth Court. I mean obviously if you get a straight
13 guilty plea on the first day then you go straight to
14 reports, or you may be able to deal with the case, as we
15 often did, on what was called a stand-down report, that
16 is where there was a previous recent report and
17 a probation officer attached to the Court on that day
18 would actually provide some updated information.

19 PROFESSOR CAMERON: Did the Court have any problem in
20 getting reports timeously?

21 A. No, I think we were okay within the time limits. As
22 I say, they changed so that it was a four week remand if
23 a person wasn't in custody and a two week remand if they
24 were in custody, for reports. There were sometimes
25 pressures on those people producing the reports,

1 particularly in the times when there was a large volume
2 of persistently offending youngsters.

3 PROFESSOR CAMERON: Was there occasion on which the remand
4 had to be extended because the reports weren't
5 available?

6 A. I don't recall that ever happening.

7 PROFESSOR CAMERON: You said in your evidence that sometimes
8 it was necessary to remand people in custody to have
9 a sort of time out as if, as it were, just to start
10 trying to break the pattern of persistent offending.

11 A. Yes.

12 PROFESSOR CAMERON: That sounds to my ears more like remand
13 being used as a disposal.

14 A. No, it -- you're still applying the same test, you're
15 still applying the same basic test as to whether bail
16 should be granted or should not be granted, but where
17 you've got youngsters who are repeat, repeat offending
18 and you actually have the very real problem, which
19 I think I mentioned before, that if they're going to go
20 out into the community when they're at very high risk of
21 reoffending, they're going to reoffend and then you're
22 going to have the same problem again, except with
23 an extra lot of charges which will take time to work
24 through. So it may seem -- it might seem that you are
25 making a decision which was kind to them, but actually

1 in reality you could be making a decision which actually
2 just dug them deeper into a hole.

3 PROFESSOR CAMERON: You spoke about the importance, which we
4 understand, of the protection of the public; however, in
5 the context of a system where there is no possibility of
6 a custodial sentence then a custodial remand, is that
7 not a very short-term protection of the public?

8 A. Yes, it could be, but, as I say -- I was asked
9 a question about this before, in a sense as to whether
10 we attempted to use remands as it were in view of that
11 and I said that was something that we tried very hard
12 not to do. I'll tell you where we had a real tension
13 with that and that was once some of the youngsters who
14 were under 15 started to realise that the Court had no
15 sentencing powers at all, effectively we began to get
16 a situation where youngsters the first time they were
17 presented would plead guilty and say "Please sentence
18 me" and as a result of that effectively would be a
19 complete mockery of the criminal justice system and
20 there was that temptation, but we tried to resist it,
21 but what we would tend to do then would be to remand for
22 two weeks to obtain a further report. That also had the
23 benefit of bringing to the attention of the authorities
24 that things were going wrong with this youngster and
25 they really ought to be coming up with some solutions

1 for them.

2 PROFESSOR CAMERON: What was going to be achieved by having
3 them in custody for two weeks?

4 A. We would get a background report in relation to them and
5 that would be two weeks during which they would not be
6 offending, if they were at very very high risk of
7 offending so that we anticipated that we would reoffend
8 as soon as they had the possibility.

9 PROFESSOR CAMERON: But deciding to detain and deprive
10 a young person of their liberty for two weeks where
11 there was no possibility of a custodial sentence, was
12 that not trying to in effect find a way of giving them
13 a taste of --

14 A. No, it was trying to break the pattern of offending. It
15 was trying to ensure that the public were protected
16 during that period.

17 PROFESSOR CAMERON: How would two weeks break a pattern of
18 offending?

19 A. How would two weeks break a pattern of offending?

20 PROFESSOR CAMERON: Yes?

21 A. Well, some of the youngsters that we were dealing with
22 were in a situation of being very persistent offenders
23 and that created a real problem. Some of the youngsters
24 had simply totally gone off the rails for a short period
25 and actually a period in custody enabled them to

1 actually think about what was happening, people to talk
2 to them and so on and so forth and maybe helped them at
3 that stage. That was certainly my view. Understand
4 that the courts were being left in a very difficult
5 position because of the failures of the law at the time.
6 I took the view and I still take the view that we had
7 an overriding duty of protection to the youngsters and
8 to the public at large.

9 PROFESSOR CAMERON: Was it the case then in your view that
10 Jersey had an inadequate system --

11 A. Yes.

12 PROFESSOR CAMERON: -- for dealing with young people?

13 A. Absolutely. That is what I was saying from very very
14 early on, "We have an inadequate system."

15 PROFESSOR CAMERON: So what steps were being taken to try
16 and rectify that in terms of the law?

17 A. Well, one of the things I was trying to do, which
18 actually history overtook it, it became unnecessary,
19 I was actually trying to create a situation by which
20 the courts would have a sentencing power, subject to
21 safeguards and so on, for those who were under 15. That
22 was highly controversial and a proposition was actually
23 brought by the former Deputy Bob Hill to that effect and
24 he lost, he lost the proposition, but that was right in
25 the stage where we were really really struggling with

1 the issues being posed by some of the youngsters. So
2 there was a debate in the States on that possibility.
3 What eventually came out of it was the secure placement
4 order, but that was in more limited circumstances. But
5 you're absolutely right, of course the system was
6 totally failing.

7 PROFESSOR CAMERON: When probation orders were being made
8 with a condition of residence what did the Court
9 understand the condition of residence to mean?

10 A. It meant there was a condition attached to the Probation
11 Department that the person would reside at Les Chenes.

12 PROFESSOR CAMERON: And what does "reside" mean?

13 A. My understanding is that they would live there but there
14 was a degree of flexibility in terms of the regime that
15 was actually being operated.

16 PROFESSOR CAMERON: Would it imply a power to detain?

17 A. Well, it wasn't a power to detain, as I explained
18 before, because the person wasn't lawfully in custody,
19 but I'm not sure that was understood by staff because
20 there was an occasion I recall when a youngster said
21 "I want to go out" and there was a scuffle and the staff
22 prevented him and for some reason I learned about this
23 issue and said "Well, of course they can't", but I don't
24 think that was understood.

25 PROFESSOR CAMERON: What was the Court doing when it was

1 proposing to make a probation order to ensure that the
2 terms of the probation order were properly understood by
3 the young person prior to them agreeing for the
4 probation order?

5 A. That wasn't our responsibility. That was the
6 responsibility of the Probation Department to -- the
7 person would go up with the Probation Officer who would
8 explain the order to them.

9 PROFESSOR CAMERON: Do you think the Court had no
10 responsibility in those terms?

11 A. It wasn't normal for the Court to exercise the
12 responsibility.

13 PROFESSOR CAMERON: Were young people usually legally
14 represented?

15 A. On more serious matters, yes, but they wouldn't always
16 have been legally represented, but I would have said
17 they probably were legally represented in the vast
18 majority of cases which would have involved
19 a probation order -- certainly a probation order with
20 a condition of residence.

21 PROFESSOR CAMERON: Could we conclude then that probation
22 orders with a condition of residence were either
23 deliberately or through misunderstanding being used
24 de facto as a power to detain?

25 A. This is what I have said about it not strictly being

1 a detention. I would say it was power to place --
2 sorry, I'm not just playing with words, power to detain
3 to me is a legal power to detain.

4 PROFESSOR CAMERON: Now it would be viewed that the
5 condition of residence was something that was an
6 obligation placed on the offender to reside at that
7 place.

8 A. Yes.

9 PROFESSOR CAMERON: But residing doesn't mean being locked
10 in that place?

11 A. I think that's right, but, as I say, I'm not sure that
12 was understood by the staff, for the reason I say, which
13 was the individual case.

14 PROFESSOR CAMERON: So against that backdrop that you agreed
15 that there was an inadequacy in the law, was this
16 a manipulation of the law to try and compensate?

17 A. Well, I don't know, it had started happening before my
18 time and interestingly enough there is some
19 correspondence which I was shown in preparation for this
20 which suggested at the time there was a mechanism being
21 used associated with care orders. Now, that had ceased
22 and again it's my understanding -- I could be wrong
23 about this, but it is my understanding that as part of
24 the proposition, one of the propositions to the States
25 in relation to Les Chenes, that it was suggested that

1 this was going to be the mechanism that would be used.
2 I can only assume that advice -- if my understanding is
3 correct, and I think I have seen a document at some
4 stage that said that, a proposition to the States that
5 said that. If I'm correct I can only assume that legal
6 advice had then been obtained at that time from the
7 Law Officers' Department that that was going to be
8 appropriate, because clearly there was a change in what
9 was happening at some time prior to my period.

10 PROFESSOR CAMERON: You said that there would always be
11 a recommendation in the reports that the Court received
12 and that the general perception was that the
13 professionalism and standards of the Probation
14 Department were much higher than that of the
15 Children's Service.

16 A. Yes.

17 PROFESSOR CAMERON: Was that a matter that you raised with
18 the Director of the Children's Service?

19 A. No, I don't think so. I don't think so.

20 PROFESSOR CAMERON: Would there have been any kind of
21 routine meeting at which you might have raised
22 the Court's concern over the quality of the reports it
23 was receiving?

24 A. No. Interestingly enough we had far more linkage with
25 the Probation Department than we had with the

1 Children's Service. So there was an age differentiation
2 between youngsters who was below a certain age, and
3 I can't remember what it was -- a Children's Service
4 report -- if they were above a certain age. I can't
5 remember the age, I suspect it might have been 14,
6 I can't be sure.

7 PROFESSOR CAMERON: Earlier on in your evidence you said
8 that one important aspect of Parish Hall Enquiries was
9 restorative justice. Just for the record could you tell
10 us what you understand restorative justice to be?

11 A. Yes, restorative justice actually came in much later
12 because it came in as a possibility much later. It's
13 basically a system whereby victim and offender, and the
14 perpetrator meet together and are reconciled. It may
15 involve some kind of compensation as well, but that's
16 essentially my understanding of the model.

17 PROFESSOR CAMERON: Was there a restorative justice scheme
18 operating in the Island?

19 A. There was at some point, but I can't tell you exactly
20 when -- it began to operate at a later period, but
21 I would be guessing. I suppose I'm guessing about
22 2004/2005. There was a specific person attached to the
23 Probation Department who had previously been a police
24 officer who worked on this.

25 PROFESSOR CAMERON: Prior to that then, I'm reading this as

1 being that you saw the Parish Hall Enquiry as in effect
2 affording an opportunity for restorative justice, is
3 that right?

4 A. Yes. That was the mechanism -- it normally would happen
5 at that stage in lieu of a charge.

6 PROFESSOR CAMERON: And it would happen there at the hands
7 of the Centenier?

8 A. Yes, yes.

9 PROFESSOR CAMERON: Who didn't have any training in
10 restorative justice?

11 A. No, no, that's what I'm saying, there was a specific
12 employee of the Probation Department who actually ran
13 that scheme.

14 At a Parish Hall Enquiry, I should explain this, it
15 was quite normal at a Parish Hall Enquiry involving
16 youths that there would be a probation officer present
17 to advise the Centenier. That was part of the pattern.

18 PROFESSOR CAMERON: And just finally, in the latter part of
19 your evidence relating to the suspension of Mr Power you
20 said that -- the question was on the basis of what
21 David Warcup was telling you, is that David Warcup was
22 telling you, you chose not to read the report. Did you
23 have any thought at that time that Mr Warcup might,
24 because of the position he was in, have some element of
25 conflict because he had a personal interest potentially

1 in promotion beyond that, so was it reasonable to simply
2 take his advice?

3 A. Can I say there has been a very strange approach. He
4 was effectively Chief Officer Designate, although -- he
5 wasn't just deputy, he was effectively Chief Officer
6 Designate, although the appointment had to be approved
7 by the States. The idea that he would have actually, as
8 it were, tried to get his chief in trouble to accelerate
9 that forward is perfectly ridiculous in my opinion and
10 indeed as things transpired, because of the criticism of
11 him, he eventually decided not to seek to take up the
12 post and left the Island, so I completely reject that he
13 had any personal motive for doing that because that
14 would have been an extraordinary situation.

15 PROFESSOR CAMERON: Against that view, however, would you
16 have any concern that there might be a perception by
17 others that he would have a conflict?

18 A. Well, those who like to throw mud at him. But the fact
19 is that, as I say, the issues actually came to the fore
20 because of the press conference that took place. The
21 reasons for that press conference I think are fairly
22 clear, that he and Mr Gradwell became aware that there
23 were very serious issues which potentially would
24 prejudice a fair trial and I believe that was the
25 motivation in relation to this and what supports me in

1 that -- it's one of the things I wanted to mention
2 today -- is in fact of course there were proceedings in
3 relation to a number of accused who were charged in
4 relation to Haut de la Garenne who sought to have the
5 prosecution stayed or dismissed on the basis of the
6 mishandling of the case by Mr Harper. That case, which
7 I think you should read, is the case of
8 Attorney General v Aubin and others and the reference
9 number is 2009, that's the year, Jersey Law Reports at
10 page 340. Now, in that judgment the judge was highly
11 critical of the handling of matters and also indicated
12 that the fact that effectively an apology for the
13 mishandling had been made at that press conference had
14 been one of the factors which enabled him to find that
15 the cases could continue. That's my reflection on it,
16 but I would invite you please to -- it was one of the
17 matters I wanted to raise today -- please to read that
18 judgment because I think that actually shows you what
19 the motivation was of -- you have already heard of
20 course Mr Gradwell's evidence, I understand, I don't
21 know if you heard Mr Warcup's evidence -- of Mr Warcup
22 and Mr Gradwell in relation to that press conference.
23 There was that press conference that took place.
24 Clearly then that sparked a response at various
25 different levels, I think it was probably a response at

1 chief executive officer level, and then Mr Warcup
2 produced a letter in which he set out his understanding
3 of the issues and so on and so forth. But the initial
4 motivation, I'm pretty clear on, was to counter the
5 damage potentially done to prosecutions as a result of
6 the mishandling.

7 PROFESSOR CAMERON: Thank you, Mr Le Marquand. I have no
8 other questions, thank you.

9 THE CHAIR: Mr Le Marquand, just before I turn to counsel,
10 the Panel has read the judgment you just recited.

11 A. Oh, right, okay.

12 THE CHAIR: Can I also just be clear on one final matter
13 that Professor Cameron was asking you about. Your
14 evidence was that on the basis of what David Warcup told
15 you did not read the interim report. I also understood
16 it was not only David Warcup but on the basis of what
17 Mr Gradwell told you that you didn't read the interim
18 report?

19 A. I'm sorry?

20 THE CHAIR: It was not only Mr Warcup who advised you but
21 Mr Gradwell advised you --

22 A. That's right, because in making my decision in relation
23 to maintenance of suspension I was looking not just at
24 Mr Warcup's letter but I was also looking at the terms
25 of the press release which was a joint press release

1 between the two of them and therefore I knew from that
2 what was the position of Mr Gradwell in relation to
3 that.

4 THE CHAIR: Thank you. Mr Sadd, are there any questions
5 arising from the Panel's questions?

6 Further questions from COUNSEL TO THE INQUIRY

7 MR SADD: Madam Chair, just one -- barristers always say
8 that, Mr Le Marquand, but I hope it is just one.

9 In relation to the evidence you have just given in
10 response to Professor Cameron's question about
11 motivation and the rationale behind the actions taken by
12 David Warcup and Michael Gradwell, is that something you
13 specifically discussed with them?

14 A. I had virtually no contact with Mr Gradwell. I think
15 the only time I had contact with him was when he rang me
16 to protest at something I had said in the States which
17 was critical of how he had gone public on a lot of
18 issues and -- sorry, can I just come back to the
19 question. I have just side-tracked myself.

20 Q. Yes. Essentially on what do you base your view that the
21 motivation of David Warcup -- let's leave it at just
22 Mr Warcup -- that his motivation for doing what he did
23 on 12 November was motivated by his view of abuse of
24 process? Was that something you discussed with him?

25 A. I think that came from discussion with him, yes.

1 Q. And when were those discussions held?

2 A. I don't know I'm afraid. I can't recall. I think
3 I would also have deduced that from the judgment.

4 MR SADD: Thank you, Madam Chair.

5 THE CHAIR: Thank you, Mr Sadd.

6 A. I had some issues I wanted to raise --

7 THE CHAIR: If you just give me one moment. I appreciate
8 you mentioned on the last occasion, we haven't lost
9 sight of that, so I'm now going to invite you -- I know
10 that you have added some further thoughts in the course
11 of further questions this morning, but Mr Le Marquand,
12 as I indicated last time, if there are other matters
13 please do assist the Panel in that regard.

14 A. Yes, thank you very much, Madam Chair.

15 Firstly I just want to remind the Panel in relation
16 to the issue of volumes of cases in the Youth Court that
17 figures are available from the Magistrates Court Greffe
18 by year and I would invite you to look at those.

19 Secondly, to remind you that the transcript of the
20 two sets of suspension hearings, particularly the first
21 hearing, should still be available. I don't have a copy
22 of it, but it must still exist and that makes it very
23 clear as to precisely the test which I applied and the
24 facts which I found in relation to the suspension. I'm
25 sorry, it was a very complicated test, it was the first

1 time I had actually ever conducted such proceedings and
2 I simply can't remember.

3 It was put to me at the last hearing first of all
4 that I hadn't given Mr Power reasons, which is clearly
5 incorrect and you will see from the transcript that's
6 so, but secondly and somewhat contradictorily was put to
7 me that I said to him that he was being suspended
8 because of having brought the Island into disrepute and
9 I said "No that's not correct". Now, subsequently
10 I have recalled, and you do really need to look at the
11 precise wording that I used in relation to this, but
12 subsequently I recalled that as part of the test that
13 I was applying in relation to the suspension was an
14 issue of loss of be confidence and that in that context
15 of the issue of loss of public confidence that I did say
16 right at the end I think of the decision or judgment
17 that I made -- I was used as Magistrate to giving oral
18 decisions, you understand, and in a formal kind of way,
19 we were Human Rights compliant and that was required and
20 so on and so forth. I did say that there was an issue
21 of loss of public confidence because of the way in which
22 the press matters had been handled, but that's
23 completely different issue to saying he was being
24 suspended because he brought the Island into disrepute.
25 But I invite you to look at exactly what I said, because

1 I can't remember the exact wording.

2 The third thing I want to say -- it is a question
3 I haven't been asked but I think I should have been
4 asked because I have deduced that this whole area of
5 suspension of Mr Power and that is only really
6 relevant -- at least I think it's only really relevant
7 to your considerations if somehow that suspension was
8 motivated by trying to foul up the investigation, or --
9 the criminal investigation in some way and I'm surprised
10 I haven't been asked a question as to what effect did
11 the suspension of Mr Power have in relation to the
12 criminal investigations which were then taking place and
13 I'm going to give you the answer to that because I think
14 that is actually quite an important question.

15 The answer is I don't think it had any effect
16 whatsoever, because at that stage -- my understanding is
17 with the departure of Mr Harper that temporarily on
18 arriving in the Island as deputy that temporarily
19 Mr Warcup became the senior investigating officer but
20 subsequently realised we really did need a specialist
21 investigating officer from outside and so Mr Gradwell
22 was brought in and my understanding of the structure as
23 it was then was that Mr Gradwell was the senior
24 investigating officer and Mr Warcup was playing the
25 overseeing role and therefore that Mr Power had

1 virtually no role and I think that's quite an important
2 issue. If it's being implied that somehow there was
3 some motivation to suspend him to stop the
4 investigations going on, to impede them; that's
5 completely untrue, completely incorrect.

6 I have mentioned the Aubin case.

7 I think the last thing I wanted to say which I have
8 been hinting at periodically this morning is there are
9 things I wanted to say in relation to the serious case
10 reviews, which I'm very pleased to see they have now
11 come out. Because I referred in my statement to the
12 fact that one of the major issues which these raised was
13 a lack of locally based medical expertise in identifying
14 the signs of sexual abuse to children. I have to say
15 this was a major concern to me and I raised this matter
16 in meetings on more than one occasion. I was very very
17 concerned about this, in fact on one occasion I think
18 I said I could not consider anything being more
19 important and more vital than that we have the expertise
20 locally to identify the signs of sexual abuse to
21 children.

22 What I found was that the Health and Social Services
23 Department was resistant for financial reasons --
24 I think for financial reasons -- to employing someone
25 with the necessary expertise. Towards the end of my

1 period as Minister there were negotiations going on
2 between the States Police and Social Services in
3 relation to this, bringing in periodically expertise,
4 and indeed as to who would pay for this expertise.

5 I then left the post and I'm not sure as to whether this
6 has been satisfactorily resolved. The police officer
7 you would need to speak to on that is Superintendent
8 Stewart Gull, if he hasn't already given evidence,
9 because that's his area.

10 The necessary post I understand is that of
11 a paediatric forensic examiner and I still think it's
12 absolutely vital, it's absolutely vital. I mean it's
13 really not in the least acceptable that we find from
14 these serious case reviews that young people remained in
15 an environment in which they were being abused because
16 the signs of abuse were not recognised. It just cannot
17 be acceptable in any shape or form. I feel very
18 strongly about that.

19 There are however other issues as to other potential
20 areas and posts. Now, my information on this comes from
21 my cousin who I think I can identify, Senator
22 Dr Zoe Cameron, who has a fair bit of expertise in this
23 area, I don't know if you have heard her as a witness as
24 well, but that role is -- I understand is called
25 a designated doctor in child protection and it's a post

1 which is filled by I understand a consultant community
2 paediatrician -- have I got the right words? Now,
3 that's the person that I understand fulfils not just
4 a role in this area -- they're not a forensic
5 examiner -- but also in relation to certain related
6 areas.

7 In addition to that there is the role of the GP who
8 has responsibility for acting, as it were, for
9 medical officer in relation to children who are in care,
10 that was really the role that Dr Cameron fulfilled for
11 a time. My impression from her is that after she left
12 that role it got downgraded effectively and also placed
13 in the hands of a nurse and so there's a further issue
14 there as to whether we have the right structure and
15 right services for looked-after children in terms of
16 a GP with responsibility.

17 So I urge you very strongly -- having I'm afraid
18 sort of rather unwisely laughed when you asked me the
19 question as to whether or not you would get everything
20 you asked for, and I'm afraid that came out of a certain
21 degree of realism of having worked in the public sector
22 system since 1990, I would urge you very strongly to
23 look at these posts. The most vital is the first, but
24 the second is important and ensuring that the third is
25 functioning properly is also in my view important.

1 THE CHAIR: Mr Le Marquand, thank you, and with that that
2 concludes your evidence to this independent inquiry.

3 A. Thank you very much.

4 THE CHAIR: I thank you on behalf of the Panel for attending
5 not only today, but on the earlier occasion on
6 4 November, and thank you for your patience in that
7 return.

8 Mr Sadd, it's now 20 past 12. We have a further
9 witness today, I understand, that will be at 2 o'clock.
10 So we will rise now and sit again at 2 o'clock. Thank
11 you.

12 (12.20 pm)

13 (The lunch break)

14 (2.15 pm)

15 THE CHAIR: Good afternoon, Mr Sadd.

16 MR SADD: Madam Chair, before we start taking this
17 afternoon's evidence, that of Centenier Scaife, there is
18 an application to be made on behalf of the Law Officers'
19 Department, but it may assist both my learned friend
20 Mr Glasgow and yourselves if we have up on screen the
21 witness statement, which is {WS000657} and if Mr Glasgow
22 needs to go to any specific paragraphs he can do so, but
23 it's an application in relation to the content of that
24 statement.

25

1 Application on behalf of the Law Officers' Department
2 concerning the evidence of Senator Scaife

3 MR GLASGOW: Madam, thank you.

4 THE CHAIR: Good afternoon, Mr Glasgow.

5 MR GLASGOW: Good afternoon. As my learned friend has
6 rightly introduced, I appear on behalf of the
7 Law Officers' Department and I'm grateful for the
8 opportunity to address the Panel this afternoon in
9 respect of paragraph 97. Could I ask that that please
10 be brought up. If it assists I think it is page 26
11 {WS000657/26}.

12 THE CHAIR: Just give us a moment.

13 MR GLASGOW: Would it assist if I wait a moment whilst
14 the Panel read that paragraph, since it may help to put
15 it in context?

16 THE CHAIR: Yes please. You appreciate we have read it
17 before, but on your specific point just give us time to
18 read those paragraphs.

19 (Pause).

20 Yes, thank you.

21 MR GLASGOW: Thank you very much. It is simply in order to
22 put the matter into context for those who may not have
23 had the opportunity of considering the entirety of the
24 statement. Centenier Scaife is being invited in
25 paragraph 97 to provide his opinion on the reasons as

1 reported by Lenny Harper for the decision not to charge
2 suspects 279 and 281. The reasons Mr Harper records are
3 threefold in a document that he provided on
4 29 June 2008, some five days after the original advice
5 was provided by Simon Thomas not to charge those two
6 suspects. Mr Harper records in the document, which was
7 shown to Centenier Scaife, the following three reasons:
8 first that one of the suspects was unwell, secondly that
9 a witness had called the custody officer stating that
10 the wrong people had been placed in custody, and third
11 that children of the suspects had telephoned to say that
12 their parents were good people.

13 What happens following the showing of that document
14 to Centenier Scaife is that he is invited then to
15 provide his opinion as to the significance of the
16 developments that are rehearsed by Lenny Harper.

17 As I have already indicated, Mr Harper set out those
18 three developments in a document dated 29 June, some
19 five days after the charging decision was set out. In
20 fact the Inquiry has available to it the original
21 contemporaneous note that Simon Thomas provided of his
22 charging decision and that note rehearses in far greater
23 detail what are termed the "three developments" and
24 indeed it rehearses in detail his, that is Mr Thomas',
25 reasoning for taking the decision that he did about

1 a decision not to charge suspects 279 and 281.

2 Now, what the Law Officers' Department have done is
3 invited the solicitors to the Inquiry to reconsider
4 whether it is appropriate to invite Centenier Scaife to
5 comment on Lenny Harper's comments on Simon Thomas'
6 advice, since what the Inquiry has available to it is
7 a contemporaneous record of the advice itself, and if,
8 as appears to be the case, Centenier Scaife is being
9 used almost as a quasi expert in charging matters to
10 provide his quasi expert opinion on the reasons that the
11 lawyer relied upon for not charging, then what should be
12 put before him for him to consider is not somebody
13 else's version of those reasons, but the reasons of the
14 lawyer himself and what we have invited the solicitors
15 to the Inquiry to do is to replace paragraph 97 with
16 a proper version of what should be an assessment of the
17 reasons of Simon Thomas. That document is available.
18 It has now been shown to Centenier Scaife and he will in
19 due course I understand be invited by Mr Sadd to set out
20 his understanding of the logic of Simon Thomas'
21 reasoning.

22 Can I just explain why we suggest that it is
23 important that one steers clear of Mr Harper's assertion
24 of what Simon Thomas said and focus upon what in fact
25 Simon Thomas said and it's for this reason: if one looks

1 at those "three developments", as they are termed by
2 Mr Harper, they are these. First, that suspect 279 was
3 unwell. That is correct in that that was the
4 development, but in fact the reasoning behind
5 Simon Thomas' advice was not the fact that 279 was
6 unwell, but that as a result of ill health 279 had not
7 been interviewed, so 279 had not had an opportunity to
8 provide any explanation at all, if 279 felt it
9 appropriate so to do, as to the allegations being made
10 against them. As to the second of the reasons, namely
11 that a witness had called the custody officer stating
12 that the wrong people had been placed in custody, again
13 at its most basic that may well be a proper way of
14 describing the development, but in fact the significance
15 is completely lost on Mr Harper. The significance is
16 this, that the witness who phoned in to speak to the
17 custody officer was alleged by the complainants to have
18 been a further victim of the abuse suffered at the hands
19 of 279 and 281 and what that witness did when ringing in
20 and speaking to the custody officer was expressly deny
21 that he or she was the victim of any abuse and to
22 provide a completely contradictory account to that which
23 had been provided by the children, the account being
24 relied upon in the evidence against 279 and 281. So to
25 categorise that development as simply being a witness

1 ringing in to say the wrong people are in custody does
2 it a complete disservice. In fact a witness who
3 provided direct, relevant and admissible evidence on
4 what had happened phoned in to say that the allegations
5 being made by the complainants who had provided
6 statements were inaccurate and that that witness could
7 provide direct relevant evidence to that effect, plainly
8 material which would have to be borne in mind by any
9 lawyer assessing the strength of the evidence when
10 dealing with the charge.

11 A third and final reason, again which is at its most
12 basic level characterised accurately by Mr Harper, is
13 that the children of the suspects had phoned in to say
14 their parents were good people. Once again that does
15 complete disservice to Mr Thomas' assessment of that bit
16 of the evidence because he recognised at the time he
17 understood that the children of the suspects were
18 willing to provide accounts to the Police that it was
19 necessary to understand whether in the first place they
20 could provide direct, relevant and admissible evidence
21 on what happened at the time the allegations were said
22 to have taken place, but also the extent to which any of
23 the complainants who were providing evidence might have
24 been in a position to collude on their accounts and
25 Mr Thomas, immediately following the phone call that he

1 had with Mr Harper on 24 June, set out in a four page
2 detailed memo, which he dictated immediately after the
3 telephone call, his reasoning applying to those
4 developments.

5 THE CHAIR: Is that the telephone call when Mr Thomas was at
6 the railway station?

7 MR GLASGOW: Yes.

8 What we have invited the solicitors to the Inquiry
9 to do is not to rely upon Mr Harper's five day
10 thereafter comments on what he thought Mr Thomas had
11 said to him, but in fact if one is going to use
12 Centenier Scaife in this way, is to invite him to
13 provide his comments on the advice that was actually the
14 advice of the lawyer because there's something of the
15 Alice in wonderland about this, isn't there, where you
16 have the direct account of the lawyer, but you choose to
17 ignore that, to rely upon somebody else's account of
18 that account and then to invite a witness to comment on
19 the account of the third party, ignoring the account
20 that is in fact the direct, relevant and original one,
21 and what we have invited the solicitors to the Inquiry
22 to do is to redact paragraph 97 because it simply
23 doesn't set out the correct position, and that knowing
24 that Simon Thomas' document is available and has been
25 available for many many months, to invite

1 Centenier Scaife to look at that and for that to form
2 the basis of his assessment, if it's appropriate for him
3 to give it, and for that to replace paragraph 97.

4 So can I make it clear we are not seeking to prevent
5 Centenier Scaife from considering what might be thought
6 by this Inquiry to be relevant and admissible evidence,
7 that's not the purpose of the objection; the purpose of
8 the objection is to ensure that we are focused on what
9 is in fact the right reasoning to be considered by
10 Centenier Scaife and with respect to Mr Harper, it may
11 well be when he gives evidence that he is in a position,
12 if it's appropriate, for him to give his assessment on
13 Simon Thomas' advice, but what is not appropriate is for
14 Centenier Scaife to consider Lenny Harper's assessment
15 of Simon Thomas' advice since Centenier Scaife didn't
16 discuss this aspect of the advice with Lenny Harper,
17 indeed he didn't even discuss it with Simon Thomas. All
18 he knew was that Simon Thomas had reached a decision not
19 to charge and he was subsequently thereafter provided
20 with these reasons and, with respect, he ought to have
21 been provided with the proper picture and not one which
22 is de minimis to such an extent that it is misleading.

23 THE CHAIR: Mr Glasgow, thank you for those submissions.

24 Mr Sadd, do you wish to respond?

25 Reply submissions from COUNSEL TO THE INQUIRY

1 MR SADD: Madam Chair, by way of general principle there are
2 no rules of evidence in this Inquiry.

3 Secondly, the concern put forward by my learned
4 friend in relation to the contemporaneous account
5 between Advocate Thomas and the senior investigating
6 officer, Mr Harper, at the time is a document that quite
7 properly we can put and will put to Centenier Scaife so
8 that he is in a position to comment.

9 The issue then is in my submission for the Inquiry
10 to consider Centenier Scaife's role on the afternoon of
11 the 24th when he has been called in to charge by, as he
12 understands it in his evidence, Mr Harper. Yes, as we
13 read his evidence it's right that he didn't know of all
14 the reasons, as Mr Harper puts them subsequently in
15 a note that's going to be provided to the
16 Attorney General on 29 June and that's exhibited at
17 paragraph 97, but he is asked to look at the papers that
18 have been set out in a police report and in so doing he
19 is, we say, quite properly asked to comment on the
20 differing views, it should now be said, of those
21 involved in charging, bearing in mind that
22 Centenier Scaife's role, or one of his three roles, is
23 to consider charge, and that's exactly what he sets out
24 in paragraphs 97, 98 and 99 and the considerations that
25 he would have considered to be relevant and he is asked

1 to comment -- whatever one might think of the weight
2 that will be attached to Mr Harper's evidence, and
3 indeed the Inquiry has made no findings in relation to
4 that evidence, but he is asked to comment on Mr Harper's
5 views of how he has interpreted that meeting. There is
6 a difference of interpretation. What is the consequence
7 as far as Centenier Scaife is concerned about that
8 understanding, safeguarded, if I can put it in that way,
9 by the fact that Centenier Scaife will be invited this
10 afternoon to look at the contemporaneous note prepared
11 by Advocate Thomas, which, as you have heard my learned
12 friend say, sets out in far greater detail the rationale
13 that Advocate Thomas was putting forward in relation to
14 the decision that he was making not yet to charge.

15 Those are my submissions as to why that paragraph
16 should remain untouched.

17 THE CHAIR: Thank you, Mr Sadd. Mr Sadd, we will just take
18 a moment. It will just literally be a few minutes. I'm
19 conscious that we have a witness waiting, so if everyone
20 can remain in the hearing room we will be back in a few
21 moments.

22 (2.30 pm)

23 (A short break)

24 (2.34 pm)

25 THE CHAIR: Mr Sadd, I will address you by way of the

1 record.

2 Ruling

3 The Panel has received statements drafted by
4 witnesses or their solicitors, as well as statements
5 drafted by the Inquiry solicitors. Inevitably some of
6 those statements touch on matters that fall outside
7 the Inquiry's Terms of Reference. Some will contain
8 hearsay, including multiple hearsay.

9 This Panel is committed to openness and for this
10 reason will not redact statements that are put up on the
11 public screens, or on the Inquiry's website, other than
12 to protect the identities of individuals.

13 Mr Sadd, as you said, there are no rules of evidence
14 before this Inquiry. The Panel will give such weight as
15 it sees fit to all of the material placed before it,
16 bearing in mind that in reaching its conclusions
17 the Panel may take into account only such material as
18 may properly be said to fall within its Terms of
19 Reference.

20 So that is our ruling in relation to the submissions
21 and I understand we are ready to proceed with Mr Scaife.

22 MR SADD: Madam Chair, that's right. Centenier Scaife would
23 like to take the oath.

24 I wondered, Madam, I know you have just risen, are
25 you happy that we go straight into the evidence or do

1 you want to retire again?

2 THE CHAIR: No, we are happy to go straight into the
3 evidence and I think Centenier Scaife is in the room.

4 MR SADD: Madam Chair, just to be entirely clear so that
5 Mr Glasgow knows where he stands, although perhaps he
6 does, so far as his submissions are concerned in
7 relation to paragraph 97 --

8 THE CHAIR: It will not be redacted.

9 MR SADD: It will not be redacted.

10 Centenier Scaife, if you would like to come forward
11 and the centenier, Madam Chair, would like to take the
12 oath, as I say.

13 CENTENIER DANIEL SCAIFE (sworn)

14 THE CHAIR: Thank you, Centenier Scaife. Please make
15 yourself comfortable. As I think you have already been
16 told, we will take a break in about an hour, an hour and
17 ten minutes, for the stenographer, but if for any reason
18 you require a break before then please just indicate and
19 we will accommodate you.

20 A. Thank you, Madam.

21 Questions from COUNSEL TO THE INQUIRY

22 MR SADD: Madam Chair and Members of the Panel,
23 Centenier Scaife's statement as you have already heard
24 is to be found at {WS000657} and the documents behind
25 that statement are at {WD008454}. Centenier, you

1 provided a statement to the Inquiry dated
2 11 November 2015, a statement which you signed and at
3 the time of signing it should the Inquiry be content
4 that you were happy that it was true, what was contained
5 in the statement?

6 A. Yes, I am indeed happy with that, yes.

7 Q. It is important that you know that your statement has
8 been read by the Panel, as indeed have the documents to
9 your statement. Your evidence in your role as centenier
10 is particularly relevant to the following Terms of
11 Reference, which I'm not going to set out in extenso but
12 just going to provide the numbers: Terms of Reference 4,
13 9, 11 and 13.

14 You provide on the first page of your statement
15 a brief background, but if I may I'm going to summarise
16 some of the evidence that you provide.

17 You were born in London. You came to Jersey as
18 a child. After leaving school you trained in
19 horticulture. You were elected a constable's officer in
20 1990. You were a vingtenier in 1995 and you became
21 a centenier in 1999. You were appointed Chef de Police
22 in 2007 and that's a position you still hold.

23 A. That is correct.

24 Q. Your evidence to the Inquiry sets out the role of the
25 Honorary Police, its organisational structure, the

1 prosecution of cases and you provide background and
2 detail on the Parish Hall Enquiry. Some of these issues
3 the Inquiry has already heard evidence about from, if
4 you want, somebody of a more senior generation, so from
5 an earlier time, and that is from Robert Le Brocq.

6 You also go on to discuss issues related to charging
7 and you provide an account of your involvement in
8 specific cases that are known to the Inquiry.

9 If we then go please to page 2 {WS000657/2} of your
10 statement, paragraphs 5 to 10, where you set out your
11 role as a constable's officer and a vingtenier. At
12 paragraph 7 you set out the role of the constable's
13 officer and you say that its nearest equivalent within
14 the States of Jersey Police is that of a constable. You
15 say that the constable's officer has powers of arrest,
16 although for more serious offences, including grave and
17 criminal assault, you would need the assistance of the
18 SOJP. Is that simply -- without doing you any
19 disservice, is that a manpower issue, or an issue that
20 is by way of policy?

21 A. No, it's a legal issue. The law actually states that
22 prescribed offences, certain offences have to be
23 investigated by the States of Jersey Police.

24 Q. I was asking you specifically in relation to the powers
25 of arrest, so at the point of arrest if you wanted to do

1 so as a constable's officer would you need to be
2 attended by an officer from the SOJP?

3 A. No. What would normally happen is that a constable's
4 officer, vingtenier or centenier could make an arrest.
5 The person would be detained, taken back to the police
6 station and if indeed an investigation is due to take
7 place, depending on the nature of the offence that will
8 be then conducted by a member of the States of Jersey
9 Police.

10 Q. And indeed you say that "certain offences, generally
11 more serious ones, require the assistance of the States
12 of Jersey Police". Under "serious offences" would that
13 include physical and sexual assaults on children?

14 A. Yes, it would, yes.

15 Q. Are there a list of what are considered to be serious
16 offences or is it something that you get to know?

17 A. No, there are a list of prescribed offences which are
18 set out which you can and cannot deal with, it's quite
19 clear.

20 Q. And where is that set out?

21 A. It's set out under the law and it is available. It's
22 the 1974 law I think it comes under.

23 Q. And at what point in an investigation that had been
24 initiated in your role as an honorary constable would
25 you involve the States of Jersey Police?

1 A. Well, if you arrested somebody -- I'll give you a good
2 example. An example would be if Honorary Police were
3 out on patrol and they arrested somebody for a grave and
4 criminal assault outside a nightclub, they would make
5 the arrest, they would take the individual back to the
6 police station, but then it would be deemed that
7 the States Police would take on the investigating role.
8 The Honorary Police officer would provide a statement of
9 evidence; the actual investigation, including the
10 interviewing of the actual suspect and the gathering of
11 the evidence, ie the witness statements, would be done
12 by a States of Jersey Police officer.

13 Q. As you pointed out in the first sentence of paragraph 7,
14 looking at the nearest equivalent rank of constable
15 officer to States of Jersey Police constable, can any
16 further useful comparison be made between ranks within
17 the Honorary Police and ranks within the States of
18 Jersey Police?

19 A. I suppose to some extent it is a little bit difficult.
20 A vingtenier probably would be the equivalent of
21 a sergeant in its nearest sense. A centenier's role is
22 different in the fact that they have a judicial role as
23 well. As well as being Honorary Police officers they
24 have the power of charge and bail and they prosecute in
25 a Magistrates Court and preside over Parish Hall

1 Enquiries.

2 Q. And indeed you come on to discuss that at length in your
3 statement.

4 A. Yes.

5 Q. The need to involve the States of Jersey Police in
6 serious offences, has that existed throughout your time
7 as an honorary constable and then vingtenier and
8 centenier?

9 A. Yes, I believe it came into force in 1974 --

10 Q. So it dates from 1974?

11 A. Yes, it has.

12 Q. All right. I just want to consider with you
13 circumstances in which as an honorary constable you may
14 be approached by a member of the public who insists that
15 what they are about to tell you mustn't be taken to the
16 States of Jersey Police and just get your reaction to
17 that and whether the sort of scenario I'm going to set
18 out to you is one that you have ever had to deal with.

19 So the first scenario: mother of a 15-year old girl
20 who is resident at a children's home reports her concern
21 to you that the girl is sleeping with -- "sleeping" in
22 inverted commas -- with a man aged 22 described as the
23 boyfriend and that the two of them are planning to move
24 in together when she turns 16, the mother doesn't want
25 to -- nor does the girl -- want to involve the States of

1 Jersey Police in that scenario. How would you, if you
2 were approached by the mother or the girl, address that
3 situation?

4 A. Well, it would be reported to the States of Jersey
5 Police by myself because quite clearly there could be
6 a criminal offence here. There's all sorts of issues.
7 We have a child under the age of 16 who is under the age
8 of consent, we have an older person and there's all
9 sorts of issues with it, all sorts of child protection
10 issues, so that would be reported to the States Police.

11 Q. And that's regardless of the request made by --

12 A. Yes, that's regardless, yes.

13 Q. The next scenario please, centenier, runs as follows:

14 X reports that a male, in this case a foster parent,
15 sexually assaulted her 30 years previously and is now
16 only reporting this because the same male has moved into
17 a house where there are young children. She doesn't
18 want to make a complaint, doesn't want him to get into
19 trouble because it all happened a long time ago, but she
20 is concerned for the welfare of the children in that
21 house. You are approached by this individual who says
22 she doesn't want to let the States of Jersey Police know
23 because of all her concerns and fears. Again what
24 action would you as an honorary constable take in those
25 circumstances?

1 A. It would be referred to the Public Protection Unit.

2 There's all sorts of wider public interest issues
3 regarding that case. Whether the actual person wished
4 to make a complaint or not is another matter, but there
5 are wider public protection -- child protection issues.
6 It would be referred to the Public Protection Unit.

7 Q. And that's the unit that the Inquiry understands to be
8 within the States of Jersey Police?

9 A. That's correct, yes.

10 Q. What used to be called the FPU I think, but there it is.

11 A. Yes.

12 Q. And in those circumstances and in your time as
13 an honorary constable would consideration also be given
14 to notifying Children's Services, or did you not see
15 that -- or would that not be the role of --

16 A. It probably would be, depending on the circumstances.
17 I think the priority would be to report it to the Public
18 Protection Unit because that's their speciality, that's
19 what they deal with and invariably they probably would
20 report it to the Children's Service. I would probably
21 have a conversation with them first and they would
22 probably almost automatically report that themselves and
23 they would look into that aspect themselves.

24 Q. And the scenarios I set out to you, have you ever been
25 faced with or put in that predicament where a member of

1 the public is setting out to you a set of circumstances
2 and they are very concerned that it shouldn't go any
3 further, but you need to know about it, "Please don't go
4 to the Police about it", has that ever happened to you?

5 A. Yes it has indeed, on several occasions.

6 Q. In those circumstances what have you then done, or felt
7 you needed to do?

8 A. On every occasion it has been reported to the States of
9 Jersey Police.

10 Q. Paragraph 8 please, Centenier {WS000657/3}. Here you
11 discuss the training for a constable's officer. You say
12 that this would have been provided by the States of
13 Jersey Police over an eight week period, usually in the
14 evenings.

15 The Inquiry understands from Mr Le Brocq when he
16 gave evidence that when he joined in the 1980s the
17 constable's officer's training consisted of shadowing
18 an existing constable's officer. When was training, the
19 eight week training introduced?

20 A. Well, when I joined in 1990 it was certainly in place
21 then and I attended an eight week course in 1990,
22 beginning of 1991 with the States of Jersey Police. It
23 was held -- conducted by their training department.
24 Now, it would also consist of shadowing constable's
25 officers and fellow colleagues, that would be part of

1 it, that clearly would be part of it, you would do that
2 as well, but your formal training regarding policing
3 powers would be done by the States of Jersey Police and
4 also your colleagues as well.

5 Q. Did the training then include any element in relation to
6 child protection?

7 A. Yes. There wasn't -- probably back in 1990 there
8 wasn't. There certainly is now. You would have child
9 protection training, there would be input from the
10 Public Protection Department and people who were
11 specialists in that area. Probably 1990 there wouldn't
12 be.

13 Q. You have been Chef de Police since 2007. In that role
14 are you responsible for the training of officers,
15 honorary officers?

16 A. Yes, I am. It is my job to make sure they are trained.

17 Q. So in 2007 was child protection training in existence,
18 or did you introduce it?

19 A. I would say there was probably minimal to some extent in
20 2007. It would have been there, but it's probably post
21 2008/2009 that it became much more fixed on the agenda
22 and it became more apparent this should be done and
23 indeed it has been.

24 Q. And to whom did you go to for advice as to what should
25 be included in that training?

1 A. Well, I would probably go to the States of Jersey Police
2 training department who would then probably take their
3 advice from the specialists and they may well use
4 a specialist trainer to do that training themselves.

5 Q. And does it follow from that, Centenier, that
6 notwithstanding having been elected as a constable's
7 officer, training remains ongoing throughout
8 an officer's time?

9 A. Yes, that is correct, it does, yes.

10 Q. We also heard from Robert Le Brocq about checks that
11 would be carried out on putative honorary constables.
12 What checks are now carried out?

13 A. Well, when you join a person would be interviewed when
14 they joined by our recruiting team. They would then be
15 invited to fill in an application form which is quite
16 detailed and a police check form. The police check form
17 will then be forwarded to the States of Jersey Police
18 vetting department and they will carry out the relevant
19 checks into that individual and send back any copy, if
20 there is indeed any record.

21 Q. And would the States of Jersey Police at that point
22 provide any comment on those checks?

23 A. They might do. They could do. If they felt it was
24 inappropriate or there was intelligence to suggest that
25 this person may be a problem, yes they would probably,

1 yes.

2 Q. As Chef de Police do you have a role in determining
3 whether a candidate is suitable?

4 A. Yes I do. It's very difficult -- a person -- it's
5 a public office so people can stand for public election,
6 but we would certainly have a view to certain people
7 joining and if we felt it was inappropriate we would
8 approach the Attorney General.

9 Q. As you may be aware, Centenier, the Inquiry has heard
10 evidence about events relating to the election of
11 Roger Holland and has seen the committee of inquiry that
12 took place in 2002 into that election. Would
13 an applicant with a previous conviction for indecent
14 assault of a child now be disqualified from applying?

15 A. Completely.

16 Q. At paragraph 10 {WS000657/3} you set out the duties,
17 about seven lines down, you say:

18 "Duty weeks would commence and end on Fridays.
19 During a duty week I would be alerted to any serious
20 incidents that may have taken place during the day."

21 What should the Inquiry understand by "serious
22 incidents"? Is that related -- again I mean no
23 disservice, is that related simply to traffic issues or
24 generally all areas of crime?

25 A. It could be all areas of crime. I think to put it in

1 its context, if there was a serious road crash on one of
2 the highways in St Helier we would be notified. If
3 there was an armed operation we would probably be
4 notified for information purposes. We're not talking
5 about minor incidents because clearly that wouldn't be
6 feasible to do that, but major incidents we would be
7 notified: 1, because we may be required to attend and
8 assist; and 2, just so that we are aware of it.

9 Q. Right. You come on to deal then with centeniers and
10 their election and, as the heading suggests, their "role
11 generally" -- this is still on page 3. At paragraph 11
12 {WS000657/3} we learn that you became a centenier in
13 1999 and as you have touched on briefly, Centenier,
14 the Inquiry understands that you have, as a centenier,
15 three significant roles which are unique to being
16 a centenier: first, running or presiding over Parish
17 Hall Enquiries, second presenting cases in
18 the Magistrates Court, which includes the Youth Panel,
19 and third a prosecutorial role, which is charging
20 offences, and as you say at paragraph 14 {WS000657/4}
21 the centenier's role is primarily focused on the
22 judicial process.

23 If we look please at paragraph 15 at the bottom of
24 page 4 {WS000657/4} you say that centeniers received
25 training for the charging role and for the Court

1 presentation role. If we take those separately, who
2 provides the training for the charging role?

3 A. The Legal Advisor's Department, which is part of the
4 Law Officers' Department at the police station.

5 Q. And what's the extent of that training?

6 A. The training will be how to present cases in court, the
7 gathering of evidence, how to present evidence in court,
8 what you require pre charge when you go to the police
9 station, what evidence you're looking for and what
10 should be provided by the Police.

11 Q. So the two are combined?

12 A. The two are combined, yes, they are. There will be
13 a first section and then there will be a second section,
14 then it will move on to more complicated issues to do
15 with jurisdiction in the courts, whether the case should
16 be heard in a more senior court and it would deal with
17 bail applications and those various aspects and how to
18 do that in the Magistrates Court.

19 Q. And is there the opportunity or indeed the time for
20 a newly appointed centenier to shadow a colleague --

21 A. Yes.

22 Q. -- in relation -- there is?

23 A. Yes.

24 Q. And that provision is specifically made?

25 A. It's specifically made in St Helier and most parishes as

1 far as I know. We certainly would not let a new
2 centenier probably be on their own for at least probably
3 nine months.

4 Q. Is there any specific training please, Centenier, for
5 Youth Panel work?

6 A. I'm not aware, I don't know that.

7 Q. In paragraph 14 just above {WS000657/4}, four lines up
8 from the bottom of that paragraph you say this:

9 "Centeniers have the power to remand defendants
10 post charge in custody pending their appearance in the
11 Youth or Magistrates Court."

12 And later on in your statement, paragraphs 43 to 49,
13 this is page 12 {WS000657/12}, you talk there again of
14 "interim remand decisions". You say at paragraph 45:

15 "It was rare for young offenders to be remanded in
16 custody pending a court decision."

17 And at paragraphs 46 to 47 {WS000657/12} you set out
18 the factors that would be taken into account and you say
19 at the bottom of paragraph 46:

20 "The starting presumption was always that the young
21 person would not be remanded in custody and would be
22 released."

23 From whom did you in training understand that that
24 was the starting presumption when considering remand?

25 A. Well, it was accepted good practice. I mean nobody

1 wants to see a child remanded in custody. It's a very
2 serious step to take and we would only take it in
3 extreme circumstances where it was deemed in the public
4 safety or there was nowhere else for them to go. So
5 it's not something you do lightly and it was just
6 generally accepted practice.

7 Q. And indeed, to give your complete evidence on this, at
8 paragraph 60 you say that remanding in custody was
9 "typically a last resort" {WS000657/16}.

10 A. Yes, it would be, yes.

11 Q. Would the decision on remand be taken at the point of
12 the charging decision?

13 A. Yes. If you were called into the police station and
14 once you had charged, probably even pre charge you may
15 take that decision after a discussion with the custody
16 sergeant.

17 Q. So should the Inquiry understand that you have had to
18 remand a young person in custody?

19 A. Yes, we would.

20 Q. You have done so?

21 A. Yes, it's something I have done and yes, it has been
22 done on a number of occasions. It does happen, yes.

23 Q. And when it's happened since your becoming
24 Chef de Police, for instance -- so if we take it from
25 2007 -- what options are available to you when remanding

1 in custody someone under 15?

2 A. Well, the options are if they're under the age of 15
3 they would have to go to Greenfields, that is the option
4 for remanding youngsters in custody. If they're over
5 the age of 15 they would go to the Young Offenders at
6 La Moye.

7 Q. And from your experience -- we had this morning
8 Ian Le Marquand providing evidence on remand periods,
9 but for how long generally is a young person held on
10 custodial remand pending the first hearing?

11 A. Well, they have to come at the first available -- so if
12 a youngster was charged say on a Wednesday evening, they
13 would have to appear in court the next day. There would
14 be a special Youth Court set up at the end of the
15 Magistrates Court. If they were charged on a Friday
16 they would have to appear in court on the Monday.
17 Youth Court sits on a Tuesday in our local court, but
18 someone is in custody that would be overridden and they
19 would appear on the first available court sitting.

20 Q. And from your time as Centenier, being elected in 1999,
21 was that the case then?

22 A. Yes.

23 Q. At paragraph 47 {WS000657/12} you discuss the balancing
24 exercise in relation to the decision whether or not to
25 remand and you say in that first line:

1 "In the case of young people, in assessing the
2 appropriateness of remand, I would often speak to the
3 parents, or to a duty social worker at Social Services.
4 Contact with Social Services was typically made to
5 gather information on the young person, but also to
6 identify any alternatives to remand that could be used."

7 What alternatives would you find were available?

8 A. Well, there were two -- not two now, but there was
9 Heathfield and there was La Preference and it would be
10 deemed preferable to put them into one of those two
11 homes if you could do that and not to remand them in
12 custody, and Social Services might be able to facilitate
13 that happening.

14 Q. And that was up until when?

15 A. I think La Preference and Heathfield have been closed
16 about three years, I think.

17 Q. So it was up to the point of their closure?

18 A. Yes.

19 Q. What's the situation now? Is it always Greenfields?

20 A. There is another -- I think Brig-y-don is a children's
21 home and there are facilities I think at Greenfields.
22 There is I think something called the White House, so
23 there are other facilities up there. I have to say it's
24 fairly rare that we do remand somebody to Greenfields,
25 certainly in the last two or three years it doesn't

1 happen very often, it's not -- it's very very rare.

2 Q. And in the case, Centenier, of a young person not at the
3 point of arrest or charge in the care of the States, so
4 not known to Children's Services -- perhaps not known,
5 we don't know whether there would have been preventative
6 intervention -- would you involve Social Services
7 nonetheless, because at that point was it considered
8 necessary that they become involved?

9 A. We might do. If they were going to be remanded in
10 custody I think yes, invariably you would want to find
11 out a little bit more about what was going on in the
12 background. It's a serious step, particularly if the
13 youngster is 13 or 14, so you probably would phone them
14 just to find out if there was anything known.

15 Q. Paragraph 48 please, page 13 {WS000657/13}. You set
16 down there the mechanics of remand, if it was deemed to
17 be the best course of action and of course we have heard
18 that you qualify that by saying it's an action of last
19 resort. You say this:

20 "The committal book would then be passed to a Jurat
21 to countersign. The Jurat would only countersign the
22 committal book if he agreed with the decision made by
23 the centenier."

24 How did that work in practice; is it a matter of
25 half an hour getting the committal order, is the jurat

1 asked to come to the police station?

2 A. No, what normally happens is that the Centenier will
3 sign the committal book and they have to sign it, as the
4 reason being the nature of the offence and often I will
5 put the reason like a risk of reoffending, or whatever
6 it is, and then the States of Jersey Police would detail
7 an officer to attend at the jurat's home address with
8 the committal book to sign. It's very rare they will
9 attend a police station, although I have known them to
10 attend occasionally, but it's very rare and if they are
11 satisfied they will sign it, then the individual can be
12 taken to the Prison.

13 Q. Have there been circumstances in your experience where
14 the jurat has refused to countersign?

15 A. In all my years I have only ever known -- I've never
16 known a refusal, but I have known one questioned, I have
17 had one questioned about why that particular person was
18 going to be remanded in custody and they were satisfied
19 at that.

20 Q. So should the Inquiry understand that the reasons given
21 for remanding in custody are expected to be quite
22 detailed?

23 A. They probably won't be detailed. They'll probably be
24 the reason would be for whatever, you know, risk of
25 interfering with witnesses, risk of reoffending, risk of

1 absconding, and that's probably what we put down, and of
2 course the nature of the offence. We probably wouldn't
3 go into too much more detail. If the jurat wished to
4 find out they could call us or they could call the
5 custody sergeant to speak to them.

6 Q. In that list that you have given what I didn't hear was
7 the preface of "significant" risk. Does it follow that
8 that's always taken into account?

9 A. What was --

10 Q. The significant risk of harm to others, or --

11 A. Yes, I think it has to be. Clearly if you believe the
12 person is a danger to the public, or to victims, or to
13 witnesses, you do have to give it very careful
14 consideration, you do, yes.

15 Q. While still on the issue of remand and charge of young
16 people, if we can look at bail and you granting bail.
17 This is paragraphs 52 to 53 please, page 14
18 {WS000657/14} and you say that it is not uncommon for
19 bail to be granted to a young person with the condition
20 that they reside at a children's home. You have been
21 asked to look at a conditions of bail imposed on a young
22 person in care accommodated at Heathfield in 2004. This
23 is {WD008454/15} please. I will just give you
24 an opportunity please, Centenier, to familiarise
25 yourself with this. "Heathfield children centre" we see

1 at the top, "Top sheet/care plan", reference to the
2 individual, their age and then the weekly plan. We see
3 just under "Weekly plan" the statutory basis upon which
4 the young person has been taken into care and then we go
5 to the bottom of the page please and we can see against
6 "Bail conditions":

7 "[Young person] is currently on bail to reside at
8 Heathfield Children's Centre until her next court
9 appearance in two weeks time. Her conditions are to
10 obey the rules at Heathfield. [Young person] also has
11 a curfew of 21:00 to 07:00. Due to these restrictions
12 [young person] is unable to have any overnights with
13 family and friends. If [young person] breaches her bail
14 then the charging Centenier is to be informed."

15 There is a reference there to you,
16 "Centenier Scaife, Town Hall."

17 In the event that such a young person would breach
18 their bail conditions, what powers were open to you? So
19 it would be referred back to you -- I should preface all
20 of this by saying did this ever happen to you, that
21 a young person breached bail?

22 A. Yes, it's a regular occurrence, it can be -- when I say
23 young person, any person that's on bail conditions.
24 What would happen here is that they would notify
25 the centenier of what the breaches are, they would set

1 them out, normally in a statement or a report format.

2 We would then report that to the Youth Court, they would
3 be given a copy and the Magistrate would then decide
4 whether to deem it a breach or not. The Magistrate
5 might say "Yes I do deem it a breach and order the
6 arrest of the individual", the Magistrate might say
7 "Well, can you go and have a word with the individual
8 and tell them to comply with their bail conditions if
9 they are breaching their curfew and tell them they've
10 got to be in at 9 o'clock and they mustn't be mucking
11 around", that's happened to me before.

12 Q. When making the decision to remand a young person in
13 custody pending a court appearance would it be necessary
14 to attach to that remand these sorts of curfews?

15 I suppose it follows that if they're on remand there's
16 no need for curfew, is that right?

17 A. If the centenier charges, they can't set bail
18 conditions. The law doesn't permit them at the moment
19 to set bail conditions. Once they have appeared in
20 court the Magistrate will set the bail conditions and
21 release them and they are then to their next court
22 hearing with those conditions.

23 Q. You say "at the moment", is that a prospective change?

24 A. It has been -- it was included in PACE when it came in
25 in 2004, there was a caveat put in there for it to come

1 in, for bail conditions to be set post charge. It was
2 never enacted but I believe it is being looked at.

3 Q. Paragraphs 56 to 57 please {WS000657/14}. You come on
4 in these paragraphs to express concerns that children's
5 homes are not equipped -- sorry, in the past I think you
6 say -- sorry:

7 "I have been asked whether homes such as
8 La Preference and Heathfield were sufficiently equipped
9 to deal with young people sent to them I do
10 remember there being some difficulties. I recall that
11 one young girl ..."

12 And you provide an example. Can you help: now are
13 you satisfied that those homes that do take young people
14 are in a position to handle them and deal with remands?

15 A. I can't say whether a particular home now would be or
16 would not be, to be honest with you, but I think one of
17 the issues we had there was that some people on bail
18 conditions -- that's a good example -- they would breach
19 their bail conditions constantly, they would be out very
20 late at night, they would go out at 3 o'clock in the
21 morning and there was little that the home could do. So
22 I don't know what the current state of play would be
23 with one of the children's homes, particularly
24 Brig-y-don, I can't comment on that, but certainly at
25 that particular time there was some concern about

1 whether somebody who was a prolific offender and at
2 a children's home, whether they could be managed
3 properly.

4 Q. And indeed you set these concerns out in a letter that
5 you wrote to the Attorney General, William Bailhache,
6 in May 2009. If we could have page 17 up please of the
7 exhibits {WD008454/17}. Again I will give you
8 an opportunity to familiarise yourself with that. This
9 is where you are setting out exactly the scenario that
10 you recount in your statement and you say at the very
11 bottom:

12 "Having talked to members of staff at Heathfield
13 (off the record for obvious reasons) there seems to be
14 little they can do to stop the children from leaving the
15 building. The doors are locked from the outside, but
16 can be unlocked by a child from the inside who will then
17 just walk out. The staff cannot physically prevent them
18 from doing this and can only appeal for them not to go.
19 The Police have been called to Heathfield on several
20 occasions from what I have been told, most recently in
21 mid-April when youths from the home were misbehaving in
22 the grounds for several hours. One was stuck on the
23 roof of the building and the fire service had to be
24 called to get him down."

25 Centenier, to date the Inquiry has heard evidence

1 about a particularly difficult period in relation to
2 young people offending and that period we understand was
3 between about 2000 to 2003. Here you are writing
4 a letter in 2009. From your experience as the
5 Chef de Police and centenier, until the closure of
6 La Preference and Heathfield, was it a constant issue?

7 A. I don't think it was constant, but I remember in 2009 we
8 had some youngsters on the radar that were causing
9 problems and I particularly remember these incidents
10 happening because it was reasonably -- it was low level
11 disorderly conduct and it was causing problems and
12 I just felt that when you had several youths doing that
13 at Heathfield it was causing a problem, particularly to
14 other residents there that may be there on care orders
15 and they were there, you know, not because they had
16 reoffended or they had done anything wrong, but they may
17 have been put there by the system and that was a concern
18 I had. I wasn't the only one, I think a number of
19 people had that concern as well at the time.

20 Q. You come on to relate in the main paragraph there, the
21 third paragraph, on page 18 {WD008454/18}, talking about
22 a particular incident, I wonder if you can find over
23 halfway down the date 28 April, do you have that?

24 A. Yes.

25 Q. You write, giving this account of a young person:

1 "On the 28th of April his lawyer made a bail
2 application for him to be released from Greenfields and
3 to reside at Heathfield, this application was backed by
4 the Youth Action Team which I was very surprised at ..."

5 And you say seven lines down:

6 "It is accepted that the Youth Action Team and other
7 agencies play a very important role in supervising
8 youngsters, but this has to be of grave concern to
9 anyone working in the justice system bearing in mind the
10 lack of restraints available at Heathfield and the very
11 bad influence this youth would have on other residents."

12 The role of the Youth Action Team, can you tell
13 the Inquiry about that?

14 A. I can't go into detail about the Youth Action Team but
15 I remember on that particular occasion I think they were
16 backing this particular application to be made for the
17 youngster who was out of control and had been breaking
18 into people's homes and he had been leading younger
19 children astray and taking them with him when he went on
20 these particular crimes, you know, taking vehicles and
21 all sorts of things, and the Youth Action Team had
22 obviously made a recommendation having looked at it that
23 it was appropriate for him to go back there and
24 I strongly felt it was not because of the other younger
25 children at the premises who would have been

1 influenced -- firstly would have been influenced and
2 also the fact that some may have been there on care
3 orders. It was totally inappropriate and I think --
4 I don't know why the Youth Action Team made that
5 particular recommendation; it was never made apparent to
6 me why.

7 Q. My question was directed at the Youth Action Team and
8 you said you don't know any detail about them. So you
9 simply know them as an agency that provides --

10 A. Yes, I know they're an agency that deal with youths and
11 youngsters but as to their specific role within the
12 Service it's not probably appropriate for me to comment
13 on because I don't know completely their full role
14 totally.

15 Q. Right, but they're a team that you still come across in
16 the Magistrates Court?

17 A. No, no, not generally, normally a probation officer we
18 come across now. But at the time the Youth Action Team
19 did come to the Court and there were a number of
20 agencies that would be attached to the Youth Action
21 Team, and indeed that would include police officers
22 I believe, from memory.

23 Q. Then we go over the page please to page 19 {WD008454/19}
24 and you conclude the letter:

25 "That the staff cannot prevent or are not permitted

1 to stop pre-teens from staying out all night seems
2 ludicrous. If a parent were putting their offspring
3 into some of the situations described they would likely
4 be facing a charge under the Children's Law of neglect
5 or exposing a child to harm.

6 "There are no easy quick fix solutions to this
7 problem, but I bring this to your attention as I think
8 there needs to be an urgent review of the situation
9 before it is too late."

10 Was there an urgent review?

11 A. I can't quite remember what happened. I think
12 I probably did mention it to Mr Bailhache but it wasn't
13 that long after that that it seemed to taper off, these
14 crimes seemed to nosedive somewhat, it no longer became
15 such an urgent issue and that particular group of
16 offenders either grew up a little bit or they weren't
17 offending as a group perhaps and they probably went
18 their own separate ways. But it wasn't too long after
19 that that it started to take a different turn.

20 Q. Then we look at your role in the Parish Hall Enquiries
21 please if we can go to that and you set out the process
22 between paragraphs 61 and 78 {WS000657/16}. You say
23 that in relation to training in presiding over the
24 Parish Hall Enquiry you received training, as it were,
25 internally from those -- how does that work in practice?

1 Who provides you that training?

2 A. Yes, we do. Well, the Committee of the Chef de Police
3 has a duty to do this, provide training and to make sure
4 that Parish Hall Enquiries are a consistent practice,
5 consistent standards maintained and of course the
6 Attorney General does have guidelines and that they are
7 abided by and people know what they're doing, so a new
8 centenier would certainly expect to be trained and
9 shadowed for some considerable time before they were
10 operating on their own.

11 Q. At paragraph 69 {WS000657/18} please, Centenier, you say
12 in the second line there:

13 "In my view it would be completely inappropriate for
14 sexual offences to be dealt with at a Parish Hall
15 Enquiry."

16 In your experience from 1999, as a centenier, were
17 there any instances you can remember where, for
18 instance, a person was brought before you who had, to
19 use the expression, "chastised their child", using
20 punishment that was seen to be excessive?

21 A. Well, it wouldn't be appropriate to deal with a case of
22 sexual offence at a Parish Hall Enquiry, it just
23 wouldn't --

24 Q. Sorry, it is my mistake, it's not a sexual offence I'm
25 looking at to begin with, I am looking at a physical

1 assault for instance by a parent of a child. Would that
2 be something that would be, or has been in the past,
3 dealt with at a Parish Hall Enquiry?

4 A. Parents on a child?

5 Q. Yes.

6 A. Like physical chastisement?

7 Q. Yes.

8 A. Yes, that would be -- in the past have been dealt with
9 in a Parish Hall Enquiry, yes.

10 Q. Is that still the case?

11 A. No, I think not probably now. But perhaps 16 years ago,
12 and even up to ten years ago I think probably that would
13 have been the case that providing the chastisement was
14 not beyond -- you know, it depends on the
15 proportionality of it as well and that was used, whether
16 an implement was used or something like that. They have
17 been dealt with at Parish Hall in the past but I would
18 say in the last seven or eight years that's not the
19 case, they go to the Magistrates Court.

20 Q. I understand of course that it may be uncomfortable to
21 look with hindsight at that specific issue: do you think
22 it was appropriate that Parish Hall Enquiries deal with
23 that very specific issue of chastisement of parents on
24 children?

25 A. Probably in its day it was. I think the general

1 thinking probably was from everybody, including
2 the Police, that if it was low level and it was not too
3 severe then that probably was the appropriate place to
4 deal with it, by trying to find out what was going on in
5 the home. I think there's a different mode of thinking
6 now and that's not the case, but a few years ago it
7 probably would have been. And that's not to say that
8 a more serious case of chastisement would not have been
9 taken to court, it would have been.

10 Q. Understood, and what I picked up from your answer was
11 that the decision that that should go to Parish Hall
12 Enquiry rather than there be a charge, should
13 I understand that that would be taken in consultation
14 with the SOJP?

15 A. It probably would be. They might send a person to
16 Parish Hall Enquiry with the recommendation they have
17 looked at it and it be dealt at the Parish Hall and the
18 centenier would review it and probably come to that same
19 conclusion.

20 Q. And in those cases would it be for you in presiding over
21 the Parish Hall Enquiry for instance to ask for the
22 attendance of Children's Services?

23 A. I think it probably would. I think if a person was
24 dealing dealt with -- if the parent was being dealt with
25 at Parish Hall for chastisement of a child, you would

1 probably want to know a bit more about the background
2 and what was going on and were there any other child
3 care issues that you need to know about. I think the
4 Police would have done that as well: are there any
5 welfare issues, what's going on and are there issues in
6 the home, definitely.

7 Q. And were you comfortable with your experience in dealing
8 with those types of cases? How would you go about doing
9 that?

10 A. Well, I would probably -- I mean there weren't many, it
11 has to be said. There were not many, they were few and
12 far between. But if an individual had come to the
13 Parish Hall, let's say 15 years ago, and it had been
14 low level chastisement we probably would have put
15 them -- once we had made all the inquiries and we were
16 satisfied it was appropriate to deal with them at
17 Parish Hall we would probably have put them on
18 a deferred decision, which means we would have asked the
19 individual to come back in three months time and we
20 would monitor their behaviour to make sure there were no
21 further offences or no further situations. That's
22 almost invariably what would have happened and when they
23 came back in three months time, had there been no
24 reoffending and there had been no further incidents we
25 would have dealt with it at Parish Hall level by way of

1 a sanction, a written caution. There would have been
2 a sanction given. It would not have been "no further
3 action", there would always have been a sanction given.

4 Q. In those circumstances, given the nature of the
5 Parish Hall Enquiry, would the child have been present?
6 Would you have asked for the child to be present?

7 A. No, not generally, no. The parents would have been.
8 But there weren't that many; in all fairness it wasn't
9 a common occurrence.

10 Q. You say at paragraph 78 please {WS000657/21}, Centenier,
11 that attendance at a Parish Hall Enquiry was, as
12 I understand it, optional, is that right, it's
13 a voluntary --

14 A. Yes.

15 Q. If an individual chooses not to attend they can be
16 summonsed?

17 A. Yes.

18 Q. And that would be a summons to the Magistrate's Court,
19 is that right?

20 A. Yes.

21 Q. So does it follow at the point they don't attend the
22 Parish Hall Enquiry they have yet to be charged, if they
23 don't attend are they then charged; is that what
24 happens?

25 A. No, not straight away. If a youngster doesn't appear at

1 Parish Hall we will make every effort to get the
2 youngster to the Parish Hall. We really will pull out
3 the stops, we will phone them up first of all and find
4 out why they haven't attended, we will phone the parents
5 up. It's a last resort to summons. It does happen,
6 I can't say it doesn't, it does occasionally, but we try
7 to avoid it at all costs. If the youngster hasn't
8 attended we will do our utmost -- even if we have to
9 send someone round to knock on the front door and find
10 out what's going on and why they haven't attended. It's
11 a last resort to summons a youngster.

12 Q. We looked at together just a moment ago at the issue of
13 chastisement and you say those are few and far between.
14 We have also looked at the passage where you say it
15 would be completely inappropriate to deal with sexual
16 assaults. In the context of -- in the time that you
17 have been a centenier, have you ever been aware of --
18 when we look at centeniers presenting cases in
19 the Magistrates Court, are you aware of any cases where
20 centeniers have decided not to take the case forward and
21 it involves some form of sexual assault?

22 A. Not -- no, I'm not aware of any. I have been told that
23 this has happened in the past, I have been told that,
24 but in my time it certainly wouldn't have been
25 appropriate and I can't even think back in the 1990s it

1 would have been.

2 Q. And you have already mentioned the deferred decision,
3 this you deal with at paragraphs 66 to 67 {WS000657/17}.
4 You have told us about making contact with
5 Social Services in certain cases to attend the
6 Parish Hall Enquiry. Can we then look at the options
7 open to you when dealing with a young person,
8 paragraph 70 {WS000657/18}. This is where you have been
9 asked to comment on the Howard League report in 2008 and
10 I think paragraph 71 {WS000657/19} you say:

11 "The Howard League was generally very positive about
12 the work of Parish Hall Enquiries. Indeed
13 paragraph 5.17 states ..."

14 This is quoting from the report:

15 " ... 'In general terms we believe the [Parish Hall
16 Enquiry] is an excellent method of dealing with children
17 and young people in trouble with the law, it clearly has
18 the potential for diverting the great majority of
19 children away from the youth justice system, in
20 a positive and constructive manner."

21 We know that the Howard League reported in 2008, we
22 are now in 2015, what changes if any have been made in
23 Parish Hall Enquiries to build on the Howard League
24 findings in relation to young people?

25 A. I think there is more awareness of young people in

1 delving down to any issues that may go beyond just them
2 appearing at Parish Hall. For instance if a youngster
3 comes to Parish Hall you might be looking at are they
4 using drugs, is there something going on in the
5 background, are they regularly attending school, is
6 there something going on in the home background we need
7 to know about. We have tended to make sure now that
8 let's look beyond the face of the individual and what's
9 going on here, is there something else going on we
10 should know about, and it generally works, and probation
11 frequently will be able to give us information about the
12 background, particularly school attendance, something
13 they may be aware of through Social Services. So that's
14 become more prevalent since the Howard League came over
15 in 2008.

16 Q. And do you find, Centenier, that there's a willingness
17 on the part of agencies to contribute to the success of
18 the Parish Hall Enquiry in relation to young people?

19 A. I would say there was, yes. Yes, I would.

20 Q. As you may be aware, this Inquiry is in a position, if
21 it thinks necessary, to make recommendations. Are there
22 any recommendations that you would want them to consider
23 in relation to Parish Hall Enquiries and what would
24 facilitate the benefits that a Parish Hall Enquiry has
25 for young people?

1 A. No, I think the Parish Hall Enquiry works very well. If
2 you have that engagement on both sides it can be a very
3 useful tool. I don't think it really needs to be
4 changed. I think again mistakes are made, we learn by
5 them, we move on and it is important that we always
6 modernise the Parish Hall system and keep it going, but
7 I think with youngsters it is a very very useful tool to
8 have.

9 Q. You discuss at paragraph 74 {WS000657/19} the concerns
10 that were raised in the Howard League report about the
11 Parish Hall Enquiries, including the risk of abuse of
12 power and at paragraph 74 you say this:

13 "I think that in this day and age a centenier would
14 not allow his decisions to be affected by the fact that
15 his position is an elected one. Behaviour to the
16 contrary would obviously be totally inappropriate.
17 Additionally, there are checks and balances against the
18 decisions of centeniers."

19 You refer in that paragraph to having to speak to
20 centeniers on rare occasions when they have referred
21 a case on. I now can't find --

22 THE CHAIR: Is it the top of page 20?

23 "Additionally, there are checks and balances against
24 the decisions of centeniers. In my capacity as
25 Chef de Police, I have, albeit very rarely ..."

1 MR SADD: Yes, thank you very much Madam Chair.

2 What were you thinking of there, what circumstances
3 where that has happened?

4 A. There might be a case where a youngster -- a borderline
5 case and the centenier may be fairly new and they have
6 charged a youngster and it's not really appropriate. It
7 doesn't happen very often, it's very rare and I have
8 probably had to speak to them and say "I think this
9 ought to be retained at Parish Hall and it ought to be
10 dealt with at Parish Hall, that's the more appropriate
11 route to take it."

12 Q. The Howard League report identified a risk of centeniers
13 succumbing to political pressure, so for instance the
14 clarion call for getting tough on youth crime, perhaps.
15 Have you ever been concerned by political pressure being
16 exerted on Parish Hall Enquiries in relation to periods
17 within St Helier for instance of --

18 A. No I haven't been, because the Parish Hall Enquiry is
19 a closed process. It's not open to the public and there
20 should be no political pressure -- there should be no
21 politics involved in it. So from that point of view,
22 no, I've never ever come across that at Parish Hall
23 Enquiry at all.

24 Q. Can we go to page 23 of the exhibits {WD008454/23} and
25 look at one recommendation made by the Howard League.

1 It's at the very bottom of that page, "Expanding the
2 power of the [Parish Hall Enquiry]" and the Howard
3 League makes the recommendation that all cases
4 concerning children and young people should go to the
5 Parish Hall Enquiry unless clear criteria are met. Do
6 you remember that recommendation being made?

7 A. Yes, I do.

8 Q. What are your views about that?

9 A. Expanding the Parish Hall system as a diversion from
10 the courts?

11 Q. Yes.

12 A. Yes, I think it's a good thing. I think particularly
13 with youngsters it has to be a last resort to take them
14 to the Court, it's got to be. And there are so many
15 more things you can do. I think restorative justice,
16 dealing with them at Parish Hall, keeping them out of
17 the courts is the priority, and it is the same to some
18 extent with adults as well. I know it's a different
19 criteria for people who come down as adults -- you are
20 looking at that. You can't always keep people out of
21 the court system and the court system is designed for
22 a reason, but if you can do that then -- and it does
23 work then if you can take that road it sometimes does
24 work; not all the time but sometimes.

25 Q. The recommendation at page 24 {WD008454/24},

1 paragraph 5.28:

2 "Centeniers would be responsible for convening each
3 PHE on an individual basis, using information provided
4 by the 'paid' Police Service and information arising in
5 their enquiry. Any child who denied the alleged offence
6 should be tried by a professional magistrate in the
7 privacy of chambers, and on a finding of guilt be
8 referred back to the PHE for resolution."

9 What's your view about that suggestion, so that yes,
10 there are circumstances in which a charge should be
11 brought but when it comes to sentencing the Parish Hall
12 Enquiry is the best forum?

13 A. I don't think that would be appropriate. I think if the
14 case has had to go to court and gone to trial then it's
15 entirely appropriate for the Magistrate to deal with it.
16 I'm not sure you could refer a case back, once it has
17 been to trial, for sentencing. That's not really what
18 the Parish Hall system is designed for I don't think.
19 If it has gone that far in the first place then probably
20 there is good reason why it has gone that far and it
21 should stay with the Magistrate.

22 MR SADD: Madam Chair, I am about to move on to a new topic.

23 I didn't note when we actually started --

24 THE CHAIR: We have been sitting an hour, but you are moving
25 on to a new topic. We will take a ten minute break then

1 and we will resume at 20 to.

2 MR SADD: I'm just conscious as well that the shorthand
3 writer took a note of the submissions.

4 THE CHAIR: So ten minutes and we will resume again at
5 quarter to 4.

6 (3.35 pm)

7 (A short break)

8 (3.45 pm)

9 THE CHAIR: Yes, Mr Sadd.

10 MR SADD: Centenier Scaife, if we could go very briefly to
11 page 11, paragraph 42 {WS000657/11}, where you tell
12 the Inquiry about the second role, which is the
13 presenting of cases in the Magistrates Court and you
14 tell the Inquiry that from 2007 centeniers no longer
15 presented cases where there were not guilty pleas; that
16 is done now by the Force Legal Advisor.

17 A. That is correct, yes.

18 Q. You still however present guilty pleas. Does that
19 include offences that have remained in the Magistrates
20 Court to do with sexual assaults, or are those
21 automatically committed to the Royal Court?

22 A. No, there may be low level offences in the Magistrates
23 Court of that nature that the centenier may well deal
24 with on a guilty plea.

25 Q. Is it the system now that in presenting that case do you

1 present the impact of the assault on the victim? Are
2 there such things as victim impact statements?

3 A. Yes, indeed there is and I think the Magistrate would
4 expect a victim impact statement.

5 Q. Thank you. We then turn to an extensive passage of your
6 statement, this is in relation to charging, and you deal
7 with this at paragraphs 20 to 41 and in a moment we're
8 going to turn to specific charging decisions, but before
9 we do that I just want to set up, as it were, the
10 mechanics of the charging decision.

11 In practice, Centenier, at what point in a case will
12 the centenier normally be asked to consider charging?

13 A. When the investigating officer considers that there is
14 enough evidence to warrant a charge they will call the
15 centenier in. That will normally happen by phone and
16 the centenier will attend and will be presented with an
17 evidential package to review.

18 Q. And it's that package that you talk about at
19 paragraph 21 {WS000657/6}. You describe it as "a fairly
20 good package of the basic evidence behind the case".
21 Ordinarily, at the point of being asked to consider
22 charge will the suspect have been interviewed?

23 A. Yes. Unless they have declined to be interviewed for
24 some reason, but they will have been interviewed and
25 there will be a précis of the interview in the actual

1 report summary.

2 Q. And would you again ordinarily expect to find at the end
3 of the report provided by the police officer
4 a recommendation as to what should happen?

5 A. Well, it depends on how it goes. If you are attending
6 at a police station -- now, normally you would attend at
7 a police station when there's an expectation to charge,
8 when it's a more serious offence, so yes the
9 recommendation would be automatic because that's why the
10 custody sergeant called you in. If the case goes to
11 Parish Hall there is a written recommendation from the
12 Criminal Justice Department which is actually put down
13 in the Parish Hall Enquiry itself. So there's two
14 different strands to it: somebody coming to Parish Hall,
15 there will be a written recommendation; coming to the
16 police station it will be verbal by the fact that you
17 have been called in.

18 Q. At paragraph 22 {WS000657/6} you say there is
19 a prescribed time within which a decision to charge is
20 expected to be made, it ranges from a couple of hours in
21 some cases, more in more complex cases and that you
22 would be called to the police station by the custody
23 sergeant. At the point of you being called to the
24 station to charge where would the suspect normally be?

25 A. Well, it depends. If the suspect is in custody then

1 they will be at the police station and of course then
2 you've got the issues of the PACE clock which is ticking
3 so there is only a certain amount of time when the
4 centenier will need to be called to come in and consider
5 charge. If the case is an ongoing complex investigation
6 then the person may have been bailed by the Police to
7 return at a later date to be charged, so they might not
8 be in custody. So if that's the case you would probably
9 be given the paperwork 48 hours in advance because the
10 person is coming in at a pre-determined time.

11 Q. At paragraph 23 {WS000657/6} you say in some cases you
12 may, in addition to the investigation file, have
13 an advice from the Law Officers' Department or the Crown
14 Advocates. You say that this would be in cases
15 involving historical abuse and you go on that:

16 "Where advice had been received from the LOD or
17 a Crown Advocate that the suspect should be charged, the
18 centenier would act upon this advice."

19 A. Yes.

20 Q. I think later on in your statement you describe your
21 role in those circumstances as effectively the mechanism
22 for making the charge. Yours is a passive role at that
23 point, is that correct?

24 A. Yes it is, to some extent, that's a good way of putting
25 it, yes.

1 Q. Presumably the advice you receive is always in writing?

2 A. If it is from the Law Officers' Department directly it
3 probably would be. Invariably it would probably be in
4 writing saying that the Attorney General consents to
5 this. Maybe not always, but it should be and probably
6 would be. It might involve a phone call from
7 a Crown Advocate, it could do that, but normally it
8 would be in writing. If it is from the legal advisors
9 at the police station it would be verbal.

10 Q. Does it follow that you won't be given a file if there
11 is no need to charge, or is it always the situation that
12 even where the Police are advising no charge you still
13 have to make the final decision?

14 A. No. If the Police are advising no charge and the
15 Law Officers were, we would not be made aware of the
16 case.

17 Q. In paragraph 25 {WS000657/7} you talk about certain
18 serious offences including for example the downloading
19 of child pornography, for which the consent of the
20 Attorney General himself is required before
21 an individual can be charged. Is that set out in
22 legislation, or is that an understanding?

23 A. No, I believe it -- I think it might be a law in that
24 particular case of that offence. There are other
25 offences like perjury and attempting to pervert the

1 course of justice where the Attorney General's consent
2 is required as well.

3 Q. Is that as it were a common law understanding, or a --

4 A. That might be a common law understanding but it is
5 invariable that the Attorney General will give that
6 consent. It is not something that's decided on by
7 a centenier or a legal advisor or the Police.

8 Q. Forgive me, because I have introduced a lawyer's term.
9 By common law I mean it's a convention as to --

10 A. Yes. I mean they are common law offences. I don't
11 think it's particularly set out in those particular laws
12 or offences where the Attorney General has to give it by
13 law, but I've never known when he doesn't. He always
14 will, but I think there are some offences that the
15 caveat is built into the law.

16 Q. At paragraph 26 {WS000657/7} you say:

17 "The Attorney General also has the power to overturn
18 charging decisions of centeniers once made. This
19 occasionally happens, typically following a complaint."

20 In what situation would that arise? What do you
21 mean by a complaint?

22 A. Well, it may be that a case has been dealt with at
23 Parish Hall by a Parish Hall sanction and it would have
24 been appropriate to take it to the Magistrates Court and
25 there will be a victim and the victim may well write to

1 the Attorney General and say they're not happy with the
2 centenier's decision that it was dealt with at
3 Parish Hall. The Attorney General will then get a copy
4 of the paperwork, review it and he may direct the
5 centenier to charge.

6 Q. And as Chef de Police you are no doubt aware of when
7 that happens --

8 A. Yes.

9 Q. -- because it is brought to your attention. Has it been
10 brought to your attention in any cases of assault in
11 relation to children where there has been a decision not
12 to take this further and it was thought it could be
13 dealt with at the Parish Hall Enquiry?

14 A. Yes. I mean we have dealt with -- it does happen from
15 time to time. I have to say that most of the cases
16 I think we have dealt with have been motoring cases,
17 driving without due care and attention, recent ones, not
18 generally historical cases.

19 Q. At paragraph 27 {WS000657/7}, you here refer to the
20 trained police legal advisors, which in other evidence
21 we have heard them referred to as the Force legal
22 advisors, and it is the understanding of the Inquiry
23 that they are employed actually by the Law Officers'
24 Department. Is that what you understood as well?

25 A. That's correct, they are, yes.

1 Q. Does it follow that you are in a position to ask them as
2 an investigation is proceeding, when you're being asked
3 to charge, that you can ask them for specific advice on
4 issues of law?

5 A. Yes.

6 Q. Is that how it works?

7 A. We can do -- if we need to, we can. They are available
8 24/7 by phone, so if we need advice then they're there
9 to give it and they will do, yes.

10 Q. And is it a requirement that that advice is always
11 recorded?

12 A. No, I don't think it is a requirement. We probably
13 would record it and say that yes, we had taken advice
14 from the legal advisor as to what's happened, we might
15 well record it. But it might be -- it could be to do
16 with an evidential issue, a point of law. We may not be
17 happy with it and we may phone them up for advice and
18 say "Look, what do you think of this? We're not happy
19 with this", so that's probably normally what it's going
20 to be.

21 Q. Of course centeniers are not trained lawyers, so --

22 A. They're not.

23 Q. Can we have up on screen please {WD008131/303}. What
24 will appear in a moment on screen is a briefing note
25 prepared by Michel Le Troquer for Simon Crowcroft. It

1 is a note dated 30 June 2008 and if we go please to
2 page 304 {WD008131/304}, at the bottom of that page we
3 can see that the purpose for which the note is prepared,
4 an email from Mr Le Troquer to Simon Crowcroft. Pausing
5 there, who is Mr Crowcroft?

6 A. Mr Crowcroft is the Constable of St Helier.

7 Q. Mr Le Troquer writes:

8 "Constable, a few notes that may assist you in case
9 questions or comments in the States this week."

10 And we then have to go to page 306 {WD008131/306}.
11 Here we see "Notes for Constable regarding decision not
12 to charge two persons held in custody" and it relates to
13 a case that you and I are going to look at in a moment.
14 He sets out the evidential and public interest test.
15 We're going to look at those again, Centenier, but
16 there's a specific issue here. Do you see two-thirds of
17 the way down in bold underlined "We then move on
18 a stage" -- do you have that? And it says this:

19 "Once a person has been formally 'charged' by the
20 centenier then the Police are [in bold underlined] not
21 allowed to question that person again. This used to be
22 covered by what was known as 'Judges Rules' 'but it has
23 been more formalised by the use of Article 10(4) of the
24 Police Procedures and Criminal Evidence (Codes of
25 Practice) (Jersey) Order 2004."

1 Are you aware of that at the time of making the
2 charge?

3 A. Yes, I am.

4 Q. Does that have therefore a particular influence on
5 whether you consider the case ready to be charged?

6 A. It can do -- yes, it definitely does, because the only
7 time they can really do it is to clear up ambiguities.
8 So if you think there is a problem with the evidence and
9 you go ahead and charge and you think there might need
10 to be another interview conducted, you are then creating
11 a hurdle for the Police and the prosecution, so it's
12 something we are very aware of definitely, yes.

13 Q. You say later in your statement at paragraph 100
14 {WS000657/27} that in historical abuse cases it was for
15 Crown Advocates to make the decision on charge. Was
16 that something that was established at the point of
17 Operation Rectangle, or was it something that was in
18 existence prior to Rectangle, the need to get advice
19 from --

20 A. Well, it wasn't -- I think it was accepted practice from
21 day one of Rectangle that Crown Advocates would be
22 making the decision to charge; they would be reviewing
23 the cases and reviewing the evidence. Prior to that any
24 historical abuse cases they may not necessarily have had
25 a Crown Advocate reviewing them but certainly I was

1 aware that from when Rectangle started that was the
2 expectation, that is that a Crown Advocate would review
3 it, because if a charge was put invariably probably it
4 would be going to the Royal Court.

5 Q. You have already told us that in those types of cases
6 the centenier acts as the mechanism for charge. Your
7 views have no impact on the decision made?

8 A. It doesn't, because the situation is that to bring
9 a charge into the Magistrates Court it requires the
10 centenier to physically do that. It's not something
11 I don't think -- the Attorney General can't directly
12 bring them in, but a centenier can, so the centenier has
13 to physically charge the individual to bring them into
14 the Court. Of course the individuals can be directly
15 indicted to the Royal Court, but the route into
16 the Magistrates Court has to be by a centenier doing
17 that.

18 Q. At paragraph 28 please, where we then turn to charging
19 considerations -- this is page 8 of your statement
20 {WS000657/8} and if we could have up on screen please
21 page 2 of the exhibits {WD008454/2}. What we're about
22 to look at together is the "Code on the Decision to
23 Prosecute" issued by the Attorney General in 2000.

24 Prior to publication of this code, Centenier, what
25 written guidance was available to you and your

1 colleagues? I know you joined in 1999 so you may not
2 know, but when you joined what --

3 A. I think there may well have been another code before
4 that. Certainly this had been in existence -- I think
5 it was January 2000 this came into existence, so this is
6 the one I'm very familiar with and my colleagues would
7 be.

8 Q. Do you know if alongside this, did you draw on, or was
9 it drawn on, the English CPS code for Crown Prosecutors;
10 were you familiar with that?

11 A. I don't think this one was. I don't think -- I'm not
12 sure about that, but I don't think it was.

13 Q. And as at today, 2015, what is the code that you and
14 your colleagues refer to?

15 A. This is the same code we still use.

16 Q. The same code. Were you provided training on the use of
17 the code when it was issued?

18 A. Yes, we would go through the code, the legal advisors
19 would go through it to make sure it is understood and
20 the specifics are understood, evidential, public
21 interest, things like that.

22 Q. Then from paragraphs 30 to 41 {WS000657/8}, Centenier,
23 you take the Inquiry through the two-stage process that
24 has to be followed when deciding whether to charge: you
25 first apply the evidential test, as it is called, and

1 only if the evidential test is passed do you go on to
2 consider the second stage, which is the public interest
3 test. Have I got that right?

4 A. Yes.

5 Q. And the evidential test is set out at page 3 of your
6 exhibits and under paragraph 4 {WD008454/3} and just
7 quoting 4.1:

8 "Centeniers must be satisfied that there is
9 sufficient evidence to provide a realistic prospect of
10 conviction against each defendant on each charge. They
11 must consider what the defence case may be and how that
12 is likely to affect the prosecution case."

13 Does it follow from that that in the file that you
14 receive when making a decision on charge it will include
15 evidence that is adverse to the proposed prosecution
16 case?

17 A. It might do. There will be statements -- there will be
18 witnesses -- depending on the witness statements you
19 have, most of the witness statements will be tending to
20 probably be pro prosecution, but there could be other
21 witness statements from somebody who has seen
22 an incident and you have to weigh them up.

23 Q. So would the Police be providing you with material that
24 they wouldn't rely on in the prosecution?

25 A. If they record the statement then yes, they have to,

1 they would do that, yes.

2 Q. Then what follows at 4.2 to 4.4 are the factors to apply
3 when considering whether the evidential test has been
4 met. In paragraph 32 of your statement {WS000657/9} you
5 say:

6 "Where allegations were particularly serious, for
7 example where the physical or sexual abuse of children
8 was alleged, the centenier would receive advice from
9 trained legal advisors, and potentially from
10 a Crown Advocate, and would base their decision on such
11 advice."

12 I simply want to reconcile what you said a moment
13 ago, certainly in relation to Operation Rectangle, you
14 said from that moment on it was Crown Advocates, but up
15 until that moment and certainly it is the Inquiry's
16 experience that we have seen a good amount of material
17 that has the Force Legal Advisor making recommendations
18 on charge in relation to sexual abuse cases. Was that
19 your experience?

20 A. Yes, it was. I think it is worth explaining that
21 Rectangle it was Crown Advocates that were making the
22 recommendation, pre-Rectangle on ordinary cases it would
23 probably be the Force legal advisors that work at the
24 police station.

25 Q. And at 4.3 (a) and (b) {WD008454/4} you have issues

1 there:

2 "Is it likely that evidence will be excluded by
3 the Court? There are certain legal rules which might
4 mean that evidence which seems relevant cannot be given
5 at a trial."

6 Then there is reference there to the rule against
7 hearsay as evidence. Then we look further down at (b):

8 "Is it likely that a confession is unreliable ..."

9 Are those issues which ordinarily you would go back
10 to the Force Legal Advisor on, or would you feel
11 competent on a regular basis to deal with those issues
12 or address those issues?

13 A. Depending on the nature of the case a very experienced
14 Centenier would know this, certainly should. If it
15 comes to using hearsay evidence in court, they probably
16 would speak to legal advisors, they probably would speak
17 to them about that, if they felt it should be excluded
18 or if there was an issue with that. Regarding the
19 defendant's age, intelligence or lack of understanding,
20 well, clearly there is an issue there which they would
21 talk to the Police about. You would probably have
22 several parties there, it wouldn't just be the
23 centenier, it would be the investigating officer, then
24 maybe the legal advisor, so there will probably be two
25 or three people looking at that issue.

1 Q. Paragraph 36, if we can go back to your statement
2 {WS000657/10} -- we will come back to the code in
3 a minute looking at the be interest test -- you say:

4 "Whilst not a common occurrence, if a centenier felt
5 that more evidence was required to secure a reasonable
6 prospect of conviction and therefore to charge an
7 individual ... this conversation would be had with the
8 States of Jersey Police."

9 It may be a very obvious point to you, but where the
10 centenier decides to charge does it follow that the
11 centenier is satisfied that the public interest test has
12 been met in every case?

13 A. Yes.

14 Q. In paragraph 38 {WS000657/10} at the bottom of that page
15 you say that:

16 "The States Police operate an effective filtering
17 system by which less serious offences are referred
18 straight to the Parish Hall Enquiry system."

19 You told us about that:

20 "It follows from the more serious nature of the
21 allegations dealt with by the centenier at the police
22 station that they are by nature likely to pass the
23 public interest test ..."

24 Could you explain what you mean by that?

25 A. Well, if you're called into a police station to

1 charge -- a common assault where an allegation is
2 somebody may be pushed, that may be referred to
3 a Parish Hall Enquiry and the expectation may be that
4 that's going to be dealt with at Parish Hall Enquiry.
5 If it's a grave and criminal assault where there is the
6 use of a weapon, there is the use of a bottle, a knife,
7 a piece of wood, then these are aggravating factors and
8 those would all invariably be charged at the police
9 station and it would be deemed that the public interest
10 is certainly served. A person in a position of trust,
11 or vulnerable people, there again the same thing would
12 apply. If somebody is stealing money from an old
13 people's home, you know, that is a position of trust and
14 you would expect those cases to be charged and taken to
15 court.

16 Q. And if we go back to the code and looking at the public
17 interest test, this is page 5 please {WD008454/5}, at
18 5.2:

19 "The public interest must be considered in each case
20 where there is enough evidence to provide a realistic
21 prospect of conviction."

22 Although, reading two lines down:

23 "Although there may be public interest factors
24 against prosecution in a particular case, often the
25 prosecution should go ahead and those factors should be

1 put to the Court for consideration when sentence is
2 being passed."

3 Over the page {WD008454/6}, 5.3:

4 "Centeniers must balance factors for and against
5 prosecution carefully and fairly."

6 And 5.4:

7 "The more serious the offence the more likely it is
8 that a prosecution will be needed in the public
9 interest."

10 And then the code sets out "A prosecution is likely
11 to be needed if ..." and the various issues which should
12 be taken into account, including (d), "The defendant was
13 in a position of authority or trust." Then we go over
14 the page to page 7 please {WD008454/7}, letter (h):

15 "The victim of the offence was vulnerable, has been
16 put in considerable fear or suffered personal attack,
17 damage or disturbance."

18 Then letter (j):

19 "There is a marked difference between the actual or
20 mental ages of the defendant and the victim or there is
21 any element of corruption."

22 Then letter (n):

23 "The offence, although not serious in itself, is
24 widespread."

25 What does that mean, just in passing?

1 A. Well I think it might mean there may be low level
2 offences -- a good example might be somebody that's
3 going to shops and taking items of low value, it might
4 be widespread, it might not just be one shop, he might
5 have done it on several occasions and he would be doing
6 it fairly regularly, so it is low level on its own, but
7 it's widespread when somebody is doing it.

8 Q. Then at page 8, "Some common public interest factors
9 against prosecution" and at 5.5, "A prosecution is less
10 likely to be needed if ..." and it sets out at (a):

11 "The Court is likely to impose a very small or
12 nominal penalty."

13 Page 9, letter (d):

14 "There has been a long delay between the offence
15 taking place and the date of the trial ..."

16 And under the third bullet point there:

17 "The offence has only recently come to light ..."

18 Then letter (e):

19 "A prosecution is likely to have a very bad effect
20 on the victim's physical or mental health (always
21 bearing in mind the seriousness of the offence)."

22 Then we see at 5.7, page 11 {WD008454/11}:

23 "Centeniers act in the public interest and not just
24 in the interests of any one individual. But, centeniers
25 must always think very carefully about the

1 interests of the victim, which are an important factor
2 when deciding where the be interest lies and,
3 accordingly, whether a prosecution should be brought."

4 Then for completeness sake at page 12 we see at
5 paragraph 8 "Power of the Attorney General to overrule
6 a centenier's decision":

7 " ... the Attorney General is the ultimate authority
8 in respect of all prosecutions in the Island and has the
9 power to overrule a centenier's decision not to
10 prosecute. In exercise of this power he may direct
11 a centenier to lay a charge."

12 And over the page, 8.2:

13 "Similarly the Attorney General may direct
14 a centenier not to proceed with a prosecution which has
15 been commenced."

16 Your memory serves you absolutely right, Centenier,
17 because 10 January 2000 we see at the bottom of the
18 page.

19 If we then go back please to your statement,
20 paragraph 40 {WS000657/11}, you say four lines down:

21 "In my view, where the allegation involves some sort
22 of physical or sexual abuse of a child, it would always
23 be in the public interest for a prosecution to proceed,
24 assuming the evidential test has been passed."

25 Do you draw a distinction here between current

1 allegations of abuse of children and historic
2 allegations of abuse?

3 A. Well, there will always be -- whether they are current
4 or historic, providing the evidential test is met the
5 public interest would always lie in them going to court.
6 I can't see any other way that would be dealt with. If
7 the prosecution was deemed to need to go ahead then it
8 would not go to Parish Hall, it would always be deemed
9 that a prosecution should take place, providing the
10 evidence (inaudible), I can't imagine or think that in
11 a case of sexual abuse of a child that there would be
12 any other appropriate way of dealing with it.

13 Q. And do you draw any distinction when breaking that down
14 between on the one hand physical abuse of a child and on
15 the other sexual abuse of a child?

16 A. Well, there would be. I mean physical abuse may relate
17 to a child being assaulted and physically assaulted with
18 an implement or weapon, or chastisement. There's
19 a difference, though at the end of the day I think the
20 public interest would lie with the physical abuse cases
21 of a serious nature going to the Court, almost
22 certainly. No question about it.

23 Q. So because the Inquiry has seen cases that weren't taken
24 forward to charge and often on the basis of lack of
25 corroboration, is that something that at the point that

1 it reached you were conscious of, the issue of
2 corroboration?

3 A. Depending on what was -- was this
4 pre-Operation Rectangle or ..?

5 Q. Let's look first at pre-Operation Rectangle and the
6 issue of corroboration in relation to historical abuse
7 cases.

8 A. I would think if there was lack of corroboration we
9 would be referring it to the legal advisors and having
10 a conversation with them if we had concerns.

11 Q. So that was something that you would need help in
12 understanding about?

13 A. No, no, I don't think so. I think most centeniers would
14 be fully aware of the corroboration issue, they
15 certainly would be, but if the Police wished the charge
16 to be put and there were corroboration issues then we
17 would speak to the legal advisors, but they probably
18 would know about the case already, they would be aware
19 of it and they would have been advising the Police
20 throughout the investigation.

21 Q. At paragraph 41 {WS000657/11} you say that when
22 a decision is made no the to charge Police will make an
23 entry on what you call the SOJP system, including the
24 reasons why they hadn't done so. Would a record of that
25 decision go to the Law Officers' Department? Do you

1 know? You may not be in a position to know.

2 A. Probably not. I think what they do is they want to put
3 in the system that the centenier has been called in, he
4 or she has read the paperwork and they have decided for
5 whatever reason not to charge and they will put the
6 reason down. It may be because of lack of evidence, it
7 may be because more evidence needs to be gathered, but
8 they make a note of that, a record on their system.

9 Q. Centenier, when you make the decision to charge what
10 actually happens in practice; do you read out the charge
11 in the presence of the suspect, or is this done by the
12 custody sergeant -- in situations where you have been
13 called to the police station?

14 A. No, only a centenier can do that. The centenier will
15 physically have to charge that person. They will be
16 charged either in one of the interview rooms, or in the
17 actual custody suite at the back of the police station.
18 There will be a custody sergeant present, there will be
19 a police officer present. The centenier will outline
20 the case very briefly to the individual and then will
21 formally caution them and then charge them with the
22 offence.

23 Q. Can we then turn please to specific charging decisions
24 that you have been involved in. If we go first to
25 page 22 please {WS000657/22} and this is in relation to

1 Thomas Hamon. You cover this at paragraphs 80 to 85.
2 You set out in your statement the background to your
3 role in charging Thomas Hamon in 2005. Very briefly,
4 Thomas Hamon was employed for a time at
5 Haut de la Garenne. He was also the Superintendent of
6 St John's Ambulance. He was charged with sexually
7 assaulting 13 young boys between 1965 and 1988, one of
8 whom was at Haut de la Garenne at the time of the
9 assault. You say at paragraph 83 that at the point
10 where you were asked to charge you can't remember if
11 legal advice was provided with the papers.

12 What I want us to look at then is the information
13 that was given to you. This is at paragraph 84
14 {WS000657/22}. If we go please to page 26 of the
15 exhibits {WD008454/26} and just to invite your comments
16 on some of the entries made here. So we can see -- this
17 is the first page of the police report submitted by
18 Brian Carter, dated 27 July 2005, "Subject: historic
19 abuse at St John Ambulance". Under "Victims" we can
20 see:

21 "Thirteen in total, their details will be identified
22 in the body of the report."

23 And then this:

24 "Following guidance from Crown Advocates Le Cocq and
25 MacRae, charges have been brought in respect of eight of

1 the victims."

2 At the point that you were being asked to charge,
3 and given the date here, 2005, were you at this point
4 simply the mechanism for charge, or was there any
5 further input that you could provide here, given what
6 you read very quickly in the report?

7 A. I was not the mechanism, I actually had to review the
8 case, so I remember it quite well and I think I had
9 a meeting with -- I may have had a meeting with
10 DC Carter the day before and certainly I went in the
11 next day to charge and I was satisfied the evidence was
12 very strong in the case, there were lots of witness
13 statements from different age groups of people involved
14 and it was quite clear that the case was made out to
15 charge and I thought there was a realistic prospect of
16 conviction.

17 I don't recollect whether the legal advisors were
18 involved. I suspect they probably would have been,
19 I expect they probably would have had some input into it
20 but it had been a fairly lengthy investigation and
21 I don't think it was charged until towards the end of
22 the year, it may have been some time towards October.
23 So I think the legal advisors would have been fully
24 aware of the case.

25 Q. Yes. My point wasn't put to you very well. What's

1 being said there under "Victims" is that in effect the
2 advice has been that he should be charged. That's how
3 I understand that. So at the point that you receive it
4 the advice from the Crown Advocates is "charge this
5 man"?

6 A. No, there was no Crown Advocate's advice in that
7 particular case, I don't think. This was
8 pre-Operation Rectangle and the people probably that
9 would have advised on it would have been one of the
10 police legal advisors at the police station. They would
11 have advised on this, if indeed they did. Had I not
12 been happy with the evidence I would have been in
13 a position to decline to charge and then refer it back
14 to the legal advisors, but that didn't happen on this
15 occasion.

16 Q. You may not then be in a position to answer this,
17 Centenier, it may be unfair on you, but that reference
18 there, "Following guidance from Crown Advocates Le Cocq
19 and MacRae, charges have been brought ..." do you think
20 that was put in subsequently?

21 A. No, no, it was probably quite correct, but I was not
22 aware of that advice. It's quite possible that
23 a Crown Advocate could have been involved -- more often
24 than not it was the legal advisors, but it could have
25 been a Crown Advocate that could have given the advice.

1 Q. Page 33 please of the note {WD008454/33}, looking at
2 paragraph 68 there in relation to the interview of
3 Hamon:

4 "No comment interview, insufficient
5 evidence/corroborator for successful prosecution."

6 Should one understand that to mean in relation to
7 the interview alone; is that what that means there?

8 A. I think to the interview alone, yes. I think that the
9 corroborator was the main aspect in this case, that the
10 victims -- a number of victims of different age groups
11 had come forward and made allegations from different
12 eras and that was the strong point of the case here,
13 despite the fact that there had been no comment given by
14 Mr Hamon.

15 Q. Page 37 please and paragraphs 102 and 103 {WD008454/37}.
16 At 102 Officer Carter is reflecting on a particular
17 witness:

18 "Should [an individual] need to give evidence at
19 trial, he will need a great deal of support and
20 encouragement and at this time he must be rated as 50/50
21 to see his complaint through. However in relation to
22 the more serious allegations [three individuals] will
23 make competent witnesses."

24 Paragraph 103:

25 "The other complainants have fears in respect of

1 giving evidence and this based on anonymity."

2 Would it be usual in such a report to find
3 commentary by the officer on witnesses in the way that
4 this is set out?

5 A. Not always. In some it would be, it depends on the
6 investigating officer. Some may put that in there, some
7 might not. It all depends on the officer.

8 Q. The reason I ask you, Centenier, is would the fragility
9 of witnesses play a part in your decision whether or
10 not -- that is victim witnesses, would their fragility
11 be a relevant consideration to you when considering --
12 so you say once the evidential test is passed --

13 A. Yes.

14 Q. -- you no longer need to consider the public interest
15 test because as far as you're concerned that should be
16 charged. Where does the fragility of the witness and
17 the harm that the prosecution may have come into that
18 consideration, if at all?

19 A. Well, it would do. I mean clearly depending on the --
20 if the witness does not have capacity and they are very
21 elderly, depending on the circumstances it would be
22 looked at. There could be other issues: how many
23 witnesses do you have to the case, how many victims are
24 there? If there are ten victims and two are considered
25 to be vulnerable then clearly the evidential test is

1 passed to go ahead, but it is a consideration and it is
2 a consideration that I personally would discuss with the
3 legal advisors; particularly if you had the majority of
4 the victims being vulnerable, or they have not got
5 capacity or something like that, then I would refer that
6 to the legal advisors and ask them what this he think
7 for them to do a review of the case. I think in those
8 sorts of cases they would have had a look at it, almost
9 certainly.

10 Q. Page 38 please {WD008454/38}, last paragraph of the
11 report by DC Carter, he writes as follows:

12 "It is apparent that the victims have suffered
13 varying degrees of abuse at the hands of Hamon. It is
14 suggested that Hamon should be charged with the
15 appropriate offences in respect of each complainant as
16 opposed to particular individuals, whereby negating
17 criticism of a disservice to any of the victims."

18 You may understand that, Centenier. What does the
19 officer mean by that?

20 A. I'm not sure what he quite means by it. From
21 recollection I think there were 13 charges put and
22 I don't think all the victims that had come forward --
23 all the charges may not have been put -- there may have
24 been more victims. So I think there was only a certain
25 amount that were considered suitable. That's just from

1 memory, that may not be the case. So 13 were eventually
2 put but I don't think all the victims that came
3 forward -- the charges may not have been put forward on
4 them.

5 Q. Understood. Page 23 now, back to your statement
6 {WS000657/23}, and we're now going to look at the
7 charging process involved in witnesses 279 and 281.
8 This starts at paragraph 86.

9 This is a case that you were involved in three years
10 after the Hamon case. At paragraph 86 you set out the
11 background to the circumstances in which you were asked
12 to consider charges against 279 and 281. As you state,
13 these related to allegations of "excessive corporal
14 punishment when acting as house parents at a family
15 group home" run by the States. Children in the care of
16 the States placed in the Family Group Home claimed that
17 they had been beaten and hit by the house parents.

18 At paragraph 87, on 24 June 2008 you were attending
19 a Parish Hall Enquiry and you say that you were called
20 by Detective Sergeant Smith. You say that he told you,
21 as he put it, he had a couple in custody who may require
22 charging. From the evidence that you've already given
23 to us this afternoon, Centenier, that appears to be
24 a routine approach in asking you to come into the police
25 station, is that right?

1 A. That's correct.

2 Q. On this occasion though you were asked to come to the
3 specific Operation Rectangle office, is that right?

4 A. Yes.

5 Q. Had you been there before?

6 A. I think I had been there once before, so I was asked to
7 go to Broadcasting House which I knew to be the
8 headquarters of Operation Rectangle.

9 Q. You meet with DS Smith and you say this, this is
10 paragraph 87 {WS000657/23}, five lines down:

11 "DS Smith briefed me on the case and explained that
12 Deputy Chief Officer Lenny Harper had asked for charges
13 to be put, but also made me aware of the fact that
14 Simon Thomas, the legal advisor, had stated that he did
15 not want [279 and 281] to be charged at this time.
16 I believe that DS Smith informed me that Simon Thomas
17 was in the UK and was not able to look at the papers as
18 he was travelling and that he had not yet come to
19 a decision himself as to whether [279 and 281] should be
20 charged."

21 Would it be standard for you to be briefed by the
22 officer in the case -- so did you assume that DS Smith
23 was the officer in the case here, as far as you knew?

24 A. Yes, he was concerned with that.

25 Q. You say that DCO Harper had asked for charges to be put.

1 In his statement to the Inquiry Lenny Harper says,
2 I quote, "I instructed a detective sergeant to call in
3 the local Centenier to charge [279 and 281]"
4 {WS000516/81}, suggesting in effect that there was no
5 argument and that's taken from paragraph 297 of his
6 statement. Is that what you understood from DS Smith
7 that you had to do?

8 A. Well, no. Mr Harper may have called -- he told DS Smith
9 that he wanted them charged, but that decision, or the
10 actual process of charging them rests with me and
11 Sergeant Smith explained that to me, what had happened,
12 and the fact that Mr Harper wanted them charged and he
13 explained to me the circumstances around it. This was
14 at Broadcasting House. But I'm not aware of the
15 specifics of the conversation between Sergeant Smith and
16 Mr Harper.

17 Q. But in relaying that to you, Centenier, was the
18 impression that you gained that DCO Harper, as it
19 were -- and I mean no disservice to anyone involved, but
20 in effect it was a done deal and that you were, as it
21 were, the mechanism for charge?

22 A. There was that impression I think given, the fact that
23 Mr Harper did want them charged. I think he had wanted
24 them charged and taken to court the next day.

25 Q. Had you in the past been asked by senior ranking

1 officers to charge?

2 A. In respect of Operation Rectangle?

3 Q. Or in any case?

4 A. Yes, I mean that's happened in the past over the years.

5 Q. And at that level of seniority?

6 A. No. No, normally it would be probably the inspector in
7 CID or the chief inspector.

8 Q. And in those situations where someone of that rank had
9 asked you to charge, had you followed what they sought?

10 A. No, if the evidence wasn't made out and there was
11 an issue with the evidence I wouldn't charge. If the
12 evidence was made out, the person would be charged. It
13 didn't happen every day, it's not a common occurrence,
14 but occasionally it would and the centenier may have to
15 say "Well, I can't charge at the moment, we need more
16 evidence in this case."

17 Q. And I have quoted paragraph 87 where you say that you
18 were made aware of the fact that the legal advisor did
19 not want 279 and 281 to be charged and I have quoted
20 "I believe DS Smith informed me about that", and then
21 you say at paragraph 89 {WS000657/24}:

22 "It was highly unusual for a centenier to be called
23 on to charge a suspect in circumstances where a legal
24 advisor had requested that they should not be charged.
25 I do not recall ever having been in this situation

1 before."

2 You have been relayed this information by DS Smith,
3 as I understand it, the DCO says charge, DS Smith tells
4 you "Actually the legal advisor is saying differently".
5 Where did that leave you?

6 A. Well, it would be unusual, it's an unusual situation.
7 If a legal advisor has recommended to the Police that
8 the charges should not be put then it's for a very good
9 reason, it is because there are evidential issues, or
10 there may be public interest issues and the normal
11 procedure was that the centenier would not be called in
12 to do the charge, so that was an unusual situation.

13 Q. What do you think, looking back on it, that you were
14 being expected to do?

15 A. Well, I think probably the DCO wanted them charged with
16 I think three counts of grave and criminal assault and
17 presented to the Magistrates Court the following day and
18 I think that was the expectation. But clearly Mr Thomas
19 was not happy with that at the time and did not want
20 that to happen on that particular occasion.

21 Q. And how did you learn of that specific detail that you
22 have just told us about? From whom would you have
23 learned that detail, the three charges of grave and
24 criminal assault?

25 A. Sergeant Smith told me exactly what Mr Thomas wasn't

1 particularly happy to charge at the time, he didn't want
2 to. I think he said he was stuck in a train station in
3 the UK at the time.

4 Q. At paragraph 88 {WS000657/23} you go on to say that you
5 looked at the file. I just want to try and understand
6 the sequence. It may seem strange to you, but if you
7 can help us with this -- you may not remember it. You
8 were handed the file, you read it, and then you were
9 briefed or were you briefed before reading it?

10 A. I was briefed before reading it.

11 Q. If you were briefed before reading it why then did you
12 go on to read it?

13 A. Because Sergeant Smith wanted to invite me to read it
14 and go through it, I did go through it and went through
15 the paperwork and Sergeant Smith left me to do that
16 and --

17 Q. Why did Sergeant Smith want you to do that?

18 A. I think he wanted me to go through it because DCO Harper
19 had wanted me to charge, so I felt really that I should
20 go through the paperwork and have a look at it.

21 Q. Did you, Centenier, feel under any form of pressure to
22 charge or not to charge?

23 A. No, I didn't. I didn't feel under any pressure at all.
24 DCO Harper had made it clear I think via Sergeant Smith
25 he probably wanted them charged but I didn't feel under

1 any pressure and I certainly didn't feel under any
2 pressure from Sergeant Smith.

3 Q. Later at paragraph 102 when the -- you have been shown
4 a letter written by the Attorney General to
5 Chief Officer Power about the circumstances in which you
6 found yourself on 24 June and the Attorney General
7 comments that he considered it to have been unfair to
8 ask you to attend Police Headquarters, and you comment:

9 "I was being asked to make a decision to charge
10 where there was no remit for me to do so."

11 Is that something you thought at the time?

12 A. Well, it was because clearly the legal advisor to the
13 case was Mr Thomas, who was advising on those particular
14 cases and if he was suggesting at the time not to charge
15 it was -- there was no remit to charge, because
16 the Crown Advocates were reviewing this case and making
17 that decision and --

18 Q. I know we have already been over this, Centenier, but
19 just so we can understand as clearly as possible the
20 position you were in, why do you think you were being
21 asked to charge when you knew that you couldn't?

22 A. I don't know. I mean only the DCO can probably comment
23 on that as to why he wanted them charged. He probably
24 felt there was sufficient evidence to charge them and
25 take them to court and proceed with the case, but

1 clearly Mr Thomas had contrary advice on that.

2 Q. If we then go please to page 40 of the exhibits
3 {WD008454/40}, this is the -- as I understand it the
4 report you received, case report dated, we can see from
5 the top there, 13 May 2008. You say at paragraph 88
6 {WS000657/23}:

7 "The report took me over an hour to go through."

8 You say as well:

9 "I note that page 10 of the police report refers to
10 a request from the investigating officer to have the
11 report forwarded to the police legal advisors for
12 direction. I can confirm that I had not received any
13 legal advice when considering whether to charge [279 and
14 281]. The only input I had received from a legal
15 advisor was Simon Thomas' direction ..."

16 Apart from this report what other information did
17 you have? What other documentary information I should
18 say.

19 A. There wasn't. There was just a report and I think there
20 were some statements to read through and just
21 Sergeant Smith telling me what the situation was with
22 Mr Thomas.

23 Q. Were you aware at this stage whether 279 and 281 had
24 been interviewed?

25 A. I don't think -- I think there was an issue with 279.

1 I don't think that particular suspect had been
2 interviewed due to a medical problem.

3 Q. And at the time that you were at the station were you
4 aware whether or not they were at the station as well?

5 A. Whether they were?

6 Q. At the police station as well, that is 279 and 281?

7 A. They were at the police station, yes, they were.

8 Q. Can we go then through the report. At page 41
9 {WD008454/41} we can see, bearing in mind this is dated
10 13 May 2008, the last paragraph there:

11 "This report will consist of a summary of events,
12 a synopsis of significant statement detail, officers'
13 observations, an opinion on possible further enquiries
14 and a request for legal guidance."

15 Then we go please to page 45 and 46 {WD008454/45}
16 where we see what's described at the top of page 45 as
17 "Synopsis of significant statement detail". Would it be
18 common practice for statements to be summarised in this
19 way, I mean given the nature of the offence?

20 A. No, normally you would have the full statement of the
21 individual. they could be summarised for the actual
22 report, but you would be given a copy of the full
23 statement if you were charging.

24 Q. And then please if we go to page 49 {WD008454/49}, the
25 "Possible further enquiries", we see numbers 1 to 8, and

1 then a request:

2 "As investigating officers and in order to conclude
3 this investigation we respectfully request that this
4 report be forwarded to the police legal advisors for
5 direction."

6 Did you have any material, apart from this report,
7 that met the possible further enquiries?

8 A. No, I have no recollection of any further material, just
9 the case itself as it currently stood at that stage.

10 Q. Later in your statement you have been shown by the
11 solicitors to the Inquiry Social Services records
12 generated at the time relating to 279 and 281 and the
13 children in the Family Group Home and within the records
14 there is a report of one of the children complaining of
15 being struck by 279 and then there is a counter to that
16 report subsequently in the Social Services records.

17 You say that you don't remember seeing these records
18 and it was not common practice for records to form part
19 of the file. Of the historic cases that you reviewed
20 did any contain records?

21 A. I have no recollection of having records from the
22 Children's Service going back that far. I would say
23 that's unusual. That's not to say they didn't exist or
24 they wouldn't be available maybe at a later date for the
25 prosecution, but certainly at the point of charge

1 I don't have any recollection of historical reports from
2 the Children's Service.

3 Q. And you say at paragraph 107 {WS000657/29} that having
4 file notes would have provided, you say,
5 "good corroborating evidence", but presumably that
6 depends entirely on what was within those notes?

7 A. Yes.

8 Q. So it could provide, not necessarily would always
9 provide; is that right?

10 A. It could potentially.

11 Q. So we go back to the case report please on 279 and 281
12 {WD008454/49} and it appears from the report alone you
13 were not being asked to consider charge. Was that your
14 understanding?

15 A. That I was being asked to consider charge?

16 Q. That you were not being asked -- so regardless of
17 whether or not you had had the information from DS Smith
18 about Simon Thomas' position, this report was suggesting
19 that the case wasn't in a position to charge?

20 A. I don't think that the case was ready to charge
21 because -- I don't know the reason why Mr Thomas wanted
22 to look at it, but I'm guessing that he wanted to see
23 what was probably said in the interviews and he wanted
24 to physically have copies of that and read it and go
25 through it, which would make sense. And I would be very

1 surprised had he said go ahead and charge without that.
2 It just makes sense that he would have the full package.
3 And he never -- I don't know what the reasoning is, but
4 that was my guessing at the time that that was what it
5 was.

6 Q. So then we go to paragraph 92 of your statement
7 {WS000657/24} and if you can help me with this: we are
8 entitled to assume that before you signed the statement
9 you had read everything, so you made the corrections you
10 thought were necessary?

11 A. Yes.

12 Q. So we read at paragraph 92, page 24:

13 "Having considered the papers ..."

14 So the report that we have just looked at, you and
15 I together:

16 " ... my view (as was subsequently reported) was
17 that there was sufficient evidence to charge
18 However, I declined to do so."

19 In the light of what you have told us about once you
20 had established that the evidential test had been passed
21 in cases of this kind, the public interest test was
22 automatically satisfied -- have I got that right?

23 A. Yes. But this is -- well, it depends on -- you have
24 to -- the word "declined" there, I declined to do so,
25 that doesn't mean declined to do so permanently, that's

1 declined to do so for a specific reason, and that wasn't
2 because of lack of evidence or public interest.

3 Q. I haven't got to that bit yet, Centenier --

4 A. Sorry.

5 Q. No no, no need to apologise. I'm still at the bit where
6 you had decided on the basis of the police report that
7 we have just looked at together that there was
8 sufficient evidence to charge, is that right?

9 A. My view was that there was a prima facie case probably
10 on the evidence there at the particular time that
11 I read. There was clearly allegations made by three
12 individuals which to some extent were corroborated and
13 that was my view at the time. There probably was enough
14 evidence to charge, but how far it would go after that,
15 whether it would result in conviction at the end of it
16 is another matter. But I did think that personally
17 there probably was, yes. That wasn't the reason why
18 I declined.

19 Q. Doesn't the code suggest that at the point where you are
20 applying the evidential test you are looking at
21 reasonable prospects of conviction?

22 A. Yes.

23 Q. So does it follow from your assessment of the police
24 report dated 13 May 2008 that you felt that there were
25 reasonable prospects of conviction?

1 A. Yes and no. I would have wanted to know a lot more
2 about the case, because you've got three witnesses there
3 and you could say the three witnesses are giving
4 statements of evidence and there is some corroboration
5 then there is a realistic prosecute for conviction, but
6 there's an awful lot you have to go through to get to
7 that stage and this is a case that would have ended up
8 in the Royal Court being prosecuted by a Crown Advocate,
9 so there are quite a few hurdles to go through and
10 overcome but I did think there was a prima facie case,
11 but of course I may not have had all the evidence,
12 I wasn't aware of the interviews of the suspects and
13 what was said and what they would be saying, so I only
14 had the statements from the actual people that had made
15 complaints.

16 Q. But, Centenier, you knew at the point of making charge
17 that at that point the suspects could no longer be
18 interviewed unless it was to resolve ambiguities?

19 A. Yes.

20 Q. Or to meet evidence for them to comment on new evidence,
21 so that the prospect of their being interviewed would at
22 that point no longer be there?

23 A. No, no, there needed to be an interview as far as I was
24 concerned. I am not aware of what was said in
25 interview, if indeed an interview did eventually take

1 place, but it would have been important I think for an
2 interview to be conducted and for Mr Thomas to be aware
3 of that. Yes, people are charged where they go
4 "no comment" in interviews and they can decline to be
5 interviewed to some extent and you probably would go
6 ahead and charge, but in a case like this I would have
7 felt it appropriate they should be interviewed, yes.

8 Q. So it shows my lack of understanding of the process, but
9 we have looked at that note from Michel Le Troquer which
10 says on being charged they can no longer be interviewed,
11 the suspects.

12 A. They can't be, that's right.

13 Q. So in these circumstances how would that then have
14 happened? How could further information have been
15 gained from the two --

16 A. Well, they weren't charged, they weren't charged, so the
17 situation didn't arise. Because the couple were not
18 charged it didn't come into play that there would be any
19 issues about a second interview.

20 Q. At paragraph 92 {WS000657/24} you go on to say, eight
21 lines down:

22 "However, even if I had not received the direction
23 from Simon Thomas, I would have referred the matter to
24 a legal advisor in any event. There were issues on
25 which it was appropriate for advice to be sought."

1 Again, Centenier, you can anticipate what I'm going
2 to ask you. You are telling us in the second line in of
3 that paragraph that there was sufficient evidence to
4 charge and therefore presumably you would have charged?

5 A. My personal view was there was sufficient evidence for
6 a prima facie case -- that's my personal view. But
7 I realised that I would not be making that decision, at
8 the end of the day it was down to one of the Crown
9 Advocates or legal advisors to make that decision and
10 I felt that even if I had wanted to, that advise did
11 need to be sought, there were all sorts of issues, the
12 case was quite old, the allegations went back between 30
13 and 40 years, I think some of them went back to 1967 and
14 those had to be looked at; the witnesses and whether
15 there was an issue with vulnerability, all sorts of
16 issues had to be looked at by a professional legal
17 advisor. So while on the face of it yes, there
18 certainly was a prima facie case to go ahead and charge,
19 there were other considerations for the case when it got
20 to court and indeed if it later came to trial.

21 Q. Consequently on that evening 279 and 281 are released
22 and I think we learn from paragraph 96, page 25
23 {WS000657/25}, that you telephoned DCO Harper:

24 " ... the afternoon following my decision not to
25 charge [279 and 281]."

1 And that was your first point of contact with him?

2 Or had he attempted to contact you before that?

3 A. No, that was my first point of contact. I think I tried
4 it twice on the day but I think he was busy in meetings
5 and we eventually spoke in the afternoon.

6 Q. If we can have on screen please page 52 {WD008454/52},
7 this is the report that appears the following day,
8 25 June 2008, and it sets out in paragraphs 1 and 2
9 an account of what happened the previous day. It says
10 at the bottom of the first column:

11 "No explanation has been given why the
12 honorary officer, Centenier Danny Scaife, declined to
13 charge."

14 And then this:

15 "A statement released by the States Force and
16 written by Deputy Police Chief Lenny Harper said that
17 the centenier had made his decision 'despite stating
18 that the evidence was present'."

19 You hadn't spoken to DCO Harper until the afternoon
20 after?

21 A. Yes.

22 Q. This report appears before you speak to DCO Harper, is
23 that right?

24 A. This report sorry?

25 Q. This report in the paper --

1 A. Appeared before it?

2 Q. -- appeared before that?

3 A. I can't say, because the actual paper is printed fairly
4 early and I don't know what time I spoke to
5 DCO Harper -- it was some time in the afternoon the
6 following day, I recollect that.

7 Q. So are you able to help the Inquiry with the source for
8 the information that you had stated that the evidence
9 was present to charge?

10 A. Well, probably it may have come from -- I would have
11 probably spoken to Sergeant Smith and had a conversation
12 with him. I can't surmise what happened there and
13 I don't know how that was forwarded on. I didn't have
14 a conversation with DCO Harper until the afternoon of
15 the following day, the 25th it was.

16 Q. Then at paragraph 97 {WS000657/26} you in providing this
17 statement were asked to comment on DCO Harper's
18 recollection of his exchange with Simon Thomas on
19 24 June and this is exhibited at DS8.

20 I should make it clear, Mr Scaife, that inviting you
21 to comment on Mr Harper's views, those views are not
22 accepted as fact by the Inquiry, so just with that
23 proviso.

24 When providing this statement had you seen the
25 report dated 29 June before?

1 A. Before I made this statement?

2 Q. Yes.

3 A. I think I may have been shown something -- yes, I was.

4 I can't recall the date, but I was shown something, yes.

5 Q. If we go to page 55 please of the exhibits {WD008454/55}
6 and the penultimate paragraph there, there is reference
7 there to "During these meetings", do you have that? It
8 is five lines down do you have that? It is the
9 penultimate paragraph, page 55, seven lines up from the
10 bottom a sentence that starts "During these
11 meetings ...", do you have that?

12 A. Yes, yes.

13 Q. "During these meetings the evidence was discussed and on
14 Friday 20th June 2008 the detective sergeant and the two
15 investigators met with Mr Thomas."

16 And then he writes this, this is DCO Harper:

17 "It was agreed that [279 and 281] should be arrested
18 and charged with three crimes of grave and criminal
19 assault. As always, it was accepted that this was
20 subject to any significant changes in the evidence
21 against them ..."

22 On 24 June, Centenier, were you aware that a meeting
23 had taken place on 20 June between police and the
24 lawyers appointed by the Attorney General?

25 A. No.

1 Q. Does it follow from that that you weren't aware that
2 Mr Harper's view of that meeting was that a decision had
3 been made to charge?

4 A. I wasn't aware -- no, I wasn't aware that there had been
5 an agreement to charge beforehand.

6 Q. So if we look at page 56 please, the next page
7 {WD008454/56}, just to invite your comment. When you
8 met with Detective Sergeant Smith on 24 June did you
9 understand from DS Smith that Simon Thomas, the
10 Advocate, to use Mr Harper's words in this report, had
11 "revised" his view? Was that how it was put to you by
12 DS Smith?

13 A. I can't remember the terminology, but it was put to me
14 by Sergeant Smith that Mr Thomas did not want charges to
15 be put. He was reviewing the case and at this time he
16 didn't -- he wanted to review the matter and didn't want
17 them to be put at this stage.

18 Q. So his revising his view, as quoted, is not something
19 you remember being said by DS Smith?

20 A. No, I mean I don't know what the conversations were
21 prior to my being called in, but I was certainly made
22 aware by Sergeant Smith that Mr Thomas did not want them
23 charged at that particular stage and the fact that he
24 was stuck in the UK and he wanted to look at certain
25 things. I think he was coming back to Jersey within the

1 next few days after that and I was told that.

2 Q. You then comment on the new evidence that had emerged
3 and that is set out in the version provided by
4 DCO Harper at page 56 and we can see it is set out
5 numbered paragraphs 1, 2 and 3 {WD008454/56}.

6 When you were reviewing the papers on 24 June -- and
7 do say if you can't remember -- were you aware that
8 these issues had arisen?

9 A. Was I aware?

10 Q. That these issues that are set out --

11 A. I think I was aware of the medical issue regarding
12 279 -- not the specifics of it, but I think I had been
13 made aware that there were some issues with her.
14 I don't think the particular suspect had been
15 interviewed and it may have been due to medical reasons,
16 so I was aware of that, but not the specifics of why.

17 Q. And as put by DCO Harper in this note, you say:

18 "To a degree I sympathise with Mr Harper's
19 comments." {WS000657/26}

20 Are these the comments we are looking at now?

21 A. I said I think I had some sympathy, but I did think it
22 would be more appropriate to have the interview of that
23 particular individual. The nature of the allegations
24 were very serious, the age of the allegations and the
25 fact that the allegation was that they were in

1 a position of trust at the time, so I felt the interview
2 was quite important. But I understood where he was
3 coming from on some of these issues.

4 Q. But as has been pointed out, you understand that now
5 looking back on it and being presented that document;
6 you weren't aware of these at the time?

7 A. I wasn't aware at the time. I was aware of the medical
8 issue with 279 to some degree, but I wasn't completely
9 aware of all the other issues.

10 Q. You qualify your commentary and you say that "to
11 a degree I sympathise". The "to a degree", are those
12 the reservations that you have just outlined to
13 the Inquiry?

14 A. Well, I can understand where the DCO was coming from to
15 some extent and I think on one of them he was talking
16 about the fact that someone had phoned up and said the
17 wrong people were in custody. Well, that wouldn't
18 necessarily stop somebody being charged, but you would
19 want the Police to investigate that, look into it if
20 indeed it was true, and I think the other one may have
21 been from what I saw about the children -- the
22 individual's children saying that they were good people
23 and they shouldn't be charged. Well, that alone would
24 not stop individuals being charged either.

25 Q. And that's on the account that you have seen in that

1 document?

2 A. That's -- yes, that's correct, yes.

3 Q. Can we then look please at {WD007457/20}. This is
4 a telephone attendance note prepared by Advocate Thomas
5 on 24 June 2008, and we need to go to page 21 please
6 {WD007457/21}. This is prepared on the day that you are
7 later in the day asked to attend Broadcasting House and
8 to make the charge and this is an attendance note
9 compiled by Advocate Thomas. He is referred to by the
10 initials "ST" and later down the page we can see
11 initials "AS", that's a reference to DS Smith, and then
12 later on we can see a reference there to "LH" on that
13 page, that's Lenny Harper.

14 Before today had you seen this document?

15 A. No, no.

16 Q. If we look at page 21 and the second and third
17 paragraphs please. So this is a record of Simon Thomas
18 speaking to DS Smith:

19 "ST indicated that in his view the decision as to
20 whether to charge either or both of them should be
21 delayed for a day or so in order that the matter could
22 be fully reviewed in the light of answers given in
23 interview and of the health concerns relating to [279]."

24 And then he goes on:

25 "ST expressed the view that we should not be seen to

1 be rushing into a charging decision in these
2 circumstances, particularly in a case which is finely
3 balanced (in the sense of there being witnesses on each
4 side - for and against [279 and 281]). DS Smith
5 commented that he had been looking through the
6 statements and had flagged up this issue, in particular
7 in relation to [one of the witnesses] who could be
8 expected to give evidence in favour of [279 and 281]."

9 Pausing there, Centenier, at the point of meeting
10 with DS Smith did he share with you any of his views
11 about the case?

12 A. He did -- I think he did mention that there were other
13 potential witnesses to the case that did not want to
14 make statements, or did not want to make complaints.
15 I can't remember the specifics, but I think there were
16 three others that may have been connected with the
17 particular establishment that did not wish to make any
18 complaint.

19 Q. Then down the page please we can see that there is then
20 a record -- if you see "A short time later ST received
21 a telephone call from LH", do you have that?

22 A. Yes.

23 Q. Then we see, "ST pointed out what he perceived as
24 developments ..." and we can see that he writes:

25 "[279] had claimed to be in ill health whilst at the

1 police station. She had been seen by the police doctor.
2 Although fit to be detained, she was a lady who we know
3 has a past history ..."

4 That medical history is then set out:

5 "(It was not clear to ST at that stage that she had
6 not actually been interviewed yet)."

7 All you knew of that, Centenier, is that 279 was
8 ill, is that as I understand it?

9 A. Yes, I knew that 279 was ill.

10 Q. We then read at (ii) one of the witnesses had contacted
11 the enquiry and over the page please we see (iii):

12 "[279 and 281]'s children, who had not hitherto been
13 spoken to, had or were about to return to the Island as
14 a direct result of their parents' arrest."

15 Then (iv):

16 "[281] had answered questions in interview."

17 And then we go please to page 23 {WD007457/23} and
18 if you look at the third paragraph please we can see the
19 arguments and counter-arguments that are recorded there.
20 In relation to the first sentence, that is from the
21 context DCO Harper, so DCO Harper says as to 279 and
22 281's children:

23 "... he commented that any evidence they could give
24 would be limited to character evidence; they did not
25 witness any of the assaults according to the

1 complainants and lived in another part of the house."

2 And Simon Thomas observed:

3 " ... that their potential evidence was not limited
4 to eye witness accounts (although who knows what they
5 might claim to have seen/heard), but might also, for
6 example, be evidence of observing collusion between the
7 complainants as against their parents. As remote as
8 this may be, the point was that they could not be
9 automatically ruled out as simply character witnesses.

10 "ST reiterated that this was a finely balanced
11 case - we have six children, three of whom give credible
12 evidence of abuse, but three of whom do not support that
13 evidence and speak positively in favour of [279 and
14 281]. We need to be alive to any new issues that might
15 go to credibility."

16 Then:

17 "LH commented that it was not proposed to take
18 statements from the children nor to take a further
19 statement from [one of the witnesses] since all had
20 operated on the basis that they would support [279 and
21 281]."

22 Finally:

23 "ST observed that, from the limited information he
24 had been given, [281] had raised the issue in interview
25 of the children being reasonably chastised by his wife.

1 This issue had been flagged up as a potential one during
2 the first of the two conferences. This was a further
3 reason to carefully assess what he had said in
4 interview."

5 And that paragraph ends with:

6 "LH could not see why this was necessary because he
7 had not admitted that he or his wife had hit children
8 with bats and as such reasonable chastisement, in the
9 sense of degrees of punishment, was not an issue."

10 Should one understand, Centenier, that the position
11 taken by the Crown Advocate is one that you would
12 necessarily have to defer to?

13 A. Yes. I think it's correct what the Crown Advocate is
14 saying, that there are -- there were other issues, which
15 I was not aware of when I was asked to look at the
16 evidence to charge. Clearly some of this I was not
17 aware of and I think it's something that anybody making
18 a charging decision should have been aware of and should
19 be made aware of and the Crown Advocate probably would
20 have had that information, so hence the reason why it
21 was important that the Crown Advocate did make that
22 decision when it was the right time to charge.

23 Q. It may be, Centenier, that you have already answered
24 this question, but how is it then that in the article
25 that did appear in the JEP the information that there

1 was enough evidence to charge -- or you had said that
2 there was enough evidence to charge -- can you provide
3 us with any help as to how that would have been known
4 by --

5 A. Based on what -- I don't know who -- I would have had
6 that discussion with the Police at the time in the
7 Operation Rectangle headquarters.

8 Q. And who was present, was it DS Smith?

9 A. There would have been DS Smith -- there may have been
10 others, but certainly DS Smith was present and that may
11 have been forwarded on to another party, but I don't
12 know who. Whether DS Smith did, I don't know.

13 Q. You say at paragraph 99 {WS000657/26} that you didn't
14 think it was appropriate for a press release to have
15 been issued on 279 and 281's release. Were you told
16 that a press release was going to be issued?

17 A. Was I told that ..?

18 Q. That a press release would be issued on their release?

19 A. No, I don't think I was told that a press release was
20 going to be issued at all. I don't even know if
21 DS Smith knew that himself, he probably didn't, so it
22 was only the next day that we became aware, fairly early
23 on, about what had happened.

24 Q. Centenier, why did you think it was not appropriate for
25 there to be a press release?

1 A. I felt it was not appropriate because the decision not
2 to charge was based on the fact that Simon Thomas was
3 reviewing the case, so it wasn't that there weren't
4 going to be charges maybe brought at a later date, but
5 he needed to make that decision, he needed to have time
6 to do that. And I think at that stage one of the
7 suspects had not been interviewed, as you have outlined
8 already, so I didn't think it was appropriate to go and
9 have that in the media. It could effect the victims,
10 the alleged victims reading that as well, it could be
11 upsetting for them. It could also potentially affect
12 a future trial at a later date, having that kind of
13 information in the media when Mr Thomas was still making
14 his decision. People are routinely released on bail by
15 the Police during an investigation. That happens quite
16 a lot and then they are asked to come back in, but the
17 press are not told, or made aware every time somebody is
18 released on bail necessarily. It's a fairly routine
19 requirement and thing that happens here in Jersey and
20 the UK.

21 Q. Page 29 please, paragraph 108 {WS000657/29}, where we
22 learn that you were the centenier charging Tony and
23 Morag Jordan. This is in 2010 you were asked to
24 consider charges in relation to them. You say that by
25 the time you received the papers to charge, the decision

1 on charge had already been made and there had been
2 an advice in writing. You say at paragraph 110
3 {WS000657/30}:

4 " ... I think I recall receiving a written direction
5 from Crown Advocate Stephen Baker to charge the
6 Jordans."

7 What was the difference between a written
8 direction -- because that's the first reference we have
9 seen to that -- as opposed to an advice?

10 A. Well, I think what would happen is it would state in the
11 file that the Attorney General has reviewed the evidence
12 and is satisfied that a charge should be put; it was
13 somewhere along those lines. I was in no doubt when
14 I went into Broadcasting House on that day that it had
15 been agreed and that Mr Baker acting on behalf of the
16 Royal Officers was content that charges should be put,
17 there was no question about that.

18 Q. And again at paragraph 111 {WS000657/30} you say:

19 "Notwithstanding Advocate Baker's direction,
20 conscious that my name would be on the charge sheet,
21 I reviewed the documentation within the bundle supplied
22 to me. I did not expect there to be any issues, but it
23 is always prudent to check."

24 What issues could have come up in the light of the
25 direction that you had been given?

1 A. Well, there may have been an evidential issue that
2 I come across, even though the Attorney General was
3 directing -- the charge goes in our name: because that
4 mechanism is that the parish has to charge I wanted to
5 be satisfied that my name is going to something which
6 was correct. Yes, we have been directed to charge. Had
7 I had any issues with it then I would have phoned up
8 Mr Baker and spoken to him about those issues. There
9 were no issues, but had there been I would have done.

10 Q. Should one understand that in effect you are discharging
11 your role conscientiously, is what you are telling us?

12 A. Yes. I would expect the centenier to read the evidence.

13 Q. Regardless of the instruction?

14 A. Regardless, I would still expect the centenier to go
15 through that evidence and make sure they are satisfied
16 that the case is made out and if it wasn't then to
17 challenge the Crown Advocate and say "Look, I don't
18 think it's made out even though you're directing it."

19 Q. In fact has there ever been a situation where you have
20 been directed to charge by the Crown Advocate for
21 instance and not done so?

22 A. No.

23 Q. We see something that we have already looked at the last
24 sentence at paragraph 113 {WS000657/30}, you say:

25 "To me, where the evidential test is made out

1 against anyone in a position of responsibility, the
2 public interest test would always be passed and
3 a prosecution should follow."

4 Presumably when we looked at 279 and 281, subject to
5 all the caveats that you have told us about, subject to
6 the fact that you wanted to seek advice, your view was
7 that there was sufficient evidence to charge.

8 Presumably should the Inquiry conclude that given that
9 279 and 281 were in positions of responsibility, the
10 public interest test would have been passed?

11 A. Yes, yes. They were in a position of trust so the
12 public interest test would have always been passed
13 there, yes.

14 Q. And finally, Centenier, you conclude your statement by
15 talking to the Inquiry about inter-agency working and
16 you provide helpful comment on the working of agencies.
17 You say at paragraph 124 {WS000657/33}, the very last
18 page of your statement, page 33:

19 "Centeniers now know that their role does not just
20 end at the Parish Hall Enquiries. If there are wider
21 issues concerning a young person then it is now
22 incumbent upon them to refer this on to the appropriate
23 agency."

24 Once referral is made to the appropriate agencies do
25 you, as the Chef de Police, or as a centenier, get

1 feedback?

2 A. Yes.

3 Q. You do.

4 A. Yes, if you made a referral to MASH or to the Public
5 Protection Unit they probably would phone me back and
6 say: look, we've looked into this situation, there's
7 nothing to worry about, or there is. They would phone
8 you back and update you, yes.

9 Q. Centenier, I've got no further questions. Thank you.

10 THE CHAIR: Mr Sadd, thank you. There are just a few
11 questions from the Panel.

12 Questions from THE PANEL

13 PROFESSOR CAMERON: Mr Scaife, you have described the role
14 of the Centenier in terms of taking some very complex
15 decisions and obviously decisions of a very serious
16 nature in terms of their implications for individuals.
17 I wonder what your views are, or your explanation would
18 be as to why it would continue to be appropriate to have
19 these decisions taken by people who are -- I make no
20 comment about the people doing it, but who are
21 essentially volunteers, elected and without any detailed
22 training or even any requirement to demonstrate a level
23 of competence before they are put in that position. How
24 is that in the modern world a justifiable way to
25 continue that system?

1 A. Well, times have changed and things have adapted. The
2 legal advisors are always in court. We have
3 professional legal advisors in the court permanently who
4 sit directly behind the centenier and invariably in many
5 of the more serious complex cases, first of all they
6 probably would have had an input into the actual case
7 themselves, they would have been advising the Police,
8 whether it be PPU or the Criminal Investigation
9 Division, and they will probably be themselves saying
10 "Yes, I think there is sufficient to charge", and they
11 may well phone the centenier, so there is a safety net
12 there, in that you have the professional legal advisors
13 who work very very closely with the centeniers. You
14 didn't have this many years ago, 20 years ago that
15 wasn't the case, but you do have that now and whereas
16 they may have been in court only a brief time maybe
17 15 years ago, they are now permanently in court and
18 there's a permanent legal advisor present there to
19 advise and their advice is available 24/7 to the Police
20 and to the centeniers.

21 PROFESSOR CAMERON: So does that mean that the role of the
22 centenier is in effect increasingly becoming simply
23 a formality, if not a tokenistic role?

24 A. No, no, no. I mean centeniers, there will be many cases
25 they will prosecute where the legal advisor may not be

1 involved. You know, they might be low level assaults,
2 offences under licensing law, traffic offences, public
3 order offences. It's only when you get into a more
4 serious area that the legal advisors will probably have
5 a large input, which has been established for a number
6 of years now.

7 PROFESSOR CAMERON: So how do you -- or indeed do you -- as
8 Chef de Police maintain oversight of the quality of
9 decision-making and the competence of the
10 decision-making of centeniers?

11 A. In St Helier I do, yes. I mean I can't comment on other
12 parishes, but that should be the role, to maintain
13 oversight to make sure there is continuity and that the
14 centeniers fully understand that they're doing, that
15 they know why they're making these decisions and if
16 there are areas where there perhaps is more training
17 required then it's up to me to sort that out to make
18 sure that happens.

19 PROFESSOR CAMERON: Do you do that by reviewing their
20 decisions?

21 A. The only person who can technically review a centenier's
22 decision is the Attorney General, or in his absence the
23 Solicitor General. He is the only person who can
24 overturn that decision as the titular head of the
25 Honorary Police. But if I had a concern about

1 a particular case, if it had been prosecuted badly
2 I would speak to that centenier and if need be go to the
3 Attorney General. It's rare that happens but that
4 facility does exist to do that.

5 PROFESSOR CAMERON: I was more thinking about it in terms of
6 how you maintain a consistency of application of
7 standard in these circumstances?

8 A. Well, I keep an eye on the cases and what's going on
9 within our office to make sure that standard is being
10 applied. I keep an overview of what is happening
11 generally.

12 PROFESSOR CAMERON: And in terms of how centeniers conduct
13 Parish Hall Enquiries, do you observe those?

14 A. I have done on occasion when it is necessary. With
15 Parish Hall Enquiries there are quite strict guidelines
16 you have to follow, which are directed by the
17 Attorney General. You cannot -- you can only fine for
18 certain statute offences, you cannot fine for common law
19 offences and there are certain rules that have to be
20 applied and it is very important there is consistency
21 with fining, that people aren't being fined too broad,
22 that some people are not being fined excessively or some
23 people are not being under fined, so have to keep an eye
24 on that, and by doing that I can look at the Parish Hall
25 results and see what's happening and if I feel there has

1 been a very very big discrepancy I can approach that
2 centenier and say "Look I think there might be an issue
3 here" or the centeniers in general and there needs to be
4 a more consistent approach.

5 PROFESSOR CAMERON: And are the centeniers required to
6 record in writing the reasons for the charging decisions
7 and/or the decisions to refer a matter to the
8 Parish Hall?

9 A. They don't refer the matter to the Parish Hall. What
10 happens is the States of Jersey Police through their
11 filtering system will refer a case to the Parish Hall.
12 So the centenier -- there will be a recommendation on
13 the Parish Hall Enquiry sheet that will say "suitable
14 for Parish Hall" or "suitable for court" and the police
15 officer will give their reasons why. Now, if the
16 centenier goes against that recommendation they will put
17 a reason down as to why they have gone against it -- it
18 may be in the public interest or something like that --
19 and they will put that and they will record that reason
20 in writing.

21 We also keep a ledger book where if there is
22 a particular issue with a case we keep verbatim notes of
23 it so if someone is coming to the Parish Hall and they
24 suddenly say "That's not the way it happened, this is
25 the way it happened" and we might have to look into it

1 further, we will take verbatim notes in the room of what
2 was said by the individual.

3 PROFESSOR CAMERON: I think you said that in terms of the
4 charging decisions, that you would have to record
5 reasons for declining to charge. Do you equally record
6 the reasons for proceeding to charge?

7 A. For charging?

8 PROFESSOR CAMERON: Yes.

9 A. If we go against a decision of the Police or
10 recommendation of the Police, we probably might do that.
11 If they for instance recommend dealing with it at
12 Parish Hall and we decide "No, it's far too serious, it
13 has to go to court" then we probably would put our
14 reason down, that's the reason why.

15 PROFESSOR CAMERON: But there is no formal routine procedure
16 of recording reasons for decisions?

17 A. Yes, there is, there can be, but it's depending on the
18 circumstances. I mean it has to be said that some
19 cases, for instance -- there are cases that are going to
20 be borderline that could be dealt with at Parish Hall or
21 maybe should go to court, they fall in that kind of grey
22 area. Serious cases are quite clear-cut and you go to
23 the police station, it's obviously made out; the
24 evidential test is made out and the public interest test
25 is.

1 PROFESSOR CAMERON: Thank you, I have no further questions.

2 THE CHAIR: Thank you, Professor Cameron. Ms Leslie.

3 MS LESLIE: Centenier, if you had charged 279 and 281 would
4 that have precluded more serious charges being laid once
5 Mr Thomas had reviewed the further evidence that had
6 come to light?

7 A. Well, the charges that would have been put would have
8 been I believe at the time three grave and criminal
9 assault charges -- that is what would have been put,
10 nothing else at the time. At a later date if more
11 evidence had come to light then probably the Crown would
12 have directed that more charges be put either on the
13 indictment in the Royal Court or even in the Magistrates
14 Court.

15 MS LESLIE: Could additional charges have been made
16 alongside these, or could these charges have in a sense
17 been set aside and replaced by other charges?

18 A. They could be replaced by other charges, they could be,
19 yes.

20 MS LESLIE: Was any consideration given on that evening to
21 you charging 281 who had been interviewed but not 279
22 who hadn't?

23 A. No, my view was that because of what Mr Thomas wanted to
24 do it was totally inappropriate to charge either of
25 them. Certainly as they were very closely linked and

1 the allegations against them were virtually the same,
2 they were the same period of time and the same case, it
3 would have been totally inappropriate to do that.

4 MS LESLIE: And finally, what was your expectation when you
5 left Broadcasting House that night as to what would
6 happen next with --

7 A. My expectation would be that Mr Thomas would return to
8 Jersey, he would have reviewed the case and he would
9 have either called myself back in to charge, or not as
10 the case may be.

11 MS LESLIE: Thank you.

12 THE CHAIR: Thank you, Ms Leslie.

13 Mr Sadd, any questions arising from the Panel's
14 questions?

15 MR SADD: No.

16 THE CHAIR: Centenier Scaife, it just remains for me
17 therefore on behalf of the Panel to thank you for
18 attending today, thank you for your evidence to the work
19 of this Independent Inquiry. Thank you.

20 Mr Sadd, we will now rise for the day at 20 past 5
21 and sit again at 10 o'clock tomorrow morning.

22 (5.20 pm)

23 (The Inquiry adjourned until 10.00 am on Wednesday,
24 18 November 2015)

25

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