

# Independent Jersey Care Inquiry

Day 125

January 26, 2016

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1 Tuesday, 26 January 2016

2 (10.05 am)

3 THE CHAIR: Good morning, Mr Sadd. Good morning,  
4 Sir Philip.

5 MR SADD: Good morning, Madam Chair.

6 Statement from the Chair

7 THE CHAIR: Mr Sadd, before we begin with this morning's  
8 witness there is an announcement I wish to make and that  
9 is that, pursuant to Term of Reference 13, the Inquiry  
10 has instructed Queen's Counsel from England to review  
11 a selection of decisions made about whether to prosecute  
12 individuals alleged to have committed criminal offences  
13 against children in the care of the States of Jersey.  
14 Nicholas Griffin QC has completed a report into eight  
15 selected cases. This has been released to the  
16 Interested Parties and will be made available to the  
17 public in due course, along with the supporting  
18 documents.

19 Mr Griffin is due to give oral evidence to  
20 the Inquiry in February.

21 I wish to make clear that this report is only part  
22 of the Inquiry's work in pursuing Term of Reference 13.  
23 Other prosecution files will be put to relevant  
24 witnesses and examined by the Inquiry in the preparation  
25 of its final report.

1           Mr Sadd, I think we are ready to proceed.

2       MR SADD: Madam Chair, this morning the Inquiry hears  
3           evidence from Sir Philip Bailhache. His statement  
4           appears at {WS000699} and the documents behind that  
5           statement are the at {WD009001}. Sir Philip Bailhache  
6           would like to take the oath please.

7                           SIR PHILIP BAILHACHE (sworn)

8       THE CHAIR: Thank you. Put those to one side. Please make  
9           yourself comfortable and when you are ready, counsel  
10          will begin questions. We will take a break in about an  
11          hour, an hour and ten minutes, for the stenographer, but  
12          if you need for any reason a break before that please  
13          just indicate.

14                           Questions from COUNSEL TO THE INQUIRY

15       MR SADD: Sir Philip, you have provided a statement to the  
16          Inquiry, it is dated 22 January 2016, it is a statement  
17          that you have signed. Were you satisfied at the time of  
18          signing it that it set out the truth as far as you can  
19          remember?

20       A. Yes, indeed.

21       Q. Your statement and exhibits have been read by the Panel.  
22          For this reason, as I have told other witnesses  
23          previously, I won't be taking you through each and every  
24          paragraph.

25                           I need to remind you, as I do with other witnesses,

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1 Sir Philip, the relevance of your evidence to  
2 a selection of the terms of reference, specifically Term  
3 of Reference 4 requires the Inquiry to:

4 "Examine the political and societal environment  
5 during the period under review [the period under review  
6 being 1945 to 2014] and its effect on the oversight of  
7 children's homes, fostering services and other  
8 establishments ... on the response to reports of abuse  
9 by all agencies and by the public, on the eventual  
10 police and other investigations, and on the eventual  
11 outcomes." {GD000005/1}

12 Term of Reference 8 {GD000005/2} requires  
13 the Inquiry to look at whether systems existed to allow  
14 children and others to raise concerns and safeguard  
15 their wellbeing, and whether these systems were adequate  
16 and any failings they had and you will recollect that in  
17 your statements, Sir Philip, you deal with the issue of  
18 disclosure by children who allege abuse.

19 Term of Reference 9 requires the Inquiry to:

20 "Review the actions of the agencies of government,  
21 the justice system and politicians during the period  
22 under review, in particular when concerns came to light  
23 about child abuse and establish what, if any, lessons  
24 are to be learned."

25 Then Term of Reference 11 please which says:

1 "Establish whether, when abuse was suspected, it was  
2 reported to the appropriate bodies, including the States  
3 of Jersey Police; what action was taken by persons or  
4 entities, including the Police, and whether this was in  
5 line with policies and procedures of the day and whether  
6 those policies and procedures were adequate."

7 Just summarising, if I may, by way of background,  
8 you tell the Inquiry in paragraph 1 {WS000699/1} that  
9 you qualified as a Jersey advocate in 1969, having been  
10 called to the Bar of England and Wales in 1968. You  
11 were elected as a Deputy of Grouville in 1972, appointed  
12 Solicitor General in 1975, then Attorney General in  
13 1986, a position, as I understand it, that you held  
14 until 1993. In 1994 you became Deputy Bailiff and  
15 Bailiff in 1995, a position you held until 2009.  
16 In October 2011 you were elected Senator and you  
17 presently serve, as I understand it, as an assistant  
18 minister to the Chief Minister, is that right?

19 A. No. I serve now as the Minister for External Relations.

20 Q. And that's since when please?

21 A. That would have been I think since about October 2013.

22 Q. And before that my description of you as an assistant  
23 minister to the Chief Minister, is that right or not?

24 A. Yes. When I was elected in 2011 I was given  
25 responsibility for the conduct of external relations.

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1 At that time there was no ministry of external relations  
2 and the work was conducted in the Chief Minister's  
3 Department and so I was appointed as an assistant  
4 minister to the Chief Minister with responsibility for  
5 external relations. When the Ministry was created in  
6 2013 I was elected by the States as the first Minister  
7 for External Relations.

8 Q. You tell the Inquiry that the role of Bailiff,  
9 Deputy Bailiff and Law Officers, which includes the  
10 Attorney General and the Solicitor General, were  
11 collectively known for a time as the Crown Officers.  
12 Can you explain please the Bailiff's judicial function?

13 A. The Bailiff is effectively the Chief Justice.

14 Q. So effectively that places the Bailiff as head of the  
15 judiciary in Jersey?

16 A. It places him as head of the judiciary in Jersey and  
17 incidentally as President of the Jersey Court of Appeal.

18 Q. You say, Sir Philip, at paragraph 8 {WS000699/2} that  
19 the Court of Appeal oversees the judicial functions of  
20 the Bailiff and the Deputy Bailiff. What does that mean  
21 precisely?

22 A. Well, what that means is that there is a right of appeal  
23 from the Royal Court to the Court of Appeal and the  
24 judicial decisions of the Bailiff and the Deputy Bailiff  
25 are amenable to appeal before that court.

1 Q. Again, as I understand it, under the States of Jersey  
2 Law 2005 the Bailiff also has a legislative function,  
3 acting as President of the States, in effect presiding  
4 over the States. Have I understood that rightly?

5 A. Yes, you have.

6 Q. What does that role involve in practice?

7 A. In practice that role involves acting as a speaker of  
8 the legislative assembly. It is a non-political role.  
9 The speaker exercises no political functions and the  
10 functions of the speaker I suppose are very much the  
11 same as the functions of the speaker in the House of  
12 Commons, to maintain order and to apply the Standing  
13 Orders of the States.

14 Q. And if I heard you correctly, Sir Philip, the Bailiff in  
15 that role has no voting rights, is that right?

16 A. No.

17 Q. In situations where the States might be debating  
18 judicial reform, or legislative reform, does the Bailiff  
19 stand out of those debates, given his role as head of  
20 the judiciary?

21 A. I'm sorry, would you mind repeating that question.

22 Q. Yes, in the event that the States is debating judicial  
23 reform, for instance, at that point what hat does the  
24 Bailiff wear: head of the judiciary or presiding over  
25 the States?

1 A. When the Bailiff is sitting in the States he is The  
2 President of the States, he is not acting as a judge in  
3 any way.

4 Q. Where does the office of Bailiff stand in the governance  
5 of Jersey, is it the most senior, non-elected position?

6 A. The Bailiff is not part of the government of Jersey.  
7 The Bailiff is the chief citizen of the Island and in  
8 that capacity he exercises various functions like  
9 receiving members of the Royal Family, assisting in the  
10 entertainment of ambassadors and high commissioners and  
11 that kind of thing.

12 Q. And by describing the Bailiff as the chief citizen of  
13 the Island, should the Inquiry also understand that he  
14 is representative of the citizens of Jersey?

15 A. In a sense, yes.

16 Q. Then we come on to look at the role of the  
17 Attorney General. What is the Attorney General's role?  
18 I understand it differs from that in the UK, is that  
19 right?

20 A. Yes. The Attorney General is the Director of Public  
21 Prosecutions. Occasionally he is the public prosecutor  
22 if he conducts cases himself. He is the legal advisor  
23 to the Government of Jersey and he is the legal advisor  
24 to the Crown on matters of Jersey law.

25 Q. And finally the role of Solicitor General?



1 A. The Solicitor General is the deputy to the  
2 Attorney General.

3 Q. So does it ordinarily follow that the Solicitor General  
4 ultimately becomes the Attorney General; is that how the  
5 succession works?

6 A. Not always. Sometimes it does, but sometimes it does  
7 not.

8 Q. And does it also come about by custom that those serving  
9 as Attorney General ultimately become Bailiff?

10 A. Again that -- that was the traditional system. There  
11 was a cursus honorum: a Crown Officer would start at  
12 Solicitor General, Attorney General and then Bailiff.  
13 In recent years it is not quite as straightforward as  
14 that and I think that if a person is appointed as  
15 Deputy Bailiff there is certainly a presumption that he  
16 would become Bailiff in due course because the role of  
17 Deputy Bailiff is seen in a sense as a training ground  
18 for Bailiff.

19 The link between Attorney General and Deputy Bailiff  
20 is not quite as strong now as it was a few decades ago.

21 Q. And who appoints the Attorney General?

22 A. The Crown.

23 Q. By the Crown, who does that mean in practice? Is it the  
24 Bailiff who appoints the Attorney General?

25 A. No. In practice the appointment is made by the

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1 Secretary of State for Justice who is the Privy  
2 Councillor responsible to the Queen for  
3 the Channel Islands. But there is a process -- I don't  
4 know whether you want me to deal with that.

5 Q. Just simply, is the process on the recommendation by  
6 individuals in Jersey to the Secretary of State?

7 A. Yes, the --

8 Q. And who makes the recommendation, sorry?

9 A. There is an appointments board now and the appointments  
10 board makes its recommendation to the  
11 Lieutenant Governor who is the Queen's personal  
12 representative in Jersey and the Lieutenant Governor  
13 will relay that recommendation to the Secretary of State  
14 and the Secretary of State in turn makes his  
15 recommendation to the Queen.

16 Q. And when was the appointments board set up?

17 A. It's difficult to answer that question. I think  
18 probably the process has been evolving in the last  
19 15 years. I think probably the current Bailiff or the  
20 current Deputy Bailiff are the better people to answer  
21 that question.

22 Q. And should I understand that sitting on the appointments  
23 board will be the Bailiff and the Deputy Bailiff?

24 A. For which office?

25 Q. For the office of Attorney General?

1 A. I don't know the answer to that question.

2 Q. Can we look please at your time as Solicitor General and  
3 if we could have up on screen please {WD006311}. This  
4 is a record, Sir Philip, of your attendance at a meeting  
5 at Brig-y-don in December 1981, we can see at the top of  
6 the page there, in which you set out the role of  
7 Crown Officers in child care. If we go halfway down the  
8 page please, in the left-hand column we can see  
9 reference there to "Guest speaker", do you have that?

10 A. Yes, I see that.

11 Q. And there's reference there to "Mr Philip Bailhache  
12 HM Solicitor General was welcomed by Mr Manton" and it  
13 goes on to record:

14 "Mr Bailhache spoke of the role of the Crown  
15 Officers in child care."

16 And you are recorded as saying:

17 "He stressed the need to achieve a fine balance  
18 between the interests of the child and the family."

19 And you explain further on in the note, or a record  
20 of your explanation further on in the note is how  
21 children came into care. If we go please to the second  
22 page {WD006311/134} and you say at the top there:

23 "Mr Bailhache said that in the past the Court tended  
24 to place much more emphasis on the rights of the parents  
25 but now more and more the rights of the children were

1           being considered first."

2           Then two lines below that, reading the extract:

3           " ... it was most important that cases should be  
4           referred to the Court sooner rather than later."

5           Presumably, Sir Philip, this note suggests that at  
6           the time, 1981 -- and I recognise it's a long time  
7           ago -- that in your position as Solicitor General you  
8           were aware of how children could be ill-treated in  
9           the home, so as to justify being taken into care?

10          A. Yes. Can I just say that it's not only 30 years ago,  
11          but I don't believe I have ever seen this document  
12          before.

13          Q. It forms part of the documents that were provided to  
14          you. I'm sorry if you haven't seen it before, but it  
15          was part of the bundle provided. If you need more  
16          time ..?

17          A. No, I don't need more time.

18                 The question was, I'm sorry?

19          Q. Presumably as Solicitor General at the time you were  
20          aware of how children could come into care as  
21          a consequence of being ill-treated at home?

22          A. Yes, absolutely. It was the responsibility of the  
23          Law Officers to make the necessary representation to  
24          the Court.

25          Q. Why was it important, as we see you recorded there, that

1 cases should be referred sooner rather than later?

2 A. I think that this was a familiar problem and certainly  
3 one which I was aware of at a very much later stage when  
4 I was sitting as a judge in the Royal Court and that is  
5 that the Children's Service from time to time would be  
6 much more concerned with the interests of the parents  
7 than the interests of a child, or that is how it  
8 appeared to members of the Court, and I think that was  
9 probably why I made the point in 1981 that if there was  
10 a problem with a child it was important that the Court  
11 should have the opportunity to see what was the best  
12 thing to do at an earlier stage rather than when it was  
13 too late.

14 Q. I think you started sitting as a judge in the  
15 Royal Court some 14 years later, about 1995, is that  
16 right?

17 A. Yes, 1994.

18 Q. And at that stage is it your evidence that you were  
19 struck that the Children's Service still seemed to  
20 consider the rights of the parents as against those of  
21 the child?

22 A. From time to time, yes.

23 Q. Paragraph 3 please, you say there in the late 1970s the  
24 Law Officers were in practice the Law Officers'  
25 Department -- this is in effect page 2 at the top of the

1 page there. You say:

2 "... the only legally qualified members of the  
3 Law Officers' Department were the Law Officers  
4 themselves. As a result, I prosecuted a considerable  
5 number of cases." {WS000699/2}

6 Was that both in your role as Attorney General and  
7 Solicitor General?

8 A. Yes.

9 Q. You say that these cases would have included historical  
10 sexual cases. A recurrent issue in this Inquiry,  
11 Sir Philip, relating to prosecuting historic cases of  
12 sexual abuse, has been the difficulty of corroboration,  
13 something that you deal with later on in your statement  
14 and that we will come on to, but presumably, as at 1975  
15 when you were appointed Solicitor General, that was an  
16 issue then as well?

17 A. The issue of corroboration? I don't recall it being  
18 a particular issue in 1975.

19 Q. As one of the Law Officers you would have provided  
20 advices on charge, is that right, at the time?

21 A. Yes.

22 Q. So can you assist the Inquiry with any recollection of  
23 historic abuse cases that were taken forward in the late  
24 1970s, in your role as Solicitor General?

25 A. I must have dealt with thousands of cases during my time

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1 as a Law Officer, as I say, and I don't think there is  
2 any particular one that I would recollect unless you  
3 want to draw my attention to one.

4 Q. No. The reason I ask you is you say this in terms at  
5 the top of page 2 {WS000699/2} and I just wanted to  
6 understand from where it is derived, the third line  
7 there, you say "I prosecuted a considerable inspect of  
8 cases. This would have included historic sexual cases"  
9 and it was just trying to understand the basis upon  
10 which you say that. Is that an assumption, or something  
11 that you remember doing?

12 A. No, it's not an assumption. I can't give you precise  
13 statistics, but my general recollection would be that  
14 a historic abuse case would come up once a year, perhaps  
15 twice a year, and I would have prosecuted some of those.

16 Q. And what you understand by historic abuse cases, would  
17 that include, or have included a complainant as an adult  
18 alleging abuse as a child?

19 A. Yes, certainly.

20 Q. Did any of those cases, as far as you can remember,  
21 relate to children who had been, or were in care?

22 A. I'm sorry, I can't remember. I expect the answer is  
23 yes, but I can't remember.

24 Q. And just building on this issue of corroboration, you  
25 say that you may have prosecuted -- I think your figure

1           was one a year. Presumably therefore you would have  
2           been aware in prosecuting those cases of the harm done  
3           to the complainant?

4           A. Of course.

5           Q. Was there an understanding in that era, as far as you  
6           were concerned, of the harm done emotionally to the  
7           complainant?

8           A. Yes, I'm sure there was.

9           Q. The question, Sir Philip, was directed more at whether  
10          you had that understanding?

11          A. Whether I had the understanding of the emotional harm  
12          caused to victims of child abuse?

13          Q. Yes.

14          A. Yes, certainly.

15          Q. At paragraph 4 {WS000699/2} you tell the Inquiry that  
16          you were appointed Attorney General in 1986. Can we  
17          look at a case in which you advised as Attorney General.  
18          This is at {WD007317/11} please. Again this formed part  
19          of the documentation which you were provided with, but  
20          of course if you can't remember seeing this I will give  
21          you as much time as you need, Sir Philip. But just  
22          briefly, I recognise this isn't a case concerning abuse  
23          of children in care, it may however provide an insight  
24          into prevailing attitudes at the time.

25                 The case concerned a male adult whose job brought



1 him into contact with children. Complaints were made by  
2 young adolescent girls that the adult are indecently  
3 assaulted them. In both cases he had put his hand down  
4 their tops. One child complained to her parent.

5 The Police interviewed the suspect, who admitted what he  
6 had done and he apologised in relation to one of the  
7 complainants. You as Attorney General were sent  
8 a police report and a covering letter was provided to  
9 you by Detective Inspector Fitzgerald in July 1988 and  
10 the Police report attached to that letter includes  
11 accounts of the distress caused to the girls.

12 What I want to take you to first, Sir Philip, is  
13 page 12, it is the second page of the document  
14 {WD007317/12}. We see the first page, it is a letter of  
15 6 July 1988, and the first paragraph sets out the  
16 allegations of indecently assaulting and the second  
17 paragraph says this:

18 "It is not our normal practice to refer such cases  
19 to you for advice and guidance - but the circumstances  
20 of this case are difficult."

21 What would have been, if you can remember,  
22 Sir Philip, the normal practice in relation to adult  
23 sexual assaults on children; would they have been dealt  
24 with by the Police providing the decision as to whether  
25 or not to take forward, or would there have been an

1           automatic reference to the Law Officers' Department?

2       A. No, I wouldn't have expected there to be a reference to  
3       the Law Officers in every case. It would depend on the  
4       circumstances. Most simple cases I'm quite sure would  
5       have been prosecuted.

6       Q. So in what cases, as far as you can remember, would your  
7       advice have been sought in the context of children being  
8       sexually assaulted by adults?

9       A. I would have thought only if there was some particular  
10      factor which made the case more complicated than the  
11      average case.

12      Q. So severity wouldn't necessarily have been the issue  
13      triggering referral?

14      A. Well, severity might have been. If the Police were sure  
15      that the case was going to be referred to the  
16      Royal Court then occasionally they would have referred  
17      a case to the Law Officers at an earlier stage.

18      Q. DI Fitzgerald then sets out the reasons why he has  
19      approached you, concerns from the Senior  
20      Child Care Officer, Mr A Skinner, that for some time the  
21      suspect had been making sexual advances to young pupils,  
22      it had been investigated in 1983, and then the final  
23      paragraph on that page:

24                    "In the present case there is ample evidence to  
25      prosecute [the suspect] for indecent assault on 14-year

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1 old ... and possibly adequate evidence in respect of  
2 [the other complainant]. Further inquiries could also  
3 be made to establish if any of his past or present  
4 pupils have been subject to assault, but I see little  
5 point in making extensive inquiries as I feel that, due  
6 to [the suspect's] age, the main consideration should be  
7 to prevent him reoffending."

8 The approach there put forward by the detective  
9 inspector, did that change whilst you were  
10 Attorney General? He is giving a rationale effectively  
11 as to why he is not going to see if there are other  
12 complainants in relation to this adult and the rationale  
13 he provides is he is old, effectively, and that the main  
14 consideration should be to prevent his reoffending. Can  
15 you recollect if, in your time in office as  
16 Attorney General, that approach changed?

17 A. I don't think I -- I don't think I would say that any  
18 specific change of policy took place during my time as  
19 Attorney General. Each case has to be dealt with on its  
20 own individual merits and I don't recall very much about  
21 this case, but what seems to be the position is that the  
22 offender was extremely old and that obviously affected  
23 the approach of the investigating officer.

24 Q. Can we go then please to the last page of the letter,  
25 page 13 on Magnum {WD007317/13}, where DI Fitzgerald

1 writes:

2 "[The suspect] has told woman Detective Constable  
3 Laisney that he intends to continue with his  
4 [profession] and therefore it is likely that he will  
5 indecently assault other children. I therefore feel  
6 that it is probably in the public's interest for  
7 [the suspect] to be charged and presented at Court. The  
8 only possible alternative being that he is placed on  
9 voluntary probation at a Town Hall Centenier's Enquiry.

10 "I respectfully submit the report for your due  
11 consideration."

12 Sir Philip, what would have been the circumstances  
13 in which this would have been dealt with by voluntary  
14 probation at a Parish Hall Enquiry, as being suggested  
15 by the detective inspector?

16 A. I think it would have been unusual for a case of that  
17 kind to be dealt with at the Town Hall by voluntary  
18 probation. The only possible advantage of dealing with  
19 it in that way is that it would have enabled the Police  
20 to keep tabs on the offender for a period of time before  
21 a decision was made as to what to do with him.

22 Voluntary probation is very much in inverted commas  
23 I think, it wasn't an order of a court, it was just  
24 a means whereby the assistance of the Probation Service  
25 could be obtained to monitor the activities of the

1           offender and to ensure that he wasn't a danger to  
2           society.

3           I mean I've never -- I don't recall that kind of  
4           approach being adopted in relation to offenders of this  
5           age. It was much more a process that was used for young  
6           offenders to keep them out of the Court and to try to  
7           get them back on the right tracks.

8       Q.   Were you aware, Sir Philip, in your time as  
9           Attorney General, of cases of adult sexual assault on  
10          children -- let's leave to one side the age of the adult  
11          and let's look at someone younger, in their 40s or  
12          50s -- of such a case being dealt with by way of  
13          Parish Hall Enquiry?

14       A.   I can't recall any such event.

15       Q.   Do you think it would have ever been appropriate for  
16          such a case to be dealt with by way of Parish Hall  
17          Enquiry?

18       A.   I very much doubt it.

19       Q.   We then go please to your reply at page 11 of this  
20          exhibit, so back to the first page {WD007317/11}, again  
21          giving you an opportunity to read it. You say in the  
22          fourth line:

23                 "Despite [the suspect's] age he should be prosecuted  
24                 for the two indecent assaults. So far as the assault  
25                 upon the 14-year old child is concerned there is a clear

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1 admission. So far as [the other complainant] is  
2 concerned there is corroborative evidence in the similar  
3 fact evidence of the assault upon the child and,  
4 probably, in the form of recent complaint."

5 And you conclude your letter:

6 "The 1983 incident ..."

7 Which is some years before:

8 " ... makes it clear that [the suspect] is not a man  
9 who should be trusted to teach children and  
10 a prosecution is, in my opinion, the only sure means of  
11 ensuring that this result is achieved."

12 In the light of the available evidence was there in  
13 fact any legitimate alternative to prosecution in this  
14 case?

15 A. I'm sorry, was there any ..?

16 Q. Alternative other than prosecution, from what you have  
17 learned in looking at the documents?

18 A. From my perspective I would have thought there was no  
19 alternative to prosecution.

20 Q. Should the Inquiry take DI Fitzgerald's suggestion of an  
21 alternative route as a reflection of how offences of  
22 this sort were looked on at the time?

23 A. We're talking about the late 1980s?

24 Q. Yes.

25 A. I would have thought not. I would have thought that

1           during the late 1980s there was no question but that  
2           offences of this kind should be prosecuted.

3           Q. Do you have any idea where the possibility of voluntary  
4           probation might have come from?

5           A. No.

6           Q. Can we go back please to your statement and paragraph 39  
7           {WS000699/9} in which you were invited to comment on  
8           a prosecution that took place whilst you were  
9           Attorney General, the case of Leslie Hughes. To remind  
10          you, Sir Philip, the case is that of a house father  
11          convicted of sexual assaults of children in  
12          Clos de Sables Family Group Home. As you note in your  
13          statement, you were Attorney General at the time. You  
14          say at paragraph 41 "I do not recall this case" and you  
15          say that the Inquiry would do better to ask  
16          Cyril Whelan, "The responsibility for this case was  
17          delegated to him". Your statement exhibits a memo from  
18          Cyril Whelan dated August 1989 and I wondered if we  
19          could look together at that note, so this is at  
20          {WD009001/49} please.

21                 We can see at the top of the page it is addressed to  
22          Attorney General, copied we can see to the  
23          Solicitor General. The year has been -- sorry, on my  
24          page it has -- it is 1989, "Royal Court sentencing:  
25          sexual offences against children Leslie Hughes" and

1 Cyril Whelan writes:

2 "You will recall from earlier file notes that  
3 I worked quite closely with Detective Sergeant Bonney in  
4 directing the gathering of evidence and the framing of  
5 charges.

6 "I noticed recently in the press that Hughes had  
7 pleaded guilty to everything (David Le Cornu acts).  
8 This came as a big relief and while there's 'many a slip  
9 etc ...' there is a good chance that the plea will be  
10 maintained in the Royal Court.

11 "There are some points which are probably obvious  
12 but which I jot down for the sentencer in case it is not  
13 one of 'my weeks'."

14 Then on the second page {WD009001/50} he directs you  
15 to various issues. It is worth noting on the third  
16 paragraph down he writes:

17 "Detective Sergeant Bonney deserves an honourable  
18 mention. You will see from the Q&As that getting  
19 anything out of Hughes was like pulling teeth - but  
20 a noticeably good interview technique by Bonney produced  
21 results. Additionally, his handling of the case,  
22 particularly his dealings with witnesses, was thorough  
23 and intelligent."

24 Then he goes on at the next passage:

25 "Despite the revulsion which the offences cause it



1 is true to say that we're going to have to credit Hughes  
2 with a high degree of cooperation."

3 Then to the final page please {WD009001/51}, your  
4 attention is drawn to the following:

5 "We must take the initiative in causing a thorough  
6 investigation into the conduct of one of the Children's  
7 Officers concerned. Children were complaining to her of  
8 sexual abuse and were being ignored. At the moment that  
9 is no more than an allegation but the statements -  
10 including her own - give cause for profound concern, and  
11 the issue must be looked at on our initiative, after the  
12 resolution of the criminal proceedings."

13 First off, Sir Philip, would it have been routine  
14 for you to have been notified of cases in this way?

15 A. It would be a matter for the Crown Advocate. I think it  
16 probably would be routine for any case which was likely  
17 to go to the Superior Number of the Royal Court to be  
18 notified to the Attorney General.

19 Q. Why would that have been the case?

20 A. Because of the gravity of the offence.

21 Q. Would there be circumstances in which were you  
22 available, you would have acted for the prosecution in  
23 the sentencing hearing?

24 A. I can't remember what the policy was in 1988. In the  
25 middle 1970s and the early part of the 1980s the

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1 Law Officers were very much more concerned in  
2 prosecutions, but the Crown Advocates Law was passed in  
3 1987 with a view to allowing the Attorney General to  
4 appoint Crown Advocates who could conduct prosecutions  
5 on his behalf. The reason for that law was that the  
6 Law Officers were under considerable pressure and  
7 couldn't deal with everything. So by 1988 or 1989  
8 I would have thought that quite a considerable number of  
9 prosecutions were being dealt with by Crown Advocates.

10 Q. So this is in contrast, Sir Philip, to the earlier days  
11 when you had started in 1975 when you were appointed, at  
12 that point, as Solicitor General? There you had a busy  
13 diary prosecuting --

14 A. Yes.

15 Q. -- and by this date and the change in the law, the  
16 Attorney General stepped back from that position, is  
17 that right?

18 A. Yes. Not entirely, but the emphasis probably shifted.

19 Q. And to what extent in this period, that is 1988/1989,  
20 would the Attorney General have been keeping abreast of  
21 cases that were coming before the Court, which he  
22 wouldn't necessarily be prosecuting?

23 A. Well, probably not to a very great extent.

24 Q. The issue that I have taken you to on that last page  
25 {WD009001/51}, which is taking the initiative and

1 causing a thorough investigation into the conduct of one  
2 of the Children's Officers concerned and the reasons for  
3 doing so, does that help you remember in any way this  
4 case and that situation?

5 A. No, I'm afraid not.

6 Q. Can we go please then to {WD005571} please. This isn't  
7 a document included in your exhibits to your statements,  
8 Sir Philip, but formed part of the provision of  
9 documents provided to you. It is a letter dated  
10 10 October, as you can see, 1989. It comes from the  
11 Attorney General's Chambers and is written to  
12 AJ Skinner, then Children's Officer, and it is in  
13 relation to the Hughes case, as you can see, and it is  
14 written by Cyril Whelan. At the bottom of the first  
15 page please:

16 "Whatever the surrounding circumstances may be,  
17 clearly it can be established that complaints were made  
18 to [the adult] and that she took no effective action.  
19 You have indicated that you will wish to look further  
20 into the matter. If you are satisfied that  
21 [the adult]'s response to the complaints was at fault,  
22 you will no doubt wish to consider what action to be  
23 taken. In addition you will no doubt wish to give  
24 thought to establishing a fixed policy by virtue of  
25 which any complaint, no matter how apparently

1 ill-founded, will be given formal attention."

2 Given that this is from the Attorney General's  
3 Chambers, was this delegated authority on the part of  
4 your office to Mr Whelan?

5 A. Yes. I don't remember whether I saw that letter or not,  
6 but I would think that I would have had a discussion  
7 with Cyril Whelan about it, but Cyril Whelan was a very  
8 senior Crown Advocate and a very good Crown Advocate and  
9 if the matter had been delegated to him I'm quite sure  
10 that he would have taken the issue through to its upmost  
11 conclusion.

12 Q. Can we then move four years later to January 1993 --

13 A. May I just add to that that we're looking at a snapshot  
14 of a case at a particular time and what we don't have is  
15 sight of any correspondence which might have followed  
16 this letter from Mr Whelan. I don't know whether  
17 Mr Whelan was successful in arranging for Mr Skinner to  
18 have some kind of policy which would have prevented what  
19 had happened in this case from happening again. Maybe  
20 he did, but I think the Panel ought to be cautious about  
21 drawing conclusions from one particular document without  
22 looking at the whole picture.

23 Q. Well, perhaps your concern is answered by the document  
24 that we're going to look at together now. This is  
25 a meeting four years later in January 1993. It is

1 a meeting between yourself, Mr Skinner, Dr King -- she  
2 was then Head of Probation -- Marnie Baudains and Police  
3 Sergeant Morgan. It is a memo that can be found at  
4 {WD009001/43}. It is exhibited as PB5.

5 You cover this, Sir Philip, at paragraphs 35 to 38  
6 of your statement {WS000699/8}. Before we look at the  
7 document together, under the heading "The duty to report  
8 allegations of abuse", where you're discussing the  
9 document we're going to look at, you say at  
10 paragraph 36:

11 "The issue arose because children who were victims  
12 of abuse often wanted to tell someone about the abuse  
13 they had suffered but did not want the matter to be  
14 pursued any further."

15 A. That's slightly different, if I may say so, from the  
16 case we were looking at earlier on.

17 Q. Yes, but what you come on to discuss in the memo is the  
18 extent to which there should be immunity afforded child  
19 care officers to whom disclosure had been made, but in  
20 circumstances where the person making disclosure didn't  
21 want the matter to be taken any further. I can see that  
22 it's a variation on the issue, but generally my  
23 questions are directed at your knowledge and  
24 understanding --

25 A. It is a different matter entirely, if I may say so. The

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1 previous case was a case where the -- apparently the  
2 child care officer did not act on complaints that were  
3 made to her and the suggestion was that she -- by  
4 the Crown Advocate -- that she should have done. This  
5 is a different issue, which is a question of where there  
6 is no wish on the part of the victim to have the matter  
7 go through the legal process.

8 Q. Let's look, if we may, at the document, as I say.

9 {WD009001/43}. We can see there at page 43,  
10 11 January 1993:

11 "I attended a meeting in the old committee room ..."

12 You set out who attended:

13 "The purpose of the meeting was to consider the  
14 exchange of correspondence with Mr Skinner concerning  
15 the question of counselling for victims of sexual abuse  
16 and the duty to report the commission of criminal  
17 offences."

18 And you write here:

19 "I suggested that there were two primary  
20 considerations. The first was the age of the child. It  
21 was only when a child had achieved a necessary stage of  
22 maturity that any question could arise of preserving  
23 confidentiality. The second was whether the abuse was  
24 continuing. It would not in my view be appropriate for  
25 officials to condone continuing sexual abuse of young

1 people."

2 Paragraph 3:

3 "Mr Skinner said that it was only in cases where  
4 a child was at least 13 that this kind of problem might  
5 arise. In general he explained that there was often  
6 a process of confidence building with the child which  
7 might last over a period of months. There was often  
8 doubt as to the precise moment when it could be said  
9 that a complaint had been made. Information was built  
10 up until a stage was reached when evidence had been  
11 obtained."

12 And then you set out your decision, or your advice:

13 "I said that I thought that I could assist where  
14 a child of this age (13 plus) disclosed that she had  
15 been the victim of sexual abuse (which was not  
16 continuing) but would only speak if she was assured of  
17 confidentiality. I was prepared to grant immunity from  
18 prosecution to any child care officer who learned of the  
19 commission of a criminal offence which the child was not  
20 prepared to formalise into a complaint, provided that  
21 the Children's Officer had been fully involved in the  
22 discussion. The purpose would be to allow counselling  
23 to take place in the interests of the child.

24 "Mr Skinner said, after further discussion, that if  
25 the sexual abuse was continuing he thought that there

1           could be no question of offering confidentiality to the  
2           child."

3           On a point of detail please, Sir Philip, why did you  
4           consider that for under 13s confidentiality could not be  
5           preserved following disclosure? Was it an issue of  
6           maturity?

7           A. Yes, I would think that was probably what I had in mind.

8           Q. The reference to immunity, what would have been the  
9           legislative basis for prosecuting a child care officer  
10          in those circumstances if the abuse was not continuing  
11          at the time of the disclosure?

12          A. I think it would depend upon the gravity of the offence  
13          which had been disclosed to the child care officer, but  
14          if it was a serious offence and what we might describe  
15          as a "crime" or a "délit" then the child care officer  
16          would have been exposing herself to the risk of  
17          prosecution for an offence of misprision of felony.

18          Q. Forgive me, I misheard that.

19          A. Misprision of felony.

20          Q. Meaning?

21          A. Failure to disclose the commission of a serious offence.  
22          It was an offence in England I think until probably the  
23          1980s, but I don't recall precisely when it was  
24          repealed.

25          Q. And conversely, Sir Philip, what would have been the



1           legal basis for granting immunity, was it an issue of  
2           the public interest?

3           A. Yes, it would have been a public interest matter.

4           Q. Can we look at the next page please --

5           A. I may say that I don't ever recall granting immunity.

6           This was a hypothetical discussion on an issue which  
7           concerned not only the Children's Service but also the  
8           Probation Service, but I don't recollect that any  
9           immunity was ever granted in a particular case.

10          Q. Does it follow from that that no such case came before  
11          you, or that where you were approached you decided that  
12          immunity shouldn't be given?

13          A. I don't recall any case coming before me.

14          Q. Paragraph 6, page 44 of the document we have been  
15          looking at together {WD009001/44}:

16                 "Dr King said that the Probation Service  
17                 occasionally experienced the same problem where a victim  
18                 of sexual abuse (not always a child) was prepared to  
19                 talk about the abuse but did not wish the matter to go  
20                 any further. I agreed [that is yourself] that while  
21                 information of such abuse coming from the perpetrator of  
22                 a crime must necessarily be reported to the Police, it  
23                 need not be so reported if the victim did not wish to  
24                 make a complaint. In such circumstances however the  
25                 information would be passed to the Child Protection

1 Team. As a matter of police intelligence it would be  
2 passed by the Police member of the Child Protection Team  
3 to the appropriate department for entry on the Police  
4 computer."

5 If you could just help the Inquiry understand  
6 please, Sir Philip, how did the two go hand in hand,  
7 that is providing confidentiality on the one hand to the  
8 individual disclosing the abuse and not wanting it to be  
9 taken forward, and on the other the matter nonetheless  
10 having to be recorded and reported?

11 A. I think the object was to try to protect the child from  
12 being obliged to go through a legal process if she did  
13 not want to do so and was not prepared to cooperate with  
14 the authorities to enable a prosecution to take place.  
15 The information might have had a broader interest to  
16 the Police. I'm surmising now because I don't recollect  
17 what the process was at Police Headquarters, but  
18 I surmise that the purpose of ensuring that it was  
19 recorded was to help the Police in case there was some  
20 related matter in which the information might have been  
21 of some assistance.

22 Q. Can we go then please to page 46 of your exhibits  
23 {WD009001/46}, which is your response to the meeting,  
24 a letter dated 5 February 1993. This is in fact  
25 a letter to the Chief Probation Officer. There was

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1 a letter written in identical terms to the  
2 Children's Officer, Anton Skinner, adapted to the  
3 circumstances, and you say at page 47 {WD009001/47} that  
4 you weren't going to grant an immunity in the case of  
5 probation officers unless:

6 "(i) the child making the report is aged at  
7 least 13;

8 "(ii) the probation officer shares with the Chief  
9 Probation Officer all the information which is imparted  
10 to her and;

11 "(iii) it is in the public interest (in the widest  
12 sense) that immunity be granted."

13 And the corresponding phraseology, Sir Philip, in  
14 the letter to Children's Services was, in place of (ii)  
15 there you wrote:

16 "The child care officer shares with the  
17 Children's Officer all information which is imparted to  
18 her."

19 And at (iii) you repeat wider public interest. By  
20 public interest in the wider sense can you recollect  
21 what it was you meant?

22 A. I think probably the words explain themselves, don't  
23 they? Are you suggesting there's a difference between  
24 what I said to the Chief Probation Officer and to the  
25 Children's Officer?

1 Q. Not at all. It is just trying to understand the phrase  
2 "public interest (in the widest sense)". There is no  
3 nuance between the two letters, it is just that phrase.  
4 What is it you are driving at there?

5 A. I think I must have been making it clear that the public  
6 interest was not to be narrowly interpreted in the sense  
7 of what might be in the interests of this particular  
8 child, but in the interests of children as a whole.  
9 I think that was probably what I meant.

10 Q. The reason I ask, Sir Philip, is because when we looked  
11 at the terms of reference in the opening of your  
12 statement, the Inquiry is required to look at society in  
13 Jersey at any given moment and it's understanding and  
14 the evolution of understanding in relation to cases  
15 involving child sex abuse, or that is part of it, and  
16 here it is just trying to understand what the public  
17 interest incorporates here. Is that a reflection of an  
18 understanding on the part of these agencies and yourself  
19 of the difficulties associated with victims who have  
20 been abused, that is victims disclosing that abuse?

21 A. That would have been part of it, I'm sure.

22 Q. And a reflection therefore of your understanding of that  
23 difficulty?

24 A. Yes. I mean these are very difficult cases. These are  
25 cases whereas a matter of general principle there should

1           be a prosecution, there should be -- whoever who has  
2           committed the abuse should be brought to book, but in  
3           very unusual circumstances the victim doesn't wish the  
4           matter to be taken forward and therefore there is a lot  
5           of balancing of different interests and factors which  
6           had to be taken into account before any public officer  
7           could agree that the public process would not be  
8           engaged.

9           Q.   And presumably from the documents that you and I have  
10           looked at together in the last few minutes, that was an  
11           understanding that you had at that time?

12          A.   Yes.

13          Q.   Please can we go back to your statement and page 9  
14           {WS000699/9}. At the top of the page please, looking at  
15           this issue of immunity, and you say there:

16                   "I acknowledged that there would still be cases  
17                   where the public interest mandated that the offence  
18                   should be reported to the relevant authorities."

19                   What would be the circumstances, Sir Philip, in  
20                   which cases should be reported to the relevant  
21                   authorities, notwithstanding the confidentiality assured  
22                   the victim?

23          A.   Well, I think what I'm saying here is that there are  
24           occasions when the public interest mandated that the  
25           victim could not be given confidentiality. The public

1 interest mandated that the prosecution process should be  
2 engaged.

3 Q. And as part of that decision would the severity of the  
4 offending be an element?

5 A. Yes, I think it would be.

6 Q. You may have already dealt with this, Sir Philip, but  
7 just to be clear: during your time in the Law Officers'  
8 Department and your roles as Solicitor General or  
9 Attorney General, did you ever have cause to prosecute  
10 someone from Children's Services, for permitting a child  
11 to be assaulted by failing to report that abuse?

12 A. No.

13 Q. Can you remember if you were ever asked to advise on  
14 that situation?

15 A. No, my only recollection of the issue being brought to  
16 my attention was in what presumably was not  
17 a hypothetical situation, but a situation which worried  
18 the Children's Service and the Probation Service in that  
19 they didn't want their officers to get into difficulties  
20 because they had not been able to give an assurance to  
21 a victim that the matter would go no further.

22 Q. Can we go back a few pages in your statement please,  
23 this is to page 4 {WS000699/4}, where you deal with  
24 corroboration and the prosecution of child abuse cases.  
25 We've now looked at the issue of disclosure and

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1 reporting, an issue that we see you were addressing in  
2 early 1993. We now look at corroboration in child abuse  
3 cases. I think it's right -- and you mention it here  
4 towards the bottom of the page -- that you chaired  
5 a working party into the issue, amongst others, of  
6 corroboration and that working party produced its first  
7 draft report in March 1993. You say at paragraph 18  
8 please that the working party was set up 18 months  
9 previously in September 1991, that you had become aware  
10 of a desire to amend the requirement for corroboration  
11 in sexual cases involving young children and you say at  
12 paragraph 18, three lines up from the bottom of that  
13 page:

14 "It was recognised that an increasing number of  
15 child abuse cases were being brought before the courts  
16 in Jersey and the UK and that a number of changes had  
17 been instigated in the UK."

18 Was this drawn to your attention by  
19 Children's Services, or was this something that you  
20 yourself were aware of, of the increasing number of  
21 cases coming to court?

22 A. I don't remember. I think the likelihood is it was  
23 brought to my attention by the Children's Service,  
24 because most of these cases would have been dealt with  
25 either in the Youth Court or in the Magistrates Court.

1 Q. The law as it then stood, as I understand it from the  
2 Working Group paper, was that no defendant could be  
3 convicted on the unsworn evidence of a child of tender  
4 years unless that evidence was corroborated. Have I got  
5 that right?

6 A. That's what the law stated.

7 Q. Can you remember in advance of setting up the working  
8 party in September 1991, discussions between yourself  
9 and others in relation to this issue?

10 A. I think I did discuss it with the Bailiff.

11 Q. If we go please to document {WD007333}. Again this  
12 forms part of the documents which you were provided  
13 with, but you haven't exhibited, so I give you  
14 an opportunity to look at this as I comment on it. This  
15 is a letter dated 4 April 1991. It is addressed to the  
16 Bailiff, Sir Peter Crill CBE, at the time and it is  
17 a letter from Anton Skinner. If we go to the second  
18 page {WD007333/10} we can see, as you recollect, that  
19 you were copied into the letter, as was Advocate  
20 Stéphanie Nicolle and on the first page of the letter  
21 {WD007333/9}, in the last paragraph there, Anton Skinner  
22 writes as follows:

23 "However, I am not suggesting that Jersey should  
24 necessarily adopt the revised United Kingdom rules of  
25 evidence, but it is clear to all of those currently



1           involved in child abuse investigations locally that the  
2           legal process surrounding young children giving evidence  
3           is in need of urgent review. Urgency derives centrally  
4           from an inability to proceed legally toward criminal  
5           prosecution in an increasing number of cases where there  
6           has been no doubt in the minds of investigating officers  
7           that grave offences against children have occurred.  
8           However, due to the present restrictions surrounding the  
9           rules of evidence as they affect children, and the  
10          circumstances under which children must give evidence,  
11          there has been no possibility of considering prosecution  
12          for these very serious offences. I am also concerned  
13          that in the cases which do proceed to the Magistrates  
14          Court there is often inadequate protection of the child  
15          witness' position before the Court due to the absence of  
16          a professional prosecutor."

17                 Then the second page {WD007333/10}, Mr Skinner  
18                 writes in the second paragraph there:

19                 "I have written to the Attorney General to seek his  
20                 views as to how the situation might best be reviewed and  
21                 I enclose the material which accompanied that letter for  
22                 your information. I will also send a copy of your  
23                 letter and my reply for the Attorney General's  
24                 information."

25                 Should we understand then that this letter and this

1 exchange set in train the formation of the Working  
2 Party?

3 A. Yes, I would think it did.

4 Q. And should the Inquiry understand that you agreed with  
5 Anton Skinner that corroboration needed to be reviewed?

6 A. I did, yes.

7 Q. And had you come to that view independently, Sir Philip?

8 A. I'm sorry, Mr Sadd, I can't recall. I might have done.

9 Q. Should the Inquiry regard the setting up of the Working  
10 Party as a reflection of greater awareness of sexual  
11 assaults and abuse of children in this period?

12 A. Yes, I think it should.

13 Q. The report quotes figures which you give at paragraph 19  
14 please, page 5 of your statement {WS000699/5}, and you  
15 set those figures out there and then at paragraph 20 you  
16 are asked to comment on those figures and you say that  
17 you believe "the rising trend was in the reporting of  
18 cases of child abuse, rather than in their commission"  
19 and that the setting up of the working group increased  
20 the public's awareness. Does it follow from that,  
21 Sir Philip, that publicity was given to the Working  
22 Group, that members of the public in Jersey were aware  
23 that this was being looked at?

24 A. I'm sure it was, yes. There would have been probably  
25 quite a long report in the Jersey Evening Post.

1 MR SADD: I'm conscious, Madam Chair, of the time. That's  
2 a sort of natural break.

3 THE CHAIR: At a convenient moment take a break.

4 MR SADD: I think I will stop at that point.

5 THE CHAIR: You are going to the detail now. Right, we will  
6 take our morning break and we will resume no later than  
7 half past.

8 (11.16 am)

9 (A short break)

10 (11.30 am)

11 THE CHAIR: Yes, Mr Sadd.

12 MR SADD: Sir Philip, we were discussing before the break  
13 the lead-up to the report of the Working Party in Child  
14 Abuse Cases, the first draft of which was dated  
15 31 March 1993 and which is your exhibit number 2, page 5  
16 please of the exhibits {WD009001/5}. In your statement  
17 you take the Inquiry through the report.

18 We can see at page 5 the various appendices that  
19 were provided to the report. If we go please to page 7  
20 {WD009001/7} we can see by way of introduction the  
21 reference there to the figures, at paragraph 2.1, and at  
22 2.2 the following text:

23 "In 1989 the Child Protection Team was formed. It  
24 consisted of police officers and child care officers  
25 specifically trained to investigate referrals of child

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1 sexual abuse, sensitively from the point of view of the  
2 child and the family, and thoroughly from the  
3 perspective of criminal investigations."

4 Should the Inquiry take it, Sir Philip, that you  
5 were aware of the formation of the Child Protection  
6 Team?

7 A. I must have been, yes.

8 Q. And if we go on please to page 11 {WD009001/11} we can  
9 see at the bottom of that page:

10 "The Working Party received papers from the Police  
11 and Children's Service detailing local procedures for  
12 the video recording of children's evidence and the  
13 training undertaken by the Child Protection Team in the  
14 techniques of interviewing ..."

15 And then at 4.1.6:

16 "A representative selection of the Working Party  
17 attended a conference on Children's Evidence in  
18 the Courts presented by the Faculty of Law of the  
19 University of Southampton."

20 Do you remember -- I recognise it is a long time ago  
21 now, Sir Philip -- whether you went on that?

22 A. Yes, I do remember going.

23 Q. We will look at some text of the report, but we know  
24 that some of the report deals with the issues of  
25 corroboration, as we have touched on, and you say at

1 paragraph 22 of your statement {WS000699/5}:

2 "I have been asked whether the corroboration rule  
3 was being applied in such a way that meant that cases  
4 were never prosecuted in the absence of such evidence."

5 You say:

6 "That was never my understanding; Law Officers take  
7 an oath to bring criminals to justice and if there were  
8 evidence that a crime had been committed one would be  
9 straining to bring a prosecution if possible. Obviously  
10 the overriding consideration is whether the case  
11 satisfied the two-stage test."

12 And by that, Sir Philip, you're referring to  
13 evidential and public interest, is that right?

14 A. Yes.

15 Q. You say in relation to the same issue at paragraph 30  
16 {WS000699/7}:

17 "I have been asked whether I perceived the  
18 requirement of corroboration as a serious impediment to  
19 the Law Officers' Department's ability to bring  
20 successful prosecutions during my time in office.  
21 Whilst I was in favour of the abolition of the  
22 requirement of corroboration, I do not believe that the  
23 requirement was a barrier that prevented us from  
24 prosecuting more cases of child abuse."

25 Could you explain to the Inquiry what you mean by

1           that, that it wasn't a barrier to being able to  
2           prosecute cases, or more cases of child abuse?

3       A. Well, what I mean by that is that in my recollection of  
4       my time as a Law Officer I don't remember a case where  
5       I said to myself "I would like to prosecute this case  
6       but because of the requirements of corroboration  
7       I cannot do so." It might have been an issue in cases  
8       and one would be looking to find corroboration and  
9       sometimes it would be difficult to do that, but I don't  
10      remember any case where I said to myself "Well, I would  
11      like to prosecute this case but I cannot because there  
12      is no corroboration."

13     Q. Does it follow from that answer, Sir Philip, that that  
14      included cases of sexual abuse on children?

15     A. Yes. I remember prosecuting a case of rape of a 5-year  
16      old child and I mean I can't remember the details of the  
17      case, but clearly the child was very young and  
18      I remember her giving evidence. It was a very difficult  
19      case. But I didn't think one would not have prosecuted  
20      a case of that kind because of the corroboration.

21     Q. And should we understand that you had applied for those  
22      cases the two-stage process and that the public interest  
23      required that that case be prosecuted, was how you saw  
24      it?

25     A. Yes.

1 Q. You told us earlier this morning of cases that you had  
2 prosecuted, you think one or two annually, involving  
3 historical abuse, my understanding of that being  
4 an adult complaining of having been abused as a child.  
5 Should we understand that again in those cases there  
6 were cases that you prosecuted where concern about  
7 corroboration was trumped by other issues?

8 A. Yes. I mean I don't recollect a case in which  
9 corroboration was the issue which prevented  
10 a prosecution.

11 Q. I would like to invite your comment please, Sir Philip,  
12 on a memo from 2004 concerning the investigation of an  
13 individual for historic abuse. It is a document at  
14 {WD007441} and I recognise, Sir Philip, that you saw  
15 this document for the first time this morning. If we  
16 can go to page 4 please {WD007441/4}. And I appreciate  
17 that you weren't involved in this case. This is a memo  
18 to Detective Inspector Bonney. It is from  
19 Laurence O'Donnell, legal advisor to the Police, dated  
20 24 September 2004 and concerns a case involving  
21 a suspect who is alleged to have committed serious  
22 sexual abuse on a resident at Haut de la Garenne in the  
23 late 1960s and the resident as adult made complaints of  
24 that abuse against the visitor, and this is a review  
25 conducted by Laurence O'Donnell as to whether or not to

1           prosecute, and if I may I will read from it:

2                     "Thank you for the papers in this matter, which  
3           I have considered. I note the thorough manner in which  
4           this case has been investigated. Prosecutions for  
5           offences of this nature are regularly undertaken in  
6           the UK, albeit that it is acknowledged that they present  
7           their own peculiar difficulties due to the time lapse,  
8           absence of records and very often witnesses. The  
9           Criminal Cases Review Commission (CCRC) has recently set  
10          out in Archbold News the criteria which it applies.  
11          I attach a copy .... You have already noted that there  
12          is little in the way of contemporaneous corroboration of  
13          the account given by [the victim]. However, this case  
14          is a little more complicated in that [the victim] has  
15          subsequently approached [the suspect] in order to  
16          blackmail him. [The victim] was subsequently convicted  
17          of blackmail. I am not aware of the basis upon which he  
18          was sentenced and that may be material which would  
19          assist the Crown should a decision be made to prosecute  
20          [the suspect].

21                    "I note that there are no other victims identified  
22           as a consequence of the police investigation and thus,  
23           at present, the prosecution would proceed with only one  
24           victim. The practice locally is for such prosecutions  
25           not to be proceeded with and I am of the view that,



1           should the matter be charged, the Magistrate would  
2           discharge [the suspect] at an old style committal."

3           I just wanted to gain your understanding, please,  
4           Sir Philip, of what you think is meant by "the practice  
5           locally", the suggestion being that in the absence of  
6           corroboration here this was not a case that could go  
7           forward, based on practice locally. Does that --

8       A. Can I say first of all that this memorandum is sent  
9       about ten years after I ceased to be a Law Officer. I'm  
10      not aware of any practice such as is referred to in this  
11      memorandum and in fact I think if we look back to the  
12      case to which you drew my attention earlier this  
13      morning, I was looking for -- looking at the doctrine of  
14      recent complaint and the doctrine of similar facts as  
15      being possible elements of corroboration which would  
16      have justified a charge in that particular case. I mean  
17      the only person who can answer this question is  
18      Mr O'Donnell.

19      Q. If we go to page 1 please of the document on screen at  
20      the moment {WD007441/1}. This is an email dated  
21      14 July 2009 from John Edmonds to William Bailhache,  
22      then the Attorney General, and reviewing the case that  
23      we've just been looking at, he writes:

24                 "William,

25                 "Please see the attached. It is not clear to me

1 from this material that you did actually review the  
2 papers but it gives the timescale for you to examine  
3 your notes to see if there was some discussion."

4 Then Mr Edmonds writes this:

5 "I cannot help feeling that the legal advisors over  
6 a period of many years have effectively been applying  
7 a test of mandatory corroboration rather than properly  
8 evaluating whether an uncorroborated victim would  
9 nonetheless be regarded as a witness of truth."

10 Do you have any observations about Mr Edmonds'  
11 assessment? Do you think it's a fair one?

12 A. I don't think I can answer that question. Again this is  
13 15 years after I ceased to be a Law Officer and during  
14 my time as a Law Officer there was certainly no test of  
15 mandatory corroboration.

16 Q. What Mr Edmonds is saying there is not that there was  
17 a test set out of mandatory corroboration, but that in  
18 practice that was how Law Officers were applying the  
19 corroboration rule, which is the rule that required the  
20 judge to say it is dangerous to prosecute on the  
21 uncorroborated evidence of the complainant. What I'm  
22 seeking to explore with you, Sir Philip, is in your time  
23 as Attorney General was it the approach of your  
24 colleagues, whose authority was delegated by you, to  
25 treat cases in that way, effectively saying "If there

1           isn't corroboration we're not taking the case forward"?

2       A. Not to my knowledge. I would be very surprised if  
3       either Cyril Whelan or Stéphanie Nicolle had adopted  
4       that approach. I'm pretty sure they didn't.

5       Q. Would cases of serious sexual abuse, such as in this  
6       case sodomy, be sent to you as Attorney General as  
7       a matter of course before a final decision was taken?

8       A. What date are we talking about please?

9       Q. We're talking the late 1980s, early 1990s, when you were  
10      Attorney General.

11      A. Yes, I think at that stage a case of that kind probably  
12      would have been referred to me.

13      Q. And what would have been the rationale for doing so?

14      A. The gravity of the crime.

15      Q. And in those situations, if you can recollect any -- I'm  
16      not thinking at the moment necessarily of historic  
17      cases -- is it your evidence to the Inquiry that  
18      corroboration was one amongst several issues that you  
19      would have looked at, but not a decisive issue?

20      A. That's my evidence, yes.

21      Q. Could we go please then to {WD004529}. This is a memo  
22      which forms part of the documents provided to you,  
23      Sir Philip. It is dated 21 August 1991, from  
24      Ian Christmas to Superintendent Marks, and it concerns  
25      an allegation of sodomy in relation to a member of staff

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1 working at Heathfield Children's Home and, as you can  
2 read, it says that member of staff working at Heathfield  
3 Children's Home:

4 " ... is the subject of a number of allegations of  
5 indecency by [a complainant] who was in care at the  
6 children's home until January 1989."

7 The complainant permitted the member of staff:

8 " ... to commit these acts of sexual interference  
9 only to ensure that he received privileges and favours  
10 at Heathfield but it seems that the acts continued even  
11 after he had left the children's home and moved into his  
12 own flat ... thereafter he maintains [a member of staff]  
13 visited him at his home and their relationship continued  
14 until March of this year.

15 "Presumably the time had long since passed when [the  
16 complainant] could secure privileges and favours for  
17 himself and in my view the last three paragraphs of his  
18 statement ... are highly suspicious. Why should he wait  
19 until over two years after his departure from Heathfield  
20 and only a month or so after his last sexual encounter  
21 with [the suspect] to complain? Apparently the thing  
22 that provoked his complaint was his observation of the  
23 behaviour of [another individual] and his concern that  
24 [that individual] might be at risk of being sexually  
25 abused by [the suspect]. All this I find rather

1 implausible.

2 "There is no forensic evidence to support  
3 [the complainant]'s allegations and [the suspect]  
4 himself totally denies any of the acts complained of.  
5 There is no corroboration of the complaint whatsoever,  
6 and I must conclude therefore that whether or not there  
7 is substance to these complaints there is certainly  
8 insufficient evidence to support criminal proceedings."

9 Presumably, Sir Philip -- this is dated 1991 -- you  
10 were still Attorney General? This is a case of  
11 a serious allegation of sexual assault. This would have  
12 been a case that came across your desk?

13 A. Well, I certainly told you a few moments ago that  
14 I would have expected allegations of this kind to come  
15 across my desk, but I must say I have no recollection of  
16 this one at all. I don't know. I don't recollect it.

17 Q. Ordinarily though the Inquiry's understanding should be  
18 that this case fell fairly and squarely within those  
19 that you would have had the final say on?

20 A. Well, I think what I was saying to you was that I would  
21 have expected serious cases which were on their way up  
22 to the Royal Court to have been referred to me at some  
23 stage. This is a case which it seems fell at a very  
24 early hurdle because the legal advisor took the view  
25 that there was insufficient evidence of the crime to

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1           justify a prosecution. I mean that seems to have been  
2           his decision on the facts of the case and he certainly  
3           makes no reference to discussing it with either of the  
4           Law Officers and I would think that this is a decision  
5           he made off his own bat.

6        Q. Sir Philip, your answer suggests that you may have  
7        looked at a case like this once the decision had been  
8        made to prosecute, because you spoke of a case on its  
9        way up to the Royal Court. Does that help us understand  
10       better the trigger of your involvement in cases of this  
11       kind, once a decision had been taken to prosecute rather  
12       than your being involved in the decision to prosecute?

13       A. Yes, I think that's probably the position. One needs to  
14       understand the evolving situation in the Law Officers'  
15       Department. When I became Attorney General in 1986  
16       there were no Crown Advocates. I think that  
17       Stéphanie Nicolle and Cyril Whelan were probably working  
18       in the Law Officers' Department at that time, but they  
19       were not Crown Advocates and I don't think that at that  
20       early stage, the late 1980s, there was any legal advisor  
21       based at Police Headquarters. Mr Christmas was the  
22       first legal advisor actually to be stationed at Police  
23       Headquarters so that the Police could have legal advice  
24       available to them at a very early stage and I don't know  
25       whether -- how long Mr Christmas had been at Police

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1           Headquarters, but probably not very long by August 1991  
2           and obviously the purpose of placing a legal advisor at  
3           Police Headquarters was to enable legal advice to be  
4           given in that place, rather than necessarily having all  
5           the papers on difficult cases referred up to the  
6           Law Officers' Department. So -- I mean if there had  
7           been a decision to -- if the advice from Mr Christmas  
8           had been to prosecute and to take the case forward,  
9           I would have expected to have learned about it at some  
10          stage because clearly a case of that kind would have  
11          come before the Royal Court.

12        Q. The reverse follows, doesn't it, from the answer that  
13        you have given, that where decisions were made at this  
14        level by the Law Officer, in this case Ian Christmas,  
15        there was no referral on to you for final say?

16        A. No. I mean I -- if there had been a suspected murder,  
17        to take it right at the top of the scale, I would have  
18        expected to be involved at a very early stage.

19        Q. This is a case, Sir Philip, where the allegation is that  
20        age 9, 10 and 11 a child had been regularly sodomised by  
21        an adult, to the extent that at one stage the child was  
22        caused bleeding, was the allegation. Is that a case  
23        that would have required your review where the decision  
24        was being made not to prosecute?

25        A. Well, it clearly didn't. I must say that I think it

1           should have done.

2           Q. One case that the Inquiry has heard a considerable  
3           amount of evidence about is that of the Maguires and  
4           I appreciate immediately, Sir Philip, that you were not  
5           involved in the matter, notwithstanding that you were  
6           Attorney General at the time, because the matter was  
7           never referred on to the Police and it was kept, as it  
8           were, within Children's Services, so it was never passed  
9           on to the Law Officers' Department, but I wondered if  
10          I could invite you to consider the case in as much as it  
11          helps the Inquiry understand the societal environment as  
12          at 1990, by reference to the terms of reference. If you  
13          had received a file as Attorney General in which two  
14          Children's Services staff members said that they had  
15          witnessed physical assaults of children by the people  
16          responsible for their care, including smacking on  
17          the head regularly and throwing across a room -- by the  
18          house parents -- and that those same house parents had  
19          admitted washing mouths out with soap and had admitted  
20          striking the children, albeit on the back of their legs,  
21          would that have been a case where you as  
22          Attorney General would have wanted to advise?

23          A. Well, that's a very hypothetical question.

24          Q. I understand that, but taking it as a hypothetical  
25          question.



1 THE CHAIR: Assist us if you can, Sir Philip.

2 A. Well, Madam Chair, you have two very distinguished  
3 witnesses who were concerned in this particular case and  
4 I know nothing about the detail of the case. I can  
5 answer the question on the basis that Mr Sadd has put it  
6 to me, but that's -- I can't do any more than that.  
7 I think the question was would I have wanted to hear  
8 about it?

9 THE CHAIR: Yes. Would that have been a case where you as  
10 Attorney General would have wanted to advise?

11 A. A case where there was evidence of physical abuse of  
12 children by members of -- witnessed by members of the  
13 Children's Service, or perpetrated by members of the  
14 Children's Service?

15 THE CHAIR: Witnessed by those who worked in the home.

16 A. Well, I mean I'm not sure that it's a question that  
17 I can answer, if it were ...

18 MR SADD: It may assist you -- I understand that it is  
19 a hypothetical question, but it may assist you if we  
20 look at it in this way. Such a case, in 1990, with you  
21 as Attorney General, would you have considered such  
22 a case to be one that required serious consideration by  
23 a senior Law Officer?

24 A. On the hypothesis that you have put to me of sustained  
25 abuse by individuals in a children's home, of physical

1 abuse of -- with the obvious corollary that there might  
2 have been some involvement by the authorities in that  
3 home, that's the kind of scenario that you're putting to  
4 me, is it?

5 Q. Save for the last part, yes.

6 A. Well, I'm sorry, I would expect a case of that kind to  
7 be taken seriously, yes. Whether that would necessitate  
8 the involvement of one of the Law Officers I think  
9 depends upon the -- all the circumstances of the case  
10 and perhaps in 1990, if you're putting it to me on that  
11 hypothesis, it might have been more likely to have gone  
12 to the Law Officer because there weren't very many legal  
13 advisors around. By the time you get to the late 1990s  
14 there are many more lawyers involved in the  
15 Law Officers' Department.

16 Q. But to whom the case could be delegated, or looked at is  
17 one issue. The other issue is the circumstances that  
18 have been set out to you and the understanding as at  
19 1990 of the potential severity of ongoing physical abuse  
20 of children of a young age in a children's home.

21 A. Well, I don't recollect any such case being referred to  
22 me.

23 Q. We come back please to the Working Party and the fact  
24 that it made recommendations which were adopted in full  
25 by the Education Committee and in turn passed on to the

1           Legislation Committee, but as you tell the Inquiry at  
2           paragraph 16 {WS000699/4}, you say four lines down in it  
3           that paragraph unfortunately, in spite of having  
4           recommended a change on corroboration, a change in the  
5           law was not effected until 2012, which in fact was  
6           19 years after the Working Party reported, and you  
7           explain this in part at paragraph 28 of your statement  
8           {WS000699/6} and I will just read that for you:

9                     "Although the Education Committee agreed with the  
10                    recommendation of the Working Party, responsibility for  
11                    implementing the recommendation was passed to the  
12                    Legislation Committee in 1993. I imagine that further  
13                    discussions followed over a number of years in relation  
14                    to how the change should be achieved. I was not party  
15                    to any such discussions."

16                   And you then recount as to your time as Bailiff that  
17                   you attempted to implement the necessary change by way  
18                   of case law and a particular case that you were involved  
19                   in.

20                   In your role as head of the judiciary, the  
21                   Lord Chief Justice I think is a parallel that you drew,  
22                   did you apply any influence in accelerating legislative  
23                   change where you felt it was important on matters of  
24                   evidence in court?

25           A. I don't think it's the function of the Bailiff to

1 exercise some general supervision on the state of the  
2 criminal law. If there were a particular case in which  
3 a problem had arisen, corroboration for example, then  
4 certainly as a judge I would have said something in the  
5 judgment that I would hope that the appropriate  
6 political authorities would do something about what was  
7 an obvious defect, but I don't remember any such case in  
8 the context of corroboration. But I don't think it  
9 would have been the function of the Bailiff, as it were,  
10 to have a roving brief over the whole of the criminal  
11 law and to be pressing for changes for this, that and  
12 the other.

13 Q. We know that in 2008, if I remember rightly, there was  
14 a paper on corroboration and the need for change and, as  
15 you --

16 A. Sorry, what date?

17 Q. 2008. And, as you tell the Inquiry, change did come  
18 about in 2012. In the period up to 2008, a phrase that  
19 the Inquiry has heard in other contexts, "the absence of  
20 political will", do you think that played a part in what  
21 appears to have been the very slow trajectory in  
22 relation to this issue?

23 A. No, I don't.

24 Q. What explains therefore the delay?

25 A. Incompetence probably.

1 Q. One of the other recommendations made in the report was,  
2 to quote, the:

3 "... urgent need for a prosecuting lawyer to present  
4 the case for the prosecution in all cases in the Police  
5 Court involving offences against children."

6 {WD009001/29}

7 This was discussed in the report -- this is page 22  
8 please of the exhibit bundle {WD009001/22},  
9 paragraph 4.5.5, Sir Philip:

10 "The Working Party agreed with the observations  
11 contained in the Children's Officer's note on the  
12 subject, and concluded that there was a need for  
13 a prosecuting lawyer to present the case for the  
14 prosecution in the Police Court in cases involving child  
15 victims."

16 And a paper, we learn from the report, had been  
17 presented to the Working Party on this issue. Can you  
18 remember why it was felt necessary for there to be  
19 a change?

20 A. In relation to a prosecuting lawyer, do you mean?

21 Q. Yes, in cases involving offences against children.

22 A. I think the Panel needs to understand, perhaps the Panel  
23 does already understand, that the Magistrate is not  
24 a magistrate in an English sense. The Magistrate  
25 started life as a juge d'instruction, as an

1           investigating magistrate, much more on the continental  
2           model, and that started in the middle of the  
3           19th Century, but as the decades wore on the  
4           investigating magistrate perhaps began to assume  
5           a little more of the nature of an English style  
6           magistrate, but nonetheless his function was that of an  
7           inquisitioner rather than a magistrate hearing both  
8           sides of the argument. The juge d'instruction, the  
9           Magistrate, had a duty to inquire into the facts and his  
10          first responsibility was to decide whether he could deal  
11          with the matter himself and if he could deal -- if he  
12          decided that he could deal with the matter himself then  
13          his function changed in a subtle kind of way and he  
14          became much more of a magistrate in the English sense.

15                 But before he got to that stage he had to examine  
16          the witnesses for the prosecution. He had to elicit the  
17          evidence upon which the charge was based and what the  
18          Children's Office were saying was that in the context of  
19          a case involving a child victim that made the  
20          Magistrate's task much more difficult. He had a duty to  
21          elicit the evidence, but at the same time he had a duty  
22          to try to protect the child, he had a duty to be  
23          balanced. I mean he had so many different functions, it  
24          was extraordinarily difficult for him, and this was  
25          a problem not just in relation to child cases actually,

1 but in relation to other more complicated cases and it  
2 had led to discussions as to whether the role of the  
3 magistrate should change and as to whether there should  
4 be a lawyer prosecuting in the Magistrates Court. The  
5 trouble with that was that it was seen to interfere with  
6 the functions of the Constable or the centeniers because  
7 the centenier presented a case to the Magistrates Court  
8 and if there were a prosecuting lawyer there, what would  
9 the presenting centenier do? Do you get rid of the  
10 centenier altogether and have lawyers prosecuting in  
11 every case, or do you distinguish between cases where  
12 a lawyer is necessary and cases where a lawyer is not  
13 really necessary? So that was the complexity of the  
14 situation and the background to why the  
15 Children's Officer thought that in cases involving child  
16 abuse a prosecutor -- they fell that side of the line.

17 Q. And presumably given that this was a recommendation of  
18 the Working Group and one that was taken up by the  
19 Education Committee, this was a recommendation that you  
20 supported?

21 A. Yes.

22 Q. So in supporting it the potential issue between the  
23 centenier on the one hand and the professional legal  
24 prosecutor on the other was one that you considered  
25 could be resolved?

1 A. Yes, I did.

2 Q. And I recognise of course, Sir Philip, that you haven't  
3 been Attorney General for a good while, nor have you  
4 been Bailiff, but are you able to tell us what the  
5 present position is vis-a-vis the presentation of these  
6 cases in the Magistrates Court?

7 A. I'm afraid I'm not.

8 Q. The memo that was prepared for the Working Group by  
9 Children's Services was by Marnie Baudains. It is  
10 referred to at 4.5.2 of the Working Group report and in  
11 that memo she refers to a report of physical abuse of  
12 a child in which a centenier had offered no evidence and  
13 she says despite police legal advisors and the  
14 Attorney General's backing. Do you remember such cases  
15 occurring where centeniers would take it on themselves  
16 not to bring cases forward?

17 A. Against the advise of the Police?

18 Q. Against the advice of the Police, against the legal  
19 advisor's advice and in cases in which the  
20 Attorney General had given his backing?

21 A. I would have thought that such a case would be curtains  
22 for the centenier.

23 Q. Sorry, my question to you was do you remember such cases  
24 occurring?

25 A. No.



1 Q. Leaving to one side whether or not centeniers would do  
2 that as against the advice that the Attorney General had  
3 given, in cases where the Police will have said "This is  
4 a case to prosecute" and the centenier had made the  
5 decision not to do so, do you remember those cases  
6 occurring, hearing of those cases?

7 A. No. I think I would -- perhaps you have an example,  
8 Mr Sadd, but you ought to put it to me.

9 Q. I will, I can. I will do so now.

10 A. Perhaps let's go on to that.

11 Q. "We have had cases recently ..."

12 Says Marnie Baudains -- and this is in a memo dated  
13 13 January 1993.

14 "... where despite police legal advisor's and AG's  
15 backing the prosecuting centenier has made an entirely  
16 independent decision to offer no evidence in a case."

17 {WD008034}

18 And the name of the case is given and it related to  
19 physical abuse.

20 A. Well, I'm surprised that did not result in a complaint  
21 by the States Police to the Attorney General and  
22 disciplinary action by the Attorney General.

23 Q. I'm not so concerned about whether or not disciplinary  
24 action was taken, or whether there was a complaint  
25 raised; it's whether there was in your view too much

1 power delegated to the centenier at that point of  
2 deciding whether or not a case should be put before  
3 the Court?

4 A. Well, I don't recall any such case and I would be -- you  
5 have given me the example. If it happened it seems to  
6 me an extraordinary example of a centenier exceeding his  
7 authority.

8 Q. Paragraph 42 please {WS000699/9}, moving on to  
9 a different subject. This is in relation to your  
10 observations on the evidence of John Rodhouse, former  
11 Director of Education in Jersey, and here you have been  
12 given the opportunity to address Mr Rodhouse's evidence.  
13 You say that you have no recollection of what you  
14 remember him describing and I'm going to come on in  
15 a moment to that, and you think he has confused you with  
16 one of your predecessors. You think that in the  
17 circumstances of how you read his evidence that he took  
18 reasonable action, but that he should have gone to  
19 the Police.

20 What I'm going to do now, Sir Philip, is read to you  
21 the evidence that he actually gave because it seems to  
22 be in contrast to that which you have set out. This is  
23 what he said in the Inquiry {Day95/210:23}:

24 "Answer: There is a case about which I still feel  
25 very uncomfortable; it concerned a volunteer youth

1 worker. The then Attorney General, Philip Bailhache,  
2 called me to tell me that a named volunteer youth worker  
3 had acted improperly with a boy. The boy's father [held  
4 a particular position] and did not want to involve  
5 the Police. Philip Bailhache wanted me to investigate  
6 and take action. I protested that it was a matter for  
7 the Police but Philip Bailhache said that the parents  
8 would not cooperate and that if I did not act nothing  
9 would happen."

10 Then he goes on to say:

11 "Answer: As far as I was concerned I was caught  
12 between the legal authority of the Island in the person  
13 of the Attorney General and what I believed to be my  
14 professional and moral duty. I have since learned that  
15 the man was some time later convicted of a similar  
16 offence and subsequently faced a further charge."

17 Then he is asked the question:

18 "Question: It may be obvious to you, Mr Rodhouse,  
19 but why do you feel uncomfortable about this particular  
20 episode?

21 "Answer: Because I believe -- because I believed  
22 that if Philip Bailhache had accepted my view that the  
23 Police should be involved then there would have been --  
24 not been the later cases. Two other children were  
25 assaulted, one -- well, I have to withdraw that. One

1 other child was assaulted and the man was convicted and  
2 subsequently he was charged with another offence."

3 Then he is asked this question:

4 "Question: What do you believe, Mr Rodhouse, would  
5 have happened to you if you had said to Philip Bailhache  
6 that it was your duty to report it to the Police?

7 "Answer: I did say that to him.

8 "Question: But what if you had gone ahead and done  
9 it?

10 "Answer: No, if I -- I said it was his duty to  
11 report it to the Police, not mine. He had the  
12 complaint, I hadn't -- I had not.

13 "Question: And you learned that he wasn't going to  
14 do so.

15 "Answer: So I did what I could and it was a very  
16 uncomfortable process. I did business with this man.  
17 I didn't do any -- I had done business with him I mean,  
18 but I wouldn't do any more after that."

19 That's the end of the extract, Sir Philip. The  
20 reason I read it out to you is it is the inverse of what  
21 it is you say in your statement, and what it is you  
22 suggest in your statement is that he became aware, that  
23 is Mr Rodhouse, of allegations of abuse, that he took  
24 action in response to those allegations:

25 "I have no recollection of the occasion he describes

1           when he reported an allegation of abuse to a Crown  
2           Officer ..." {WS000699/9}

3           He is suggesting there, Sir Philip, and I just want  
4           to give you an opportunity to comment, that it was quite  
5           the contrary: that you contacted him, you said "Could  
6           you investigate this complaint as a matter of internal  
7           discipline, the parents don't want it reported to  
8           the Police". Having heard that differing account,  
9           what's your observation?

10          A. My observation is that I think Mr Rodhouse is mistaken  
11          in his recollection of who was the Attorney General at  
12          the time and the person to whom he spoke. I have no  
13          recollection of this at all and it's the kind of case  
14          where I think I would have a recollection if it had  
15          happened to me. I mean I go on to say in my  
16          statement -- and I would like to repeat here in defence  
17          of the Attorney General, whoever he was -- that it seems  
18          to me not a unreasonable position for an Attorney to  
19          take if he is given information about some kind of  
20          abuse, but coupled with the information that the victim  
21          or the victims' parents do not wish the matter to be  
22          reported to the police. There is clearly --  
23          Madam Chair, I'm sorry, but there is a member of the  
24          public shaking his head as my evidence is given and I do  
25          find it very disturbing.

1 THE CHAIR: Just pause a moment, Sir Philip.

2 As I have indicated before, every witness is treated  
3 with respect in this hearing. If not, if there is any  
4 disturbance from the public gallery, we will adjourn,  
5 I will have the public gallery cleared and then the  
6 witness can feel at comfort, whoever that witness may  
7 be.

8 Sir Philip.

9 A. Thank you. Sorry, I have lost the thread. Where was I?

10 THE CHAIR: Do you want to repeat the question, Mr Sadd.

11 MR SADD: Yes, you were talking, Sir Philip, about whoever  
12 the Attorney General might have been and saying that  
13 I think you thought that the decision that it should be  
14 dealt with internally in the light of the parents'  
15 objection to it going to the Police was a reasonable  
16 one.

17 A. No, what I'm saying is that if an Attorney General were  
18 presented with a position where a complainant did not  
19 wish to make a complaint, but nonetheless there was  
20 evidence that somebody in a position of authority was  
21 committing that kind of abuse, that clearly is not  
22 a position which ought to be allowed to continue and  
23 I can well understand an Attorney General telephoning  
24 the Director of Education and saying "Look, I have had  
25 this complaint made to me and I think you ought to see

1           whether the individual concerned is fit to hold the  
2           office" of whatever it was he was doing.

3           Now, as I understand Mr Rodhouse's evidence, when he  
4           did take that action he was told that the man admitted  
5           that this offending had been taking place and what  
6           I find -- what I think is a pity, Mr Sadd, is that the  
7           question which I would have thought was the logical  
8           question which ought to have followed that evidence of  
9           Mr Rodhouse was "Why did you not tell the Police about  
10          it?", because here we have a different situation. It's  
11          not a question of a complaint, it's a question of an  
12          admission by a child officer, or whatever he was, that  
13          offending had taken place and that confession would have  
14          founded a criminal prosecution irrespective of the  
15          evidence of the victim, but he wasn't asked.

16          Q. No, what he was asked, Sir Philip, is as follows:

17                 "Question: What do you believe, Mr Rodhouse, would  
18                 have happened to you if you had said to Philip Bailhache  
19                 that it was your duty to report it to the Police?

20                 "Answer: I did say that to him.

21                 "Question: But what if you had gone ahead and done  
22                 it?

23                 "Answer: No, if I -- I said it was his duty to  
24                 report it to the Police, not mine. He had the  
25                 complaint, I hadn't -- I had not." {Day95/212:10}

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1       A. I'm not being critical, Mr Sadd, but the question was  
2       not put to Mr Rodhouse "Did you not think it was your  
3       duty, having received an admission that a criminal  
4       offence had been committed, to report the matter to  
5       the Police?"

6       Q. Arising out of the circumstances here and the  
7       distinction, or the point that you make in relation to  
8       the parents wanting confidentiality, isn't the critical  
9       difference between an internal disciplinary issue on the  
10      one hand and a police prosecution and conviction on the  
11      other that the latter makes it very difficult for that  
12      individual to continue offending?

13     A. A prosecution does make it more difficult for that  
14     person to continue offending I would have thought, yes.

15     Q. Can we turn then to the case of Roger Holland and this  
16     you deal with at paragraphs 44 to 61 of your statement,  
17     starting at page 10 please {WS000699/10}.

18             Sir Philip, the Inquiry is familiar with the case  
19     and has read the 2002 Committee of Inquiry report which  
20     sets out the sequence of events leading up to  
21     Roger Holland taking the oath of office in July 1992 and  
22     shortly after being sworn in, when you learned of his  
23     previous conviction in 1986 for indecent assault of  
24     a girl with learning difficulties. We know that  
25     Roger Holland was given 12 months probation in 1987, as



1 I understand it, which was subsequently reduced to eight  
2 months.

3 You gave evidence at the 2002 inquiry. In 2008 the  
4 issue surfaced again and you provided a public statement  
5 in relation to this episode.

6 If we could go please to page 57 of the  
7 exhibit bundle {WD009001/57}. There we have a copy of  
8 the report. I would like first to go to page 60  
9 {WD009001/60} just to set out the context that I have  
10 provided the Inquiry and then I just want to pick up one  
11 or two issues with you. "Context" there at page 60:

12 "On 8th September 2000, Mr Roger Holland was found  
13 guilty by the Royal Court on two counts of indecent  
14 assault committed prior to 1992 and was sentenced to  
15 a three year probation order, which included  
16 a requirement to attend for a minimum of 12 months at  
17 Wolvercote Centre, United Kingdom, where he would  
18 receive compulsory treatment. The Court indicated that  
19 if he did not cooperate fully with the programme, he  
20 would be brought back before the Court and would be  
21 likely to receive a custodial sentence."

22 Then it recounts how he was brought back, the  
23 probation order discharged and sentenced to two years  
24 imprisonment.

25 Then the introduction reads:

1           "The conviction of Mr Holland made the public aware  
2           that he had a prior conviction for indecent assault in  
3           1986. His apparent ability in 1992 to enter and then  
4           remain in the St Helier Honorary Police whilst having  
5           such a conviction raised serious questions as to the  
6           procedures that had been followed in the recruitment and  
7           monitoring of this officer. It was considered in some  
8           quarters to be essential that the procedures followed,  
9           or not followed as the case may be, should be  
10          investigated in-depth so that secure safeguards could be  
11          put in place to prevent similar occurrences in the  
12          future."

13           So the report was looking at a very specific issue  
14          of the procedures involved in the appointment of  
15          an honorary policeman. The reason why the Inquiry seeks  
16          your views is to understand the context as at 1992 in  
17          which the previous conviction of indecent assault was  
18          regarded and to give you an opportunity to comment on  
19          the context. I know it's something that you do in your  
20          public statement in 2008.

21           Can we move on to page 65 please of the documents  
22          {WD009001/65} and just to read, by way of background  
23          please, 4.1.18 -- do you have that? It's halfway down  
24          the page.

25          A. Yes, I do.

1 Q. Where the report reads as follows:

2 "The oath of office for a member of the  
3 Honorary Police is administered by the Royal Court after  
4 it has heard any observations of the Attorney General as  
5 to whether or not the oath should be administered. It  
6 is for the purpose of these observations (known  
7 technically as 'moving conclusions') that the  
8 Attorney General requires to know whether the officer  
9 concerned has any previous convictions."

10 It would be therefore at the point of just prior to  
11 taking the oath, as I read it, Sir Philip, that the  
12 Attorney General would raise concerns?

13 A. When any Honorary Police officer is sworn in before the  
14 Royal Court the Attorney General or the Crown Advocate  
15 on his behalf has to move conclusions and to recommend  
16 to the Court that the oath be administered. What is in  
17 question is not so much whether he has a criminal  
18 conviction, but whether he is a fit and proper person to  
19 exercise the functions of a constable's officer, or  
20 vingtenier or whatever it may be.

21 Q. And part of that process involves whether or not he has  
22 a criminal conviction?

23 A. And part of that process obviously involves whether he  
24 has a criminal conviction. So yes, that's the general  
25 process.

1 Q. So should the Inquiry understand that having the  
2 knowledge, as the Attorney General might do, that there  
3 was a previous conviction and that the Attorney General  
4 thought that previous conviction relevant, moving to  
5 a conclusion wouldn't in fact even arise because it  
6 would never come before the Court, is that right?

7 A. No. One needs to understand that there's a democratic  
8 process involved in the election of members of the  
9 Honorary Police and I think at that time one would have  
10 expected a constable who had any doubt as to whether  
11 somebody putting himself forward for election as  
12 a Honorary Police officer was a fit and proper person  
13 would have been referred to the Attorney General before  
14 any Parish Assembly took place. Once the Parish  
15 Assembly has taken place and the individual has been  
16 elected it makes it a much more complicated process to  
17 prevent the person from being sworn in.

18 Q. But nonetheless the Attorney General retains the  
19 residual power to raise issues of convictions that are  
20 notified to him at the point of swearing the oath?

21 A. Yes, of course, if he has information which is relevant  
22 to the question as to whether the officer is a fit and  
23 proper person, he should tell the Court about it.

24 Q. And in those circumstances would the Royal Court invite  
25 the Attorney General's observations about for instance

1 a previous conviction and what the Attorney General, as  
2 head of the Honorary Police, thought of the relevance of  
3 that conviction?

4 A. Yes, if anyone had known about it.

5 Q. And in the event that the Attorney General took the view  
6 that the conviction meant this person shouldn't in fact  
7 take the oath, would the Royal Court respect that view  
8 and follow it?

9 A. It might, or it might not. The Royal Court would take  
10 its own view of the issue.

11 Q. Were there circumstances prior to this event in which  
12 you had had to raise concerns about a nominated honorary  
13 policeman?

14 A. Yes.

15 Q. And in those circumstances had the Royal Court accepted  
16 your concerns and not gone ahead with the oath?

17 A. Yes.

18 Q. And had that happened in every case in which you had  
19 raised concerns?

20 A. Well, it very rarely happened, Mr Sadd. You have asked  
21 me the question. There was a case where the then  
22 Constable of St Helier was elected to office, or  
23 re-elected to office and it came to my notice that he  
24 was the chairman of a group of companies involved in the  
25 licensing trade and one of the functions of the

1 Constable was to supervise licensed premises in the  
2 parish and to make recommendations to the Court as to  
3 managers of licensed premises and I thought there was  
4 a conflict and I drew the conflict to the attention of  
5 the Royal Court and the Royal Court deferred the  
6 swearing in and decided that there should be a hearing  
7 and that evidence could be called and the arguments  
8 could be heard as to whether the conflict was so serious  
9 that the person ought not to be elected as a constable  
10 and at the end of the day the Court decided that there  
11 was a conflict and that the individual should be put to  
12 his election: either he resign from his position in the  
13 group of companies which hold licences, or he could not  
14 become the Constable of St Helier.

15 Q. In situations in which someone was taking the oath to  
16 become an honorary policeman and you had concerns about  
17 information that you had received and you brought that  
18 information to the attention of the Royal Court,  
19 a scenario that I think you accept did happen, can you  
20 recollect any instance where the Royal Court went  
21 against your advice?

22 A. Well, I think I have already said that this was a very  
23 rare occurrence. I mean I don't remember very many  
24 occasions when these kind of issues were articulated  
25 before the Court, but I think the answer to your

1 question is no, I can't remember any case where  
2 the Court did not take my advice as Attorney General.

3 Q. Can we go please to page 67 of the exhibits  
4 {WD009001/67} and just to draw your attention please to  
5 the observation of the Committee, this is at 4.2.7 -- do  
6 you have that?

7 A. Yes I do.

8 Q. Where it reads:

9 "It is clear from the evidence that this Committee  
10 has received that, if an Attorney General were notified  
11 that a candidate for Honorary Police office had previous  
12 convictions, it would be his responsibility to decide  
13 whether details of the conviction should be brought to  
14 the attention of the Royal Court. Among the factors  
15 that he would take into account in making that decision  
16 are whether or not the existence of the conviction might  
17 affect adversely the reputation of the Honorary Police  
18 generally, or compromise the officer's ability to  
19 discharge his police duties."

20 Would it also have been a factor, Sir Philip,  
21 amongst other factors, that the nature of the offence  
22 involved misuse of trust and the sexual assault of  
23 a child with learning difficulties?

24 A. The nature of any conviction would obviously be  
25 a material consideration.

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1 Q. At paragraph 54 of your statement please {WS000699/12}  
2 you set out the background to your becoming aware of the  
3 conviction and you place that conviction in context.  
4 You suggest that even if the Court had known about the  
5 conviction for indecent assault, which presumably it  
6 would only have done if you had brought it to  
7 the Court's attention -- you say this:

8 " ... the Royal Court might well have sworn him in  
9 anyway. It is impossible to say."

10 In the light of the evidence that you have given us,  
11 Sir Philip, a moment ago, should the Inquiry conclude  
12 that had the Royal Court known about it they wouldn't  
13 have sworn him in?

14 A. No, I'm saying it's quite impossible to say what the  
15 Royal Court would have decided.

16 Q. We have looked together, Sir Philip, at cases before  
17 1992 and at your involvement in 1991, early 1991, in the  
18 Working Group in relation to children who had been  
19 sexually abused and their evidence in court. That  
20 involvement was continuing in 1992. Do you think  
21 compared to 1986, which was the date of Roger Holland's  
22 offence, there was in 1992 a greater awareness of sexual  
23 assaults on children and their impact on the child?

24 A. Do you mean a greater public awareness, or a greater  
25 awareness in the Royal Court, or in the Law Officers'



1 Department?

2 Q. In the round, given what it is we have looked at  
3 together?

4 A. I think it's probably fair to say that there was an  
5 evolving greater awareness towards the end of the 1980s  
6 and the 1990s, yes.

7 Q. Do you think that differing attitudes of the time may  
8 have been reflected in the fact that the Magistrate in  
9 1987 for instance reduced the probation period; would  
10 that have happened in 1992? So we understand that he  
11 was given a 12-month probation period, we understand  
12 that as a result of good behaviour -- I'm paraphrasing  
13 it -- that was reduced. Given your involvement in  
14 the courts, your role as Attorney General, would there  
15 have been a different stance taken in 1992 to a similar  
16 offence?

17 A. By the Magistrates Court?

18 Q. Yes, and in your approach to how the case was to be  
19 handled?

20 A. It's very difficult to say. I don't know. I mean  
21 I think one has to set the offence in the context of  
22 what actually happened, what Holland actually did, and  
23 also in the context of the time. What Holland did, as  
24 I understand it, was to put his hand up a girl's  
25 pullover and the girl suffered from learning

1           difficulties. It was an unpleasant thing to do, but  
2           across the range of sexual offences one might say that  
3           it was at the lower end of the scale, so the Magistrate  
4           is presented with a young man who I don't think had any  
5           other convictions before that, who had been placed on  
6           probation, who evidently had been doing everything that  
7           the probation officer wanted him to do, the  
8           probation officer was presumably persuaded that he had  
9           learned his lesson, that he was not going to reoffend,  
10          and that presumably was the context in which the matter  
11          came back before the Magistrate, at the instance of the  
12          probation officer, with a recommendation that the  
13          probation order could be discharged because the  
14          probation officer presumably, he thought at the time,  
15          had other more important things to do than supervise  
16          Mr Holland.

17        Q. Presumably, Sir Philip -- you can tell me if I'm wrong  
18        about this -- other aspects of the decision to prosecute  
19        Mr Holland at the time would have involved the fact that  
20        he was in a position of trust working for St John's  
21        Ambulance with a child, or a young adult, who was  
22        vulnerable?

23        A. Yes, no doubt.

24        Q. That's a relevant consideration, you agree with me?

25        A. Absolutely.

1 Q. And it's a relevant consideration -- I recognise that  
2 the code for prosecutors wasn't brought in until 2000,  
3 but you have already told us about the two-stage process  
4 operating in the 1980s. That would have formed one of  
5 the elements of the public interest balancing act, is  
6 that right?

7 A. Yes, I think that is right.

8 Q. So to describe it as a young man in the way that you  
9 have done leaves out those particular ingredients of the  
10 offence, would you agree with me?

11 A. I wasn't purporting to give the whole range of --

12 Q. No, I understand that, but would you agree with me that  
13 those are relevant to the consideration of someone who  
14 is about to hold public office effectively in which  
15 contact with the public is going to take place and in  
16 which integrity is central to the discharge of that  
17 office?

18 A. You're coming forward to 1992 now?

19 Q. I am.

20 A. The context of the offence that he committed was  
21 obviously a relevant factor.

22 Q. At paragraph 58 {WS000699/13} you explain the procedure  
23 that would have adopted that would have required you to  
24 go back to the Court, given that you only learned of the  
25 conviction once Roger Holland had been sworn in, or had

1 taken the oath, and you say this at the end of the  
2 paragraph:

3 "The swearing in of an Honorary Police officer is  
4 a solemn affair. The action of suspending Roger Holland  
5 immediately after he had been sworn in would have been  
6 a very extraordinary thing to do."

7 Is the extraordinary thing the fact that  
8 procedurally it would have been complex?

9 A. I'm sorry, which paragraph are you on?

10 Q. I'm on paragraph 58, page 13 please. I'm happy to go  
11 through that again.

12 A. Yes, no, that's all right, I have it now.

13 Q. It's the last sentence there:

14 "The action of suspending Roger Holland immediately  
15 after he had been sworn in would have been a very  
16 extraordinary thing to do."

17 Is that a reference to the procedural difficulties  
18 or larger conceptual difficulties in relation to the  
19 standing of an honorary policeman?

20 A. No, it's a conceptual matter.

21 Q. Why would it have been an extraordinary thing to do?

22 A. Perhaps "extraordinary" is a little too strong a word.

23 It would have been an unusual thing to do because if  
24 a Crown Officer has recommended to the Court that  
25 a particular man should be sworn in as

---

1 an Honorary Police officer one doesn't generally expect  
2 the Crown Officer to go back the following week and say  
3 "I'm sorry, there has been a mistake, this man ought not  
4 to have been sworn in."

5 Q. But you would have gone on to say presumably,  
6 Sir Philip, "He ought not to be sworn in because he has  
7 a previous conviction, albeit in 1986, for indecent  
8 assault of a child with learning difficulties and I have  
9 concerns about the integrity of the Honorary Police  
10 Force and concerns about the individual"?

11 A. Well, that's the issue of judgment, isn't it? And the  
12 issue of judgment has to be looked at also in the  
13 context of what the Constable of St Helier and the  
14 Honorary Police of St Helier wanted. I have no doubt --  
15 I don't specifically recollect it, but I have no doubt  
16 that after I received the anonymous letter which told me  
17 that Holland had a previous conviction, that I would  
18 have spoken to the Constable of St Helier about the  
19 matter. Because I didn't have the opportunity to  
20 consider it before he was sworn in, after he was sworn  
21 in I would have telephoned the Constable of St Helier  
22 and said "What is the view of the parish police and what  
23 is your view on this?", and the view I would have been  
24 given by the Constable is that they were aware of the  
25 conviction, no doubt he would have said "I'm very sorry,

1 I should have told you about it beforehand" but "I was  
2 aware of the conviction and notwithstanding the  
3 conviction we think that Holland has rehabilitated  
4 himself, he has behaved himself for the last six years,  
5 he has been discharged by the Magistrate, his probation  
6 was successfully completed, he is very anxious to become  
7 a police officer and on balance we don't wish you to do  
8 anything about it."

9 So it's in that context that one has to make  
10 a judgment as to whether the issue is so serious that it  
11 must go back to the Royal Court and, as I have said in  
12 my statement, I wish, I would, that a different decision  
13 had been made. If I had known what Holland was going to  
14 do, or what Holland had done after 1986 I would no doubt  
15 have taken a different view, but I didn't.

16 Q. Sir Philip, ultimately the decision as to whether or not  
17 the issue was viewed as a serious one was yours because  
18 you were head of the Honorary Police as  
19 Attorney General, is that right?

20 A. Yes.

21 Q. So you were in a position to take into account the  
22 Constable of St Helier's views -- if I've got the  
23 terminology right -- and to ignore them?

24 A. I could have done.

25 Q. Do you remember considering at the time, Sir Philip, how

1           this might have been viewed by the man on the street in  
2           Jersey?

3           A. Well, yes, many of my decisions, Mr Sadd, were made in  
4           the context of what would a reasonable person, what  
5           would the man in the street think about the merits of  
6           the decision and I would have reached the conclusion  
7           that the man in the street would have said to himself  
8           "Well, this is a young man who made a mistake, he has  
9           proved that he's got over that and he wants to serve his  
10          parish and we should give him the opportunity to do so."  
11          In retrospect it was a pity the decision was made, but  
12          there we are.

13          Q. Can we go please to page 53 of the documents  
14          {WD009001/53}. This is something you deal with at  
15          paragraph 60 of your statement {WS000699/13} where there  
16          you refer to the press release you issued and we're  
17          going to look at that press release. At page 54  
18          {WD009001/54} of the exhibits you recount, as indeed you  
19          have just done a moment ago, Sir Philip, the contextual  
20          position. You say at the bottom of page 54, the last  
21          paragraph there, "Whatever the position in law, the  
22          facts confronting me were a man" and you set out what  
23          you have just told us and you say, "I had to balance all  
24          those factors".

25                 The reason why the Inquiry seeks your response to

1           this is simply this, that should your decision not to go  
2           back to the Court be regarded by the Inquiry as a wider  
3           reflection of general public attitudes on the Island in  
4           1992 towards offences of this type?

5       A. I mean if the question is was this evidence of  
6           a carelessness towards child abuse, or offending against  
7           children, the answer is clearly no, it wasn't.

8       Q. It's not so much directed at carelessness, it's directed  
9           at the view taken of such an offence as at 1992. At the  
10          moment the Inquiry's understanding is that it was your  
11          view -- and in 2008 you say that you regret that -- that  
12          it was your view in 1992 that the offence, as it were --  
13          and I mean no disrespect to the way you've put it, I'm  
14          just paraphrasing it -- was in effect done and dusted  
15          and he was to be given a chance. Is that a reflection  
16          of what you think would have been a general attitude to  
17          an offence of this sort, an indecent assault, lifting up  
18          someone's jumper, albeit a girl with learning  
19          difficulties, some years previously?

20       A. I --

21       Q. It's trying to put it in the context of how the public  
22          would have viewed this at the time.

23       A. Well, I think I have probably already answered that  
24          question.

25       Q. You say in the press release at page 55 {WD009001/55} --



1 and you have already told us now -- in that second  
2 paragraph:

3 "With hindsight, of course, I would rather  
4 a different decision had been taken at the time."

5 Was the view that you set out in 2008 a view that  
6 you also held in 2002 at the time that you gave evidence  
7 before the Committee of Inquiry?

8 A. That I wish I had made a different decision at the time?

9 Q. Yes?

10 A. I don't honestly remember. I don't remember whether  
11 Holland had reoffended before 2002 -- presumably he had,  
12 had he?

13 Q. You say in that same paragraph, Sir Philip:

14 "But, in context, on the facts as known at the time  
15 - 1992 - when not as much was known about the long term  
16 paedophile tendencies of those abusing children, and  
17 before the rash of child abuse investigations which took  
18 place in the UK in the 1990s - I hope the decision seems  
19 more understandable."

20 I come back to the point, Sir Philip, just trying to  
21 understand it: in the light of everything that you and  
22 I have looked at in the course of today's evidence, do  
23 you think that it could still be considered  
24 understandable?

25 A. If one takes oneself back to 1992, yes I do. I think,

1 Mr Sadd -- I don't know whether the Panel will agree  
2 with this or not, but in my view the capacity of men to  
3 do evil in the context of children is probably  
4 a constant. I don't think it has changed between 1945  
5 and 2016. What has changed in that period of time is  
6 that people are much more aware than they were in  
7 earlier years about the long term damage done to  
8 children by abuse during their childhoods and  
9 a determination that in most cases these offences should  
10 be prosecuted and brought to justice. I think in the  
11 1970s and the 1980s -- not in the case of serious  
12 offending, but in the case of minor sexual offending --  
13 institutions tended to take the view that the reputation  
14 of the institution was something to be taken into  
15 account in deciding whether, for example, a teacher  
16 should be reported to the police, or simply sacked and  
17 pushed away. That has changed and that's been an  
18 evolutionary process over the last 50 years.

19 MR SADD: Madam Chair, I'm about --

20 A. If I could just add to that. I don't think in that  
21 respect that Jersey is any different from England, or  
22 Scotland, or Northern Ireland, or any part of the  
23 British Isles. I think that experience of abuse in the  
24 whole of the British Isles tends to support the view  
25 that exactly the same process happened in all parts of

1 the country.

2 MR SADD: Madam Chair, it is 5 to 1. I am about to move on  
3 to a completely new subject.

4 THE CHAIR: Well, then we will take our luncheon break now  
5 and resume at 2 o'clock.

6 Sir Philip, if you wish there will be refreshment  
7 provided.

8 A. Thank you very much.

9 (12.55 pm)

10 (The lunch break)

11 (2.00 pm)

12 THE CHAIR: Good afternoon, Mr Sadd.

13 MR SADD: Sir Philip, over the lunch break I have reviewed  
14 some of this morning's evidence and I just need to  
15 clarify with you the process that was adopted in your  
16 approach to the Roger Holland issue and I just need to  
17 be clear that I have understood it correctly.

18 At the moment my understanding is that had you known  
19 of the conviction in advance of the appearance at the  
20 Royal Court for the taking of the oath, it would have  
21 been something that you would have brought to  
22 the Court's attention; have I got that right?

23 A. Yes.

24 Q. You didn't do so once he was sworn in. Should  
25 the Inquiry then conclude that the reason in fact why

1           you didn't do so was because of the procedural  
2           difficulties involved?

3           A. My feeling is that if the Royal Court had been aware of  
4           Holland's conviction and all the circumstances which we  
5           discussed before lunch, they might well have sworn him  
6           in in any event as an Honorary Police officer. I have  
7           said before, and one can't be sure what the result would  
8           have been, but that probably was one of the factors  
9           which influenced me, in combination with the wishes of  
10          the Constable of St Helier and the parish and so forth,  
11          and all the other surrounding circumstances, into not  
12          taking it back before the Royal Court.

13                 It would have been -- I mean viewed from Holland's  
14          perspective, let's assume he had never again offended in  
15          his life, viewed from Holland's perspective it would  
16          have brought to everyone's attention the fact of  
17          a conviction which the parish wanted to treat as being  
18          subject to rehabilitation, something that was in the  
19          past and gone and forgotten. So it would have caused  
20          some ripples, let me put it that way, to make  
21          a representation to the Royal Court and to have drawn  
22          the matter to the attention of the Royal Court, so  
23          I would need to have been certain that my recommendation  
24          to the Court had been that "this man should not have  
25          been sworn in, it was a mistake, undo it", because

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1 I imagine that I would not necessarily have reached that  
2 conclusion that that again influenced me into not making  
3 the representation. I mean it's a long time ago,  
4 I can't be precisely sure what my motives were at that  
5 stage.

6 Q. Sir Philip, I think I understand, the point is that had  
7 you known beforehand you would have brought it  
8 forward --

9 A. Yes.

10 Q. -- regardless of the repercussions for Roger Holland?

11 A. Yes, absolutely.

12 Q. And I assume that the hearings to take the oath are held  
13 in public?

14 A. They are.

15 Q. Can we then go please --

16 A. I don't know, Mr Sadd, perhaps it is worth mentioning --  
17 I don't know if Members of the Panel have visited the  
18 Royal Court. It is a large and splendid place. On  
19 a Friday morning it is full of people because  
20 Honorary Police officers go there to take their oaths,  
21 it is a clearing house for all kinds of public business,  
22 so it's a very public sitting which sort of underlines  
23 I think the hesitations that I must have had about  
24 bringing the matter back to the Court unless I was  
25 certain that I was going to suggest that he should be

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1 removed from the Honorary Police.

2 Q. But again so that my understanding is entirely clear and  
3 that no false point is taken about this, Sir Philip,  
4 that concern about a busy court on a Friday with  
5 honorary policemen taking their oaths, would not have  
6 prevented you taking it before the Court prior to the  
7 oath being taken?

8 A. No, I only say that to underline the fact that it is  
9 a very public occasion.

10 Q. Can we then turn to paragraph 9 of your statement, which  
11 is page 2 please {WS000699/2}. This is where you  
12 address issues arising out of the speech you gave on  
13 Liberation Day in 2008 and you set out the circumstances  
14 in which you came to be delivering the Liberation Day  
15 speech in May of that year. You say at paragraph 9:

16 "It is traditional in Jersey for the Bailiff to  
17 address the Island ..."

18 Is that in the Bailiff's role as head of the Court,  
19 or in his role --

20 A. No, in his civic role.

21 Q. In his civic role. So, as it were, the leading citizen  
22 on the Island effectively as you described it?

23 A. That's right.

24 Q. Do you remember, Sir Philip, if you prepared a draft of  
25 this speech?

1 A. Yes, I certainly did.

2 Q. And was it a draft that was circulated for comment?

3 A. No.

4 Q. Did you discuss the speech and the draft with anyone?

5 A. I usually used my family as a sounding board on these  
6 occasions. I find my children to be my most ferocious  
7 critics so I would have shared it in the family, but  
8 beyond that, no.

9 Q. Does your family include your brother William?

10 A. I think not on this occasion.

11 Q. So aside from your family you discussed it with no one  
12 else?

13 A. No.

14 Q. Before making that speech, Sir Philip, the suggestion  
15 that damage to Jersey's reputation was "the real  
16 scandal" {WD009001/2}, did you consider the effect that  
17 this might have for instance first on those victims who  
18 had come forward to say they had been abused?

19 A. I think, Mr Sadd, I would have considered all the  
20 circumstances in the round. I can't -- I don't think  
21 I can say to you that I specifically identified the  
22 alleged victims as a group of people to be considered,  
23 but I certainly would have viewed the matter in the  
24 round.

25 Q. And in the round did that include consideration of the

1 public confidence in the investigation that was ongoing?

2 A. Yes, indeed.

3 Q. And would it have included the effect that that might  
4 have had on the Police carrying out the investigation?

5 A. I'm not sure whether I considered that. I certainly was  
6 of the view at the time that the actions of Mr Harper  
7 were surprising, to put it neutrally, and if he had  
8 taken the comments as a reflection on the way in which  
9 he was conducting the investigation I would not have  
10 been disappointed, but I can't say that it was  
11 particularly aimed at Mr Harper, or the Police, or  
12 anyone in particular.

13 Q. I'm not suggesting it was aimed at anyone, I'm just  
14 looking at whether or not you gave consideration to the  
15 effect of the comments. In your role as effectively  
16 head of the judiciary, your other role as Bailiff as  
17 head of the judiciary in Jersey, did you give any  
18 consideration to how those comments might affect cases  
19 that were to be tried in the investigation?

20 A. It might have had the effect that I would have decided  
21 not to preside over particular cases, yes.

22 Q. But what effect or what example do you think it set for  
23 your brother and sister judges?

24 A. It would not have had the slightest effect upon them.  
25 How would it possibly have affected them?



1 Q. On one view, Sir Philip, the senior judge in the Island  
2 appears on one reading to suggest that the child abuse  
3 investigation comes second to respect for the Island.

4 A. Well, I think that's a false reading.

5 Q. You provide in your statement the context in which the  
6 speech was given. As we know it was some months into  
7 Operation Rectangle. If we go please to paragraph 10  
8 {WS000699/3} you say there:

9 "The speech must be read as a whole. In the weeks  
10 before Liberation Day 2008 ..."

11 Do you have it?

12 A. Yes, I have paragraph 10, I was just looking for my  
13 speech actually. We will come to that.

14 Q. Let me start again. Paragraph 10 {WS000699/3}:

15 "The speech must be read as a whole. In the weeks  
16 before Liberation Day 2008 Deputy Chief Officer Harper  
17 had taken the unusual course of briefing the national  
18 and later international media on a regular, if not daily  
19 basis in front of Haut de la Garenne on the progress of  
20 Operation Rectangle. Many people felt, as did I, that  
21 Mr Harper was deliberately feeding information  
22 selectively to the media with a view to achieving  
23 sensational headlines."

24 On what do you base your view, Sir Philip, that  
25 Mr Harper was doing so deliberately to get sensational

1 headlines?

2 A. Well, I think I make that clear in the remaining part of  
3 that paragraph.

4 Q. But here you use the word -- you say "deliberately";  
5 what was his purpose in so doing?

6 A. What was his purpose in ..?

7 Q. In deliberately feeding information selectively.

8 A. Well, there were -- I suppose the explanation that  
9 I thought was the case was that he rather liked  
10 publicity and that his appearance on national news and  
11 international news was something that he enjoyed.

12 Q. Mr Harper has said in evidence, and I'm paraphrasing  
13 here, that he was keen to engender the trust of victims  
14 and so chose to maintain direct and regular contact with  
15 the press in the course of the investigation so as to  
16 maintain that trust with victims. Do you accept that as  
17 a rationale?

18 A. I don't know whether that was his rationale or not.  
19 I accept that it's a possible rationale. I don't think  
20 it justified the things that he did, but it is  
21 a rationale.

22 Q. At paragraphs 11, 12 and 13, page 3 {WS000699/3} you  
23 comment as follows, paragraph 11:

24 "The result of this barrage of hostile and  
25 extravagant reporting was that people began to feel

1           ashamed to admit that they lived in Jersey. They could  
2           not understand what was happening. They could not  
3           relate this reporting to their experiences of living in  
4           Jersey. They felt 'under the cosh' of the media. That  
5           was the context of my speech.

6                     "My purpose in referring to these matters was to  
7           reassure people that they should not feel ashamed of  
8           their island, that these sensational stories should not  
9           necessarily be believed, and that a balanced judgment as  
10          to what had happened would only be possible when the  
11          investigation was complete."

12                    And then you conclude this part of your statement by  
13          saying at paragraph 13:

14                    "I wish to make it clear that I was not diminishing  
15          the gravity of any child abuse. All child abuse is  
16          scandalous. I did not wish to detract from that  
17          statement. Similarly, I was not comparing the disgrace  
18          of child abuse with the impact that Operation Rectangle  
19          was having in Jersey. Perhaps, the juxtaposition of the  
20          words was unfortunate. However, my purpose was to  
21          address the Island as a whole and to encourage Jersey  
22          people not to feel ashamed of their history and their  
23          nation."

24                    If we then go please to page 2 of the bundle  
25          {WD009001/2}, this is PB1 please, Sir Philip. We can go

1 to the second paragraph there and you say this:

2 "Now we know that the fragment of skull is at least  
3 60 years old and possibly very much older than that. Of  
4 course things may change, but there are as yet no  
5 bodies, no evidence of any murder, and no evidence of  
6 cover-ups by government. Hardly any of this has been  
7 beamed across the world. Yet many journalists continue  
8 to write about the Island's so-called child abuse  
9 scandal. All child abuse, wherever it happens, is  
10 scandalous, but it is the unjustified and remorseless  
11 denigration of Jersey and her people that is the real  
12 scandal. The simple truth is that we do not yet know  
13 what happened at Haut de la Garenne or in other places.  
14 What we do know is that a rigorous investigation is  
15 taking place and, in due course, a balanced judgment  
16 will be possible. A brave writer in the Guardian  
17 earlier this week was the first journalist in a national  
18 newspaper, so far as I know, to confront this truth."

19 You say in your statement, Sir Philip, that the  
20 juxtaposition was unfortunate. In describing the real  
21 scandal as being the denigration of Jersey, in contrast  
22 to the scandal of child abuse, do you think that this  
23 view was representative of the public's view as at 2008  
24 towards the investigation?

25 A. I appreciate that the words as one sees them written

1           there give the impression that one is comparing one with  
2           the other. That was not my intention and that's why  
3           I say in my statement that the juxtaposition of words  
4           was perhaps unfortunate. The whole tenor of the speech  
5           was motivated by my concern that the Island about which  
6           I feel very passionately was being misrepresented and  
7           maligned in a way which was completely unfair and one  
8           had to set the context of that unfairness by referring  
9           to the kind of things that had been said and some of the  
10          evidence which had apparently emerged from the inquiry,  
11          although looking at that now we now know the alleged  
12          fragment of skull was apparently a piece of coconut.

13        Q. But, Sir Philip, at the time that you drafted this  
14          speech you had been a lawyer for a good many years, you  
15          had been a senior judge in the Jersey courts, writing  
16          many judgments, and I imagine that you had provided many  
17          submissions in court and that you had spoken in  
18          the States, so it would be fair to say that words that  
19          you chose to give in a speech were words that were  
20          carefully chosen and carefully crafted, is that right?

21        A. Yes, I think that's a fair comment.

22        Q. So when you say now that the juxtaposition was  
23          unfortunate, why didn't that occur to you at the time?

24        A. Well, I'm afraid it didn't.

25        Q. And should the Inquiry conclude that your view as set

1 out there was a view representative of attitudes in  
2 Jersey towards child abuse?

3 A. I'm sorry, what is the attitude about child abuse that  
4 is alleged? I said that child abuse was scandalous, I'm  
5 sure that's representative of the views of the entire  
6 Island.

7 Q. What you say is, as we have both identified, what  
8 appears to be an apparent contrast between on the one  
9 hand the fact that child abuse is scandalous, but that  
10 the "real scandal" is the "denigration of Jersey and her  
11 people".

12 A. Well, I think I have already said that the juxtaposition  
13 of words was perhaps unfortunate and it certainly wasn't  
14 my intention to compare the gravity of child abuse with  
15 the gravity of what was happening to Jersey.

16 Q. So in answer to the question was it reflective of the  
17 views of the public in Jersey, the answer to that is ..?

18 A. Was what reflective?

19 Q. The views set out in that part of your speech?

20 A. I think it was reflective of many views in Jersey that  
21 what was happening in the context of this barrage of  
22 hostile criticism was something that was  
23 incomprehensible. It was not referable to people's  
24 understanding of what the Island was all about and if  
25 you go to the bottom of that page you will see that

1 I said "I do not believe that Jersey is an uncaring  
2 society". It was the suggestion that people had  
3 willfully closed their eyes to terrible things that were  
4 happening at Haut de la Garenne and accusations of that  
5 ilk and their relationship to alleged collaboration  
6 during the German occupation; all these things seemed to  
7 me to be completely wrong and not representative of the  
8 Island and they caused me a great deal of concern. They  
9 caused a lot people a great deal of concern.

10 It's difficult now, looking back eight years or so,  
11 to appreciate the febrile atmosphere that there was  
12 in April and May 2008. Some of the things that were  
13 being alleged were extraordinary and were wrong  
14 actually, and they were having an effect, as I saw it,  
15 upon the morale of the Island and that was my motivation  
16 for making my Liberation Day speech.

17 Q. Because you say that the juxtaposition of the words was  
18 unfortunate, were you to be given the opportunity again  
19 today to rewrite that part of the speech, knowing what  
20 it is you wanted to convey, how would you rephrase this?

21 A. Well, if I had known that my words were going to be  
22 dissected in the way in which they have been and are  
23 being at the moment, Mr Sadd, I probably would have  
24 reconstructed the speech to take apart the references to  
25 the scandal of child abuse from the scandal of the

1 treatment of the Island by the international media and  
2 the national media.

3 Q. But help me with this, Sir Philip: was it right that at  
4 the time, following the delivery of this speech, there  
5 were people who were upset by those words?

6 A. Well, I'm afraid Bailiffs do upset people from time to  
7 time. I certainly did not intend to upset anybody.  
8 I certainly didn't intend the speech to be given the  
9 construction that it has been given by a small number of  
10 people.

11 Q. Can we go please to Victoria College, which you deal  
12 with at paragraphs 62 to 67 of your statement  
13 {WS000699/14}, page 14 please. Sir Philip, although the  
14 Victoria College scandal falls outside the Inquiry's  
15 terms of reference, issues surrounding the investigation  
16 and the approach taken by the Police touch tangentially  
17 on the terms of reference.

18 You tell the Inquiry that you were a chair of  
19 governors at the school in 1995, as I think I have  
20 understood it. You say it is untrue that you were  
21 involved in covering up Jervis-Dykes' offending and you  
22 exhibit at PB10, page 85 of the exhibits {WD009001/85},  
23 a file note dated 5 June 1996 which I think you intend  
24 the Inquiry to take as your first knowledge of what had  
25 gone on at the College, is that right?



1 A. That's correct.

2 Q. The Inquiry has heard evidence from one of the  
3 investigating officers, Anton Cornelissen, who was  
4 involved in the investigation. He says that he  
5 interviewed a jurat, John Le Breton, who had formerly  
6 been a deputy head teacher at the College and who it was  
7 alleged had told a victim who had disclosed abuse not to  
8 take it further. Mr Cornelissen says that it was his  
9 understanding that either the Bailiff or  
10 Attorney General at the time advised Mr Le Breton not to  
11 have any dealings with the investigation and  
12 Mr Cornelissen suggests that Mr Le Breton tried to  
13 obstruct the arrest warrant.

14 As the Bailiff at the time, were you responsible for  
15 appointing jurats?

16 A. No.

17 Q. Who appointed jurats?

18 A. There was an electoral college that appoints the jurats,  
19 or elects them.

20 Q. Do you have any say in the approval of jurats once they  
21 are elected?

22 A. No.

23 Q. If you had concerns about any jurat would it be your  
24 place to raise those concerns and, if so, who with?

25 A. What kind of concerns?

1 Q. About impropriety, about the probity of a jurat, about  
2 information that you had learned about the conduct of  
3 a particular jurat?

4 A. Yes, certainly it would obviously be of concern to the  
5 Bailiff if he thought that any of the jurats was not  
6 a person of the upmost integrity.

7 Q. And with whom would you raise those concerns? How would  
8 those concerns be dealt with?

9 A. The -- forgive me, I should have looked it up, but I'm  
10 fairly sure the position is that a jurat can only be  
11 removed by order of the Privy Council and so if there  
12 were concerns about the conduct of a jurat then that  
13 would involve representations, or discussions with The  
14 Ministry of Justice and so on.

15 Q. In your time as Bailiff in the Court, did Mr Le Breton  
16 sit as jurat with you?

17 A. He did, many times.

18 Q. Did you ever have cause to be concerned about the  
19 integrity of Mr Le Breton?

20 A. No, I think Mr Cornelissen has got it completely wrong  
21 and I think that if Mr Le Breton were called to give  
22 evidence before this Inquiry they would get an entirely  
23 different perspective from the perspective that has been  
24 given by that witness. My experience of Mr Le Breton is  
25 that he is an extremely careful -- was an extremely

1           careful jurat and a person who I thought was a good  
2           jurat.

3       Q.   Moving on please to your discussion of Robert Le Brocq.  
4           This is page 15, paragraphs 68 to 74 cover this issue  
5           {WS000699/15}. You provide there an account,  
6           Sir Philip, of presiding over the Royal Court hearing  
7           relating to Robert Le Brocq in 2001. You set out the  
8           background and you provide a copy of the decision. In  
9           that hearing you sat with ten jurats and if we go over  
10          the page to paragraph 72 please {WS000699/16} you say:

11                 "It is quite correct to say that my brother and  
12                 I had agreed that he should not appear in a case before  
13                 me and so he would not have presented the case against  
14                 Mr Le Brocq ..."

15                 The situation being at the time that  
16                 William Bailhache was the Attorney General and was the  
17                 titular head of the Honorary Police, is that right,  
18                 while he would ordinarily have appeared at court for  
19                 this hearing, is that right?

20       A.   He was the Attorney General and he was the titular head  
21           of the Honorary Police, yes.

22       Q.   And ordinarily in hearings of this kind it would have  
23           been for him to present the case?

24       A.   Either him or the Solicitor General, yes.

25       Q.   And you refer there, as I have pointed out, to

1 an agreement between you and your brother about not  
2 appearing before you. Was this put in place on his  
3 appointment as Attorney General, or was it something  
4 that occurred subsequently?

5 A. It was something that we agreed fairly soon after his  
6 appointment as Attorney General. I don't think either  
7 of us really appreciated at the time that he was sworn  
8 in that suspicious minds might take the view that either  
9 of us might not act with integrity. I think we are both  
10 people of integrity and we expect other people to  
11 understand that and so it was I think only when  
12 a particular litigant took an appeal to the  
13 Court of Appeal, fairly early in the 2000s, and  
14 suggested that because my brother as Attorney General  
15 had signed a particular indictment it was not open to me  
16 to preside over the subsequent trial that we had a very  
17 serious discussion about how these perceptions could be  
18 dealt with and what we decided was that if he was going  
19 to appear in court I would not be the judge and vice  
20 versa.

21 Q. At page 17 please of your statement {WS000699/17}, here  
22 you deal with witness 744. This is at paragraph 80.  
23 This concerns an issue that arose in a trial over which  
24 you presided in 2010 where it was alleged that you had  
25 witnessed a convicted paedophile, Ronald Thorne, abusing

1 children in your firm's offices and at paragraph 84,  
2 page 18 {WS000699/18}, you provide an extract from the  
3 judgment where you make it clear that you didn't witness  
4 any such incident. Is there anything you would want to  
5 add to your evidence about this issue, other than that  
6 which is set out in your statement?

7 A. No, I don't think so, Mr Sadd.

8 Well, perhaps just one thing. One of the problems  
9 in a small community like Jersey where there is a very  
10 limited number of judges is that when a question arises  
11 about whether a judge should preside over a certain  
12 particular case there's a greater tension than there is  
13 in a larger jurisdiction because if one acceded as  
14 a matter of course to any litigant's application for  
15 recusal, it would be tantamount to allowing litigants to  
16 choose their own judge. He might say "I don't like the  
17 Bailiff, I would like the Deputy Bailiff to preside over  
18 this case, so I'll make up something about the Bailiff  
19 and therefore I will be tried by the Deputy Bailiff and  
20 I'll have a better chance before the Deputy Bailiff",  
21 and one cannot allow that kind of thing to happen and  
22 there are a number of judgments in the Court of Appeal  
23 where different judges of the Court of Appeal have said  
24 judges of the Royal Court ought not to acquiesce too  
25 readily to suggestions that they should recuse

1 themselves, and tests have been set out, they are not  
2 very dissimilar to the tests in the United Kingdom, but  
3 the mandate from the Court of Appeal is: just be  
4 a little bit careful.

5 Q. From pages 19 to 22 {WS000699/19} you provide  
6 the Inquiry with extracts from judgments that you have  
7 given from 1995 onwards, when sitting as Bailiff, in  
8 relation to cases involving sexual abuse and those  
9 extracts you provide, as I understand it, by way of  
10 acknowledgment of the gravity and damage done by such  
11 crimes, is that right?

12 A. That's correct.

13 Q. And you want the Inquiry to accept that, certainly from  
14 1995, you were aware of how damaging such offences could  
15 be, is that right again?

16 A. No, I think I have been aware of it for a very long  
17 time. Long before 1995.

18 Q. In relation to how damaging such offences could be?

19 A. Yes.

20 Q. Finally I would like to take you please to the comments  
21 that you make in relation to the remand and sentencing  
22 options for school age offenders. This is at page 16 of  
23 your statement please, paragraphs 75 to 79  
24 {WS000699/16}. You comment on an issue which, as you  
25 say, is very familiar to the Inquiry, namely the use of

1 Les Chenes as both a remand centre for children 15 or  
2 under, as well as a residential educational home for  
3 children in care, and at paragraph 78 {WS000699/17} you  
4 raise an issue which you have just spoken to us about in  
5 relation to the judiciary here. You say in the second  
6 line:

7 "In particular, I have been asked whether, in my  
8 view, it was appropriate to send young offenders to  
9 Les Chenes. The problem that faces a small jurisdiction  
10 like Jersey is that it is impossible to implement and  
11 comply with all conventions and recommendations made.  
12 One expert might recommend that children and adults are  
13 remanded to separate centres, whereas another expert may  
14 recommend that male and female offenders are separated.  
15 In a small community, there are not enough resources to  
16 comply with all conflicted mandates. A compromise  
17 sometimes has to be found. The compromise in relation  
18 to remanding and sentencing young offenders was  
19 Les Chenes."

20 And you elaborate on this in paragraph 79  
21 {WS000699/17}, please, Sir Philip. You say:

22 "Les Chenes did have a dual function; it was used to  
23 house children who had experienced difficulties in their  
24 lives and were under the care of the Health and Social  
25 Services Committee, and it was also used to provide

1 accommodation for those children who were in difficulty  
2 because they had been engaged with the criminal  
3 justice system. A view was taken that as both sets of  
4 children were children in difficulty who required  
5 assistance and support, that they could be placed  
6 together. Whether the child had committed a criminal  
7 offence or not was incidental."

8 Do you think that is a satisfactory position?  
9 Regardless of the realities and practicalities of  
10 resource, is that a satisfactory position?

11 A. Ultimately it turned out not to be a satisfactory  
12 position, but, Mr Sadd, you and the Panel, if I may say  
13 so, with respect, have got to appreciate that this is  
14 a small jurisdiction. There is a convention which says  
15 that adult women offenders and young female offenders  
16 should not be placed in the same institution and we were  
17 aware of that, but we did not comply with it and we did  
18 not comply with it because the number of young female  
19 offenders is very very small, occasionally there will  
20 only be one of them in the prison and if you separate  
21 the adult women from the juvenile women you will  
22 in effect place the young woman in solitary confinement  
23 and solitary confinement would be regarded as inhumane  
24 punishment under the Human Rights Convention. So it's  
25 very difficult to get it right, so all you can do is



1           administratively to try and arrange things in the best  
2           interests of the prisoners who are there.  If there is  
3           a nasty, violent adult female prisoner she would  
4           obviously not be placed anywhere near a young and  
5           potentially vulnerable prisoner, but there may be  
6           an adult female prisoner who is a motherly type and who  
7           actually could be placed without difficulty in proximity  
8           to the juvenile.

9           So these compromises have to be made in a small  
10          community --

11        Q.  Sir Philip, the issue that you are addressing -- forgive  
12        me for cutting across you, but the issue that you are  
13        addressing in paragraph 79 doesn't concern prisoners at  
14        La Moye, or at any other centre, it concerns the mixing  
15        of children coming from different sets of problems and  
16        where you say "whether the child had committed  
17        a criminal offence or not was incidental" your view  
18        is -- or a view was taken, I should say, not your view,  
19        was that "both sets of children were children in  
20        difficulty who required assistance and support" and that  
21        they could be placed together.  My question to you is at  
22        what point does concern for a particular situation trump  
23        issues of scale and resources?  At what point is that  
24        position arrived at; does it take a crisis?

25        A.  It's a question of judgment, isn't it?  It's a question

---

1 of balancing the needs of the community with the  
2 resources available to it. I will give you an example,  
3 if I may. I remember sitting in court one afternoon  
4 dealing with a particular young person and the young  
5 person got extremely agitated and threw books and  
6 a chair around the court and at the Court and was  
7 completely out of control. Now, I don't think that  
8 child actually had committed a criminal offence. That  
9 child was a thoroughly disturbed individual who was out  
10 of control and who needed help and that kind of child  
11 would probably, because he could not be contained at an  
12 ordinary children's home, have been put in an  
13 institution like Les Chenes.

14 Later I appreciate, and you may be going to draw my  
15 attention to it in a moment, I don't know, but later it  
16 became clear that some of the young people who were in  
17 Les Chenes were extremely violent and unpleasant  
18 criminals and to place them in the same environment as  
19 children who had other difficulties but were not  
20 criminal was not possible and so the balance tipped, but  
21 it is always a question of balance.

22 Q. Sir Philip, the Inquiry has heard evidence suggesting  
23 that in the past the phrase that has been used is there  
24 has been a "lack of political will" in implementing  
25 changes based on recommendations in reports, those

1 reports specifically, as far as this Inquiry is  
2 concerned, relating to the provision for children in the  
3 care of the States, and I'm thinking in particular of  
4 the Breckon Report. At one point in the recent evidence  
5 to this Inquiry, when Ian Le Marquand was asked whether  
6 the Inquiry should be confident that any recommendations  
7 it may make would be implemented his retort was I think  
8 one of -- I hope I'm not doing him a disservice --  
9 scepticism. Would you be confident, Sir Philip, that  
10 any recommendations that this Inquiry might make would  
11 be implemented?

12 A. I'm not sure that's a fair question, Mr Sadd. Any  
13 sensible recommendation that the Panel makes I would  
14 think has a very good chance of being accepted.

15 Q. Thank you very much. There may be questions from the  
16 Panel.

17 THE CHAIR: Sir Philip, there are. Are you content to  
18 continue, or would you like a break?

19 A. No, I'm very happy to continue.

20 Questions from THE PANEL

21 THE CHAIR: Just picking up that last question and answer,  
22 you say any sensible recommendation that the Panel makes  
23 would be accepted. Who judges what is sensible?

24 A. Forgive me, I wasn't intending to be impertinent to the  
25 Panel at all and I'm sure that any recommendation that

1 the Panel makes will be a sensible recommendation.

2 I think that it's the duty of government to consider  
3 recommendations which are made by judicial bodies, or  
4 quasi judicial bodies, in the context of their knowledge  
5 of the community, the resources that are available to  
6 the community and a number of other factors of that  
7 kind, so it's very -- I'm not sure that I can add very  
8 much to that.

9 THE CHAIR: Perhaps just staying with that theme, you said  
10 earlier in your evidence, and indeed we know, it was in  
11 2012 that there was a change in the law relating to  
12 corroboration. That was 19 years after you chaired the  
13 working party which made the recommendations that we  
14 know were made. Counsel asked if that 19 years  
15 reflected "an absence of political will" and you firmly  
16 said no; you were asked what caused the delay and you  
17 said incompetence. My question to you is incompetence  
18 by whom?

19 A. I think that's a difficult question to answer. I think  
20 that when a particular recommendation gets into the  
21 hands of an administrative body to implement, the speed  
22 or lack of speed with which a recommendation is dealt  
23 with depends upon the individuals concerned, whether  
24 they press for things to be done by officials, or  
25 whether they don't press, and perhaps incompetence was

1           perhaps rather a strong word to use, but I must say that  
2           I felt very disappointed that the recommendations of the  
3           working party which I chaired a long time ago took  
4           a long time to be implemented.

5       THE CHAIR: And how can we, as a panel, be confident that  
6           that aspect of incompetence isn't a recurring theme?

7       A. Well, I'm afraid that all governments are incompetent  
8           from time to time. It's a matter for public pressure,  
9           for pressure from panels such as your own which ensures  
10          that things that ought to change do change.

11       THE CHAIR: Thank you. Ms Leslie.

12       MS LESLIE: Thank you.

13                 Sir Philip, you explained to us the functions of the  
14           Bailiff, one of which is effectively the speaker of the  
15           Parliament here in Jersey. In that role how much  
16           control does the Bailiff have of the parliamentary  
17           timetable, I mean in terms of legislative timetable;  
18           what is to be given priority for discussion, or for  
19           taking forward as a piece of legislation?

20       A. None at all.

21                 The next question is you want to know where it lies.

22       MS LESLIE: Yes.

23       A. Responsibility lies with the political authorities that  
24           are charged with the responsibility for that area of the  
25           administration.

1 MS LESLIE: Thank you. I asked because one of the issues  
2 which has recurred in the evidence we have heard has  
3 sometimes been the time that it has taken for particular  
4 pieces of legislation and we have just had a very good  
5 example of coming forward. From your experience of the  
6 parliamentary system are there any recommendations that  
7 you would make about how this could be improved?

8 A. Well, are we talking about parliamentary processes?

9 MS LESLIE: Indeed, yes, so that for example if there were  
10 a recommendation for a particular piece of legislation  
11 to bring about a particular measure to assist children,  
12 what would need to happen to ensure that that was given  
13 priority within the system?

14 A. I think it would be very unlikely that a recommendation  
15 of this Panel, which was accepted, subject to all the  
16 caveats that I have already mentioned, would not be  
17 taken forward by -- certainly by the present government.  
18 The Chief Minister is very keen to ensure and has shown  
19 I think in the last three or four years that he wishes  
20 to do anything that can reasonably be done to ensure  
21 that children are protected and that instances where  
22 they are not protected are dealt with appropriately.

23 MS LESLIE: From your experience of the issue for example of  
24 the change around corroboration in the courts, are there  
25 any recommendations from that experience that you would

1           wish to make in terms of expedited the process of such  
2           things turning into law and being implemented?

3        A.   I think that all these things depend upon individuals  
4           and if individual office holders are in the right place  
5           at the right time, these things will happen.  If the  
6           wrong people are in the wrong place, they don't, or they  
7           get delayed, and it's very difficult to say more than  
8           that I think.

9        MS LESLIE:  Would you have any recommendations around how  
10           Jersey can go about ensuring it has the right people in  
11           place to take forward the policies and the legislation  
12           that --

13       A.   Lots of them, but they are well outside the terms of  
14           reference of this Panel.

15       MS LESLIE:  Just a point of clarification.  Mr Sadd was  
16           asking you about the appointment of jurats.  Are jurats  
17           Crown appointments?

18       A.   No, jurats are elected by an electoral college which is  
19           made up of all the members of the legal profession, all  
20           the Members of the States, the jurats, the body of  
21           jurats themselves, and the Bailiff and Deputy Bailiff  
22           I think are members, I'm not sure they are voting  
23           members, and when a vacancy arises in a position for  
24           a jurat, the Bailiff will announce the vacancy,  
25           candidates can be proposed and seconded by any member of

1 the electoral college, which numbers about 300 or 400  
2 people, and there is then a meeting of the electoral  
3 college at which speeches are heard from the proposer  
4 and the seconder for the candidates and a vote is taken.

5 MS LESLIE: Thank you. That's very helpful.

6 Finally just in relation to the Roger Holland case,  
7 you have explained the considerations that you balanced  
8 once you became aware of the information about his  
9 previous conviction and how you came to the conclusion  
10 that you would not in this instance take this back to  
11 the Royal Court. One of the considerations you  
12 indicated was that you thought it was possible,  
13 notwithstanding any information you brought to the  
14 Royal Court, that they would have sworn him in anyway,  
15 or they would allow him to continue. Is that not  
16 second-guessing the Court and would it not have been  
17 more appropriate for you to say "Look, this information  
18 has come to light, I lay it before you to make  
19 a decision on it"?

20 A. That's a point of view. I mean I think when one  
21 exercises a judgment of this kind one has to take into  
22 account all the surrounding circumstances. If the  
23 conviction that had not been disclosed was a parking  
24 offence, you're at one end of the scale. If the  
25 conviction which had not been disclosed was a burglary



1           or a rape, you're at the other end of the scale, and  
2           here we had something which was somewhere in the middle,  
3           but probably going towards the lower end of the middle  
4           end of the scale and that was the judgment that was  
5           made.

6           MS LESLIE: The fact that this was an abuse of a position of  
7           trust and that the offence involved someone with  
8           a learning disability, would that not weigh in the  
9           consideration to push it more towards the serious end  
10          scale because, after all, this was someone who was  
11          taking up a position of authority in which they would  
12          have contact with vulnerable people?

13          A. I think that's a perfectly fair observation and that  
14          would have been one of the considerations borne in mind.

15          MS LESLIE: You said that one of the factors that you  
16          considered was what the person in the street might have  
17          thought of this offence and that it seemed that in your  
18          mind it came down to a consideration that this was  
19          someone who had rehabilitated themselves and therefore  
20          would be suitable; is that a fair summary of your  
21          thinking?

22          A. Well, it's a very short summary, but yes, I think --  
23          I mean if one were wanting to encapsulate it in  
24          a particular phrase I think that probably is the way in  
25          which it would be encapsulated.

1 MS LESLIE: You had the letter, albeit anonymous, from  
2 a member of the public in Jersey which in fact was  
3 expressing a contrary view and was saying this is  
4 a matter of concern, this is someone who is not going to  
5 bring distinction to the role of honorary constable and  
6 it is worrying, in effect, that they are being  
7 appointed. Did that not indicate to you that there  
8 might be a different view held by members of the public?

9 A. I'm sure that was a perfectly valid view, but it had to  
10 be balanced against the view of the Constable, who was  
11 the head of the Honorary Police, who did not want  
12 a representation to be made to the Court, the other  
13 members of the Honorary Police so far as I'm aware, so  
14 the balance has to be drawn. I don't think one can take  
15 the view of a member of the public who writes an  
16 anonymous letter as being a decisive factor. It's  
17 a factor to be borne in mind.

18 MS LESLIE: Thank you.

19 THE CHAIR: Professor Cameron.

20 PROFESSOR CAMERON: Can I perhaps just continue a little bit  
21 with that theme. Would there be offences in your view  
22 which, if someone had a conviction for them, on that  
23 scale, wherever they were, that might mean that someone  
24 should be precluded from holding public office for all  
25 time, rather than be rehabilitated?

---

1       A. It's a subject which has been anxiously discussed over  
2       a number of years and my own view is that there are some  
3       offences that create a stain which you cannot rub out  
4       and therefore you ought not to be a police officer if  
5       you have done certain things in the past. Other people  
6       take the view that somebody who commits a theft as  
7       a juvenile, even though that's an offence of dishonesty,  
8       if he commits no other offence for 20 years should be  
9       forgiven and brought back into the fold.

10       PROFESSOR CAMERON: Yes and that would be very reasonable  
11       thinking, but I wonder whether you feel that perhaps in  
12       terms of those things that the conviction that  
13       Roger Holland had might be held to be one of those that  
14       would preclude people, whether attitudes to that in  
15       Jersey have changed over the years that you have been  
16       involved in these matters?

17       A. Well, I think it's obvious that they have changed  
18       because, as I think I say in my statement, I don't  
19       believe that there was any general understanding in the  
20       early 1990s that people who expressed -- who show an  
21       unhealthy interest in children can be regarded as people  
22       who will never do it again. I think in the early 1990s  
23       it was -- and certainly I would think from my own  
24       perspective, had I known that Holland was going to do  
25       what he was going to do, it would have been a completely

1 different matter, but I don't think that at that time  
2 I was aware that people who commit offences against  
3 children are inherently suspicious and one has to regard  
4 them as being potentially dangerous.

5 PROFESSOR CAMERON: In terms of us understanding the  
6 process, it's for the Attorney General, or  
7 a Crown Advocate, to move conclusions, I think was the  
8 term. Would it be possible for the Attorney General to  
9 decide not to do that?

10 A. Not to move conclusions?

11 PROFESSOR CAMERON: Yes.

12 A. No, it wouldn't. The Attorney General used to be an  
13 integral part of the Court. The Court couldn't sit  
14 without the Attorney General, rather like the European  
15 system, but that changed over the years, but when it  
16 comes to the swearing in of an Honorary Police officer,  
17 or the imposition of any sentence in a criminal case,  
18 there have to be conclusions from the  
19 Attorney General or the Crown Advocate.

20 PROFESSOR CAMERON: But that would then mean that the  
21 conclusion, so to speak, might be that this is somebody  
22 who should not be appointed?

23 A. Absolutely.

24 PROFESSOR CAMERON: And that would then be a matter for  
25 the Court to decide, so the decision --

1 A. It would be a matter for the Court.

2 PROFESSOR CAMERON: -- would lie with the -- yes.

3 A. Yes, the conclusions are a sort of preliminary judgment.

4 PROFESSOR CAMERON: In relation to the process you described  
5 for the appointment of jurats by the electoral college,  
6 I think we've got a better grasp of that. Just to be  
7 clear whether the consideration of candidates, the  
8 proposers and seconders etc, whether that's a process  
9 that's held in public or not?

10 A. I'm sorry?

11 PROFESSOR CAMERON: You described a process of names coming  
12 forward, there would be proposers, seconders, speeches  
13 made, the college takes a decision, but is that a public  
14 process or is that a private process?

15 A. The identity of the candidates is public. They are  
16 the -- I can't remember whether the nominations go to  
17 the Bailiff, or go to the Greffier. They go to --  
18 perhaps they go to the Clerk of the Court, or the Clerk  
19 of the States, I'm not sure, but once the nominations  
20 have been made they are made public and the sitting of  
21 the Electoral Assembly then takes place.

22 PROFESSOR CAMERON: Is there any process whereby a member of  
23 the public could, in some formal way, lodge an objection  
24 to someone being considered for appointment as a jurat?

25 A. Well, it's a free country. If, once the announcement of

1 a nomination has been made, somebody takes exception to  
2 that nomination, there's absolutely no reason why some  
3 public statement cannot be made of an objection to  
4 a nomination, a letter to the paper or something of that  
5 kind.

6 PROFESSOR CAMERON: What I was wondering was whether there  
7 was built into the process for the election any formal  
8 point at which an objection could be raised?

9 A. From a member of the public rather than from a member of  
10 the Assembly?

11 PROFESSOR CAMERON: It was only in a debate in the Assembly  
12 that that could happen?

13 A. Well, any member of the Assembly could certainly voice  
14 objections in relation to a nomination. As I say, it's  
15 a very large assembly of 300 or 400 people so that it  
16 would not be difficult for a member of the public to  
17 find a member of the Assembly who could articulate any  
18 objections that he wanted to make. It has never  
19 happened. I'm talking theoretically here.

20 PROFESSOR CAMERON: Going back earlier in the evidence when  
21 Mr Sadd spoke with you about the Leslie Hughes case and  
22 you said that because of the understandably busy  
23 workload that the Attorney General had, you didn't have  
24 a recollection about the Cyril Whelan letter about the  
25 member of staff and what have you. Was the

1 Leslie Hughes case, however, not a very high profile  
2 matter in the Island? This was the conviction of  
3 someone who had been in a caring role in a States  
4 establishment who over many years had been sexually  
5 abusing girls?

6 A. I'm sure it was reported in the newspaper, yes, and it  
7 would have come to public knowledge.

8 PROFESSOR CAMERON: As such would it not have been something  
9 that would have certainly sat on the desk of the  
10 Attorney General?

11 A. Well, it did sit briefly on the desk of the  
12 Attorney General because the Crown Advocate sent me  
13 a memorandum about it, but I think I said earlier on in  
14 answer to Mr Sadd that Mr Whelan is and was a very  
15 senior Crown Advocate, very competent Crown Advocate and  
16 if one delegates a matter to him to take forward, one  
17 could be confident that he would take it forward.

18 PROFESSOR CAMERON: He raised the issue of concern about the  
19 member of staff who appeared to have knowledge of what  
20 had been going on. What I'm wondering is whether in the  
21 role of the Attorney General there was, beyond the  
22 conviction of the individual, any role to raise  
23 questions as to why in a States establishment this had  
24 happened. Was there any basis for requiring an  
25 investigation into that?

1       A. Well, I think -- yes, up to a point there was a function  
2       for the Attorney General. The Attorney General has an  
3       overall responsibility for the prosecution of criminals  
4       and for public matters arising from that and that was  
5       the reason why Mr Whelan wrote his memorandum to me and  
6       certainly it would have been -- I'm sure it's very fair  
7       to say that it would have been part of the  
8       responsibility of the Attorney General to take the  
9       matter forward.

10               The point that I made to Mr Sadd is I'm not at all  
11       sure it wasn't taken forward. The Panel is being  
12       presented with a snapshot and I don't know what the  
13       sequel was, you would have to call Mr Whelan to find out  
14       what ultimately happened.

15       PROFESSOR CAMERON: I think we are not entirely sure either  
16       ultimately what happened with that chain of  
17       correspondence. But would that be something that you  
18       would have expected Mr Whelan to know what the outcome  
19       had been, having raised the question?

20       A. Well, I think you would have to ask him that, Professor.

21       PROFESSOR CAMERON: Thank you, I've got no other questions.

22       THE CHAIR: Thank you, Professor Cameron.

23               Mr Sadd, any questions arising from the Panel's  
24       questions?

25       MR SADD: No, Madam Chair.



1 THE CHAIR: Sir Philip, that then completes your evidence.

2 On behalf of the Panel can I thank you for your  
3 contribution to the work of this Independent Care  
4 Inquiry. Thank you.

5 A. Thank you.

6 THE CHAIR: Mr Sadd, that completes our witnesses today. We  
7 have further work and meetings. We will sit again at  
8 10 am tomorrow morning to take our next witness. Thank  
9 you.

10 (3.10 pm)

11 (The Inquiry adjourned until 10.00 am on Wednesday,  
12 27 January 2016)

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