

FIFTEENTH DAY.
TRIBUNALS OF INQUIRY (EVIDENCE) ACT, 1921.

TRANSCRIPT OF PROCEEDINGS
AT THE PUBLIC INQUIRY

into

INCIDENT AT DUNBLANE PRIMARY
SCHOOL on 13th MARCH, 1996

before

THE HON. LORD CULLEN

on

TUESDAY, 18th JUNE, 1996

within

THE ALBERT HALLS,
DUMBARTON ROAD, STIRLING

.....

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APPEARING:- THE LORD ADVOCATE (The Rt. Hon. The Lord Mackay of Drumadoon, Q.C.), Mr. IAN BONOMY, Q.C., Advocate Depute, with Mr. J.C. LAKE, Advocate, for the Crown;

MR. C.M. CAMPBELL, Q.C., with MS. L. DUNLOP, Advocate, for the families of the deceased children, the families of the injured children, the children absent from class, Mrs. Harrild and Mrs. Blake;

MR. A.T.F. GIBB, solicitor, Edinburgh, for the representatives of Mrs. Mayor (deceased), and the Educational Institute of Scotland;

MR. M.S. STEPHEN, solicitor, Glasgow, for the Association of Head Teachers in Scotland, and Mr. Ronald Taylor (Headmaster);

Mr. M.S. JONES, Q.C., for Stirling Council and Others;

MR. J.A. TAYLOR, Solicitor Advocate, Edinburgh, for the Central Scotland Police;

THE DEAN OF FACULTY (Mr. A.R. Hardie, Q.C.) with MR. G.C. KAVANAGH, solicitor, Hughes Dowdall, Glasgow, for individual officers of the Scottish Police Federation, and Lothian and Borders Police.

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TUESDAY, 18th JUNE, 1996.

FIFTEENTH DAY.

LORD CULLEN: Good morning. Can we have your first witness, Mr. Bonomy?

MR. BONOMOY: My first witness, sir, is George Robertson.

GEORGE ISLAY McNEILL ROBERTSON, Sworn:

EXAMINED BY MR. BONOMOY: I think you are the Member of Parliament for the Hamilton Constituency? - I am.

I think you also hold a Shadow Cabinet post. What is that post? - I am the Shadow Secretary of State for Scotland, Principal Opposition spokesman for Scotland.

I think you live in Dunblane, in fact? - I do.

How long have you lived in Dunblane? - 20 years, I think; probably more than 20 years.

So you brought your family up in Dunblane? - Yes, all three of my family.

I think you have two sons and a daughter? - Yes.

Can you tell me the ages of your family? - My older son is 23, my second son is 21 and my daughter is 15.

We are at a phase in the Inquiry now where they are looking at the past dealings Hamilton had with boys' clubs, and boys' clubs in particular on school premises. I believe, like so many other local people, you had dealings with him in that connection, and it is about that I want to ask you. When did you first encounter Thomas Hamilton? - There is some confusion about dates. This is going back quite some time. At some time in 1983 it was my older son and his friends got wind of the news that there was a club being formed at the High School/

School gymnasium called the Dunblane Rovers Group. It was offering five-a-side football, gymnastics, the sort of things young boys are interested in.

Was there any literature connected with it? - We are not sure whether at that stage there was precise literature. I think it was mainly word of mouth at that time, although there was literature later on produced by Hamilton, which was quite professional produced.

Yes? - At that time I think they simply got wind of the idea that this was going on, it was called the Dunblane Rovers Group, and there were these different activities.

I know you will tell us your son Malcolm only went or was involved for a short time, but during that short period did you encounter that literature? - The sad fact is that we threw out the file on Thomas Hamilton maybe last year or the year before because we had really got sick of the whole issue.

Yes? - We have no precise recollection of literature at the specific time he was involved in the club, although he did write on the first occasion when Malcolm failed to go one night to the club.

Did your son say he wanted to go to the club? -
Yes.

When your son said that did you have any reservations about sending him? - No. We saw it was at the High School, it was in the gymnasium at the High School and it seemed to be something that was popular and he and his friends were enthusiastic about going to it. The name "Dunblane Rovers Group" added that little bit of respectability to it, and I think that was quite deliberate.

How long did Malcolm go to the club? - I think three or four times he attended on a Thursday night, before he missed a session.

What happened then? - A letter arrived in a buff envelope from Mr. Hamilton. We always knew him as Mr. Hamilton, because the boys always/

always called him Mr. Hamilton. I think that is interesting, that that was the level to which he took it. The letter says he had noticed Malcolm had not been at the group on Thursday night, saying did he realise how important regular attendance was, and that he wanted to have an explanation as to why he was not there.

Who was the letter sent to? - To Malcolm himself.

On headed notepaper? - I don't think I can answer that question precisely.

Now, Hamilton wanted to do something as a result of his absence? - He wanted an explanation for the absence, and appeared to be reprimanding the boy himself, so my wife phoned him when she opened the letter. My son was 10 at that time.

What was the outcome of her conversation with him?
- She basically stated "How dare you write to my son. He is in the Cubs, he goes to school, he goes to a swimming club. If he is absent from there they don't write to him, they write to me as the parent". He was very calm. Our recollection of Thomas Hamilton was of a man, even from other anecdote, who even when confronted could remain calm. My wife however was angry. He said he wanted to come to the house to interview Malcolm.

Hamilton wanted an explanation from Malcolm, not from you? - Yes.

Did you do anything that time, or was it before he came to see you that you had direct experience of the activities at the club? - No. That was the stimulus to us finding out a little more about this club. My wife said there was no question of him coming to the house until I was home. As an MP, I am away nearly all the way, and it was going to be at the end of the week when I would be home. I came up early on a Thursday and went to the gymnasium with a friend of mine, Stewart Hart, who lived in Braemar Avenue, whose son was also attending the club. We went to the club to see what it looked like.

What/

What was it like? - We went to the glass doors of the gymnasium, and we were both struck very quickly by the bizarre nature of what was going on.

What was going on? - There were a large number of small boys in shorts stripped to the waist being bossed around by two or three middle-aged men, swaggering around in a very military-type way. I think I have described it as looking like the Hitler Youth. It was a military-type of feeling we had.

Yes? - Our twoselves -- we were two very different parents -- had both a gut feeling that there was something very bizarre, that it was not right, and we decided on the spot that our sons were not going to stay in the club.

Were there any recognisable physical activities going on? - There was gymnasium equipment lying about, and it was quite clear they had been using it. We were watching them, however, for 15 minutes without any recognition by Hamilton that we were there, although he clearly saw we were there.

Yes? - They were at that time marching around the gymnasium, and had been engaged in recreational activities of some kind of another.

Did you interrupt? - No. We stood for 10 to 15 minutes, but there was no indication from inside the gymnasium that they wanted to see us.

So you waited till your son came home when it was finished? - I don't think he was there. I think we kept him away. We had gone up to see it because we were frankly irritated and slightly discomfited by the fact he wanted to interview a boy of 10 as to why he was not at a youth club.

Did you make any decision about whether your son should go back? - Yes, the two fathers, myself and Mr. Hart, decided on the spot that we thought the guys that we looked at were in many ways slightly sinister in the way they were conducting the.....it was a gut feeling that we had,/

had, that we decided on the spot we were not going to send our sons back. We both thought it was very odd, what was going on in Dunblane High School gymnasium.

Can you remember what your own son's reaction to the club was? - Initially they were very happy. Young boys like activity. Dunblane was not known for having a lot of things for young boys to do. I think the fact they have five-a-side football and a gymnasium, gymnastics, was initially attractive, but they ran out of enthusiasm very quickly, and were not very keen on going on a weekly basis.

Yes? - I have to say that other parents and other children were not of that view. Some stayed on long after we had expressed our concerns.

Yes? - Certainly within our immediate group there was a very uncomfortable feeling that was left behind.

Did you see any more of Hamilton? - He came to the house the following night, I think it was, as a result of the phone conversation with my wife. I was there.

Yes? - He appeared at the door and came in. He was almost always dressed -- I think this is from the time we first saw him until a few weeks before the incident, when he was seen around Dunblane, wearing the same outfit, a Parka, usually with the hood up, disguising him very effectively.

Yes? - He came into the house and stood at the entrance to our living room and asked if he could speak to Malcolm. I said no, and that Malcolm would not be going back to the Rovers Club. He said why and I said "I don't have to give you reasons why a 10 year old boy is not coming back". He then asked if Malcolm agreed, and could he speak to Malcolm to hear his view.

Yes? - I got pretty angry, and said quite frankly that was not his business, that I was the parent, and I was making the decision, and it was absolutely irrelevant what Malcolm thought in the circumstances.

Yes?/

Yes? - At that stage I think he was beginning to recognise who I was, and looked slightly more uncomfortable. He had not been asked to sit down, and he was standing there in the living room.

Yes? - He said, "What are you implying about my club?" and I said I was not implying anything at all, I just did not feel it was the kind of club I wanted our son to go to, and I was not willing to argue with him any further, and that basically terminated the discussion; he chose not to say any more.

How aggressive was he? - He was calm and ordered, but pretty determined as well.

Yes? - The implication he wanted to speak to the boy spoke volumes, that he was likely to get more of a response from the boy than from the parents. There was a fairly restrained hostility about him. He was more confident with children than with adults.

That was the end of it as far as your son was concerned. Was that the end of it as far as you were concerned? - Definitely not.

What happened after that? - Mr. Hart and I and some of the other parents who were bothered felt there was something not right about a situation where a man that we had this gut feeling about appeared able to run a boys' club with large numbers of boys in the respectable surroundings of a school gymnasium -- he didn't need to have any -- he had no checkable background, and there was no way we could check on his background other than that he ran a kitchen fitting shop in Stirling, he had no credentials to be in charge of an army of small boys at all. This left a feeling of unease as to what would be happening.

Yes? - We decided there should be more done about it, and that we should spread the view that this man was not a proper person to be looking after small children.

How did you go about that? - Apart from talking to people involved at that time I am not certain we were able to do very much more. We were/

were concerned that other people knew about our unease and our worries and concerns, and a number of parents took their sons away from it, either from their own choice or from what they heard.

Yes? - We then heard that Central Regional Council had cancelled the let of the school following a complaint from Councillor Davidson, and that was welcome news to us. There was a feeling that that drew a line under the activities of Thomas Hamilton at that time.

Had you spoken to Councillor Davidson before the let was withdrawn? - No.

Do you know if any other parents were expressing their concerns through that councillor or any other councillor to the Regional authority? - Yes, Councillor Davidson had picked up a lot of vibrations from Dunblane as to what was going on.

Yes? - There is locally a political divide. I wouldn't normally be in communication with Councillor Davidson, who was the Conservative councillor for the area: but it was quite clear that other people had got the message over to him at that point, and the let was cancelled.

Now, you subsequently I think had a visit from a lady called Anderson. Was she a lady you knew? - Mrs. Anderson was a recognisable lady. She lives at the bottom of the hill where we live.

Did she have any young family at that time? - Not to my knowledge, no.

What was her reason for coming to see you? - She had come to the door with a petition asking us to sign a petition for Thomas Hamilton to get the let of the High School back. It appears there was a committee of some parents and individuals set up, who were aggrieved at the fact the club had been closed down and the let taken away, and this petition was being organised.

Yes? - We refused to sign the petition, and expressed the strong view that we agreed with the cancellation of the hall let.

Were/

Were you aware of any connection between her and Hamilton at that time? - The only connection we knew was -- because the Anderson's house is at the bottom of the hill where we live, and where you have to drive to and from the main road -- you could see the van Hamilton had for his business regularly parked there, and they seemed to be organising the petition to get him the let of the school back.

Were you aware there was a fair measure of support for that petition? - There was some support. There was a polarisation of opinion between some residents, between some parents who felt he had been badly treated, because there was no evidence he had done anything wrong, and parents who were pleased that their children were engaged in what looked on the surface to be pretty wholesome activities, and others like myself.

We have heard there were 70 signatures on the petition and 30 individual letters submitted to the Council, but they didn't change their mind; the Council stood firm at that stage and awaited the Ombudsman's decision. Did you make any approaches to any other people you felt should do something about Hamilton? - Mr. Forsyth had been elected in 1983. Now, because I have a sense of propriety about my own constituency, how you handle constituency affairs, I felt it was not proper for me to get engaged in a public campaign in someone else's constituency, so I made arrangements to have a word with Mr. Forsyth as the local MP, and we met informally at Westminster.

Can you date that in relation to what the state of affairs was at that stage in respect of Hamilton? You referred to the Regional Council? - It is my recollection that this was certainly before the Ombudsman's ruling came out, and was in the wake of our decision to take away my son from the club, and the worries we had about it.

Yes? - It must clearly have been between the time that the let was cancelled, because I was praying in aid Councillor Davidson to the local MP as being somebody who supported the view I had, or my personal view was strongly similar to the one Councillor Davidson had taken up.

Can/

10.20 a.m.

Can you remember when the General Election was in 1983? - Well now, I could tell you the result; no, I can't without having looked through the diaries.

No doubt somebody will tell us before you finish? - I think Mr. Forsyth will probably remember more graphically than I can.

It was after the General Election when he could be found at Westminster? - Yes.

Can you remember what you then told him about Hamilton? - I told him about my unease about this individual, I said to him that I had been to the school, I used that experience very strongly to emphasise the gut feeling that I had that this guy was not fit to be running some youth club, that Freena Davidson had come to the same point of view; she lived in Dunblane at that time and had backed up exactly my viewpoint. I have to say when confronted by Mr. Forsyth's questions to me about what precisely I was talking about, what precise evidence I had, what it was exactly I was complaining about, I found myself in the same difficulties that so many other people had, that it was difficult to put your finger on what people felt was wrong with Thomas Hamilton and therefore in terms of the exchange and I am not aware how weak it sounded but I had hoped by the personal views expressed to the Member of Parliament I would get over myself to him to take some action at that time or at least being cautious about the individual but I wasn't surprised by his reaction to it and I don't blame him for his reaction to it at that early stage; you know, the experience of a constituency MP being pestered and bombarded by people who have some obsession doesn't make it easy for people to distinguish.....in Scotland we don't have the large staff that other representatives had. I understood how plausible Hamilton must have been to him and how difficult it would be for him at that stage to accept somebody against whom nobody had any evidence that he was as untrustworthy as people were making out.

Can you say, did you form any impression of whether Mr. Forsyth had heard of Hamilton before your conversation with him? - He had certainly heard/

heard of him, he had seen him and met with him and discussed him with me; he told me at that time very strongly about Mr. Hamilton's sense of grievance that he was being judged by innuendo without any evidence ever being put forward. He had told Mr. Forsyth in the initial stages which must have sounded plausible especially to a new Member of Parliament that he was a dedicated individual who had an interest in the welfare of young children and who was operating in a town where there was an absence of facilities for young people and he was being hounded by a blanket of rumour without anyone being satisfied about what he was doing wrong.

Did the fact that school premises were being used arise in the conversation? - Yes, I expressed a view that people were given a misleading impression about Hamilton's respectability and legitimacy by the fact he could advertise and that he was using the gymnasium at Dunblane High School.

Was he leafleting people by then? - I am not certain whether he was; he was a pretty consistent leafleter, he was certainly very active around Dunblane a lot at that time, he didn't let the grass grow under his feet, he believed in campaigning zealously all the time.

Was there anything else you felt in relation to Hamilton's activities? - Again I was very conscious in my position as not being the representative for the area, I was also very conscious about the fact of legal action, where there was nothing precise to accuse Thomas Hamilton of and at that time it was quite possible that litigation would follow anything so I raised it informally with Councillors in the area, Labour Councillors, who I expressed unease to and was again confronted with the question which again was expressing the opinion where you haven't got solid evidence to back it up.

Yes? - One of the local policemen, Sergeant Moir, at that time who again had boys of that age set up another youth club in order to compete with Hamilton's one and there was a lot of concern and activity going on there and I certainly made it clear to a lot of people around that we were anxious about him but I have to say that most parents who were worried had the gut instinct simply to/

to take their sons away and drew the line under the affair.

Did Moir's youth club run for long? - Yes, indeed -- Bob Moir has been engaged in youth activities even up to this time and has made a huge contribution to looking after young people in Dunblane.

Was Councillor Ball one of the Councillors you spoke to? - I knew Bob Ball was involved because he was Hamilton's local Councillor and I understood at that time that was why he was taking up the position on his behalf or to Mr. Forsyth, the relationship between the elective representative and the Councillor. I don't think I spoke directly to Bob Ball but I spoke to other Regional Councillors on the matter.

You would learn of the outcome of the battle that followed his success with the Ombudsman; after that happened did you directly involve yourself in any further communication with people about Hamilton? - Well, a lot of what I have just been describing to you took place after the Ombudsman's report came out. I must say in our house we were absolutely in despair at the fact that the let had been returned and in many ways the Ombudsman had given him a boost. The club didn't run very much longer than the restoration of the let, the damage had been done to his reputation so although he got the let of the gymnasium back it didn't save the club from inevitable doom.

Although is it fair to say he still had the club at Dunblane High School even in 1996? - I think our recollection is that he went away but then came back at some point but it was a much more limited form. The one in the early 80s was well attended, there were a large number of boys going to it but the unease and concern especially about the camps.....our son didn't go to camp but other parents that we spoke to were very perturbed and some of the stories which came to light were running around in informal rumours at that time.

Did he write to you as he wrote to so many people? - No, he never wrote personally a letter to me but we have received leaflets through the door.

You/

You returned some of these or at least some have been located; could you look at a Production which will be given to you, R41, and you will see that is a number of documents together. Now, are these your documents? - Yes, these were the documents that we held in our home.

Can you tell me if these are the only ones you have received or are these remnants of what you received? - These are the remnants -- I can't answer the question sadly but the disgust of Hamilton and what he was doing and also the inability to do anything about the matter, these were the remnants of what we had.

Could you look at R40, is that yours? - That is another of the leaflets that we had.

Whose handwriting is on it? - That is my wife's handwriting.

Has that anything to do with the notice or is the handwriting something entirely different? - I can't read.....

I am struggling too? - I would need to consult my wife on what the handwriting says.

There is a date on it which is the 2nd of March 1994? - Yes.

It doesn't follow that you got the leaflet prior to that date which may help you pin it down. Can you remember when this leaflet came through the door? - No, I am not certain whether it did come through the door; the letter came through the door but I think the leaflet was one that may have been given by another parent.

The other Production has a leaflet attached to it as well? - Yes.

Both of these leaflets have a part in it that has to be signed by a parent? - Yes.

Could you read out the part that the parent has to sign? - "I wish to enrol my son.....to join the Dunblane Boys' Sports Club meeting at Dunblane High School. I understand that during the period of the meeting and activities my son/

son will be in your charge and under your instruction and I agree to adhere to and abide by all your rules, conditions and discretion etc".

It starts off "Dear Mr. Hamilton"? - Yes.

I take it that this is the sort of thing in 1995 which would be put through the doors or distributed somehow in the Dunblane area? - Yes.

We see that one refers to the re-opening of a club after the summer holidays on Thursday, the 7th of September, 1995? - Yes.

Do you remember if a similar form was around in 1983? - I think certainly not.

You didn't sign anything committing your son to his care, as it were, during the period of the club? - I have no recollection of doing so; I would have been profoundly disturbed if it had been presented before me. The form, this particular form, my wife took up with other parents. We had a conversation with Hamilton and Hamilton's response to why is that down in the form was I took it from the standard conditions laid down by the Boy Scouts; he had a fascination with the Scouts most of the time. He was asked about "etc." which seemed to cover pretty well anything that might happen and he said again this was something that had been in Scout literature. It was enough to provoke at least one parent to phone him up.

That leaflet is attached to a letter dated the 18th of August 1995 addressed to "Dear Parents"? - Yes.

And you obviously got a copy of that as well? - Yes.

Do you remember whether that came through the door or someone has handed it to you? - I think that one came through the door.

You have typed something on it? - My wife typed on it "Copy sent to MF", that is Michael Forsyth.

On the 28th of August? - Yes.

There/

There are parts of this letter that gives you some anxiety, no doubt? - Indeed.

And do you remember in particular the reference to his success with the Ombudsman? - Absolutely, it is the thing that to us jumped out straight away, he was now using the Ombudsman's judgement as a legitimisation of his own activities.

Did you then send this to Michael Forsyth for his opinion? - Indeed.

I think you got a reply? - We got an acknowledgement, yes; on a number of occasions informally I had spoken to Michael Forsyth who changed his view about Hamilton fairly quickly after the Ombudsman's report.

What was the view he had then? - I think he began to recognise that this was somebody who was not what he originally made out to be, was not as straightforward as he originally made out to be and was perhaps becoming uneasy about him as the rest of us had been and when he spoke with me his opinion changed.

Yes? - I want to repeat because I think it is very important, I don't blame Michael Forsyth as the local MP from taking up the initial position he did; my wife and I were angry at the time with his approach to it, but I can see now only too well in the initial stages that there was very little evidence to put forward, it was very difficult for him to come to any other conclusion than the man was being judged on the basis of unsubstantiated rumours but certainly his view, again maybe by instinct, Mr. Forsyth changed his view and we kept him briefed because we were local and it was not necessary because he was going to be getting all that literature.

About the same time as you were getting this additional literature did you get any literature about photographic services provided by Hamilton? - Yes, he produced a leaflet again that came through the doors advertising his business as a photographer. One side of the leaflet had details of his photography and the kind of services that he offered; the other side of the leaflet which is what struck us as being most disturbing were four pictures/

pictures of young boys, only young boys on the back of that leaflet, and at least two of them were recognisable to members of my family.

Now, did you pass that material to someone else to try to see if another route might be used to get firm evidence about Hamilton's activities? - I simply sent that letter to Michael Forsyth as the local MP. I think it is really not for the individual who happens to be the Member of Parliament living in another area to be taking a lot of unilateral action so my reaction was to keep him informed of what was happening and the information that came to me as the local resident that he might not be aware of.

Following that were you aware of Press interest trying to find out more substantial information about Hamilton? - Yes, sorry, I see what you are driving at. We were getting agitated and certainly concerned that he was still around, still organising. I contacted Angus McLeod who is the political editor of the Sunday Mail and said that there was perhaps a story involved here. Angus McLeod is one of the most distinguished and most reliable Scottish journalists and I know him personally.

What was the trigger for you doing that? - I think, I can't pin it down but one of the leaflets that came through, whether it was a photographic leaflet or the August 1995 leaflet, I am not sure but there was a resumption of recruitment activity for Hamilton in the area that suggested to me that perhaps the Press might be able to flush this man out where we had all failed and I privately spoke to Angus McLeod.

Do you know if he tried to do something about it? - Yes, indeed he did. The matter is now in the public documentation because the article was published after the incident itself. He came out, he interviewed Hamilton, he spoke to me afterwards and said he had come to exactly the same conclusion that I had and that this was.....his gut instinct was that this was an unreliable, unstable and slightly bizarre individual and he phoned me up the following Sunday when the article was to appear; we were astonished to see anything appearing but he apologised and said effectively it hadn't been legal, /

legal, the lawyers wouldn't allow the publication of the article because there was nothing actually against Hamilton that could be printed and it would have invited legal action if it had been printed in that form.

Now, I take it that that really completes the picture as far as your direct involvement in trying to have something done about Hamilton is concerned? - I feel that is so. I think at that stage we came to the conclusion that there was not much more we could do about it. We were certainly going to keep Michael Forsyth informed that anything that was going to happen and anything that was likely to happen. We kept an interest. It wasn't the same very keen interest that we had had in the early stages where a lot of talking and discussing went on about Hamilton. I think there comes a stage in time when you don't think you can do very much more. I have to say looking back that there was nothing in his demeanour or the way in which he reacted to us that suggested that he was likely to be violent.

Yes? - Our worries were all about the over-affection for young children rather than for any huge hostility to them and even when one of the parents who, apparently having had a discussion with us, phoned him up in a very very aggressive way to cross-examine him both about the August '95 letter and about the leaflets and this unconditional release, despite great hostility to him and provocative questioning to him he at no point reacted strongly to the cross-examination so I had no indication that this was a man who was bottling up any ferocious, murderous instinct, that was not something which crossed our minds.

If we can look more widely at some of the things you said in your evidence earlier, you mentioned the lack of qualifications in an individual with responsibilities for children. He, in fact, had produced qualifications from the British Amateur Gymnastics Association, qualifications which wasn't very high qualifications but it made him a coach -- were you aware of that? - Yes.

And the Regional Council did have information produced to them and they checked up on that/

that on a number of occasions, were you aware of that? - Yes.

You also used an expression "credentials"; this person has no credentials but I suppose if you are with the Scouts or the Boys' Brigade or some national boys club information one would expect as a member of the public that you have passed some sort of check. Did you see any way in which a private individual with an interest with children at heart who wants to do something on his own voluntarily might receive what I think you meant by credentials? - I hoped that would be the case, I hoped we could find some way in which that might be possible; I think children are very vulnerable, the age group which was recruited by him is perhaps the most vulnerable of all. I think parents do look for some form of reassurance whether it is the Scouts or the Boys' Brigade where appeals can be made or checks can be carried out -- some form of reassurance, and I think they require any reassurance.

I/

10.40 a.m.

I think it is important here to discriminate between the generality -- the parent who takes up to 10 or 15 youngsters with his own child on some boating trip, or maybe some informal club in their own home, and an organised boys' group or children's group run from public premises. There is no doubt at all that Hamilton's respectability was gained from the fact he used school premises. I think if he had been holding them somewhere else suspicion would have been aroused and there would have been less chance of people being attracted into the net. Where I think we can make a start at finding a method to discriminate between those who have just got a passing interest in children and those who have got an obsessional interest.

You have, of course, to come at it from two angles: you can have a situation where you have got a club going and you try to stop it first of all and find that extremely difficult. The other way of doing it is to protect yourself in some way before you even started. It is only I think in the latter context you can actually have any control of the situation; would that not be right? - I think that is right. However, I think there must be mechanisms for stopping as well. I think what we have to look for are systems where there are at least some hurdles that have to be passed before anybody can come into the business of running this kind of activity. Again I think there must be some reference point for making sure investigations take place, and this can be translated into firm action.

A person like yourself who has a gut feeling which turns out to be an absolutely right gut feeling about him -- how do you then translate that into some sort of material that would justify a local authority deciding that he can no longer use their premises? - Well, the gut feeling of one person is frankly not enough, but the fact I got a gut feeling about the man, it was shared by a lot of others. What is worrying here, the reason I was interested in giving evidence is that if somebody like me, ostensibly in a position of authority and influence, finds himself up against brick walls all round about, whether they be civil liberty brick walls or brick walls created by officialdom, it says a lot for what the ordinary individual would have to be facing if they had worries and concerns about it as well. We have to create some situation to protect/

protect children especially whereby there must be some form of investigation so that one's qualifications or one's credentials at the beginning can translate into running such clubs or such organisations basically afterwards.

The problem about the weight of opinion and gut feeling is it is sometimes quite difficult to turn into material that you can then justify a decision being taken against an individual? - Well, I think there has to be a balance struck between the interests of children and the interests of civil liberty. I think we have sorted it out in a whole series of other areas and I think it is not unreasonable for people who are involved in that sort of activity and who have that sort of interest to be able to pass through those tests.

CROSS-EXAMINED BY MR. GIBB: I represent the teachers at Dunblane Primary School and the Mayor family, and it was really on the aspect of vetting I wanted to take you a bit further. In the firearms field we have rights and we also refer to privileges. I suppose the same could be said about looking after children, it would be a privilege to look after them as opposed to a civil right. One of the things I wanted to canvas is the possibility if one is holding youth groups you should have insurance, public liability insurance, before they can set up a club, which would involve at least vetting by the insurer. Is that something perhaps you see as a possibility? - I think so, because, as I say, one of the things that puzzled me most was how somebody could simply set up a group and take over a school and gymnasium and use all the sporting equipment in the gymnasium apparently without any prior vetting. It may well be -- Mr. Bonomy said he had some minor qualifications in gymnastics or as a coach -- but it did seem the more we looked into it, it did seem extraordinary he could use equipment that teachers used during the day under the most controlled situation and with the highest qualifications, use it with young boys of nine apparently without anything produced in advance. I think the idea of insurance would be, however, at least one of the hurdles which should be put in the way of those who want to look after children.

But one possibility of regulation would be there are so many children per adult: in other words, /

words, there has to be so many adults, if there is 18 children, rather like the Guides and the Cubs and the Scouts. Is that another possibility? - That is one other possibility. As I say, there is a myth drawn up that Thomas Hamilton ran all these clubs on his own as if he was the only individual involved in this. He wasn't. There were other people who helped him. To my mind there were at least two other adults present the night I and Mr. Hart went to the school gymnasium. Now, these people, a lot of these people have just disappeared like snow off a dyke, and you can perhaps see why; it is not something that anybody is likely to want to put in their C.V. in the future. I don't think you can simply say the numbers of people who were there, unless these people themselves have passed through some level of qualification but, as you know, he clearly had a mesmerising influence on the youngsters and it may well be he had the same effect on those who were round about him as well.

We heard yesterday about school lets and community schools. I suppose the same applies to community schools, that they have an aura of respectability so that if someone was using a community school parents might feel this is some sort of imprimatur? - I think that is right.

I think that is why we need to have some regulations about this, something to make sure they don't get an artificial entry into respectability simply because they are using school premises. Schools in Scotland especially have got a special aura about them and activities that go on in a school have got a distinctly greater degree of respectability than things that go on in church halls or in community centres or the like. I think therefore we have got to be much more careful about who is allowed to use school premises.

It may be a bit easier I suppose to regulate the question of school premises but it is difficult to regulate Inchmoan Island on Loch Lomond or other halls where clubs are held? - Yes, I think that is right. You have to try and have a variety of hurdles. I can't think of any blanket way of preventing anybody running youth clubs. You can certainly lay down a variety of regulations that will prevent people from getting engaged in it who much not be, but anybody who -- I don't believe many parents would have allowed their children to go to Inchmoan/

Inchmoan Island or to any of the camps he organised had they not believed that because he was running the thing in the school it was sort of almost quasi official what he was doing.

Lord Cullen has the widest remit obviously since that dreadful day on 13th March and you must have given a lot of thought to the ways the Hamiltons of this world can be prevented. Is there anything else in your own mind as opposed to a parent who was involved that could be likely to have not prevented totally but minimised? - Well, as a human being, and as somebody who was close to the event, of course it is very difficult not to keep thinking about it. As a politician who might, depending on the vagaries of the electorate, might actually be in the position of changing the laws and making alterations to the law I think about it a lot. My strongest feeling is this is an individual who started off perhaps with good intentions to set out on a mission to look after or to give entertainment to small boys and became obsessed by it. He then became obsessed by the fact and that presumably in the inner recesses of his mind was quite legitimate and public spirited. Had he not been allowed to get past the first base, had he not been given school premises, the respectability that went with that, then perhaps he wouldn't have gained the same level of frustrated obsession that he apparently ended up with. So we have to try and have methods by which we stop people getting that respectability unless they have earned it.

No re-examination.

BY LORD CULLEN: Just a couple of questions I would like to ask. In the course of your evidence you described Hamilton in a number of ways and I think you used the adjective "unstable". Could you enlarge on what you mean by "unstable" in that connection? - I think just uneasiness about the character who doesn't seem to fit into the normal pattern. His demeanour outside -- the parka with the hood, the very long hood with the fur round about it that largely disguised his features. I think when the photographs were published after the incident people were slightly taken aback because he was a figure -- even though people who had met him, had seen him, were able to recognise him indistinctly./

indistinctly. The way he carried himself that night at the youth club -- the swaggering way in which he seemed to be bossing around these young boys, the way the letters were written, the phone calls. We were not the only parents who were phoned up or asked why our son was not attending the club, not the only ones to be visited by him demanding to speak to the boy himself. That adds up I think to an impression of somebody who was not particularly stable and certainly somebody who seemed to be driven in some way.

The other matter is this: you expressed some views about the vetting of people who became involved in youth clubs. Do you have any views as to how far, so to speak, across the board vetting should go. I mean, adults become involved with young persons in a whole variety of ways, and I think one example mentioned earlier in this Inquiry was the giving of piano lessons or whatever it may be. Is there a need to consider in your view vetting across a much wider spectrum than just youth clubs, things to do with sports or gymnastics or something of that sort? - I think a number of these activities should be covered anyway by qualifications. That is why in a way I am concerned about trying to at this stage anyway restrict the view to the use of school premises, because if we take that particular incident it seems to me Hamilton has got off the ground, become a big operator in this field, because of the respectability that came by using the school, and he was able to build on that. I would more than recognise the huge difficulties that would be involved if you were to demand, you know, bureaucracy that was going to check every individual. If a child's birthday party is being held in a church hall and.....

Yes, things can be arranged very informally and take place in private places and so on. One is looking here for something that is workable? - I think that is the thing I was focusing on this time, the wider context of promoting boys' clubs, and he gains substantial respectability from the fact it was held in the gymnasium of the High School. There was an implicit feeling this was something that was semi-official. Even to somebody like me, who knows a little bit about the system, if it is being operated in/

in the High School gymnasium that must be reasonably okay, and it is only once you suspect in your mind and think why, then it becomes very obvious to me it was very simply being in the school gymnasium, and I must say that astonished me that that may be the case.

LORD CULLEN: Thank you very much, Mr. Robertson, I am much obliged for your assistance.

MR. BONOMOY: Sir, the next witness is Michael Forsyth.

MICHAEL/

11 a.m.

MICHAEL BRUCE FORSYTH (42), Sworn:

EXAMINED BY MR. BONOMOY: I think you are the Member of Parliament for the Stirling constituency; is that right? - Yes.

You are also a Cabinet Minister. Which post do you hold? - I am the Secretary of State for Scotland.

I think you have been in Government positions since 1987? - That is correct, although I was Parliamentary Private Secretary to Geoffrey Howe in 1986.

You were first elected I think in 1983? - Yes, to the new Stirling constituency.

You can perhaps answer a question that you will be disappointed to know Mr. Robertson couldn't give us the answer to, which was the date of the General Election in 1983? - I think it was on the 9th April.

Are you a married man? - Yes.

Do you have a family? - I have three children.

Ages? - Oh, I didn't realise I was going to be asked such questions! 17, 14 and 9.

Now, you will appreciate we have reached the stage in the Inquiry when we are looking at Thomas Hamilton's dealings with youth and with the authorities who let premises to him for his youth club activities, and it is in that connection I want to ask you a number of questions. First of all, can you tell the Inquiry how you first either heard from him or met him? - It is quite difficult for me to recollect the detail. It was shortly after I was elected. He came to my surgery and gave me a tale that is broadly set out in the Ombudsman's Report. The gist of it was that he had been a Scout leader, and he had run an organisation I think called the Dunblane Rovers for youngsters, that he had had a disagreement with the Scouting Movement, as a result of which there was some rivalry between him and the Scouts in relation to the boys' club, Dunblane/

Dunblane Rovers, which was extremely popular, but that the Scouts or some people in the Scouts resented that, and that they had made complaints to the local authority that he was presenting himself as part of the Scouts, and that the name caused some confusion, and that as a result of these complaints the let of Dunblane High School had been withdrawn without reason being given by the Education Authority.

Can you date this meeting? - I cannot.

Was it long after you were elected? - I don't know, but it must have been during 1983, certainly.

And he then comes along to your surgery and tells you about this, does he? - Yes, as people do. People either write to me or come to my surgeries. I can't remember at that time if I operated an appointment system -- probably not, I was not very organised at that time -- I had just been elected.

I think you kept a fairly full record of correspondence, but you got rid of that at some stage? - When we moved house we had to destroy quite a lot of correspondence, and all my correspondence from my first Parliament and quite a sift through my second Parliament was destroyed, although we have been able to recover quite a lot of correspondence.

I think we have a lot of the correspondence from 1988 onwards? - Yes, I have produced this to the police.

And the police have had access to these.....? - Yes. I am happy for it to be made available to the Inquiry.

Yes? - There is some of the correspondence relates to one particular piece, a letter from a parent in the 1990s, where obviously I think disclosure should be with the consent of the parent.

On that particular one you are concerned about, that has already been disclosed to the Inquiry, /

Inquiry, anonymously as far as the parent is concerned, and is therefore already in the Inquiry's domain. As a result of Hamilton consulting you at the surgery was there any particular action that you took? - I haven't got any record of what I did, but I would almost certainly have written to Central Regional Council. The complaint was that the let had been withdrawn without reason, and I would almost certainly have written to the Regional Council asking what the position was in respect of this.

Yes? - I know by virtue of looking back over the correspondence a complaint had been made to the Ombudsman by his councillor, but I don't recall whether when he came to see me he told me whether that was the position or not.

Were you aware of a petition with 70 signatures also supporting him? - I do remember receiving correspondence from parents supporting him at the time, and I think there was a petition. There was a reference in the volume of correspondence to the Ombudsman's report, which was sent to me in 1984.

Do you have any recollection of persons approaching you about his activities to complain about them rather than to support them? - Yes, Councillor Davidson expressed concern to me about Hamilton, and George Robertson, who of course lives in Dunblane and has just given evidence, also spoke to me in the House of Commons about Hamilton, and indicating that he had -- his son had been involved in Hamilton's club, that he had gone with some friends to watch one of the evening sessions for young people that Hamilton organised, that he was worried because he thought it was rather militaristic, and he was aware of rumours circulating in Dunblane about Thomas Hamilton, and he expressed his concern.

Yes? - I asked him if he had any evidence of any wrongdoing or anything like that, and he said he did not. I think he acknowledged that there were a number of parents who were very enthusiastic about this boys' club.

Yes? - I think also at that time the Ombudsman's report would have been underway, and I think/

think I would have indicated to him that we should await the result of the Ombudsman's investigation.

So by that time your recollection is that you were aware of Councillor Ball's submitting Hamilton's complaint to the Ombudsman? - He was aware that a complaint had been made to the Ombudsman. Of course, at that time the complaint was about withdrawal of the let of Dunblane High School, so Hamilton's clubs were not operating, and the issue was whether they should be reinstated.

Yes? - Now, I can't remember now what I knew then and what I know now, but when I received the Ombudsman's report it set out in detail all the grounds, and I read that report.

It was Hamilton who sent the Ombudsman's report to you, was it not? - He sent it to me. I don't recall having any constituency case before for the Ombudsman had found so convincingly in favour of a constituent.

Yes? - At that time I think Members of Parliament could not refer cases directly to the Ombudsman, that had to be done by a councillor. He sent the report to me, and I wrote to him congratulating him on his success, because the Ombudsman's report indicated the Council had been wrong to withdraw the let, that the reasons for withdrawing the let were not supported by any evidence, that there had been no formal complaints made about Hamilton, that his clubs were well run, that the Council had been motivated by little more than -- I think the Ombudsman used the phrase "gossip".

Yes? - He also indicated the Education Authority were willing to reinstate the let if Hamilton changed the name of his group and if he made it clear he did not have the endorsement of the Regional Council.

Yes? - That was a fairly convincing conclusion by the Ombudsman, and had to be seen in the context of his original complaint to me, which was that malicious rumours had been circulating about him and that the withdrawal of the let at short notice, without reason, had done enormous damage to him in the community and reinforced the whispering/

whispering campaign he said which was being conducted against him by the Scout Movement.

Can you remember if when the let was reinstated there were any continuing concerns or anxieties being expressed to you either by the Regional Council or by parents again such as Mr. Robertson? - I don't recall any continuing concern. I do recall there was reported pretty prominently at that time. It was a front page story in the Scotsman; I remember that because I happened to have the cutting still in the file.

Yes? - It indicated a number of councillors felt they had been badly treated, and that the whole thing had been badly handled. I think that drew a line under that.

Yes? - My recollection of when I next met or heard of Hamilton was when he wrote to me about the way the police had carried out particular investigations following on complaints.

That would mean it was probably 1988 before you heard from him again? - Yes.

Just to complete the picture in relation to the Ombudsman, could you look at one letter?

MR. BONOMOY: Sir, the reference of this letter is DCF/21.

EXAMINATION CONTINUED BY MR. BONOMOY: This is a letter, I think, dated 23rd November, 1984, which is you writing to Mr. Hamilton thanking him for sending you the Commissioner's report and congratulating him on his success, and hoping that he will take steps to ensure that it was given proper publicity? - Yes.

It was given publicity, I think? - Yes. I think this has to be seen in the context of his claim that he had been maligned, and that it had damaged his reputation, and that there was no justification for the withdrawal of the let, or that the withdrawal of the let was associated with rumours in relation to boys in his club.

The first document that has been recovered from the Inquiry is a letter from Mr. Hamilton, /

Hamilton, DCF/18, addressed to you, dated 9th November, 1988? - Yes.

That is a letter you got I think in reply to one you had sent him on the 4th November, 1988; is that right? - Yes, it certainly appears that way.

And that is in the context of the complaint you have just mentioned? - About the police?

Yes? - It certainly indicates he has had an unsatisfactory reply.

And that is consistent with your own personal recollection you have just given evidence of? - Yes.

Now, it follows I think there has been a fallow period between 1984 and 1988 when little or nothing, perhaps nothing at all, was communicated between Hamilton and you. Is it fair to say that from 1988 onwards you did have fairly regular correspondence with him? - Yes, I would say we had a great deal of correspondence. I was just going to make the point that I seem to recall there may have been some delay between the publication of the Ombudsman's report and the decision by the local authority to reinstate the let, and it is possible there may have been correspondence at that time. But that is based on my own recollection, and I don't have a record of that, and the police and other sources that have brought together correspondence have identified the correspondence, and of course the Regional Council I think have copies of the correspondence. I would be surprised if there had not been some correspondence about the response to the Ombudsman's report, because he was pretty persistent.

Yes? - Certainly my own file from 1988 onwards, there were numerous letters from Hamilton. He had a capacity to focus in on detailed points and to pursue them with a terrier-like quality.

As far as 1988 is concerned, I take it in 1988 you did not meet him again, although we have some correspondence, and that your next meeting was the/

the following year? - Yes.

So we are dealing here with a complaint that he was making about the way in which the police were investigating some incident at Loch Lomond, and there is some correspondence about that? - Yes.

Can you tell us how you as a constituency MP normally handle correspondence from constituents complaining about some authority's activities or actions? - Quite a lot of correspondence is complaining about the Government or the local authority or other agencies. What I normally do is to forward the correspondence to the relevant authority. If it is a complaint about for example the railways or rail privatisation I would forward the correspondence to the relevant Minister and ask him to look into the points which have been made and let me have a response I can forward to the constituent. If it is a local authority I would write to the Chief Executive. If it was about Benefits I would write to the officers concerned with that.

Are there in your correspondence examples of your passing stuff from Hamilton to the local authority? - Yes.

Are there also frequent examples of you passing stuff from Hamilton to the police about whom he complained? - Yes.

In fact was some of that correspondence directly through the Scottish Office, to which Hamilton also directed some of his own correspondence? - There is a rule, which can be rather tiresome -- because it takes longer to get something done -- that if you are a Minister and a constituent writes to you on a matter which relates to your Ministerial responsibility you have to reply through the relevant Government department. The reason for this is so the Ministers are not committing the Government to policy decisions the Department does not know about.

Yes? - Hamilton did write to me I think in 1991 -- no, that can't be right; he wrote to me when I was in the Scottish Office, so it must have been prior to 1990. No, it may perhaps have been 1991. Anyway, he wrote to me in respect of the/

the actions of the Child Protection Unit of Central Scotland Police, and at that time I was the Minister who had responsibility for Social Work and child protection issues, and that is why the correspondence was dealt with through the Scottish Office. I sent a memo, which I have made available to the Inquiry, to my Private Secretary asking the Department to provide a suitable response to Mr. Hamilton.

Apart from passing on this correspondence as you would for any constituent, if a person such as Mr. Robertson, who is a constituent of yours, makes an oral complaint to you about an authority, what advice do you generally give to such a person about how to convey the complaint to the proper authority? - In the main I do not like oral complaints. If people say to me, ring me up or talk to me in the street, to any constituent I say "Would you send me a letter to the House of Commons?". Equally, unless there is particular urgency it is not my practice to follow up complaints over the telephone; I prefer to have things in writing so that everyone can see what has happened, and it is a matter of record.

Yes? - My practice has been that the system I operate is that when we write to local authorities we copy the reply to the constituent, and in that way we can make sure we have a clear understanding of where we have got to on any particular complaint. I don't know if your question was related to what I did when George Robertson spoke to me about this.

What did you do as far as his complaint was concerned? - His complaint was that he was concerned, but that he had no evidence of any wrongdoing; he was just anxious about him, and I basically noted that. He didn't write to me. At that time the let had already been withdrawn, and the issue was its reinstatement, which was of course a matter for the Education Authority, Central Regional Council.

Yes? - And being a new Member of Parliament -- and there was a difference of political party running the Region at that time -- George would have been able to perhaps have more influence within the Regional Council than I would have/

have had at that time.

In your evidence you said to us that Councillor Davidson also expressed concerns to you, and she was a Regional councillor at that time? - Yes.

When was that? Was that near the time Mr. Robertson spoke to you? - It was certainly in 1983, and she indicated to me she was anxious about him, that she had heard rumours about him. Interestingly enough, the last letter Hamilton sent me other than the copy of the letter he sent to Her Majesty the Queen, was in February, 1996, where he makes the same claim as he made in 1983, and where he says in that letter that Councillor Davidson had been approached by the Scout Movement.

Yes? - I am not aware I was aware of that at the time. She certainly expressed concerns to me, and to both Councillor Davidson and George Robertson I advised them that if in the future they had any evidence or any knowledge of any parents who had concerns that they should encourage them to report these to the appropriate authorities.

I will ask you about this letter now rather than later. DCF/113, which is a letter of 11th February, 1996, which came to you from Hamilton? - Yes.

I am going to go through that in a moment. Can you confirm to me it had various attachments to it? - Yes, it did.

One was an earlier letter he had written to you in March, 1993 about the horrific murder of the little James Bulger? - Yes.

And again writing at some length about his own activities in Dunfermline and also Dunblane? - Yes.

And complaining about police intervention in these activities; is that right? - Yes. He rambles on about what he describes as witch hunts by Central Scotland Police.

And he also attached to it a letter that had been sent to all parents, dated 18th August, 1995. Did you actually receive a copy of this from another source at one stage? - Sorry, /

11.20 a.m.

Sorry, I haven't had a chance to look at this letter; this is the letter of the 18th of August?

Yes, the circular letter. Mr. Robertson has indicated that he forwarded stuff to you and that may have been one of the things? - I received a copy of a communication which he had circulated and he had the names of particular people as contacts which included my name and I wrote to him asking him to change that but it is not this document here. George Robertson approached me about a leaflet which was circulated in 1994, so that was prior to this.

We will come to that in a minute; this attachment is again a letter of the 18th of August 1995 and that was sent to all parents and he has written a bit on the bottom of it dated the 11th of February, the same date as the covering letter; what did he say there? - "Dear Mr. Forsyth, prior to October 1983 70 Dunblane boys attended the Dunblane Club weekly, now there are five of which only one attended the 1995 course/camp. Others are bussed in from other areas to attempt to make up the numbers".

He also encloses a copy of a letter which he sent in January 1996 to Dr. Robert Ball, is that right? - Yes.

A letter from a solicitor about being refused Legal Aid or about Legal Aid and a note at the bottom dated the 11th of February to you that Legal Aid was refused? - Yes.

A copy of another circular dated the 28th of June 1993, another dated the 24th of July, 1995 and all this came to you with a covering letter of the 11th of February, 1996? - Yes.

I think in that letter he was saying that over the years there had been serious problems "Of which the root cause is as a result of malicious gossip circulated by certain Scout officials mainly from Dunblane and a number of the names are Vass, Muirhead, Sharp, McFarlane and Dobie. You are aware that the problem with Central Regional Council in 1983 was as a result of Vass approaching Councillor Mrs./

Mrs. Davidson in confidence and the resulting speculation on her part. At that time senior officers of Central Scotland Police had made several discrete inquiries and their conclusion was that there had been an injustice and this was later confirmed by the Ombudsman", is that the first paragraph? - Yes.

Then he is complaining that police officers were not told that so things went wrong? - Yes.

Does he go on in the last paragraph to say "I understand that senior officers of Central Scotland Police were satisfied that everything is okay. However, I have been unable to recover from the very serious damage caused by Central Scotland Police which has compounded the very difficult situation which already existed. As you have already received my numerous detailed letters of complaint there is no need to repeat my comments other than to say that the long-term effect of such has been a deathblow to my already difficult work in providing sports and leisure activities to local children as well as my public standing in the community"? - Yes.

Now, what did you do with this letter? - I sent him a reply saying that I had received his letter and noted his comments. By this stage we had had a vast volume of correspondence from him and I had really got to the point where I felt there was nothing that could be added to the representations which he was making through me to Central Scotland Police and in April 1991, for example, he asked for a meeting with me and I refused the meeting. He also at some stage made an appointment to come to one of my surgeries and I wrote to him indicating we had cancelled the appointment and I saw no purpose in continuing to involve me in what I thought were his unreasonable continuing representations that the police had somehow acted unfairly towards him in carrying out their duties to respond to particular complaints.

Your letter of the 11th of February was an acknowledgement and just filed? - We sent him a reply which was to the effect "Thank you for your letter, the contents of which have been noted".

And/

And you would pass them on to anyone else? - I would pass them on to anyone else. Of course, with hindsight it is able to say that now, that it was quite a different character to any of the previous correspondence we had received. All the previous correspondence had been saying, if you have a look and if you have it from Central Scotland Police.....however, there is one particular point which we continued to argue and move the thing forward but this letter, having the benefit of hindsight and reading back through the correspondence, this letter is quite different because it appears to indicate he is giving up on the fight, it does seem to be a kind of indication that he is not departing from his view that he has been treated unfairly but that he is no longer going to continue the correspondence. There was a similar example but it is slightly different and that was he did write at some stage after the correspondence about his summer camp at Loch Lomond indicating, where he had been vehement in his criticism of the police and suddenly out of the blue he was saying he accepted the position and he was taking steps to ensure that things would be improved in the running of his camps but this letter of the 11th of February seemed to me to be saying that "I am not departing from my position and the grievance which I feel I have" but he was not pursuing the matter and the letter which he copied to me and to the Queen I think is similar in character.

He includes some of the enclosures which are that one you have just referred to and looking at these enclosures can you confirm to me that they are..... the circulars and letters, whether he is trying to justify himself? - I am not sure, I don't want to be awkward but I am not sure how many of these I have received previously and that can be checked by looking in the file.

That one there is what comes from your file? - The James Bulger one, I think that one struck a particular cord with me that he should single out the horrific murder of James Bulger in the light of what he did.

What you have there is what was said to you complete dated the 11th of February and you have a letter which you yourself have given us your description of is a change in the tone of correspondence?/

correspondence? - Yes.

You have these other letters attached? - Yes.

They are a selection of material over a period of time but they are letters of justification trying to defend himself? - I think that is generally correct but then all the correspondence that I had with him was in that kind of tone and what is striking because I don't get every year in the constituency but it would be more than several thousand; of course, letters come in and one reads the letters and you deal with them, you don't have an opportunity to read the run of correspondence which I have now done, of course, and which I did immediately after the events of the 13th of March but if you read the run of correspondence it strikes you he has moved to criticise the police because they were investigating his camp. In that correspondence he will explain how the police's anxiety was wrong and he will attack the motives of the parents and throughout the whole theme of the correspondence it is one of how he has been subjected to unjust treatment by various authorities.

I wonder if you could help me with this, you have described the letter itself, that is the one he has handwritten on the 11th of February, as a change in his tone? - Yes.

If you look at the little notes that have been written on the bottom of this they are protestation letters. At the bottom he writes about "Prior to October 1983 70 Dunblane boys attended the Dunblane Club weekly, now there are five of only which one attended the 1995 course/camp"? - Yes.

That is the same tone as the handwritten letter. If you go to the next one that is handwritten it is one from the solicitor about Legal Aid and he has written "Mr. Forsyth, Legal Aid was refused"? - Yes.

And the third one "Mr. Forsyth, only one Dunblane boy attended, the others were bussed in from other clubs"? - Yes.

Do you see in all of these notes the same resigned/

resigned tone as appeared in the outer letter you received? - Yes, indeed that was the view that I took of the correspondence and you will see from the correspondence that I have had with him that he wrote to great length and he copied me with quite a lot of material. It wasn't for me to get involved in arguments about police investigations or complaints about the conduct of policemen. I simply acted as a kind of postman to the relevant authorities and I have dealt with his complaints very fully. My reaction to the 11th of February, 1996 letter was one of relief because it seemed to indicate that perhaps he was going to give up writing to me.

In this same connection of relaying concerns and complaints could I ask you just I think almost finally but not quite to look at DCD221 which is a letter recovered from Central Scotland Discipline and Complaints file and is that a letter dated the 15th of March 1994 from you to the Chief Constable? - Yes, it is.

You have mentioned this already, can you read the letter to us? - "Dear Mr. Wilson, Mr. George Robertson MP has drawn the attached copy of leaflets to my attention in connection with Mr. T.W. Hamilton. I have also had a call from one concerned parent following a discussion with the police. I promised to keep you informed".

That is in addition to complaints you have had in writing from parents? - Yes.

Do we see there a leaflet which we have already seen one copy of from Mr. Robertson's evidence which is about the Dunblane Boys' Sports Club? - Yes.

And another leaflet which is passed to you but he didn't actually have a copy of but it is about the Dunblane Boys' Sports Club and also his photographs of children with it all of whom are recognisable, is that right? - When you say recognisable.....?

If you knew these boys you would be able to identify them on the photographs? - Yes.

They are close-ups of them? - They are portrait/

portrait photographs of the boys.

And this was what you were passing on to the Chief Constable at Mr. Robertson's request? - No, George Robertson had, I think.....he probably mentioned to me, I think he probably said that Hamilton seemed to be putting leaflets round Dunblane and he had sent me a copy of it; this is the 15th of March, 1994 and by that time I would have known that there would have been some police investigations. Indeed, I think I wrote a letter which again has been made available when I was in the Scottish Office to Hamilton indicating a report had been sent to the Procurator-Fiscal so I knew there was police interest in his activity and I simply sent a leaflet for that reason and also because of the complaints which I had had from a particular parent. I am not certain if the parent referred to in this letter.....you perhaps know the answer to this, whether the parent referred to in this letter is the same parent as had written to me about the other leaflet.

I think may not be but I don't actually know, I am relying on your recollection? - Yes.

There is no reason to think it is the same parent? - Well, I am not sure which.....I think it may be the same parent but I don't know that.

Was your decision to pass this on simply a decision you made yourself simply by getting your hands on the material? - Yes.

Is that something you would automatically do in situations where you knew the police had an interest in some person's activity? - Yes, I have to make sure I get the timing on this -- the previous representations that I had.....I had a letter from parents in 1993, at the end of 1993, and they had complained.....they had actually written to me saying they had received a leaflet which had my name down as a contact as well as the Chief Executive of the Regional Council and officials of the Youth Department in Stirling District Council and I was pretty angry about that.

Perhaps you could have in front of you, if it would refresh your memory, DCF106 which is the letter/

letter I think you are referring to? - Yes, right -- just to finish on the previous point, this parent asked me what I could tell them about Hamilton because they had received this leaflet with my name down as a contact. I wrote to Hamilton, I think it is the only letter I actually sent to him, saying that I understood that he had circulated a letter to parents giving my name as a contact and that I was more than a little surprised to learn he had done this and I asked him to remove my name from the list of contacts. Now, the parent who had written to me expressed anxiety about Hamilton and the reaction that their son had as a result of attending one of his camps which was the one in Dunblane and I wrote.....I was sufficiently concerned about this that I wrote to the Chief Executive of the Council suggesting that the Council may wish to interview the parent in order to get to the bottom of their concern. I received in reply a letter from the Chief Executive of the Council saying that it wouldn't be appropriate for them to interview the parents because a police investigation was underway so I knew there was a police investigation underway; I think it was the first serious written complaint from a parent and although there was nothing substantial in the complaint the response from the Regional Council indicated that there was a police investigation underway and so I sent a leaflet to the Chief Constable because I knew this was happening.

Now, you may have known at the time that you were not the only point of contact mentioned in the letters that Hamilton had circulated to parents, you would realise that a number of Police Forces and Local Authorities had been mentioned. Were you aware of any action that they took similar to your own or did you act independently of them? - As far as I recall I acted independently of them and I think that it was a kind of.....the interesting thing about Hamilton is that he wrote extremely careful, controlled, analytical letters. I was furious when he put my name as a contact for obvious reasons but if you look at the letter he says "The above are our main contacts and are not given as referees or guarantors". I think that was typical.

You are referring to a letter we don't have in front of us, can you give us the date of that one? - That was a letter to parents dated the 19th/

19th of April, 1993; this is the letter which I think you were referring to which gave my name as a contact.

You have a reply to that letter which is in front of you telling him that he shouldn't be using your name and that one is dated the 23rd of October? - Yes, I didn't reply to it, it was drawn to my attention to the parents who had complained about.....they were concerned about Hamilton and asked if I could give them any information about his clubs, they wrote me a letter which I think may be available.....they wrote to me on the 26th of September.

If you look at DCF107 which should be a letter of the 11th November? - Yes.

That is a letter of the 11th of November acknowledging the complaints which you had passed on I think? - Yes, we are getting in a muddle here. The letter from the parents to me expressed concern about their son's response to having been involved with Hamilton. Their story was that he had been involved with his club and at first he was very enthusiastic and he enjoyed the club and their son had then become somewhat withdrawn.

Now,/

11.40 a.m.

Now, that letter made reference to, it stated in the letter I was a named main contact for the club. Now, this is what so far as I recall alerted me to the existence of.....

That is the letter dated September 26th, and included with it in the bundle you have got is one dated 19th May, 1993. This is the circular to parents about a Balfron Boys' Sports Club. In that you are named as one of those main contacts? - Yes.

At the House of Commons? - Yes.

And this is the letter to which the concerned parents were referring; is that the right one? - Correct.

You passed it on to the local authority who acknowledged its receipt on 20th October, 1993? - That is right. I was not aware of that letter dated 19th April, 1993 until it was drawn to my attention by those parents. I then wrote to Hamilton -- I think this is right -- I then wrote to Hamilton indicating that he should remove my name as a contact. I also wrote in response to the letter of 26th September from the parents to the Central Regional Council Chief Executive asking him if he would meet with the parents and discuss their concerns. He wrote to me saying he thought it was -- quite rightly -- saying it was inappropriate as there had been a number of complaints and that Central Scotland Police were currently investigating them. So that reassured me that the police and the Social Work authority were aware of these complaints and they were being investigated, and that's why -- I imagine -- that's why when I subsequently received a report from George Robertson to indicate another letter was being circulated in Dunblane that I would have sent it to the police so that they were aware of this material, which I am sure they would have had from other sources.

The only other letter I want to ask you about is one dated 31st August, 1991. The reference to that particular one is in a folder we already have, D103K. It is a long letter dated 31st August, 1991 from Hamilton. What you have there is an/

an unsigned copy of that letter. I only want to ask you about one aspect of it which will be of interest to the Inquiry and this is on page 5. If you go to page 5 and down to the second bottom paragraph just at the end is there a statement in that letter from Hamilton about photographs, "I personally do not keep any photographs either at home or elsewhere. All of this was fully explained to visiting officers on 23rd July, 1991". Now, you may not remember that being part of the terms of this letter but is that typical, is that letter itself typical of the correspondence you got from him? - Yes, pages and pages and, secondly, can you confirm I have accurately quoted from that paragraph on page 5? - Yes.

You can part with that. The factual matter in that sentence may be of some significance to the Inquiry? - Yes.

If there is anything else of significance in the letter tell us please? - It was just the point about -- I didn't pick this up -- when he says "I personally do not keep any photographs either at home or elsewhere". I can remember him sending me photographs which we returned of boys which shows an inconsistency here. In one of the letters which he sent he sent some photographs of boys at the camp to show how they were enjoying themselves, etc., and this is obviously an inconsistency -- unless he has photographs which he has somewhere else.

There are many other inconsistencies than that. The reason that I invited you, as I explained earlier, to give evidence, was to see what the factual position was where the subject, or your involvement in the subject of Hamilton and local authority premises for his boys' clubs. It doesn't appear on the face of the correspondence or from listening to what you have said this morning that you really had any direct involvement and relationship between Hamilton and the local authority and indeed the police other than to be a post box in your role as constituency MP? - I'm afraid Members of Parliament are glorified post boxes in many respects. But I find if there is a letter from a Member of Parliament asking for a matter to be looked at this means that it is looked at and that results in the constituent obtaining satisfaction as to their grievance.

Is/

Is being the Secretary of State for Scotland an advantage or disadvantage in that regard? - Depends who you are writing to.

I suppose in some quarters it may be seen as a stronger measure of support? - What it does mean is if -- which is why I think the constituency member system works extremely well -- it does mean that people -- in Hamilton's case it certainly wasn't the case because he was articulate enough -- what it does mean is a constituent who does have a particular problem, that can be looked at by the top people in the organisation responsible, a response can come back and there is an opportunity for them to consider that response. Every Member of Parliament will have a stream of constituents who are regular correspondents whom there is no satisfying -- and I have several others in that category -- and it is our job to respond to constituents and try to deal with the complaints as well as we can. Inevitably in such a role, as happened in the 90s with Hamilton, where the ground has been gone over, it was simply trying to re-hash an argument and complaints which had been properly investigated.

I wanted to be clear, it wasn't being suggested that really was the role you were playing. The ordinary constituent MP's role is relaying correspondence to the authority that should be dealing with the complaint or concern of the constituent? - Yes, that is correct. Towards the end of this run of correspondence in the 90s there was a pattern of events and the police had been involved on a number of occasions and I was aware that a report had been sent to the Fiscal, and one was very much more anxious about Thomas Hamilton and, for example, in 1984 when the Ombudsman's report had given him such a clean bill of health.

How many times did you actually meet him? - I can think it was twice but it may have been on three occasions.

Once is the first one you have told us about. The second one was in connection with his complaint against the police? - Yes, that was September, 1989.

Apart from that do you have any recollection/

recollection of actually meeting him? - No. I just have a feeling in the back of my mind that he may have come to see me after the Ombudsman's report but I don't know that. So I am saying he came on two or three occasions.

You last met him in 1989? - Yes. Although he did ask to come and see me subsequent to that and he did make an appointment at the surgery as I have already indicated. He did write asking to meet me and I declined which is not something I would normally do with a constituent. In the case when he made an appointment to come to the surgery, it was cancelled and I wrote to him informing him why: it was basically because he was trying to draw me into the argument about the way in which the police had carried out an enquiry and I did not think it was appropriate for me to do that.

Is there anything in the impression you made of him by meeting him that would be of value to the Inquiry? - Well, when I first met him he was very plausible. He seemed to have a real grievance, and that comes through his whole correspondence. He believed or he purported to believe that he had been unfairly treated. There was nothing about him that would have led me to conclude that in any way he would have been capable of what he did.

No cross-examination.

LORD CULLEN: Thank you very much, I am much obliged for your assistance.

MR. BONOMY: Sir, I regret to have to say that my administrative machine, which normally works extremely efficiently, has broken down a little this morning, largely through my fault. As a result of which I am in some difficulty about proceeding straight away with the next witness. I wonder if in the circumstances, bearing in mind we have made fairly good progress since the Inquiry started, I might have a short adjournment. I have in mind something up to half an hour. I appreciate it is not terribly well timed but I would be extremely grateful if I could have about half an hour at this stage or say to 20 minutes past 12 if that isn't of inconvenience to the Inquiry.

LORD CULLEN: Certainly, I quite understand. That will be the case, 20 past 12.

After/

12.24 p.m.

After a short adjournment.

MR. BONOMOY: I am sorry, sir, about the continued delay. The system is still creaking a little, but I do propose to proceed at least with the evidence of David William Cobb.

DAVID WILLIAM COBB, (38), Sworn,

EXAMINED BY MR. BONOMOY: Now, you previously held a number of positions with Central Regional Council; is that correct? - That is correct.

When the authorities were joined up what was the position you held? - I was Depute Director of Administration and Legal Services, effectively the head of Legal Services.

When did your employment terminate? - I took voluntary severance on the 31st March. I am currently working as a consultant with Stirling Council, but it is my intention to begin training for the Bar in October.

It was this year you took voluntary severance? - Yes.

As a consultant with Stirling Council are you working on legal matters? - Yes, that is correct: primarily in relation to two developments in the commercial property field.

Are you a solicitor? - I am still until the end of October.

What are your professional qualifications? - LLB(Hons).

When did you first start with Central Region? - In July, 1983.

And throughout the period till 1986 were you in the Administration and Legal Services Department? - That is correct.

I know that your closer, direct involvement in the affairs of Thomas Hamilton was really/

really from about 1993/1994 onwards; is that right? - As far as I can recall, primarily after becoming the Depute Director in 1995; but as is clear from my statement, I was involved on one or two other occasions.

I want to go back a little further and try to paint a picture of the state of your knowledge when you do become more directly involved. It would probably be best if you have the folder in front of you. If we could start with D: do you have that? - Yes.

Now, you will see that is a letter dated 7th March, 1990 from the head teacher of a primary school in Stirling to the Director of Education? - Yes.

And that enclosed a sample of leaflets which had been posted to the primary school? - That is correct.

It goes on to say "It is my understanding that all correspondence addressed to pupils from outside agencies should be cleared by yourself. I would appreciate advice on whether this has been cleared and should this leaflet be distributed"? - Yes.

I give you that as an example of the type of problem a head teacher might have. When you became involved in dealing with Hamilton's affairs were you aware of teachers in primary schools being concerned about his leafleting activities? - I couldn't be precise as to the years.

Were you involved in the consideration of the policy of the Council on matters such as sending out leaflets through the schools? - Yes. In 1995 I think particularly, I and a number of officers from Education were trying to find some way of devising a consistent policy which would allow us to treat like cases alike. There were problems in trying to strike a proper balance.

Yes? - For example, if you simply said uniformed organisations are suitable for distribution, on what basis would you discriminate between these and locally run organisations?

Yes? - It was not something we were ever/

ever able to resolve satisfactorily, in terms of something that would save us having to distribute Tom Hamilton's leaflets.

Can I take it that up until the time in 1995 when you were considering the policy that the Council's policy was to give the head teacher a measure of discretion about voluntary organisations' documents being distributed? - I believe that is so.

Now, were you aware of the general nature of the complaints that officials of the Regional Council were receiving about Hamilton's activities? - Yes. I had seen correspondence for example relating to the defamation question which the Chief Constable had referred to us, and later on it became quite clear that Mr. Hamilton considered himself to be hard done to, shall we say, by certain sections of the Regional Council.

That is complaints being made by Hamilton? - Yes.

What was your knowledge of the complaints being made against him by parents of children, for example? - Before 1995 I can only speak to the summer camp in 1989, in which I had a brief involvement.

It is either 1988 or 1991? - I beg your pardon, 1988.

That was the very first one? - Yes.

What was your involvement in that complaint? - It really was a "Fire Brigade" call, shall we say. A problem had obviously arisen about the summer camp. Education wanted to call a meeting pretty quickly, and owing to holidays I was the most senior official around.

Yes? - I went over to a meeting, which lasted about two hours, in the offices of one of the Assistant Directors of Education, Bob Curry.

Yes? - Really we reviewed the information we had and left that to be investigated further, and I didn't have any further involvement in how that matter was dealt with.

Who/

Who did you understand was investigating it at the time?
- At that point I understood we were meeting because the police were in contact, having been contacted by their colleagues in Strathclyde.

Was it your Education Department or your Social Work Department that had direct involvement at that stage? - I think it was Education.

And as far as you were concerned was the question of investigation a matter at that stage for the police? - Yes.

Would it be right to say that when problems began to crop up again, that is from 1985 onwards, particularly from 1989 onwards, that all of the problems were dealt with at official level and never got to the Councillor level, the member level? - Certainly nothing was put into any Committee paper.

And you of course were closely involved at the end of the whole business? - Yes.

Is it right also to say that a number of the individual Departments of the Regional Council were involved, in particular the Education Department, the Social Work Department and the Administration and Legal Services Department? - That is correct.

The question of the letting of school premises was a matter for Education? - Education had the statutory responsibility. Managerially quite a lot of this was dealt with within Administration and Legal Services, and latterly in some cases by School Boards.

Do you know much of the role played by School Boards in the letting of premises? - Not particularly, no, I'm afraid.

Were you involved at all in a complaint that Hamilton made about the way the Social Work Department combined with the police to investigate the camp in 1991? - In the sense that I had the involvement where the Chief Constable sought advice regarding the possibility of instituting a defamation action against Thomas Hamilton, one became/

became aware from reading the correspondence we felt various elements in the Regional Council and the police were conspiring against him.

I think you gave certain advice to the Chief Constable? -
Yes.

What was the advice? - The advice was that as far as the research indicated there was a possibility that he had made defamatory statements against the Chief Constable and his officers, but the recent authority of FRASER v. MIZRA suggested that the award that could be made was not likely to be very high -- I think it was £2,000 in that case.

Yes? - We also wondered whether it was wise to sue Mr. Hamilton in view of the danger that we might be giving him a platform to air his conspiracy theory. Ultimately the feeling was "We are not experts in this area. Perhaps we should get the advice of Counsel".

So your advice was to seek Counsel's advice? - If the Chief Constable was so minded.

It sounds as though you were tending to suggest that the matter proceed no further? - In the sense that we felt there was unlikely to be an award made that would frighten, shall we say, Mr. Hamilton into silence.

You talked about conspiracy there. What sort of things was he alleging? - In broad terms, that officers of Central Scotland Police, officers of Central Regional Council and off the top of my head I think also the Scout Association, were all involved in some major conspiracy against Thomas Hamilton personally and his involvement with children.

I think the same attitude was displayed towards the authority as was displayed towards the police? - I believe so, yes.

Can you look at D115? - I have that.

Now, is that a letter to the Chief Executive of the Region from Hamilton, dated 26th February, 1992? - That is correct.

And/

And he is complaining about defamation in the last paragraph? - Yes.

He is accusing the Social Work Department of defaming him by telling parents certain things about him? - Yes. Even in 1996 Hamilton complained that rumours were circulating about him emanating from one or other of our schools.

In the third paragraph does it say "Given my full co-operation with the Child Protection Unit" -- that is the police -- "I am outraged that I have been defamed and damaged by the pervert hunt which followed on the basis that I take photographs of the children"? - Yes. That is I am sure what Thomas Hamilton believed, but it is not something I would have seen at that time.

I/

12.40 p.m.

I think he did have a strongly felt grievance against the Social Work Department for the way in which they investigated his camps in 1991? - Indeed, and also the police because the correspondence relating to the alleged or the conduct of that investigation by Central Scotland Police eventually began the complaint about how the complaint was being run.

Did Mr. Sinclair, Chief Executive have to deal with a complaint against the Social Work Department and the social worker in particular who dealt with the investigation? - Yes, but that is not within my direct knowledge.

You were not directly involved? - No.

Were you aware when you began directly to be more involved of complaints by parents about the way in which they were being treated at the club -- for example, what they had to wear, where they were being photographed, where they were on their own with Hamilton, what their changing arrangements were and so on? - Yes, I think that was the gist of my first contact as head of Legal Services.

Were you aware that the police had received a number of complaints, perhaps as many as 10, of that sort of conduct and had encouraged parents to communicate with the Local Authority because it was not apparently possible to prosecute on the evidence available? - Yes, I can't be absolutely certain that I knew what the.....

You did know that the parents had, for some reason or another, directed their complaints to the Local Authority? - Yes, I would expect that to happen not necessarily at the police's suggestion.

Including as we have here evidence that the police did encourage that course of action in the circumstances of the case then? - Yes, but all I can say is I am not aware of anything directly passed by that route.

Were you aware of an investigation into Hamilton's gymnastic agenda and the type of activity he did in his gymnastic classes carried out by a lady/

lady in the Education Department, called Chillas? - Yes, I became aware of that subsequent to the incident.

And were you aware that she had tried to establish what his qualifications amounted to and discovered that he did have gymnastic qualifications which entitled him to supervise.....on the face of it in accordance with the Regional Council's guidelines to supervise some gymnastics? - Yes, I think he annually produced an authorisation from the British Amateur Gymnastics Association, I think he was Grade 4 from memory, exactly what that entitled him to do I don't know.

It may be Grade 5? - Yes.

Can I ask you to look at the letting arrangements in the light of what you had said about the Legal Department's involvement and could you look at D107 and D171; 170 is a memo from Mr. Flett to Councillor Ball. Who was Mr. Flett? - Mr. Flett was the Assistant Director of Administration of our Legal Services.

Is that the same department as you? - Yes, I worked on the legal side, Iain Flett, although he is or was qualified as a solicitor, at that point was responsible for clerking the Education Committee.

I think he is dealing in 170 with a request which he hasn't had satisfactorily answered, a request of Mr. Hamilton to provide information? - Yes.

That was to establish the bona fides of his club in view of something raised by the School Board, is that right? - Yes, I don't know anything of the background to it. I believe though that confirmation that Hamilton was not a one man band may have been one of the assurances he had to give after the 1983 Ombudsman's investigations.

I think you can confirm to me that D171 is an actual letter from Mr. Flett addressed to Mr. Hamilton on the same subject, looking for information about his organisation? - Yes, that is correct, from memory the final Minute was eventually produced.

Do/

Do you know that certain of the letting applications he made were delayed by the Legal Department pending the receipt of information? - Not by the Legal Department to my knowledge.

You were not directly involved with that? - No, I would have expected that primarily to be a matter for simply an administration procedure.

BY LORD CULLEN: Do you know which school was involved at that stage; we see a reference to a School Board, which school was it? - I am afraid I don't know.

EXAMINATION CONTINUED BY MR. BONOMOY: You were not involved with any dealings or correspondence with the Denny School Board? - I don't think so; it may be some of the work I did in 1995 emanated from Denny but not anything I can recall specifically.

Was it into 1995 before your involvement was really fairly intense? - That is correct.

Now, could you look at D201; do you see that is a letter from a gentleman called Young, Head of Resource Services to the rector of Dunblane High School; who was Dr. Young? - Dr. Young at that point was one of the heads of service in the Education Department; he subsequently became Acting Director of Education from the middle of 1995 until reorganisation.

You will see that the subject of this is certain difficulties in taking any action through the police and the Procurator-Fiscal; is this the difficulty that leads to your more direct involvement in the matter? - As I recall it there was another complaint which I think had reached Douglas Sinclair's desk, that is the Chief Executive, and also the first thing I was involved in as Deputy Director was a meeting between Douglas Sinclair, Graeme Young and myself regarding a complaint which, from memory, was primarily requesting the clothing, photography, etc.

Who was present at that meeting? - As far as I recall the Chief Executive, Graeme Young and myself.

Could/

Could you look please at D203. You will see that is a letter from Dr. Young to Thomas Hamilton dated the 10th of January, 1995? - That is correct.

There is some handwriting on that letter? - That is mine.

So this was the original draft letter which you added parts to? - That is correct.

This is the best copy I think we have of it and it does appear to have been sent out; that has followed the meeting that you attended? - That is correct.

What was the subject of the meeting? - It was the issue.....I can't recall where the complaint came from at the moment on the use of the black swimming trunks and I think also the failure to use changing rooms at the school in question.

So changing was done somewhere else? - In the hall being used, as far as I understand; actually looking at this I think that may have arisen separately; this was a question of the black swimming trunks and the photography.

It may actually be a composition of the two; first of all would you look at D197; you will see that is from Dr. Young to Detective Sergeant Moffat and there is reference there to two complaints and the letter is dated the 2nd of December, 1994? - Yes.

I don't want you to disclose the names -- do the names mean anything to you? - Specifically no.

If I tell you that the second of these where the name and telephone number are given was a complaint in relation to wearing black swimming trunks; is that consistent with what you are..... one of the subjects you were looking at? - With a fair degree of certainty I think so.

Could you look also at D199A; you will see that is a letter from a lady and if you look at the end you will see it has been sent to the Director of Education and Legal Administration at Central/

Central Regional Council? - That is correct.

You will see from that that the complaint is that the boys had to fully strip and change into black swimming trunks which he provided and this took place in the gymnasium with no attempt to provide privacy? - Yes.

That is a composite of the two points you mentioned and you will see the date is the 13th of December, 1994? - Yes.

Does that letter look like one of the complaints at least you were considering at that time? - I am fairly sure it is.

What action did the meeting decide to take? - Initially that Graeme Young should draft a letter to essentially ask Mr. Hamilton.....well, first of all to advise Mr. Hamilton that people were concerned and secondly, to ask him what his reasons were for conducting his clubs in this fashion.

Were you aware that that type of complaint had been made by a number of people and not just by the two I have shown you or the three I have shown you at this stage? - I think by then, yes -- whether it came up in the course of the meeting or whether I knew it previously the answer is yes.

This letter asks for answers from Hamilton to a number of questions? - That is correct.

What were the questions -- before I ask you to answer that is it right to say that the letter makes a statement that "The purpose of this activity, apparently, was to enable you to photograph the boys in these trunks"? - Yes.

Can you tell me what question was posed? - First of all, did he agree that that is what happened and then why did he do it, what use did he make of the photographs, what did they have to do with running the boys club, did he make it clear to parents that he would be undertaking photography and finally did he think it was appropriate to do that without obtaining parental consent.

That/

That is the 10th of January, 1995? - As advised I think it went out a day or two later.

I think there was a reply to that letter; would you look at 204? - Yes.

And that is quite a lengthy reply? - They generally were.

It also has enclosures with it? - Yes.

What is the enclosure? - It doesn't come out too well on the copy but I think Hamilton sent in photographs of a boy, it looks as if he is going over a vaulting horse so it is presumably a "for example" and to show he had nothing to hide.

He sent something else in addition to the picture of the boy; do you remember something else being sent? - No, I would need to be prompted on that, I didn't receive the original.

Was a pair of black swimming trunks not sent as well? - Yes, I remember that.

Do you remember that? - Yes.

And do you remember him explaining why he insisted on the boys wearing this clothing? - There is in the course of the letter some explanation for this; he would generally address these issues on the basis that the boys would turn up with the wrong kind of clothing or clothing that was dirty, etc., etc. -- far better from Tom Hamilton's point of view, he would argue that he provided them because he knows then they have the right equipment and it is clean.

Were there straight answers to the questions? - In a sense they were in as far as he would generally set out lengthy justifications and rationalisations in his terms to the questions which he was asked but when you looked at them you tended to find they didn't really answer the questions and primarily tended to be on the lines that "This is how I do it, I believe it is right, who are you to tell me I am wrong".

If you look at page two and just below the middle we can see there an example of how he deals/

deals with a question; if you read the paragraph that starts "In a club situation"? - "In a club situation photography is nationally accepted and for us is a very important training aid, a record of our work and is used for public relations. Indeed a head of physical education of a local high school has stated that the video camera has become an essential tool to his department and is used daily to film children performing various sports as a valuable training aid. Furthermore your own Department's Community Education Department has sent me four letters or leaflets over the years offering free classes specifically for leaders working with children in a club situation to learn to use video cameras to enable a full understanding of its technical handling. Therefore your Authority is fully encouraging leaders to use photography in a club situation".

So he is turning matters round to find support for his activity from your own Authority? - That is correct, I would say that was a fairly typical answer to that kind of question.

If you turn to the last paragraph on that page which deals with photography consent? - "Parents on enrolling their sons give a written undertaking that they agree to abide by all rules, conditions and the leaders discretion and as such specific permission is not required for photography and I am surprised that you should seek to ask such a question when your own schools and clubs etc. do not themselves seek to gain such specific permission from parents. As I have said photography in a club situation is nationally accepted as being normal".

If you go to the first page of the letter at the foot do we see that the reason that he sent in a swimming costume was to prove that a very small water retention in the particular types of trunks he was using? - That is what he said.

And that it was black because there was no problem with colour matching and fading? - Yes.

After/

1.50 p.m.

After an adjournment for lunch:

LORD CULLEN: Very well. Shall we resume?

MR. BONOMY: Thank you, sir.

EXAMINATION CONTINUED BY MR. BONOMY:

Could you now have before you D205. Is that a confidential memorandum that was sent to you? - That is correct.

Is that a memo from Dr. Young to you? - That is correct.

And that enclosed the letter we were just looking at?
- Yes.

I think that included a number of other items as well?
- Yes.

Publicity for the sports club? - Yes.

Including photographs of activities, all in support of the justification we look at in the letter just before lunchtime? - That is correct.

Were you aware at that time also of some support coming Mr. Hamilton's way from one of the local councillors? - In terms of overt support, no. I think you are referring to Councillor Ball.

Yes. He was in communication with the Education Section: did you know that? - At that time, January, 1995, no. I noticed that Hamilton had copied the letter we were discussing before lunch to Councillor Ball and Douglas Sinclair.

Could you look at D209? Do we have there a compliments slip covering other material, and that includes first of all a memorandum from you to Dr. Young? - Yes. I am sorry: it is from Dr. Young to me.

Yes, of course. At that stage is he alerting/

alerting you among other things to the correspondence with Councillor Ball? - Yes, he is.

And he asks a question of you in the third paragraph?

- Yes.

What is that? - "I would value your comments as to whether or not there is any merit in pursuing this matter further".

What did you understand by the words "this matter"?

- The most recent correspondence stemming from the meeting in January with Douglas Sinclair, Dr. Young and myself.

And he then suggests a further discussion with Mr. Sinclair, the Chief Executive? - Yes.

Could you confirm that amongst the stuff sent with that, being copies of the material Hamilton had sent to Dr. Young, there was an article in the newspaper about the Council changing the colour of the livery on their vehicles? - Yes. It should be recalled that Councillor Henry, who is quoted there, is one of the minority group on Stirling Council, and may have been pursuing a political point as much as anything at that time.

But Hamilton had latched on to an article about the changing of the colour scheme of the Council livery, really presumably in connection with the swimming trunks? - I suppose it was that point, but it didn't make very much impact.

There is also a letter to Mr. Sinclair, dated 13th February, protesting again about the Council's attitude and saying his interest is in the welfare and protection of children? - Yes.

And there is other correspondence that has been taking place with him; is that right? - Yes.

So you were asked to consider whether anything else was worth doing? - Yes.

Could you look at D210? Is that your reply, dated 17th February, 1995? - Yes.

Now, /

Now, you are setting out the position as you understand it to Dr. Young? - Yes.

And you are saying that the tenor of the reply from Mr. Hamilton runs fairly true to form, in so far as it does not address some of the questions which have been put twice to him? - Yes.

What do you mean "put twice"? - I am trying to recall whether there was a separate letter on this particular issue.

I think if you look at the first paragraph that must be right: there has been one on the 7th February? - As well as the one in January, yes.

You say in the fourth paragraph what your position is. Can you read that? - Yes. "I am disinclined to leave matters where they stand. It might be that we should respond to Mr. Hamilton in a fashion which makes clear that no one in the Regional Council is taking a stance on the conduct of the boys' clubs. As a responsible Education Authority, the Regional Council has to give consideration to complaints which are made regarding the conduct of any lets, and it simply will not do for Mr. Hamilton to dismiss these as the grumblings of a minority of disinterested parents", something he particularly did in the first few paragraphs of his reply to the correspondence in January.

Can you read the next part, please? - Yes. "It is perhaps also worth pointing out to Mr. Hamilton that whilst he is familiar with how he runs the clubs, it is not immediately apparent on reading the literature that the gymnastics element will involve the provision of sports clothing by him; that extensive photography (whether or not as a training aid) will take place. I suppose Mr. Hamilton at least has confirmed that such photographs are made available to parents if they wish".

In the last paragraph you deal with the question of whether the names of people who have complained should be made known to him? - Yes.

You say in the last sentence "Might one solution be to indicate to Mr. Hamilton that we will disclose/

disclose the identity of the complainants, provided that he is willing to have any comments which he makes relayed to the complainants directly?"? - It was a rather tentative suggestion, that: I did say that.

Would the Council normally make known the name of a complainer to the person complained of? - I think it would depend on the circumstances. One would worry that Mr. Hamilton, particularly given the fairly dismissive way he referred in his letter in January and in other correspondence to parents whom he regarded as either disgruntled troublemakers, disinterested parents -- it certainly became clear after the incident that Mr. Hamilton was not above going out and having it out with someone he considered was his enemy. In the circumstances I think we would be reluctant to dispose names of complainers.

Could you look at D212? - Yes.

This is a memo from one of the social workers to a Child Protection Officer about a complaint which has been made, again about his, Hamilton's, activity, and it refers to you getting a phone call about this? - Yes.

Do you remember being told about this? - Yes.

And the complaint was that two sons of the lady complaining had attended a club in Dunblane, and they were both refusing to go back due to the uncomfortable feelings about what happened, describing Mr. Hamilton as "weird" and allegedly being asked to remove T-shirts and pose for photographs in their shorts, while taking deep breaths? - Yes.

Now, this is another of the same, as it were, compared to other complaints that were by then familiar to you; is that right? - Yes, that is correct.

Can you say whether any action was taken on this? -

This is the first time I have seen that particular memo. I would expect this is one where we would have expected Child Protection as the specialists to undertake any investigations.

But/

But you don't know what happened in regard to that?
- I don't recall it going any further than the phone call I received.

I asked you earlier about the police encouraging complainers to come to the local authority. Would there rather have been a point reached where the authority would actually do something about letting property in view of the number of complaints that were coming in? - That is a difficult one. It is one I kept in mind throughout.

Yes? - If one was simply going to say that if complaints reached X level one terminates, the danger is that you are simply not addressing whether these complaints have any substance in them or not.

Yes? - The difficulty with the January correspondence and the complaints that were received in March was that it was likely to draw an answer in similar terms to those we had had from Mr. Hamilton in February.

Yes? - Now, the problem with that is that you either have to say there is something in there you can point to as fundamentally unsatisfactory and do something about it, or regard it as just about good enough to explain the way he was running the clubs. So whilst yes, in broad terms there were a number of complaints coming in, at this point we were not throwing anything up which took us beyond the January position. And bear in mind we had the experience in 1983 to bear in mind, which was to my mind a very clear indication that it was no use terminating Mr. Hamilton's lets unless there was something substantial. Complaints that Mr. Hamilton could answer up to a point did not seem to be sufficient in themselves.

On the other hand, we could probably see up to 10 different complaints like the one you have just looked at coming to the Council? - Yes.

Now, that is a rather different situation from 1983, where nobody substantiated any complaint in the sense of even identifying the complainer, except I think in relation to a boy cutting himself with an axe and not getting proper medical/

medical treatment when he was at one of the camps? - Yes.

And even that was of doubtful significance to Central Region, as the camp was held outwith the Region? - Precisely.

But we might have a different situation by 1995, in that there is this build up of complaints of a similar nature, where people see things happening, albeit they are not overtly indecent? - Yes.

Do/

Do we never approach the point where there is material and say "You shall not have Council premises legitimise your operation"? - If we go back to the "legitimise" point the answer is yes, you could, but the danger is that we were not going to be able to prove much more than a philosophical difference with Mr. Hamilton as to how he ran his clubs.

Yes? - You could say Mr. Hamilton was very old-fashioned and was not giving a good experience, but what was wrong with it?

Yes? - Some people found Mr. Hamilton's way of running things unsatisfactory. We did for example suggest to people that Mr. Hamilton's general disclaimer of abiding by the rules and his discretion should be questioned more searchingly, and we also told Mr. Hamilton to stop taking photographs without parental consent: but to go beyond that and say "There are people who disagree with the way in which you run your clubs, and on that basis alone we will terminate your let" seems to me to be suspect.

Was there anybody on the staff of the Regional Council who thought it was a good idea for Thomas Hamilton's clubs to be held in school premises? - I think probably not many.

Were there any, that you know of? - No. I don't know how many people think a number of other organisations are a good or a bad idea.

I appreciate that: but if you have got a number of complaints because people feel uneasy about the nature of the activity and the things done in the course of that activity you have an authority which would appear on the face of the correspondence and from what you are saying is concerned about the nature of the activities and the things done: so is there not another justification, which did not perhaps exist in 1983, for saying "That is enough for us to terminate the let"? - It was very difficult to point to anything concrete beyond the fact that a number of people were complaining. Mr. Hamilton would also have fairly vociferously protested that he was being damned by those against him, and that the Regional Council were simply articulating these views.

Yes?/

Yes? - It is also worth mentioning that in 1983 Mr. Hamilton did produce a petition with a number of signatures on it approving what he did. These were people who genuinely felt it was okay or even good.

Would it be fair to say from that answer that the support that Hamilton got in 1983 from members of the public plus the success he had with the Ombudsman casts a constant cloud over the freedom he might otherwise have felt to act and stop his continued use of Council premises? - It certainly had to be a factor in my consideration. Now, I think the 1983 Ombudsman threw a general line anyway, and had it been Thomas Hamilton or anyone else we would not have tried to terminate the let in the way we did in 1983.

Yes? - One concern we had -- I think it was a particularly strong reservation -- was not to get ourselves into a situation where we went before the Ombudsman again and lost.

Yes? - Now, that was done in total ignorance of lack of success with the termination of lets in Lothian and Fife; we didn't know of these.

Yes? - The biggest danger it seemed to me was of launching ourselves down the 1983 slipway again, particularly as Mr. Hamilton regarded any words of praise from an official source as a vindication of himself.

Yes? - To have gone to the Ombudsman and lost would have been a very serious difficulty for us to terminate Mr. Hamilton in the future. So yes, it was a very big part of my consideration.

Could you now look at D227? That is a letter from Mrs. Chillas to Dr. Young? - Yes.

In relation to the Dunblane summer camp, in which it is suggested that the daily training programme was in the opinion of one of the people working for Hamilton much too difficult for young boys? - Yes. I believe that was also the evidence of yesterday's witness.

Then in the third paragraph you see it says "As you know, a parent telephoned me to say she had/

had removed her child from the camp. He was very unhappy throughout"? - Yes.

Now, are you aware of complaints of this type from the camps as well as the clubs? - The camps at Dunblane -- I think they were a somewhat different kettle of fish from the camps in Loch Lomond, and may have been an example of showing sense, that he had realised that going to uninhabited islands for a summer camp was bad news.

So you saw the Dunblane summer camp as an improvement? - Yes, for two reasons: one, he was near facilities, running water, electricity, plumbing, etc.; secondly, there would be an opportunity for better supervision, because he was on our premises.

Could you look at D229? Is that a letter from a Peter Farquhar to you about a meeting in relation to Hamilton? - Yes.

Present were an Alan Steele, Mrs. Chillas, and Sergeant Moffat of the police, among others? - Yes.

What was the subject matter and the outcome of that meeting? - It primarily related specifically to a letter of 9th May that Hamilton had circulated literally door to door in the Dunblane area. It raised an inference that he had approval or support from the Regional Council. That was either a misconception or a distortion about what we had done. For example, he would tend to regard successful registration of the granting of a let as some form of approval. We were no more approving him than we were approving anyone else when we took these actions.

I think you made the decision that some effort should be made through head teachers to explain the Council's position? - Yes.

The memo states ".....there should be guidance to the head teachers that they should not distribute material except from organisations operating under a national body or community-based groups"? - Yes.

Did that happen? - No, there was a difficulty/

difficulty in trying to figure out a policy which could be drawn in such a way that it did not say "Don't distribute anything in connection with Thomas Hamilton's boys' club". Now, the difficulty with saying "a national body or community-based groups" was that you could perhaps differentiate the two and say you could distribute for the Scouts, the Guides, the Boys' Brigade. Community-based groups were rather more difficult. What was Thomas Hamilton's boys' club?

The next part of the Minute goes on to more general subjects. Can you read the outcome of the meeting? - "Overall, those present would like to see Hamilton tackled in relation to the conduct of his activities and lets withdrawn. However, it was acknowledged that members of the Council would need to support this course of action, and that experience with the Ombudsman required careful action. Mention was made of a code of practice being drawn up, containing recommendations for the new authorities on regulating letting activities. It was confirmed that the Procurator-Fiscal was not taking action on the reports sent to him because there was not a crime being committed. There was nothing in value in relation to Hamilton's criminal record".

Was a code of practice ever drawn up as a recommendation for the new authorities? - I am afraid I do not know that. I am afraid I had taken severance by then.

Are you aware whether Hamilton had initiated any other complaints to the Ombudsman after the one in 1983 involving Central Region? - No, not that I know of.

Were you aware of one that Mr. Sinclair had to deal with, by meeting him at one stage? - Well, maybe.

You are not aware of it? - No.

Following that meeting I think a letter was drafted which you were asked to consider; is that right? - Yes.

Could you look at D231? Do we see there a memo for the proposed letter? - That is correct.

And/

And that is about the distribution of material? - That is correct.

That was for the head teachers? - Yes.

Was that letter sent, as far as you are aware? - I think it was.

Could we look at D230? Is that another draft that was sent to you for your consideration? - Yes.

And that is one to Mr. Hamilton? - That is correct.

Do you know if that was sent? - I think it was sent after being revised by me.

What were the issues raised with Hamilton in that letter?
- Do you want me to read them?

Just tell us what the five things were? - What qualifications did he have, under what auspices were staff checked in terms of the requirements of the 1989 Children's Act, why were boys required to wear only swimming trunks, was it essential for them to do that in a games hall, and reference to the fact that a "Social Services Community Child Care Specialist" had inspected the "Qualifications of leaders in overseeing the boys' work in a wide range of coached activities, including the extensive use of apparatus", and asking for clarification on that point.

That/

That is a reference to a letter he had sent out in which he said a Social Services Community Child Care Specialist had inspected among other things the qualifications of people? - Yes.

That Child Care Specialist was someone who looked after the camp? - Yes. My recollection of the circumstances is that he felt that was not required under the legislation, because it did not have any under eights attending the camp. I believe it subsequently transpired that two boys of age 7 were attending the camp and their hours were restricted.

I think that letter did in fact elicit a reply from Hamilton? - Yes.

Could you look at D234? That is a letter to you from Mr. Steele, with the reply? - Yes.

It consists of a number of pages; is that right? - Yes, at least three pages.

Is it dated 2nd September? - Yes.

And the letter which dealt with it was dated 1st September. Is that when it would go out to Hamilton? - Yes. My recollection is that it went out as originally intended.

I think there was included with that also a circular letter to parents that Hamilton had sent out on the 18th August? - Yes, that is correct.

And copies of other correspondence, some of it of a similar nature to that; is that right? - Yes.

Now, you will see that Mr. Steele refers back to his memo of the 26th August? - Yes.

Where it was proposed that the group, presumably the people at the meeting, should re-convene once Hamilton's response was received? - Yes.

You then go on to say what? - "I am, however, of the opinion that the response, as you suspected,/"

suspected, gives little in the way of any justification to move for termination of let".

Could you carry on? - Yes. "As a consequence, I have some doubts as to the benefit of holding another meeting at this stage. I would, however, appreciate your comments and opinion on this matter before taking any action".

Perhaps you could also look at D232. You will see that that is another memo that Mr. Steele sent to you, enclosing a letter received from a parent in Dunblane? - Yes.

I'm talking about the circular letter which Hamilton had sent round about the 18th August? - Yes.

And hoping that parents boycott his club: do you see that? - Yes.

And referring also to his carefully-constructed consent form; is that right? - Yes.

Now, can you read out the second last paragraph, please? - "I would like to ask Central Regional Council if Mr. Hamilton fulfils all the social and" -- I can't read the word -- --

I can't read it either. "Something criteria"? - Yes. ".....to run such a club in their premises? I for one will not be sending my son, and would strongly encourage other parents to question yourselves regarding Mr. Hamilton and his motives!".

So we have then more complaints coming along on similar lines to previous ones? - Yes.

You had had them before you got the earlier memo from Steele? - Yes.

But your view was that that did not advance matters at all with a view to terminating the let? - In the sense that Mr. Hamilton made people uneasy, that we all had our suspicions as to what precisely Mr. Hamilton's motives were. That merely added to what we already knew of the man. In terms of establishing what Mr. Hamilton was doing wrong beyond creating unease, it did not advance matters./

matters.

Could you look please at D239? That is a letter from the Department of Administration and Legal Services? - Yes.

Addressed to Mr. Hamilton, and about an application for the use of Dunblane High School for a summer camp in 1996? - That is correct.

Do you know if that application was granted? - I do not.

It says a meeting would be held on Thursday, 7th December, 1995? - Yes.

Can you think of any reason why the Council might have refused that application? Was there a basis for refusal, in your view? - In the sense that the 1995 summer camp had not given any particular problems, and certainly had not caused the alarms that the Loch Lomond camps had, I would not have thought there was any reason they would have tried to refuse it. Yes, one boy had asked to be withdrawn from the camp, being unhappy, but that I imagine is not unusual.

Could you look at D240? - Yes.

This is a letter from you dated 11th January to a lady called Thomson, a Service Manager in Social Work? - Yes.

Now, there is a memo attached to that. I think that was the memo to you, to which you are in fact replying? - Yes.

And that is raising concerns about the way in which Mr. Hamilton is publicising the thing? - That is correct.

Did that relate to the previous year's camp? - Yes, I think it probably did.

Was/

2.30 p.m.

Was the material sent to you? - Yes.

I think there is a copy back in the form? - Yes.

What was the concern about the material? - The concern, as we discussed already, that Mr. Hamilton misrepresented what the Council was actually doing when it was carrying out some of its statutory functions.

Using any intervention of the Council which didn't result in anything adverse happening as a means of supporting him? - In essence, yes.

I think you say in your memo that you can't see any way of terminating any of the lets? - On the basis of that matter, on the basis of the specific misrepresentations which have been made, no; Mr. Hamilton I think could have misrepresented the change in course and simply said he had misunderstood the situation and wouldn't repeat the mistake; in terms of what we had already on record, no, we couldn't at that point see any way of terminating his let.

So in the end was the Regional Council's position that the complaints in themselves were not enough in view of the whole history of this business and the Council would only act and certainly officials of the Council would only act if they got the complaints that they could verify as justified? - No, it wouldn't be true to say verified as justified; the simple fact of the matter is that they didn't necessarily mean that Mr. Hamilton was misconducting his club, he was conducting it in a way which didn't satisfy a lot of people; on the other hand, he conducted it in a way which a number seemed to find adequate or satisfactory; really the impression one got was that you were either very much for him or very much agin him.

Did you get support for him intimated to you? - No, but we felt despite the people who wrote to us complaining saying that they were withdrawing their children, that certainly up to the summer of 1995 he was getting a worthwhile attendance level.

So/

So what in these complaints, if you could have checked them out in some way or verify them in some way would have resulted in a different course of action? - I think if you had been looking at issues of physical abuse, severe mental abuse or anything that was overtly improperly sexually then, yes, that was clear enough; as the correspondence has shown we tended to have a fairly sterile debate with Mr. Hamilton about the clothing he made boys wear, where he made them change, etc. and although he had given justification how much do you jump from there and say "That is all very well, Mr. Hamilton, but what we think you are really doing is" and whatever the various things that existed regarding Mr. Hamilton's motivation -- how can you actually make that leap which was the problem.

Were you saying that there had to be something by way of criminal activity before you could stop the let or would something less than that suffice? - There could have been matters which were not necessarily the subject of prosecution themselves, matters which the police wouldn't have taken on board.

Could you give me an example of them? - Let's suppose he had shouted at his class on a reasonable basis, reduced them to tears, I don't think the police would have found that a means for prosecution; that may not have been subject to criminal prosecution but it may have been fair enough for us; the difficulty was we were confronted by something which made us uneasy, we wondered why he wanted to take hundreds of these photographs of boys in black swimming trunks; his argument was "I was meticulously taking photographs of the activities in the club and I challenge you to say I was doing it for another purpose".

If there had been no Ombudsman in 1983? - Yes.

And indeed if 1983 had never happened at all and you had Hamilton from, say, 1985 onwards without that history behind it --? - Yes.

Do you think your decision may have been different? - Can I perhaps answer that in the sense that had one known that Lothian and Fife had successfully terminated Hamilton's lets and not been challenged/

challenged by the Ombudsman I feel in retrospect now that we may have been looking for higher evidence than we actually required.

CROSS-EXAMINED BY MR. JONES: Again just a few questions -- could you just go back to D204; I think you looked at part of this letter, this is a letter dated the 14th January 1995 from Hamilton to Dr. Young? - Yes.

Can we just look at the opening paragraph of that letter, can you read it out? - "Dear Dr. Young, I refer to your letter of 12th January 1995 asking me to answer various allegations to determine the future course of action that the Council will take and as such in terms of the requirements of natural justice you have not notified me properly and that you do not name the complainants nor do you name the schools or give dates. I therefore cannot give the detailed information necessary to answer fully and as such my reply at this stage is of a very general nature. I am however very surprised to receive your letter at this time as my group has provided our boys with black trunks for swimming and gymnastics for almost 22 years and that such matters as raised in your letter have already been fully considered by your own Authority in recent years and I understand that the conclusion was the Region constantly photograph children at its schools and clubs etc. which have included boys wearing trunks and such photographs have been used in public displays so how can the Council criticise".

If I understand it correctly you told us that your understanding of the complaints that the Education Department had been receiving up to this point were that boys would have to change into black swimming trunks and were then photographed? - Yes.

Could you go on to D212? - Yes.

This is the Social Work Department memo that you were asked to look at dated the 24th of March, 1995? - Yes.

And you were asked what action was taken on the complaints that were made about the two boys who had felt uncomfortable and described Mr. Hamilton as weird, do you see that? - Yes.

You/

You said you didn't know what action was taken; could you go on to the last paragraph of that and could you read it? - "Ron Keilloh contacted DS Moffat, Family Unit, and joint investigation will take place next week. It is noted that there have been previous complaints about Mr. Thomas Hamilton". In my answer I was simply meaning that the Admin and Legal were not going to launch anything of this nature.

Particularly that if there was going to be a joint investigation involving the Social Work Department and the Child Protection Unit? - Absolutely.

Could you go on to D229? - Yes.

And could you have at the same time D238? - Yes.

Now, D229 is dated the 22nd of August 1995? - Yes.

And we have seen that halfway down the text we see there is a break which says this -- "Overall those present would like to see Hamilton tackled in relation to the conduct of his activities and lets withdrawn." This was the memo that we have heard from Peter Farquhar to you? - Yes.

I think what we don't yet know is who was present at the meeting; do you see just below the address block the heading was "T.W. Hamilton. Meeting 21/8/1995"? - Yes.

Present "Alan Steele, Tricia Chillas, Gerry Fitzpatrick, Alan Moffat and Ian McNeish"; can you help us by telling us who these people were? - Alan Steele had responsibility for the School Board Unit in Central Regional Council; his remit may have been changing at that time because people were beginning to leave and had been appointed by the new Council but essentially that is his background. Tricia Chillas was in charge of the Regional Council Sports Development Scheme. Gerry Fitzpatrick worked with Community Education, Alan Moffat and Ian McNeish I think are both police officers, Ian McNeish certainly is.

Do/

Do you know what was the purpose of forming this group, in bringing them together? - It was a reflection of the concern regarding Mr. Hamilton, the complaints which were being generated about and also concerns about what Mr. Hamilton was about; it wasn't a formal group but they tried to find grounds for terminating Mr. Hamilton's let, it was at least a collection of people with the necessary expertise to look at the complaints.

If you look at D238 again, this is the memo from you to Alan Steele; do you see in the last paragraph you say "For the time being, I agree that there is probably not much point in reconvening the group examining Mr. Hamilton's activities"? - Yes.

That is referring back to the group you have looked at?
- Yes.

In response to this complaint we had, first of all, as I think you know reports to the Procurator-Fiscal and they had resulted in no criminal proceedings being taken, is that right? - That is correct.

We then had the setting up of a group comprising these individuals that you have just told us about to investigate Mr. Hamilton's activities? - Yes, I can also add to that fact that my initial involvement in 1985 came by a request from the Chief Executive to myself, it was being handled at a higher level; could you look at D232? - Yes.

This is a letter dated the 28th of August 1995 and you were asked the question whether this wouldn't be sufficient just to tip the balance and indeed give you a reason to withdraw Mr. Hamilton's let; can you look a little more into what the writer of this letter really says; do you see that in the paragraph that you read she wants to ask the Regional Council if Mr. Hamilton fulfils all the social and sporting criteria to run such a club and she makes the point that she won't be sending her son "and would strongly urge other parents to question yourselves regarding Mr. Hamilton and his motives" and concludes by saying "I hope you will look into the running of this club from your premises", do you see that? - Yes.

That/

That is what you were doing at the time this letter was received? - Yes, in the aftermath of Dunblane people were concerned that alarm bells should have been ringing regarding Mr. Hamilton; alarm bells were definitely ringing but he was an extremely elusive character to actually find a thing that would tip the balance.

Were you aware of any breach by Mr. Hamilton of the conditions of any of these lets? - None that I can think of or none which in the case of other organisations might not have been dealt with short of termination; I can't recall any off-hand.

You have said that what you considered might be sufficient to terminate his lets would include physical or verbal abuse or some form of overt sexual act; did you have any evidence of any of these things during the time of your involvement in this? - None that was brought to our attention.

RE-EXAMINED BY MR. BONOMY: That parent of the two complaints you have looked at again, was the parent told what was going on? - Was there a reply sent to that complaint?

Yes? - I believe so.

Saying we have a group looking into these matters and we take note of your concern? - We may have said we take note of their concern, I doubt we would have advertised the existence of a group; it was a sensitive matter.

Really in relation to the Minute of the meeting on the 21st of August where overall this person would like to see Hamilton tackled in relation to conduct -- at any stage was a decision mooted to refer the matter to the Council or a Committee of the Council in view of the view that officials had? - It is fair to say that every time we looked at the complaints regarding Tom Hamilton's clubs that was the question we wound up asking ourselves so in that sense it was constantly being mooted but the conclusion at the end of the day was that we didn't have enough to take forward.

Did you think you would have difficulty specifying exactly what was the basis of the presentation/

presentation to the Council of the case against Hamilton? - It would be the same difficulty as we would have in presenting it to the Ombudsman or the Court -- general unease, concern, doubt about motivation -- how do you actually make that stand up in a Court of law.

JANICE HELEN RENTON (49) Sworn

EXAMINED BY MR. LAKE: Your current occupation is Depute Commissioner for Local Administration and you work in Edinburgh? - That is correct.

As a preliminary matter in your evidence I understand that there is some limit to the information which you are able to give to the Inquiry, is that correct? - It is -- my reading of the 1975 Act, the Local Government (Scotland) Act, which set up the Commission at Local Administration is that there is a Statutory duty of non-disclosure of information other than in very limited circumstances and there is also a provision that indicates that the Commissioner and his staff may not be called upon to give evidence in any proceedings; having said that the initial difficulty which was in relation to handing over the files of the Ombudsman was, to a large extent, overcome because most of the correspondence was able to be accumulated from other sources and I was then able to confirm that this was indeed the correspondence from my office.

So/

2.50 p.m.

So in my view I was able not to breach the statutory duty and to achieve a satisfactory outcome. I may say that in relation to appearing here today I have not hesitated, I have tended to the view, rightly or wrongly, these are not proceedings for the purposes of the Act and therefore I am entirely happy to be here.

The reference in the Act is to information which is gathered by the Commissioner in the course of investigation rather than the procedures of the Commissioner? - That is correct, yes.

Is it correct to say the remit of the Commissioner within the Local Government (Scotland) Act, 1975 is to investigate complaints by members of the public who claim to have sustained injustice in consequence of maladministration in connection with actions taken by or on behalf of an authority? - That is correct.

Are you able to give a brief summary, a brief statement, of what you consider to be encompassed within "maladministration"? - I can try. Maladministration in my view relates to administrative practices and procedures of a local authority. The closest definition that has ever been given was by Richard Crossman who was the Leader of the House and suggested when the Bill was going through that in fact "maladministration" might encompass such things as delay, failure to follow laid down procedures, incompetence, negligence and generally matters related to the processes, but obviously not to the merits or substance of the decision.

Without looking any further at the general powers of the Commissioner, I would like to examine with you the dealings between Thomas Hamilton and the Commissioner over a period of years and his complaints about local authorities. The first of those related to a complaint made against Central Region regarding removal of lets in 1983. Were you employed in your present post in 1983? - No, I was not.

Are you aware of the circumstances surrounding the complaint made by Mr. Hamilton at that time? - Yes, I am.

We/

We have heard some detail already what the nature of the complaint was and some of what the outcome was. Is it correct to say that after you had received the complaint from Hamilton via his Councillor the first thing you would do would be to obtain comments or submissions from the Regional Council? - In fact, on this occasion the first thing was that Mr. Hamilton was interviewed in person by a member of the Commissioner's staff with a view to establishing greater detail of his complaint than had been provided in the written submissions. So the first step was to go back to Mr. Hamilton. The second step was in fact then to refer the complaint in accordance with our normal practice to the local authority asking for their comments on Mr. Hamilton's allegations.

I think in response to that you received a submission by way of a letter from the Regional Council? - That is correct.

Can I ask you to look please, to have in front of you document D10 within folder J(v). Do you recognise that document? - I can confirm that this is the response which was placed on file from Central Regional Council on our initial enquiry.

So if you go to the first numbered paragraph do the Council set out their position they were entitled at any time without any reason to terminate the arrangement, that being the letting arrangement? - Yes.

In the second paragraph they reiterate in similar terms the authority was quite entitled and had sole discretion and brought the arrangement to an end and it is submitted that no injustice was done thereby? - Yes.

Is it correct that notwithstanding that response the Commissioner decided that it was appropriate to conduct an investigation into this event? - Ultimately that was the decision that was taken. But there were other events took place before that decision was reached. My recollection is that it appeared possible that the complaint might in fact have been resolved. As I recall, there was some possibility of the matter being reconsidered by the local authority but in the event the decision, as I remember, was taken to defer making/

making such a decision until the Commissioner concluded his investigation. I may have the sequence of events out of order. My memory is not sufficiently good to recall the order in which matters happened but I can confirm certainly that ultimately the Commissioner made the decision to initiate a formal investigation into the complaint.

Are you aware that the Council attempted to argue that the matter was not one which the Commissioner could consider as it related to the conduct and management of an educational establishment? - Yes. I am aware that was the argument which was presented by the Council, and I am also aware that the then Commissioner considered that argument and took the view that he was not precluded by Schedule 5 from conducting an investigation. Again the Act indicates that whether or not a complaint is properly made and can be investigated is a matter solely for the Commissioner to determine and he so determined and proceeded on that basis.

After the initial matters the Commissioner decided that an investigation would be carried out? - That is correct.

And following that investigation a report was prepared and sent out to parties in terms of the Act? - A draft report was prepared initially. Again that is in accordance with our normal practice where a draft report containing the facts is in fact prepared. This is then issued to the complainant and the local authority so that they may have an opportunity of drawing attention to any factual inaccuracies in the body of the report. The draft is then amended, if necessary, and is then finalised by appending to the factual content the Commissioner's conclusions as to whether or not there has been maladministration and if so whether injustice has ensued. Ultimately that process was gone through. The parties commented on a draft and it was ultimately issued in its final form with the Commissioner's findings attached.

We have also heard in the Inquiry a draft of this report was also sent to the Scouts' Association? - That is correct.

Was it common to send copies of a report to/

to other parties? - It was indeed. The view has always been taken -- I think quite properly -- that if someone or some body is referred to within the body of the report they ought to have an opportunity of commenting on whether that reference is factually accurate, so Yes, in this case a copy was in fact sent to the Scout Association.

I would like to refer you to the report in its final form. I believe there is a copy in that folder but it has not been copied correctly. So if I could refer you to the original copy of the Production which is DCRC B1/F2, a copy of that was made available to parties yesterday. It is No. 38 in that file of papers. You see in the first paragraph there is a brief summary of the complaint and the second sentence says, "The let of the premises was terminated without fair warning or explanation" and goes on to say that Mr. Hamilton complained, "That the action had been taken on the basis of unsubstantiated allegations of which he was given no opportunity to reply? - Yes.

It goes under the sub-heading "Investigation" to make a number of factual conclusions following on from the investigation; you see that? - Yes, I do.

In paragraph 3, "The Commissioner was of the view that Hamilton had left the Scouts and that he had set up boys' clubs which were run by a committee and that there were up to nine leaders or assistants". You see that? - I do.

Turning to the concerns of the local authority which are expressed in paragraph 26 at the foot of page 9, you see they summarise the concerns as being "(a) General concern felt by head teachers regarding the administrative arrangements of the group; (b) The quality of leadership; (c) Management difficulties; (d) Alleged improper circulation of notices"? - Yes.

Paragraph 28, there is a summary of the Commissioner's views on the duties and responsibility of the Council; do you see that? - I do.

Would you read that paragraph please? - "Before reviewing these, I think it necessary to state/

state what I would regard as the general duties and responsibilities of the Council in the matter. On the one hand they have a discretion whether to let school premises, and a consequent duty to ensure that they are not let to unsuitable users; on the other hand they have a responsibility to deal fairly with all their constituents. I have borne both these factors in mind".

Paragraph 29, considering the reasons for the termination of the let, the Commissioner has noted the suggestion of confusion with the Scouts and he says, "Another reason for action being initiated was complaints from parents about the conduct of the group. These contained implications too vague to found upon and I were given more weight than evidence of support for the group. They should in my view have been heavily discounted as they were until November 1983". You see that? - Yes.

Paragraph 30, the Commissioner in the first sentence expresses his view of the Council's actions. Would you read the first sentence? - "I find nothing in the later reasons advanced by the Council to persuade me that the decision to discontinue the letting arrangements was taken without maladministration."

Could you continue to read the remainder of that paragraph? - "Proper use of a local authority's powers, even those which are entirely discretionary, involves among other things, giving proper attention to considerations which are relevant and ignoring or discounting considerations which are of little or no relevance, particularly if evidence is not adequately substantiated. Neither of these requirements was met by the sub-committee in their decision to discontinue the let. As I said, evidence that the group was well run and was supported by parents was ignored in favour of complaints which proved to be little better than gossip. The only evidence of general concern, which the Council maintain, is felt by head teachers rests on allegations of this kind. The criticism of leadership and management difficulties rests on one accident, of which the complainant would have been able to give a satisfactory account had he been given the opportunity to do so, and on the allegation of difficulties on an opening night, on which occasion the complainant and his colleagues seemed in fact to have/

have coped rather well with an unexpectedly high response. It is notable that no previous history of problems with premises or equipment existed and I view the Council's actions on these grounds as arbitrary."

You see the first sentence in 33 there is a statement, reading short, "The Regional Council's decision was illfounded and unfair"? - I do, yes.

In the use of that sentence of the word "illfounded" and also the use of the words in paragraph 30 that the Commissioner considered that a satisfactory account of events was available, is it your view that the Commissioner is not really dealing with administration on this matter but is giving some views on the substance of the complaint against Hamilton? - I think I would have to refer back to the 1975 Act. I am sorry, I can't quote the section, but within the Act it says that the Commissioner for Local Administration may not question the merits of decisions taken without maladministration.

In/

3.10 p.m.

In other words he may not simply question whether or not a decision was right, it sounds it is worded in such a way that he might not question a decision taken without mal-administration. What is taken from that is if there is mal-administration then indeed he may move closer to the rightness or wrongness of the decision itself.

Did you consider that the Commissioner was giving his view on the rightness or wrongness of the decision in paragraph 30 and 33? - I don't think I can answer that; the findings that are presented here were the findings of an individual and I really can't tell you what he was doing in terms of a conclusion.

But can you draw any impression from the use of the words like "satisfactory account" and "it is very ill-founded" that there was a comment being made on the merits? - In reading it I would form the view that he was commenting on the merits and if that was what he was indeed doing then in my view he was doing so on the basis that he considered that the decision had been reached that mal-administration as distinct from no mal-administration.

At the time these complaints were made and reported on what were the Local Authority obliged to do in response to the report? - The Act requires that when a report is published it must be laid before the Authority and they must consider the Ombudsman's findings and they require to then indicate to him what action they propose to take in response to that finding.

And it was open at that time for them to indicate that they would take no response to the.... take no action in response to the finding? - Had they done so then the Ombudsman couldn't have declared himself satisfied on their response; it is also required to be borne in mind that the Ombudsman has no satisfactory powers to enforce his decision and therefore what this means in our history is that the Authority, in fact, had declined to take action.

I understand now that there is certain powers have been added to the Act in 1989 to give such/

such a situation publicity? - You are quite right; it was also the case if the Authority didn't take action on the initial reports there was a power available to the Ombudsman to publish a second or further report; in other words, to give them a second opportunity to consider their position but in 1989 there was added to that that if they declined to take action following the publication of the further report the Commissioner could require the Authority to agree to the publication of a statement in local newspapers, the contents to be agreed with him narrating the circumstances of the complaint and what had, or more likely, had not happened, the cost of that to be borne by the Authority.

But it still remains the position that the Commissioner has not compulsory powers to force a Local Authority to change its mind? - That is correct.

Turning now to the next complaint which you see in relation to the letting out of Linlithgow Academy High School and was made against Lothian Region? - Yes.

Were you involved in that complaint? - Not directly but I had taken up employment in the office at that time and I was aware of the complaint and the manner in which it was dealt with.

Are you aware that the complaint was of a similar nature regarding what was seen as the arbitrary termination of the let of school premises? - Yes, I am aware of that.

Can I refer you to the document once again within the original folder you had and that is D14 in J5; I think this is actually probably stapled together with quite a few different items of correspondence; do you see this is a document headed at the top right-hand corner the 25th of January, 1990 and is your response to the Regional Council? - Yes, I do.

We have already had evidence from the Regional Council referring to that and it may suffice to say were you aware that the response of the Council was to say that it suspended it pending a police investigation regarding Hamilton in another jurisdiction? - I am aware of that.

What/

What was the outcome of that complaint? - The decision was not to initiate a formal investigation.

By not initiating a formal investigation is the Commissioner indicating there has been no mal-administration or merely there has to be no investigation? - It is merely that there has to be no investigation but on this occasion again, as I recall, the explanation was given to the complainant in intimating that there would be no formal investigation, that this Commissioner was satisfied that the duty on the Local Authority to protect the interests of young persons had been properly discharged in their decision to suspend the let of the premises.

That duty had been referred to, I think, in the summary of duties contained within the first report? - That is correct.

Is it a fair summary to say that the existence of parents' complaints was sufficient to tip the balance in this case? - That would be my view, that unlike the initial complaint there was no investigations and indeed no formal complaints lodged with the Authority in 1989, there had been, as I recall, a complaint and there was a police investigation.

You referred there to the fact that there had been a formal complaint, not one to the police but to the Local Authority; I think these are referred to in heading No. 3 on that response from the Regional Council? - Yes.

We have been avoiding referring to the names of any persons making complaints so it is perhaps sufficient to say that those paragraphs narrated complaints which had been received by the Region from parents or a parent of a child involved? - That is correct.

And this was something that the Commissioner took into account? - That is correct, yes.

Turning to the next series of complaints to the Commissioner are you aware of complaints that took place in 1992 regarding investigations into a camp/

camp run by Hamilton at Milarrochy Bay? - I am sorry, could you ask that question again.

Perhaps it would be easier if I referred you to document D17 within folder J5? - Yes.

Do you see that is a letter to Mr. Hamilton from yourself? - Yes, it is.

Dated the 2nd of March, 1992? - Yes.

And I think in the first paragraph there is a reference to complaints against Central Regional Council concerning the Social Work Department and Central Scotland Police? - Yes.

There is a reference to "You complain about harassment and disruption to the running of your sports club; and defamation of your character, which you claim has resulted in you being unemployed". Do you recall that complaint being made? - I do recall the complaint, yes.

What was the response of the Commissioner to that complaint? - Having considered the terms of the complaint which, as far as I could see, were two-fold in that it contained an allegation both against the Local Authority; the first part was readily dealt with in that the police do not come within the Ombudsman's jurisdiction and accordingly any complaints about any activities involving the police was a matter which was outside the jurisdiction and therefore that was readily dealt with on jurisdictional grounds. In relation to the second part of the complaint which was framed in fairly general terms and which was, in my view, a complaint alleging defamation, if the view was taken that the complaint of defamation is more properly a matter for the Courts than the Commissioner and again the Act stipulates that it would not be normal for the Commissioner to entertain a complaint where there is an alternative remedy including in particular, through Court action and Mr. Hamilton was therefore advised that the Commissioner did not regard a complaint of defamation as one which he could properly investigate and that the remedy lay rather through the Courts.

Can I refer you back to the second paragraph of your letter dated the 2nd of March and you/

you say there "Having examined carefully all the background papers you have supplied (and also reviewed our files on your previous complaints)"? - Yes.

You would by this time be aware that within a period of time amounting to some nine years Hamilton had made a number of complaints against different Regions? - Yes, indeed -- the system in my office ensures that on receipt of the claims there is a cross-check to establish whether an individual has, in fact, been a previous complainant to any file may be linked together.

What is the relevance of a previous complaint? - Well, there are many reasons why it would be important to establish whether an individual was a previous complainant; it could be, for example, that although a complaint appeared to be a new complaint that it actually is a complaint which has already been determined; that would be one reason and another reason is in relation to the allocation of complaints to an officer within the office; if it is an entirely different matter in my view it is normally preferable that it be dealt with by a different officer from the one who dealt with the previous complaint so that a perhaps more objective and impartial view could be taken of the complaint so there are various reasons for cross-referencing.

Is it of any relevance to the Commissioner that someone is persistently complaining against the Local Authority? - We have a number of people who are persistent claimants against Local Authorities but they would fall into various categories; we would not regard someone who complained frequently as necessarily being a veracious litigant. We have one complainant that I can think of that has complained during the office's existence some 15 times but on each occasion at least on the face of it has good reason for doing so.

But without being regarded in any way as indicating that someone is a veracious litigant is it a matter of taking into account any deliberation by the Council? - The fact that you would have complained before is no reason why the Commissioner would not be willing to undertake a formal investigation; /

investigation; each complaint must, in my view, and indeed has to be treated on its own individual merits.

I understand that but what I asked you is different matters that are taken into account? - In what context?

Deciding whether or not to have an investigation of a complaint does the Commissioner consider the history of a complaint on behalf of the individual? - There would be an awareness that the individual had made a number of complaints but I can't say that because he had made a number of complaints that the decision would necessarily be either to mount an investigation or not mount an investigation, that decision would be taken primarily on the basis of the complaint currently before the Commissioner.

Concerning now the next complaint which was made by Hamilton which was against Fife Regional Council and I refer you to document D25 within folder J5, do you see this is a letter again from the office of the Commissioner to Hamilton dated the 7th of September, 1992? - Yes.

And you see in the first paragraph there there is a brief summary of complaints and in the second sentence "You complain about the Regional Council's decision to suspend the letting of educational premises to your sports club which you claim is unfair"? - Yes.

And is it a fair summary of the second paragraph that at that stage the complaint was not to be progressed in view of the fact that the Council was offering to meet with Hamilton? - That would be a fair summary, yes.

Turning to the final complaint made by Hamilton in 1994, that was the one again against Central Region and can I refer you to document D31? - Yes.

You see the outcome of that was that the issues of the let had been resolved and there was to be no continued involvement of the Commissioner? - That is correct.

Are/

Are you aware of the basis on which that complaint was withdrawn? - Yes, I am.

What is it? - As I recall the complaint that was originally made related to what, I suppose, one might call the double booking of a facility; as I recall there was a period when Mr. Hamilton's club had the use of premises and it appeared that it had been let on certain dates to some other organisation. My understanding is that following his making a complaint to us and before we had made any inquiries into the complaint the double booking problem was resolved to the extent that he was informed in writing that there would be no disruption to the let of the premises for use by his group and he therefore wrote to our office indicating that the matter had been resolved entirely to his satisfaction and at that stage our file was closed.

You mentioned in regard to the Lothian Region complaint in 1989 that two relevant factors there was that there had been a complaint by parents and the police investigation? - Yes.

In a situation in which the Local Authority was concerned about the proprietary of Mr. Hamilton's club and wished to discontinue the let what sort of evidence would the Commissioner be looking for to enable the Local Authority to do that, that their decision was justified? - I think the best guidance we probably have on that would, in fact, be some of the criticisms that appeared in the original investigation; again I think what the Commissioner is primarily interested in is a process through which the Authority goes and that process would involve, in my view, an opportunity being given to the person whose let is terminated to be offered to put his side of the case and that in terminating some explanation for a decision would be provided.

I/

3.30 p.m.

I don't think I can really give you any great deal of assistance on what weight of evidence the authority must have. I think the Commissioner's primary interest would be in the procedures which the authority adopts in reaching the decision to terminate or suspend a let.

You referred to procedures and giving the complainer an opportunity to be heard. Do you consider that is always required in order that you can have termination of lets on this basis? - Clearly I can't say that it is always required but I think in general where a decision is made it is good administrative practice to give the party involved an opportunity to be heard. I think it is extremely important to give, where there is an unfavourable decision, to give an explanation of reasons why the decision is unfavourable.

But in relation to complaints against Lothian Regional Council where there was no hearing granted to Hamilton, he was merely told it was on the basis of complaints and a police investigation, that is one where the Commissioner was able to reject the complaint? - The complaint was not rejected. What was said was that the Commissioner did not propose to mount a formal investigation. I think I must encourage you not to use the expression "reject" a complaint. Local authorities do on occasions interpret a decision by the Commissioner not to conduct a formal investigation as in some way upholding or vindicating what they have done. That is not necessarily always the case.

But the effect is they are not found to have acted in a manner which constitutes maladministration? - No, the only occasion on which a finding is made is after a formal investigation.

That's what I said. They are not found to have acted in a manner that is maladministration? - Nothing is found unless a complaint goes to formal investigation.

In a situation on which there have been or had been repeated complaints by parents of concerns/

concerns but the concern was not substantiated by hard evidence would the Commissioner be able to take these into account in justifying a decision to terminate lets? - I think you are presenting me with a hypothetical situation and it is very difficult to give you a Yes or No answer. It would be necessary to look at the whole of the situation before determining whether to undertake a formal investigation.

Without considering what the outcome might be, and what stage of inquiry it was, are unsubstantiated complaints from parents a matter which may be taken into account in reaching a decision? - I would expect that they are matters which would be taken into account in reaching a decision, yes.

CROSS-EXAMINED BY MR. CAMPBELL: Miss Renton, just to see if I understand the general procedures and the framework of the Commissioners consideration of complaints of maladministration. I think I followed correctly the basic principles -- subjects perhaps to one qualification which we will come to in a moment -- which is that the Commissioner's concern is with procedures rather than the merits of the Council's decision? - That is correct.

Do I correctly understand that the qualification is that if and when the Commissioner has decided that there is maladministration then the Commissioner may go on to express a view on the merits of the matter? - That would be my interpretation of the Act, but since the Act says he may not challenge a decision taken without maladministration, then if there has been maladministration then he may comment on the decision itself.

So far as the merits of the position are concerned, would I be correct in understanding, as you indicated a moment ago in answer to a question by my learned friend Mr. Lake, issues such as the weight to be attached to particular evidence is a matter for the Council rather than for the Commissioner in his consideration of procedures? - That would be my view. If I can draw perhaps an analogy with, for example, the processing of a planning application. The Commissioner's concern would/

would be if there were objections to the application that they were properly before the Committee at the time at which the Committee reached its decision. If they were not properly before the Committee he might view them as constituting maladministration, but if they are properly before the Committee then the weight which the Committee then attach to those objections in my view would be primarily a matter for the Committee.

Would you consider it a normal situation that the running of a boys club should create unease in the minds of a number of the boys parents? - I'm sorry, could you ask me that again?

Would you consider it a normal thing for the running of a boys club to create unease in the minds of a number of the parents of the boys who are attending the club? - I think not.

This is something which plainly would require to be given very careful consideration by anyone in a position of responsibility for the let of premises? - Yes, I would share that view.

And the weight to be attached to the fact that a number of parents are complaining and are in fact uneasy would be a matter for the Council's concern? - It would indeed.

Would you agree with me in a matter of this nature the welfare of the children concerned will always be a paramount consideration? - Of course.

Therefore any potential risk to children would be a very important factor for the Council to bear in mind? - I would agree with you.

If we turn to the Commissioner's decision on the first complaint which is D52 -- do you still have that in front of you. If I follow the Commissioner's conclusions they begin at page 10. If we look at paragraph 29 the Commissioner gives the reasons adduced for terminating the let of the premises? - Yes.

He follows that with some of those reasons. Towards the foot of the page he says, "Another reason for action being initiated was a complaint/

complaint by parents only one of which was made direct to the Council about the conduct of the group. This contained implications admitted to be too vague to found on and were given more weight than evidence of support for the group which should in my view have been heavily discounted as they were until November, 1983". Is this an example of the Commissioners consideration of questions of weight of evidence in deciding whether or not there is maladministration when according to your evidence he should have concentrated on procedures? - I think perhaps by way of explanation for that paragraph I should explain to you that in issuing a draft report the local authority were asked to provide something which they were unable to provide from the interview, and that was a statement of complaints from parents which they had received. The response to that was that they could not provide any such statement because the complaints had been of an informal nature and they could not therefore provide information on who the complaints were from or the substance of these complaints.

Does that mean these complaints were to be ignored?

- Ignored by whom?

Well, we are talking about this in the context of an investigation into Mr. Hamilton's complaint against the Council. Are we to understand from your evidence that because the Regional Council fail to provide the written chapter and verse your view is that these complaints were in some way to be ignored or discounted? - It is very difficult to take into account complaints if the authority were unable to provide any information on either who they were from or what they consisted of. It is difficult to take account of something which is said to exist but no information can be given about the source or substance.

BY LORD CULLEN: In any event, it is a matter of the weight to be attached; is that right? - Indeed.

Because the Commissioner says "to be heavily discounted"? - Yes.

I am still not quite clear whereabouts in this paragraph we get identification of maladministration which is, as it were, the key that opened/

opened the door? - Yes. I would like to think that perhaps the conclusions are framed rather more precisely nowadays with a clear indication as to what constitutes maladministration and what constitutes an injustice.

I have an uncomfortable feeling that one is entering the subject back to front, so to speak, by a discussion of weight to be attached to evidence without being clear yet as to where the point of maladministration lies? - I think regrettably I am in no better position than you are to account for the conclusions and the manner of.....

Of course, you are not responsible at all but at least you have an inner knowledge as to the proper way in which these things should be approached? - Indeed.

CROSS-EXAMINATION CONTINUED BY MR.

CAMPBELL: Given that the Commissioner was not provided with written chapter and verse as to the nature of these complaints, how was he able to express a view that they should have been heavily discounted? - Again I think you will appreciate that it is difficult for me to explain why someone else is taken a particular view. My interpretation is that these were unsubstantiated allegations which I think he describes elsewhere as "little better than gossip". He took the view that perhaps greater weight should have been attached to the very clear and substantial support that had been lodged on Mr. Hamilton's behalf. My recollection is that there was a substantial petition and some 30 support letters had been submitted.

But, Miss Renton, there is no dispute that a number of parents were uneasy about conduct of those in the clubs. This is a matter of fact. There is no dispute about that -- correct? - No. I am sorry, I don't say it is correct because I am not aware of the complaints that were made to the Region because the Region were unable to provide my office with details of the complaints.

So one has to wait until something occurs which could be, as you put it, substantiated like a criminal conviction or something like that? - No, that is certainly not what I said.

If/

If we turn the page to paragraph 30 the Commissioner concludes "I find nothing in the later reasons advanced by the Council to persuade me that the decision to discontinue the letting arrangement was taken without maladministration. The proper use of a local authority's powers, even those which are entirely discretionary, involves, amongst other things, giving proper attention to considerations which are relevant and ignoring or discounting considerations which are of little or no relevance, particularly if evidence is not adequately substantiated"? - Yes.

Bearing/

3.50 p.m.

Bearing that in mind and taking note of the Commissioner's decision below in paragraph 33 that the Regional Council's decision was illfounded, can you explain how the Commissioner was able to come to that decision or conclusion without a consideration of factors such as potential risk to children and the welfare of the children which I think you have told us earlier are both relevant matters? - Yes, I certainly confirm that in my view both of these are relevant matters and therefore I can't tell you how or why the Commissioner reached the conclusion that he did; I regret that I am simply am not able to explain the reasoning of someone else in reaching their individual findings.

I think the implication of your evidence is that it is your view that he ought to have considered these matters because they are both relevant to whether or not the Regional Council's decision was or was not illfounded? - You are perhaps asking me in a sense if I would have reached the same conclusion and clearly since I was not involved in the conducting of the investigation that really isn't something that I can indicate. I agree that the welfare of children is paramount but I think we must constantly remember that what the Commissioner was looking into, in fact was procedure and process of the local authority. It was drawn apparently into touching on the merits of the decision so his role was primarily to decide whether there was maladministration in the manner in which the authority dealt with this.

I probably didn't put the question very clearly; I am not asking you whether you would have come to the same decision, I am putting to you that the implication of your evidence is that you would agree that the Commissioner, before expressing a view on the merits of the decision, ought to have referred to the matters of welfare of the children and potential risk to them? - No, I don't think I do agree with you, I am afraid. I think what the Commissioner requires to have regard to in the first instance is whether or not there has been maladministration. In the Commissioner's view it is not clear that he did believe that there had been maladministration in the manner in which the authority/

authority reached their decision.

I won't take up a lot more time on this but if we go back and look at the passage at the top of the page there? - Yes.

The Commissioner's own words are "The proper use of a local authority's powers, even those which are entirely discretionary, involved, among other things, giving proper attention to considerations which are relevant". Do you see that? - Yes, I do.

I think we are in agreement that the two issues of risk of children and welfare of children were the relevant consideration in the context of this decision by the Council -- correct so far? - Again my view is that the welfare of children is exceedingly important in reaching any decision and I personally agree with you, there is no dispute on that.

It follows as a matter of inevitable logic, does it not, that before the Commissioner saw fit to express a view on the merits of the Regional Council's decision acting in accordance with his own injunction at the top of the page he should have given proper attention to those relevant or, as you would put it, important considerations? - I think again I would have to take you back to his attempts to obtain further factual information about the complaints which have been received. He was not able to obtain such information from the authority and again it is difficult to say that he should have concluded that matters were relevant when, in fact, he was not in possession of any factual information relating to those matters.

Surely that would be an argument for coming to no decision because you have a lack of information? - I don't think you are allowed to come to no decision -- I am sorry. The requirement is to find if there has been maladministration or there is not and the one thing about which I am in no doubt is that the Commissioner at that time formed a view which was his view and his alone that the complaint of maladministration was well founded. He concluded that there had been maladministration in the way in which the authority dealt with this matter.

We/

We are maybe at cross-purposes here. I am asking you this question in the context of the Commissioner's view on the merits of the matter; I think you have indicated to us there is not a Statutory obligation upon him to express a view on the merits of the matter, is that correct? - Yes, there is a general prohibition, in fact, against challenging the merits of the decision in which that decision has been taken on maladministration.

It would be open to the Commissioner to say maladministration or no maladministration, he is under no obligation to go on and express a view on whether or not the decision was well founded or illfounded -- correct? - Absolutely correct, and I think perhaps you have touched on what is a very helpful point, that the role of the Commissioner is essential to determine whether or not there has been maladministration. Secondly, if there has been maladministration whether any injustice has ensued and it is traditional nowadays to indicate what action should be taken by the authority to remedy an injustice.

I will just come back to this one more time and this will perhaps be the last time I will take the point. In the context of not a maladministration but in the context of the Commissioner's conclusions in paragraph 33 that the Regional Councils decision was illfounded, given that we are agreed that the issue of welfare of children and potential risks to children are relevant and given the Commissioner's view that proper attention should be given to relevant considerations does it not follow as a matter of logic that before expressing a view on the merits of the Council's decision the Commissioner should have had regard to these two matters? - Again I don't think I can give you a yes or no answer. What the Commissioner had done from my interpretation of what his findings were, he had concluded that there had been maladministration; for reasons which I can't expand upon or explain he saw fit to move further into the merits of the decision and you are correct, it appears from reading this bit he expresses a view on the merits of the decision; that is not something that he was precluded from doing because he had found maladministration but on the other hand that is unusual to express a view on the merits of the decision because after all the decision itself was a matter for the local authority; the Commissioner's principal concern is that procedures that they use in coming to that decision are correct, proper and acceptable.

Well,/

Well, I won't question you any further for a yes or no answer to my question but, of course, the matter went just a little bit further and the conclusion at the foot of the page or rather at the conclusion on paragraph 33 because in the final paragraph over the page if you would have a look at that for a moment? - Yes, I am familiar with the paragraph.

The Commissioner went on to indicate that on the evidence available "I see no reason why the Council should not now grant a let"? - Yes, that is correct, that is what he said.

And one thing which you have emphasised on a number of occasions today is that the Commissioner had precious little in the way of direct evidence as to the reason for unease on the part of the parents? - Yes, correct.

Do you agree it may have been a good idea to find out a little bit more about that before expressing that view? - I think the expression of the view as to what the Council may now do probably goes further than one would have expected in relation to the concerns for proper procedures to be implemented; the Commissioner or the Ombudsman would normally look for a remedy which puts right the procedures that have gone wrong and the decision would normally be a matter for the Authority to take and indeed, of course, it remains open to the Authority to take whatever decision they saw fit.

Thank you for that. I just have one last matter and it relates to the passage at the top of page seven; to put this in context at the bottom of the page before I think the Commissioner here is recording certain evidence which appears to be before him; we see on the 18th of October "The complainant submitted a formal appeal on behalf of the group against the decision; Councillors and officials were invited to attend their meetings and judge for themselves the standards of supervision, organisation, safety etc."? - Yes.

"Also, because he had learned of the fact that allegations about his character may have been made, he sought to assure the Council of his good character and integrity"? - Yes.

He/

He also enclosed a copy of a letter dated April 1974 which showed that he had resigned his Scout leadership in April 1974 because of his disapproval of certain actions of other Scout officials (the Scout Association have informed me that this was not received by them)"? - Yes.

Am I right in understanding that there is no further consideration of this particular matter by the Commissioner in his report? - Sorry, which particular issue?

I am sorry, I am talking specifically about the letter of April 1974 and the evidence from the Scout Association that this letter had not been received by them? - You are correct, that there is no further reference to that within the report.

Would you have expected, particularly in the context of the view on the merits of the decision, would you have expected the Commissioner to investigate with the Scout Association why Mr. Hamilton left the Scout leadership and why they dispute the receipt of this letter? - No, I wouldn't have expected the Commissioner to pursue that; the complaint that the Commissioner is investigating is a complaint against the Local Authority, he is not investigating the individual, he is investigating a complaint from an individual against the Local Authority and I wouldn't have expected him to pursue an.....in fact, it so happened that we did involve, as you know, the Scout Association because of the reference to that to give them an opportunity to comment.

They/

They haven't indicated that the letter referred to in the draft report was not received by them. It was proper in my view to record that and their decision but I don't think it was a matter for the Commissioner to pursue in detailing the circumstances of why Mr. Hamilton was leaving the Scout Association.

You might be unaware of this but we have heard evidence in this Inquiry which appears to indicate beyond any reasonable doubt that Hamilton didn't write such a letter in April, 1974 and that he lost his warrant, his warrant for the Scout Movement was withdrawn for a number of reasons reflecting adversely on his character and suitability to look after young children; might that indicate that one lesson, no doubt amongst others, that could be learned from this whole tragic business is that in the future the Commissioner might carry out a reasonably careful investigation before expressing a view as to the merits of a Council's decision? - I can't quarrel with your suggestion that we should carry out a detailed investigation, I would subscribe totally to that, but what I would say is that you require to bear in mind that the Commissioner is conducting a formal investigation of a local authority, he is not conducting a formal investigation of an individual complainant; the investigation relates to an alleged maladministration by the authority and, in my view, one requires to exercise some caution in the extent to which one investigates the circumstances of the individual who brings the complaint; the interest of the Ombudsman is largely not maladministration by a local authority and he is not, in my view, there to institute examination into the character or past of the complainant who brings a complaint to him.

So/

4.10 p.m.

So the answer to my question is Yes, you agree with that? - I would agree that the Commissioner must always conduct a detailed investigation into the allegations of maladministration that have been made. The answer to that must certainly be Yes.

CROSS-EXAMINED BY MR. GIBB: Just a couple of points, Miss Renton. I wonder if you would look at page 11 of the report, paragraph 32. I know it is a bit out of order, the Commissioner has been dealing with the merits and Lord Cullen asked you about the key to the door of procedures? - Yes.

Do you think that is the key to the door, namely failure to investigate properly? - You are referring to paragraph 32?

He should be given the opportunity to put his side? - Yes.

Is that a defect in procedure? - Very much so. If you were asking me what the key to the door was, it appears to me -- as I say, I have read the report in the same way that all of you have read the report and it was my view that the finding of maladministration was based on the termination having been effected without notice, no explanation having been given for the termination, and Mr. Hamilton having been denied an opportunity of putting his side of the case. I see those as procedural flaws upon which the Ombudsman had reached a finding of maladministration.

One other point: Mr. Cobb earlier made reference about concerns to disclose the identity of any complainer as Mr. Hamilton later did. Did you form any view that it is necessary for a local authority to identify complainers or do you have any guidance as to whether it is necessary to identify complainers such as parents and third parties who make complaints. Is that something you have given any guidance to local authorities on? - To the best of my knowledge we have not given guidance and I think to a considerable extent authorities would require to exercise some discretion in revealing identities. The only analogy that I can draw to that/

that is the very difficult situation of anti-social tenants where I think there is occasionally some considerable difficulty in identifying who the complainants are, and I think in general authorities if they can avoid doing so do not identify who has made the complaint.

So in this case if Hamilton had made subsequent complaints about the Regional Council and the Regional Council had given you information and asked you to keep the identity of the complainers about Hamilton confidential to your office, this is something which you are perfectly used to dealing with? - Oh, indeed. There is no difficulty in fact in maintaining confidentiality. I take the view that the information that we obtain is for our benefit in order to determine whether to investigate or not. We are not a mail box in terms of simply passing information through or onwards and therefore information that was made available to us need not have gone any further.

No re-examination.

BY LORD CULLEN: Perhaps I can ask one point: this is to do with paragraph 32 of the report, assuming that is the key passage. When the Ombudsman used the word "fair" or "unfair" can you tell me what yardstick is generally understood by that. What test or standard is applied to determine whether something is fair or unfair? - Well, again I think that our primary interest is in what may best be described as good administrative practice. There are available guidance issued by many organisations of administrative practice in relation to various special fields of local government activity, and obviously there are some general principles that would apply. One of the general principles I think that would apply would be that unless there was some good reason to the contrary it is good administrative practice to give someone about whom the decision is to be taken an opportunity to have a say in answering the case. I am thinking, for example, again of planning applications. It would be unfair to invite the objectors to state their case before the Planning Committee without in my view also offering the applicant an opportunity.

Is there room for some distinction as to the/

the kind of decision to which that matter is applied. I can understand that in planning you have an application and you have to take a decision and so on. But here all we are talking about is a termination of a let which may be thought to some extent if not wholly to be within the discretion of the local authority? - Yes, I agree that that may, there may be an argument to say that it is discretionary and therefore they could do so, but can I go on to say that we are increasingly guided if not indeed bound by good practice principles, and at the present time I am serving on a Working Party relating to the subject of "Openness in Local Government". One of the fundamental principles that is emerging about that is the need when a decision is unfavourable to someone to give them an explanation for that. People deserve at least an explanation.

I understand that, of course, and the investigation the Ombudsman was concerned with was whether the decision process was flawed or not. Obviously it may create a position if people are not told until after the event what happened and perhaps aren't told why. So you say it is really rooted all the time in what is good administrative practice? - Yes, unless there is good reason why it should not be applied.

MR. LAKE: Sir, there is one matter I could usefully put to the witness to assist the Inquiry in re-examination.

RE-EXAMINED BY MR. LAKE: Could I ask you again to have in front of you D14 within folder J(v). You have already referred to the large bundle of documents which contains amongst other things the response from Lothian Regional Council to the request for information from them in the fourteenth item with D14. Could you look at that please. This is a letter from the Commissioner to Mr. Hamilton dated 12th April, 1990. You see that is the letter addressed to Mr. Hamilton from a different Commissioner, and it relates to the decision not to carry out an investigation into the complaint relating to the Lothian Region? - It does.

If you go to the second paragraph of that you see it says that I am in no doubt your disappointment/

disappointment relates to the fact the Commissioner does not propose to mount a formal investigation into your complaint? - That is right.

For reasons that are given in the next paragraph. Could you read that whole paragraph please? - The letter says "He takes the view that he cannot level any criticism against Lothian Regional Council for their actions in suspending your let of Linlithgow Academy when confronted with the allegations made in May, 1989. In making this decision he is conscious that a local authority has to demonstrate a high duty of care where children are involved".

On this occasion there is express reference to care of children that hadn't been found within the earlier report? - There is a reference in this decision.

BY LORD CULLEN: To be quite clear, obviously this came at an earlier stage before he has entered into an investigation. But what view is the Commissioner taking there as to a possible case for maladministration? - He is not in fact expressing a view on whether or not there is maladministration.

No. Isn't he required to consider whether there is at least a case for investigation on that ground? - The Act is very -- the discretion in the Act is very wide. It is left to the Commissioner to decide whether or not to initiate a formal investigation. This letter is a decision letter to the effect that he is not going to investigate formally and therefore he is not going to make a finding of maladministration or no maladministration. But the letter goes further in explaining in fact as the Act requires us to do the reasons for reaching the decision not to mount a formal investigation and on this occasion his reason given is that the Commissioner -- who I may say was a different Commissioner from the original complaint -- took the view that he was satisfied he could not level criticism against the authority for suspending the let. But, of course, I think it also goes on in the second line of the paragraph to indicate that the Council had informed him that any request for a let will be given positive consideration.

Does/

Does that part of the letter imply he had taken the view that there was no, if you like, stateable case for maladministration? -

Yes, I think he actually -- the letter indicates that the decision of the Council to act as they did was in his view acceptable given that on this occasion this was when the authority had informed him that there was an ongoing police investigation.

I can see so far as the latter part of the letter is concerned he might take the view he wasn't going to take any further action pending something else happening. It really looks as if the earlier part is the controlling passage; is that right? - Yes.

MR. BONOMOY: I think, sir, this may be an appropriate point on which to adjourn until tomorrow when I can't promise the same level of excitement as today.

LORD CULLEN: I am sure we will all be here.

Adjourned until tomorrow
at 10 a.m.