NOTE FOR SCAI

Remit

- At a meeting on 27 September 2016 Lady Smith defined my restricted role as Counsel to the SCAI as follows:-

> "I understand that you, Colin, have identified 3 areas of research that you, John, could usefully address. I noted them as follows but no doubt you, Colin, will tell me if I have misunderstood. As presently advised, I can see that they fit with the remit albeit I am not entirely sure what is envisaged under the third head. No doubt that will become clearer:
>
> i. what systems have been adopted and what outcomes achieved in other inquires relating to child abuse?
>
> ii. what provision is now made – via e.g. the Children's Hearing system, vulnerable witness provision and witness support schemes – to address the need to have appropriate rules, policies and practice in place to protect children in care (by ensuring that the voices of those who have been abused are respected and heard)?
>
> iii. COPFS practices and policies insofar as relevant to the remit – e.g why, in the past, were complaints not taken seriously? What happens now? Etc
>
> There is also, as discussed, the question of whether and if so, to what extent, the part played by the internet and mobile phones in modern abusive behaviour should be looked at together with the extent to which protections are or should be in place to protect children in care from abuse via such means.".

Interpretation of remit

- The summary and the remit itself are expressed in very simplistic terms. All of the aspects included in Lady Smith's summary, above, involve consideration of large, possibly massive, amounts of material, especially the last-mentioned subject. During much of my time working on this, I only had access to relatively superficial and publicly available

materials, together with my own experience.

- Doing my best to apply my experience to the substance of that remit, I began by considering the subjects identified at (i), other inquiries, and (iii), “COPFS practices and policies insofar as relevant to the remit – e.g why, in the past, were complaints not taken seriously? What happens now? Etc.”.

- I spent many hours identifying, reading and researching a number of lengthy reports and other materials relating to those reports (including literature reviews), as I had been instructed to do. I attempted to ensure that I followed up any “loose ends” by searching for materials and information beyond the reports available as far as I was able to do.

- In particular, on 11, 12, 15, 17, 18, 19 and 20 October 2016, I had identified a clear subject that arose from the reports and materials and that I was able to reflect upon from my own experience. I had begun to research a topic or chapter on children in care who have been exploited through their involvement in prostitution in Scotland. This is an important subject, as will be seen below. It should perhaps be more properly called child trafficking through prostitution in Scotland, because that is its proper label. I have to acknowledge, however, that I have only scratched the surface of the problem. There is much, much more work to be done on this chapter. This was due to what I can only explain as illness, fatigue, acute anxiety and stress. This chapter requires to be thoroughly, fearlessly and independently investigated.

- The following should be regarded as preliminary comments, observations and conclusions on the subject.

Previous Inquiries and Reports

- Kent Report 1997

In his report entitled "Children's Safeguards Review" (1997), Roger Kent provided what has been regarded as a “comprehensive” commentary showing a snapshot of areas of progress and of defects continuing in the care system as at 1997. This review was undertaken in tandem with the Utting review in England and Wales. The Utting report appears much more detailed and damning of failures in the care system than Kent’s report. Kent estimated that, in 1997, there were about 10,000 young people being cared for away from home in

Scotland. About 5,000 young people were thought to be accommodated at boarding schools; about 2,500 in foster care; and about 2,500 in residential care.

- One of the issues Kent mentions in the snapshot, but advances no further, is the sexual exploitation of children in the care system in Scotland as prostitutes and so-called "rent boys". It is identified as part of the picture. The issue is never tackled head-on, as far as I have seen thus far, in a subsequent report or series of reports leading to the establishment of the present Inquiry. This is surprising given the acute nature of the subject within the context of any consideration of the care system or child abuse in general. As far as I am aware, the issue is not (yet) on the agenda of the SCAI.

- Kent reports on the issue in the following terms:-

"2.13 Prostitution

Little research has been done in Scotland into the involvement of children in care in prostitution, although some English studies have recently shown under-16s of both sexes going out from residential care units to work as prostitutes. Young people who have a low self-image, who have been sexually abused and who believe that what someone else does to their body does not matter, are more likely to do this than others, particularly if their parents have put them forward for the use of other men. It may depend on the ethos among the children and young people within a home, but it seems that the same mechanism applies in relation to prostitution as to drugs: a lonely and isolated young person who is new to a unit may choose to follow the activities of the young leaders there.

Young people in care can get paper rounds or Saturday jobs, but of they need more money to pay for a drug habit, or finance themselves when they runaway, prostitution may appear superficially to be an easy option. Risks to them run from HIV through all the sexually transmitted diseases, and include physical violence from partners or from pimps. They are opened up to adult situations and adult emotions before they have developed enough skills to deal with them, and when they are still having to deal with many other emotional problems. They are likely to be the ones who come into trouble with the law, not the adults who are knowingly having sex with minors.

It can be extremely difficult for residential staff to deal with a problem such as prostitution when it has started before the young person came

into care, and may indeed be the reason for their arrival. Skilled and proactive help is needed for this small group of young people, and specialist advice and consultancy should be made available."

- These paragraphs disclose knowledge of the existence of the problem of prostitution of children in care; but little actual knowledge about, or insight into, the problem. It's tone and content may well be described as naïve. On a critical view, it may appear to lack the knowledge, experience, skill and appetite necessary to identify and deal with this very real, persistent and insidious problem. And this naivety does not appear to be accounted for by the material that was publicly available at the time.

- A literature review forms part of Kent's report. It is entitled "Safeguarding Children Living Away from Home from Abuse: A Literature Review", by Andrew Kendrick, Department of Social Work, University of Dundee, 1997. Pages 200 to 204 of the Literature Review is a review of research and literature in relation to "Runaways and Child Prostitution". At page 204, Kendrick quotes from research and commentary by Lee and O'Brien (1995). The following passages are quoted:

"Lee and O'Brien (1995) consider that the Children Act in England provides the framework for responding to children and young people involved in prostitution:

The Children Act provides for the development of services for children and young people in need and many young people involved in prostitution will have a series of needs that are not being met. The Act also provides for interagency work on child protection and emergency intervention when the welfare of a child is at risk (Lee and O'Brien, 1995, p21).

However, they stress that the law "whilst recognising the need to protect young people from sexual abuse and exploitation, **also allows for children as young as ten to be prosecuted for offences relating to that abuse"** (Lee and O'Brien, 1995, p31) and "the police are increasingly using the criminal justice system to respond to younger women on the street and involved in prostitution" (Lee and O'Brien, 1995, p47). They conclude that:

If more consideration is to be given to the welfare of young

people and less use made of the criminal justice system for dealing with young people involved in prostitution, it is essential that the police service places more emphasis on its obligations and powers under the Children Act and less on its ability to caution and arrest young people (Lee and O'Brien, 1995, p35).

The National Committee of Inquiry into the Prevention of Child Abuse also stressed that **the emphasis of criminal proceedings should be placed "on the identification and <u>prosecution of clients and pimps</u> who exploit children through prostitution"** (Williams of Mostyn, 1996, p47).

- Having reviewed relevant literature, including that quoted, for the purposes of Kent's report, Kendrick would be expected to have been alive to any Scottish publicly available material which was relevant to the anxious matters described and commented upon by Lee and O'Brien and by Williams of Mostyn. Yet there is no mention in Kendrick's Literature Review of any of the detail in Scotland's (then, and still) most recent and relevant official perspective on prostitution and exploitation of young people from the care system in the report by William Nimmo Smith, QC, and JD Friel in 1993. The omission appears to require explanation. Did he forget about this report? Was he told not to include it? Did he consider it and think it not to be relevant? These questions require to be investigated by the SCAI. Kendrick even included certain newspaper articles in his Literature Review. Had Nimmo Smith's report been included in Kendrick's Literature Review, it may be that Kent's report would have identified the existence and operation of Crown Office circulars 2025 and 2025/1. As detailed below, the polices detailed in these documents appear to have operated in precisely the opposite direction to that thought necessary by Williams of Mostyn. In any event, Kent would require to be taken as having been well aware of the Nimmo Smith Report.

- It is worth pausing to note that the SCAI is vulnerable to precisely the same criticism to date.

- An alternative (and probably more appropriate) term for the prostitution of children in care is "child trafficking". It may be thought that this does not happen in Scotland. One former resident of the residential care system, Vicki Von Blackwood, insists that it does indeed happen, and on a very significant scale. Her comments may or may not be wholly accurate, but necessitate thorough and anxious investigation. There is additional material available elsewhere in relation to the trafficking of children in care. Thorough investigations should be carried out with or without applications to the SCAI, standing the insidious nature of the

problem, and the systematic criminalisation of the victims. The paragraphs below refer to real examples of, what amounts to, and should be investigated and identified as, child trafficking from residential care in Scotland.

- Kent's failure to consider Nimmo Smith Report - Kent's summary of the issue of prostitution of children in care was published about 4 years after a much more graphic exploration of some of the important issues had been published in Scotland. Yet Kent appears to have taken no account whatsoever of the Report on an Inquiry into an Allegation of a Conspiracy to Pervert the Course of Justice in Scotland, dated 26 January 1993 ("the Nimmo Smith Report"). One available source of direct evidence as to why this might have been is Professor Kendrick.

- Even on a superficial perusal of the Nimmo Smith Report, some central facts and background about the inquiry immediately alert the reader to the organised exploitation of a child, M, from a care home, by a group of men. M was drugged and raped. He was kidnapped for 10 days. This is a crystal clear, proved beyond reasonable doubt, example of child trafficking in Scotland. There are broader issues referred to throughout the report concerning the exploitation of "rent boys". The exploitation of rent boys is also highly likely to be what amounts to child trafficking. It includes the exploitation of young people from residential care. How could this publicly available report have been missed by Kent? Why was it not included in his report's literature review, compiled by Andrew Kendrick? Surely it ought to have been the starting point for a determined effort to identify and stamp out the abuse of children in care through prostitution and child trafficking?

- Comparison of Kent with Rotherham Report approach - The naivety of Kent's summary might be best demonstrated by comparing it to the earliest part of the Executive Summary of the Rotherham Report:-

  "No one knows the true scale of child sexual exploitation (CSE) in Rotherham over the years. Our conservative estimate is that approximately 1400 children were sexually exploited over the full Inquiry period, from 1997 to 2013.

  In just over a third of cases, children affected by sexual exploitation were previously known to services because of child protection and neglect. It is hard to describe the appalling nature of the abuse that child victims suffered. They were raped by multiple perpetrators, trafficked to other towns and cities in the north of England, abducted, beaten, and intimidated. There were examples of children who had

been doused in petrol and threatened with being set alight, threatened with guns, made to witness brutally violent rapes and threatened they would be next if they told anyone. Girls as young as 11 were raped by large numbers of male perpetrators.

This abuse is not confined to the past but continues to this day. In May 2014, the caseload of the specialist child sexual exploitation team was 51. More CSE cases were held by other children's social care teams. There were 16 looked after children who were identified by children's social care as being at serious risk of sexual exploitation or having been sexually exploited. In 2013, the Police received 157 reports concerning child sexual exploitation in the Borough.

Over the first twelve years covered by this Inquiry, the collective failures of political and officer leadership were blatant. From the beginning, there was growing evidence that child sexual exploitation was a serious problem in Rotherham. This came from those working in residential care and from youth workers who knew the young people well.

Within social care, the scale and seriousness of the problem was underplayed by senior managers. At an operational level, the Police gave no priority to CSE, regarding many child victims with contempt and failing to act on their abuse as a crime. Further stark evidence came in 2002, 2003 and 2006 with three reports known to the Police and the Council, which could not have been clearer in their description of the situation in Rotherham. The first of these reports was effectively suppressed because some senior officers disbelieved the data it contained. This had led to suggestions of coverup. The other two reports set out the links between child sexual exploitation and drugs, guns and criminality in the Borough. These reports were ignored and no action was taken to deal with the issues that were identified in them.

In the early 2000s, a small group of professionals from key agencies met and monitored large numbers of children known to be involved in CSE or at risk but their managers gave little help or support to their efforts. Some at a senior level in the Police and children's social care continued to think the extent of the problem, as described by youth workers, was exaggerated, and seemed intent on reducing the official numbers of children categorised as CSE. At an operational level, staff appeared to be overwhelmed by the numbers involved. There were improvements in the response of management from about 2007 onwards. By 2009, the children's social care service was acutely understaffed and over stretched, struggling to cope with demand."

- It is delusional to think that such problems do not occur in Scotland. The Nimmo Smith Report, among other materials, informs that such problems do occur in Scotland. The numbers and even the scale of the problems might be different. There has been virtually no work done (that I am aware of) to gather and assess meaningful data in relation to prostitution, or trafficking, of girls and young women in care in Scotland, that I have been able to find thus far. The Nimmo Smith Report was commissioned for purposes other than to identify children and young people in the care system who were at risk. Yet, by investigating in the correct places, the reporters discovered some clearly relevant, and some potentially relevant, material of the very most concerning nature. A similar operation has not been embarked upon, for any purposes, in relation to girls. Yet the Rotherham experience ought to inform that the problem is likely to be much more prevalent for girls in care than for boys. Vicki Von Blackwood asserts that she has details of Scottish cases of child trafficking by prostitution. The SCAI should be anxious to investigate.

- The Rotherham report has this to say on the matter of sexual abuse of children in that area (not just children in care, of course):-

  "Gender

  4.16 Generally, there has been relatively low reporting of sexual exploitation of young males, with the exception of the police operation and a criminal conviction in 2007 of an offender who abused over 80 boys and young men. Over the years, this was identified at inter-agency meetings and in CSE plans as an issue that required attention in Rotherham. That continues to be the case today.

  4.17 Six of the CSE team's caseload at May 2014 were male, and 45 female.

  4.18 We read the files of ten boys who were groomed and abused by the lone male prosecuted and sentenced in 2007, and a further seven files of boys/young men who were his alleged victims. Following the trial, children's social care considered only two of the ten victims to meet the threshold for social care, although many had been raped and at least one was suspected of being involved in abusing other child victims. So far as we could ascertain from the files, none of these children was referred to Risky Business, and only one was referred for specialist counselling, where there was a long waiting list. One of the

children who failed to meet the threshold for social care went on to become a serious sex offender, convicted of the abduction and rape of young girls.

4.19 The Inquiry team did a detailed analysis of four cases involving young boys. We reviewed one young teenager with the specialist team from the National Working Group Network. Several issues emerged from the latter case, including:

a) the importance of making sure that judgments about child sexual exploitation are consistent and gender neutral, for example by asking if the same level of risk would be acceptable if the child was the opposite gender;

b) supporting children to explore their sexuality in safe ways, including building links and referral pathways to local LGBT projects that could provide appropriate information and advice; and

c) understanding the extreme danger children could put themselves in when they made contact with predatory adults because they did not know where else to find out about their sexuality. This needed to be better reflected in risk assessments."

- It appears that girls who have been sexually abused more often require medical attention, because of pregnancy, than boys who have been sexually abused. Girls therefore more often report sexual abuse than boys. This partly explains why the number of boys who report sexual abuse is lower than the number of girls, according to the analysis in the Rotherham report.

Trafficking of boys in care in Scotland

- I am aware, from my own directly relevant experience in residential social work, that the sexual exploitation of young people in care has been (over decades) a significant problem in Scotland. It may still be a significant problem. It has never been properly identified. It cannot be rectified without identification. My knowledge of, and concern about, the issue was initially acquired during the one-year period (Sep 1990-Oct 1991) that I worked on day shift at Wellington School, Penicuik, with boys on residential and day attendance orders made as a condition in supervision requirements by the Children's Hearing (under s44(1)(a)

and (b) Social Work (Scotland) Act 1968).

- Some boys were known by the school and the authorities to associate at weekends and in their time out of school with people who exploited them. There were concerns about drugs being supplied and about possible sexual exploitation. This is a very common problem for young people in the care system, as other inquiries elsewhere, and research, have shown. The area around Loanhead, Midlothian, was said by staff, pupils and their families (living in the community) to be notorious for such exploitation. The person named as being a prominent figure in the group who allegedly exploited these children was called John "Sticky" Wilson.

- Wilson has a well-documented history of exploiting teenage, and even younger, boys. There is material indicating that Dr Sarah Nelson, researcher at Edinburgh University, has conducted research and is in possession of detailed contended factual knowledge of these matters. The SCAI has already consulted with Sarah Nelson. She has already been identified as a professional with potentially relevant knowledge falling within the SCAI's Terms of Reference ("TORs"). No doubt, Sarah Nelson will be keen to contribute her knowledge and research about this important matter. There may be issues about confidentiality. I would certainly hope that the SCAI has already asked Dr Nelson about her research and views on these matters.

- The Scottish Government funded research facility at Strathclyde University, CELCIS, has carried out a large number of research projects relating to children in the care system in Scotland. None of the CELCIS research that I have identified appears to be focused upon the issue of the exploitation of young people in care through prostitution and child trafficking. This is very unfortunate, not least because Prof Andrew Kendrick, Director of CELCIS, compiled the literature review in Roger Kent's report. He must have been aware of the problem and the absence of data to assess and remedy it. CELCIS ought to be fully aware of the literature from elsewhere on the issue; of Kent's identification of the problem in the Scottish care system; and of the need to measure and record data relating to the problem with a view to amelioration of it. This might be one area that the SCAI could specifically request research to be carried out by CELCIS or, perhaps more appropriately, other academics elsewhere.

- Sexual exploitation, through prostitution and child trafficking, of children and young people in care (up to age 18) is an issue that is self-evidently at the very most serious and worrying end of the spectrum of child abuse that this Inquiry ought to be dealing with, insofar as relevant

to the TORs. The most relevant TOR in relation to this problem appears to be No.6. Apart from the obvious child welfare issues the problem raises, it also requires focus upon the persons exploiting the young people involved. There is a dual necessity to identify and remedy the problem for both purposes.

- I therefore began to look for, and examine, historical and publicly available material relevant to the Inquiry's consideration of this crucially important matter.

- **Nimmo Smith Report 1993**

The Report of the Inquiry into an Allegation of a Conspiracy to Pervert the Course of Justice in Scotland ("the Nimmo Smith Report") was printed on 26 January 1993 for the then Lord Advocate, Lord Rodger. Its authors were William Nimmo Smith, QC (as he then was) and JD Friel, Regional PF of North Strathclyde. There were various sensational aspects to this investigation, and the events which resulted in the Inquiry being commissioned. Much of the intrigue and sensation is self-evidently not relevant to the SCAI.

- The major part of the report is taken up with addressing the issue of homosexuality in the judiciary and legal establishment. In present times, the taboos and prejudices around homosexuality are completely unacceptable and there is absolutely no proper place in modern society for acceptance of such attitudes.

- The underlying concern which necessitated the inquiry was whether the interests of justice had been, were being, or were likely to be, compromised by an alleged secret network of gay lawyers, judges and people who may have been in a position to blackmail them to make favourable decisions and thus compromise their independence and the integrity of the whole justice system. The legitimate systemic concerns were compounded, but confused it seems, because of a lack of openness and honesty on the part of the homosexual men involved since their involvement in homosexual relations, per se, was viewed as professionally unacceptable and criminal as a matter of law. Attitudes today would undoubtedly be quite different if such an inquiry was to take place.

- The issue for present consideration by the SCAI is not concerned at all with consensual homosexual relations: but it is concerned with any

relations, whether “consensual” or not, between adults and children in care.

- However, there is a striking and very concerning aspect of the material in the report, for present purposes. The concern is that there appears to be little or no *active* consideration given to the need to protect children in the care system who are at risk of exploitation through prostitution. In fact, the accepted views and policies highlighted in the report point to a contrary prevalent attitude which appears to have clearly fostered and encouraged exploitation of young people in care through prostitution. On a critical reading of the report, it appears to intentionally ignore blatant child trafficking.

- In present times, this might even be viewed as a failure in public duty, at virtually all levels in the Scottish legal system, at the times of the events or since then, to report child trafficking concerns to the responsible authorities. The immediately obvious comparison to be drawn is with the hierarchy of the Catholic Church in different countries. Cardinals, Archbishops, Bishops and others have rightly been condemned for their failure to report known concerns and suspicions about the sexual abuse of children by clergy.

- It is known that young people in care, particularly teenagers, are at high risk of being drawn into prostitution for a number of reasons. This has been proved conclusively elsewhere. Roger Kent highlighted it as a matter of great concern. Yet very little indeed exists to demonstrate that the problem has ever been identified, quantified and rectified in Scotland. The research that has been conducted appears to have been largely ignored and certainly not followed up. The problem of trafficking of children in the care system has been largely ignored, it appears.

- The problem of trafficking of children in the care system through prostitution appears to have been ignored, as a *genus* of child abuse in Scotland which is worthy of thorough investigation, by the SCAI to date. Standing the terms of the Nimmo Smith Report, this fact in itself would be concerning in the public perception.

- The prevalent attitude in Scotland, reflected in the Nimmo Smith Report, appears to have been that, in circumstances where young men in the care system may have been involved in the matters relevant to the Report, as long as there was either “consent” or money changing hands, i.e. prostitution, that was somehow seen as acceptable; or, at

least, not a matter that required further welfare focused investigation in the interests of the young people involved. Such an attitude is the opposite of what is required from a welfare perspective.

- Yet, applying modern analysis, the rent boy scenario appears to involve child trafficking of young people in care. In fact, a Crown Office policy was developed and implemented which appears to undermine, and ignore, the welfare of a component of young men in care between the ages of 16 and 18. To express matters in another way, a Crown Office policy appears to enable, facilitate and exculpate the perpetrators of child trafficking. I return to this issue below.

- A re-reading of the Nimmo Smith Report makes clear that one of the central characters was Robert Henderson, QC. Henderson's conduct, as narrated and referred to in the report, is remarkable and deplorable. There are numerous occasions on which Henderson is reported to have made dramatic assertions of fact. Later on, after others have been asked about the same matters, he is reported to have readily conceded that he must have mis-remembered, or that he must have been mistaken. The inability of others to whom the reporters spoke to remember important details and conversations is also striking. It is also striking that Henderson was closely connected to those with power and influence. Though deceased and with serious allegations of child abuse having been made about him, his connections appear to endure. This has been noteworthy in relatively recent years in public expressions in support of Henderson's good character by, for example, Lord McCluskey. Lord McCluskey has made public statements in support of Henderson's "good character" at the time of Henderson's death in and in response to reports of allegations of child sexual abuse made by Henderson's daughter. The latter intervention can only be viewed as wholly inappropriate. The public perception of this sort of support is likely to be adverse.

- Henderson's name has been mentioned in the media more recently in contexts which appear to fall outwith this Inquiry's terms of reference. However, it should be noted that his daughter, Susie Henderson, has alleged consistently over a number of years that she was sexually abused by Henderson and his friends when she was a child. She has alleged that she was sexually abused by Sir Nicholas Fairbairn, now deceased, but a member of the Faculty of Advocates and Solicitor General for Scotland. Whether or not the police and prosecuting authorities have identified a sufficiency of evidence is not the issue in the public perception. These allegations demand to be taken seriously, as do all others.

- It is understood that, more recently, Lord Hardie has been interviewed (possibly under caution) by police in relation to allegations made by Susie Henderson. This is obviously a matter of public interest and concern. While it does not appear to fall within the TORs of this Inquiry, it appears to be a matter that the SCAI has a duty to ensure is properly investigated by criminal and judicial authorities. Allegations made require to be taken seriously. No particular note, and certainly no publicly expressed note, appears to have been taken that allegations have been made at all. This would be a matter of the gravest public concern, from the perspective of public perception. It is understood that the Scottish Government is fully aware of the fact that allegations have been made by Susie Henderson in respect of Lord Hardie's alleged conduct towards her when she was a child.

HMA v Neil Bruce Duncan and 9 others

- Chapter 16: Chapter 16 of the Nimmo Smith Report addresses a matter that is immediately and obviously relevant to the SCAI's TORs. Paras 16.1 and following detail circumstances about the investigation by police and the conduct of a High Court prosecution in which it is clear that a 16 year-old boy (referred to as "M") was sexually and otherwise abused, and passed around, by a number of men. This is the clearest record of trafficking of a child in care. The report narrates that M was resident in a care home. The abuse of M, and the perpetrators of that abuse, whether or not they were convicted of offences at the time (ie even if they were acquitted), require to be investigated by the SCAI.

- The case of M is therefore detailed in a publicly available report. This ought to have been investigated by the SCAI already. Failure to have done so may call for an explanation, in the public perception.

- Para 16. 1 of the report sets out:-

"16.1 The investigation which led to the prosecution of Neil Bruce Duncan and nine other accused began on 24 January 1990 when police officers found a 16 year old boy, who was named in the indictment but whom we shall call M, in a room occupied by Duncan at 37 Palmerston Place, Edinburgh. The police gave the investigation the code-name "Operation Planet". On 14 January 1990 M had been on weekend leave from a children's home and was returning there by bus when Duncan struck up a conversation with him and persuaded him to go with him to Edinburgh. Between then and 24 January Duncan systematically debauched M. He also made it possible for other men to participate in the debauchery by taking him to various houses in

Edinburgh. The offences thus committed are best explained by reference to the charges in the indictment to which Duncan and his co-accused Laurie Kenyon Valdemar Pringle, John Stevenson, and Ian Alexander James Ewing pled guilty."

- The reporters' summary makes it clear that this is a factual matter of the utmost gravity from SCAI's perspective. It is certain fact for the SCAI which has been investigated, prosecuted (to some extent) and reconsidered (albeit for different purposes) in a publicly available report commissioned by the Lord Advocate. There is no reason, and no excuse available, for the SCAI to decline to consider this. Para 16.1 describes a situation in which a child in the care of the state is "diverted" from returning to a residential care establishment. Notwithstanding the child's status (as being legally required to reside in a children's home), he is then "kidnapped", or trafficked, and abused by various men (including a solicitor) for a period of some 10 days. The locations at which he was abused appear to be known to the reporters.

- Surely this is one of the most serious cases requiring the SCAI's thorough investigation and consideration? How could this happen in 1990; how can it form the subject matter of a public report and STILL not have been explored from the perspective of M's (and all other children in care) welfare? Yet, even though it may be hard to believe, that appears to be the truth of this particular case. This publicly known and investigated case of child trafficking has apparently been ignored from the perspective of child welfare concerns. *Prima facie*, that may point to failures in various systems, including the legal system at the very highest level.

- There are several unanswered questions arising for the SCAI's investigation and consideration from the reporters' summary in para 16.1 of the Nimmo Smith Report. What children's home was M placed in? What procedures were operated there that meant that M was missing for 10 days, with his life clearly at risk? Was M reported to the police as a missing person by social work staff? What night care cover was in place at the children's home for the protection of M and other children? Was the Lothian Region Social Work Emergency Duty Team notified that M was missing? If so, what steps did they take? Were there any attempts made to find M during the period between 14 and 24 January 1990? What school (if any) did M attend? Did M's school (or if not school, work / apprenticeship) notice M was missing during the period between 14 and 24 January 1990? What was done by them to identify M's whereabouts and address his wellbeing? Were all other children in care in Scotland exposed to the danger of going missing for 10 days and being serially sexually abused? Why has this case never been properly identified and investigated as a case of the trafficking of

a child in care?

- It is obvious that the absence of a coherent set of procedures (at residential unit, city, regional and national levels) to deal with the situation in which a child in care, such as M, went missing for a period of 10 days might lead to the conclusion that those systems were dangerously defective in 1990, and possibly for a long time thereafter. Such a situation would obviously have put children such as M, and all others in the care system, at great risk for their lives, their safety and their well-being.

  But it is not just the procedures in the care system that require to be considered here. Crown Office procedures, the practice of lawyers and the operation of judges and the courts all feature. The failure to identify the problem and call it what it is – child trafficking - and to investigate and report from a welfare perspective appears as endemic as it is damning.

- In proper, objective context, the documented case of M ought to be be viewed as an appropriate starting point from which to commence a comprehensive and definitive chapter for the SCAI on the gaps in the care system, and in other systems such as the prosecution, legal and court systems, that allowed (and perhaps still allows) children in care to be exploited, endangered and trafficked through prostitution. Indeed, relevant and applicable Crown Office policy (in circulars 2025 and 2025/1, referred to below) appears to have facilitated abusers' actions and colluded in keeping things quiet where abuse through prostitution (trafficking) of young people in care was found to have happened. Suspected examples, additional to the case of M, are detailed below.

- M's case is all the more concerning because it appears to have escaped the notice of Roger Kent and later reporters, researchers and commentators. Indeed, it appears to have escaped the notice of the SCAI over a period of in excess of 3 years. This appears to be the case even though the vast majority of judges, advocates (especially the Chair and Senior Counsel to the SCAI), solicitors, police officers, civil servants and others are, and ought to be, entirely familiar with the publication and general circumstances of the Nimmo Smith Report.

- It should be possible for the SCAI to begin by identifying M and the 10 accused, as well as the details libelled in the Indictment. This will be a starting point for further investigations. It should also be possible to identify the then addresses of the accused by their domicile of citations.

It may also be possible to identify the residential unit from which M was on weekend leave. A possible source of information is Lord Nimmo Smith. There are other obvious sources such as Lord Pentland, Solicitor General during the mid- 1990's, slightly later on. Crown Office. National records. Lord Hope, Lord President at the time. Lord Matthews (as an AD) apparently drafted the 57 charges on the Indictment in the case involving M. Derek Ogg, QC, was counsel for one of the accused. Sheriff Kevin Drummond, QC, and Neil Murray, QC, were counsel for two other of the accused. Other sheriffs and judges were involved in decision making for their respective professional roles in Crown Office and elsewhere. The names of those interviewed are set out in the Nimmo Smith Report. Questions may be asked about who knew what; and, indeed, why no one appears to have reported concerns about the trafficking of children in care to the SCAI, or elsewhere.

The charges in relation to crimes against M

- Para 16.2 of the Nimmo Smith report details:-

"16.2 Charge 40 libelled that on 14 January 1990 Duncan approached M on the bus and induced him to travel with him to Edinburgh with the intention that he take part in homosexual acts, within the meaning of the Criminal Justice (Scotland) Act 1980, with other male persons and did thus attempt to procure the commission of homosexual acts between M and other male persons, contrary to section 80(9) of the Act. Charge 41 libelled that on the same date in a cemetery in Edinburgh Duncan conducted himself in a shamelessly indecent manner towards M and sodomised him. Charge 42 libelled that between 21 and 24 January 1990 Duncan knowingly harboured and concealed M, who was required by a supervision requirement to reside in the children's home and had failed to return there at the end of a period of leave, contrary to the Social Work (Scotland) Act 1968, section 71. Charge 44 libelled that on various occasions between 14 and 24 January 1990 in the house at 37 Palmerston Place, Duncan conducted himself in a shamelessly indecent manner towards M and sodomised him. Charge 47 libelled that on various occasions between 14 and 24 January 1990 Duncan supplied cannabis resin to M contrary to the Misuse of Drugs Act 1971, section 4(3)(a). Charge 50 libelled that on various occasions between 14 and 24 January 1990 in a house in Edinburgh Duncan and Ewing conducted themselves in a shamelessly indecent manner towards M. Charge 51 libelled that on an occasion between 14 and 24 January 1990 in another house in Edinburgh Duncan and another conducted themselves in a shamelessly indecent manner towards M and sodomised him. While Duncan pled guilty to this charge, the other person named in it, John Keir, pled not guilty and after a trial the jury found the charge not proven against him. Charge 52 libelled that on 23 January 1990 in yet

another house in Edinburgh Duncan and Pringle conducted themselves in a shamelessly indecent manner towards M.

Charge 53 libelled that on an occasion between 14 and 24 January 1990 Duncan and Stevenson conducted themselves in a shamelessly indecent manner towards M. Charge 54 libelled that on 25 January 1990 Duncan had in his possession cannabis and cannabis resin, contrary to the Misuse of Drugs Act 1971, section 5(2)."

- It will be noted that it only appears to be charges 40 to 53 (perhaps) that related to abuse of M. However, no summary or reference is made in respect of various of the charges libelled between charges 40 and 53. It is unknown what other charges were libelled on the Indictment in respect of other complainers. There must have been other complainers who were prepared to give evidence. Were the other complainers, or any of them, children or young people in care? Or had they previously been children in care who had been abused by any of the accused at the time they were supposed to be in care? These are not merely speculative questions. There appears to be a clear obligation to establish whether these were circumstances amounting to trafficking of children in care.

- As the Nimmo Smith Report makes clear, the apparent reason that the 47 charges relating to these other complainers were "dropped" was that they arose from situations involving rent boys. In other words, the Crown accepted not guilty pleas, and the court acceded to motions to acquit, on one view, BECAUSE the cases involved child trafficking. The view was taken that there was consensual activity between the complainers and the accused. However, that view may be open to question. The extent of the real consent is likely to have been consent to payment. The circumstances appear to point to exploitation through prostitution. This may be trafficking of children in care.

- Para 16.3 records:- "16.3 The above summary takes account of various deletions which were made from the charges when the pleas of guilty were accepted by the Crown. We have omitted the specification of the sexual acts which was set out in the charges. The Crown accepted pleas of not guilty to all the other charges in the indictment. In the result therefore a number of the accused were acquitted, while pleas of not guilty to various charges were accepted from all the accused who pled guilty to the charges referred to above. In the discussion which follows we think it appropriate, therefore, to refer only in the most general terms to the evidence which led to the inclusion of these charges in the indictment in the first place."

- It is plain from para 16.3 that that authors of the Nimmo Smith report were (obviously) only concerned with matters that fell within the proper scope of their inquiry. However, the deletions referred to and the detail of the libels in respect of which not guilty pleas were accepted by the Crown may well be relevant for consideration by the SCAI. The deletions for guilty pleas are likely to be aggravations which made the charges in respect of M more serious. This is normal when a view is taken by an AD that a plea to a reduced charge will be accepted. The SCAI requires to know what the more serious matters related to. The report gives a detailed account of the care with which this prosecution was put together. Lord Matthews framed the 57 charges on the Indictment, having reviewed the available evidence. As an AD, he obviously took the view that there was a sufficiency of evidence in respect of all 57 charges. Most of those involved in Crown Office are still alive and available to be asked. They are named in the Report and easily identifiable.

- Convictions on some charges were secured, after trial, in relation to M. Some resulted from guilty pleas. Of 57 charges on the Indictment, 47 appear to have had not guilty pleas accepted by the Crown at the trial diet. Aside from the involvement of M, for present purposes, paras 16.3-16.5 make clear that the substance of the 47 "dropped" charges relates to activities involving a "network" of relationships between young men under the age of 21, but older than M, and older men. This detail is insufficient to decide whether there were complainers between the ages of 16 and 18 (or even older) who had been resident in care at the time of the offences libelled (or, perhaps, at the time of other additional offences). It appears that the detail of those matters was not pursued by the report authors because the young men involved were properly to be regarded as "rent boys" - in other words, money was exchanged, usually between the young men and older men, for sexual activity. This was viewed as consensual. It was unlikely to have been consensual. It was more likely to have been exploitative. Child trafficking. The issue of whether any of the rent boys involved (aged between 16 and 18) were young men who lived (or had lived at material times) in residential care remains unaddressed. This matter is an important one should be investigated by the SCAI.

- It is not made clear by the Nimmo Smith Report whether the prevalent attitude which formed the rationale for the *Ad Hoc* AD to “drop” 47 of 57 charges on the Indictment in the case formed the basis, or was the result of, of a new Crown Office policy for consideration of matters in similar circumstances. However, given that the approach appears to be the same, it seems likely. The Crown Office policy is a matter which is discussed elsewhere in the Nimmo Smith Report.

- It should be noted that the decision by the *Ad Hoc* AD, Thomas Dawson, QC, to accept 47 not guilty pleas must be investigated by the SCAI in order to address the issues already identified. The consequence is that the court's acceptance of those not guilty pleas also requires to be investigated and considered. The Nimmo Smith Report details that there was concern among senior Edinburgh PFs and Crown Office officials about the exercise of the *Ad Hoc* AD's discretion and about his failure to discuss and/or advise those responsible for preparing the case. There was even greater concern, apparently vocally expressed, by the police officers who had investigated the case.

- It appears clear that the considerations in the AD's mind related to whether or not what was viewed as "consensual" homosexual behaviour should be prosecuted in the public interest. Clearly, for the purposes of the SCAI's TORs, such consensual behaviour is only relevant if it was participated in together with a "child" who was resident in the care system at material times (including young men aged 16-18 who were paid for sexual acts). It is important to have regard to the different definition of "child" for the respective purposes. In the Nimmo Smith Report, and for the purposes of prosecution policy in 1990, a child was a person under the age of 16. The definition for the SCAI's purposes is materially different. This will be an important matter in considering of this chapter of evidence. It means that, even if decisions were taken for proper reasons at the time, those reasons may not bear scrutiny in present context.

Crown Office Policy in circulars 2025 and 2025/1

- The Nimmo Smith Report makes reference to Crown Office policy and the publication of Crown Office circulars, some of which specified how the prosecution service intended to process and make decisions about particular categories of complaints and investigations.

- An important summary of Crown Office policy in relation to the prosecution of homosexual offences is detailed at chapter 3 of the Report. The following is an excerpt:-

"3.3 We are aware that, as we shall discuss more fully when we come to that case, counsel for some of the accused in the case of Duncan and Others proposed to argue that apart from the provisions of the 1980 Act and apart from the common law crime of sodomy no crime is committed when males over the age of 16 years engage in homosexual activity. That is not an argument which has been tested in

court and we prefer to proceed on the basis that the law is as stated in the preceding paragraph.

3.4 In the case of Duncan and Others most of the charges proceeded on the basis of common law, although some were based on the 1980 Act. In the period after that case was disposed of in January 1991 there was some public concern about the appropriateness of basing charges on the common law rather than the statute. In particular, Derek Ogg, Advocate, who had acted as counsel for one of the accused, made comments to that effect which were quoted in an article published in "The Glasgow Herald" on 20 February 1991. At about the end of March 1991 Elish McPhilomy, Senior Legal Assistant at the Crown Office, was asked to prepare a background paper on the prosecution of consensual homosexual offences. Her paper concluded that if a policy direction was considered to be appropriate and necessary with regard to homosexual offences, some consideration might be given to the following aspects:

(1) The minimum age for homosexual relations.

(2) The need for preventive prosecution directed at the male trade in prostitution with use of section 46 of the Civic Government (Scotland) Act 1982.

(3) The restriction of prosecution of the client or older man to those situations demonstrating in particular a clear breach of trust, or the overcoming of will by drugs, threats etc.

(4) The treatment of homosexual and heterosexual acts of indecency on an equivalent basis.

(5) The use of statutory provisions rather than common law charges wherever possible.

3.5 This background paper was discussed at a meeting held on 29 April 1991 attended by, among others, Lord Fraser, the Lord Advocate, Alan Rodger, the Solicitor General, Duncan Lowe, the Crown Agent, and Alfred Vannet, the Deputy Crown Agent. In the course of the discussion the Lord Advocate suggested the writing of a letter to the Association of Chief Police Officers of Scotland. In due course a letter dated 1 July 1991 was written by the Crown Agent to Sir William Sutherland, Chief Constable of Lothian and Borders Police, as Honorary Secretary of ACPOS. This letter stated that the Lord Advocate wished to ensure that prosecution policy in relation to homosexual offences was based on a careful analysis of where the public interest lay and that there was a clear understanding of the type of conduct requiring the imposition of a criminal sanction. It continued:

"It will clearly be necessary for police reporting practice to reflect that policy and Chief Constables will no doubt wish to consider a consistent enforcement approach. "

It concluded by stating that the Lord Advocate was currently reconsidering elements of prosecution policy in this area.

"It is of importance that this exercise takes into account any special features of police policy and practice which you regard as pertinent to this issue and the Lord Advocate would be pleased to consider the views of the Association before finalising his instructions in the matter. "

Sir William replied by letter dated 30 August 1991 referring to guidelines which had been issued by a previous Lord Advocate on 1 February 1981 and discouraging any change in existing prosecution practice. The letter also suggested that a "careful analysis of where the public interest lies" was a matter for Parliament.

3.6 Consideration was given to the views of ACPOS as well as those of other persons who had communicated with the Lord Advocate. There was also press coverage of the matter. In due course Crown Office Circular No. 2025 dated 28 November 1991 was issued to Procurators Fiscal. This circular stated that the Lord Advocate considered that the public interest was not served by routinely prosecuting all persons who participated in those consensual homosexual acts which remain unlawful. It then set out guidelines which included the following:

"Where both of the participants are over 16 years but one or both are under 21 years and the act has taken place in private and where there are no circumstances pointing to exploitation, corruption, or breach of trust, prosecution would not be appropriate. "

3.7 The terms of the circular became public and extensive publicity and correspondence with the Lord Advocate ensued. The Lord Advocate apparently took the view that there was public misapprehension about the significance of the review which he had undertaken, which was fuelled by speculation that he intended to effect a unilateral change in the law on the age of consent; that was not his intention, as such a change in the law would be a matter for Parliament. The circular was, however, reconsidered and on 20 December 1991 a new Crown Office Circular No. 2025/1 was issued to Procurators Fiscal. This circular made reference to the continuing review, and set out new, provisional directions by the Lord Advocate which replaced the directions contained in the previous circular. These directions included:

" 1. Where both of the participants are over 18 years but one or both are under 21 years and the act has taken place in private and where there are circumstances pointing to exploitation, corruption, or breach of trust, prosecution would be appropriate. Where the Procurator Fiscal receives a report involving individuals in this age group and none of these circumstances is present, but the Procurator Fiscal considers there are other circumstances which would justify proceedings, a report should be made to Crown Office for consideration by Crown Counsel.

2. Where both of the participants are over 16 years but one or both are under 18 years and the act appears to have been consensual and in private, the Procurator Fiscal should report the case to Crown Office for consideration by Crown Counsel.

4. Where it appears that one of the parties has engaged in homosexual acts **before** the occasion under consideration and has acted as a prostitute, there is little justification in pursuing the client of such an individual,

while ignoring his activity as a prostitute.... "

We understand that the review continues, and meantime the circular of 20 December 1991 sets out the Lord Advocate's current directions."

- These paragraphs from the Nimmo Smith Report raise very serious issues of relevance and concern from the perspective of the SCAI's TORs. It will be immediately noticed that the report contains excerpts only from the Crown Office circulars. It does not detail, for example, the content of para 3 taken from the last quoted circular. The detail contained in the actual circulars will require to be checked and established. The detail and conclusion of the Lord Advocate's continued review will also require to be established and considered.

- Para 4 of circular 2025/1, dated 20 December 1991, appears to be of particular concern from the perspective of the SCAI's TORs. This appears to detail and record that the Crown Office policy in relation to rent boy activity, ie prostitution, from at least 20 December 1991 (but most likely beforehand, and most likely the rationale for the 47 "dropped" charges in the case of Duncan and others), was not to prosecute either the client (typically the older man) or the rent boy. No minimum age is specified. No particular or special consideration is given to circumstances in which the rent boy may be a child aged 16-18 (or younger) and in care. In this particular respect, the policy appears

to facilitate the trafficking of children in care by older men. In this particular respect, the policy may have been formulated and implemented in error of judgment and responsibility in the public interest.

- This Crown Office policy therefore appears to place at risk and in clear danger of exploitation young men in care aged between 16 and 18. In circumstances in which rent boys who were in care were being exploited by older men who could pay for the opportunity to exploit, Crown Office would turn a blind eye, it appears. It would not be seen as in the public interest to prosecute either participant. It would not be in the public interest, therefore, to recognise legitimate issues about the exploitation of children in care if they were acting as rent boys in these circumstances. The view appears to have been taken that there was no public interest in prosecuting the client who may be exploiting the rent boy who, in turn, may be a child in care.

- There is an obvious contrast to be made with the view expressed by Williams of Mostyn in 1996:

  "The National Committee of Inquiry into the Prevention of Child Abuse also stressed that the emphasis of criminal proceedings should be placed "on the identification and prosecution of clients and pimps who exploit children through prostitution" (Williams of Mostyn, 1996, p47)."

- This Crown Office policy ought to be a matter of the greatest concern from the perspective of the SCAI. The SCAI needs to establish its terms and manifestations (circulars 2025 and 2025/1); how it was operated; in which cases it was operated; and for how long did it remain Crown Office policy. Examples of real cases, in addition to M's case, referred to below, give great cause for concern over a significant period of time. It is of great concern that it is unclear for how long this policy was followed by Crown Office.

Other cases arising from HMA v Duncan and others and Crown Office policy

- Another important fact to be taken from the case of M, as detailed in the Nimmo Smith Report, is the locus of the offences detailed as having occurred at 37 Palmerston Place, Edinburgh. It is very well documented that the property at 37 Palmerston Place Edinburgh was owned, at material times, by Tam Paton, one-time manager of the Bay City Rollers, who died in 2009. Paton is not mentioned in the Nimmo Smith Report at all. He does not appear to have been interviewed.

However, the omission of any reference to the property as having been owned by Paton may be viewed as curious. It cannot have escaped the notice of the reporters that Paton was the owner of the property. They must have considered whether he was involved, standing his record at the time. If they did consider this, it ought to have been detailed in the report they produced. 37 Palmerston Place, Edinburgh, was a known locus for child trafficking.

- Paton has been the subject of a lot of press coverage and other written material. It is alleged that he exploited children in care in Nazareth House, Lasswade (with Jimmy Saville); and children from Ponton House Children's Home, Edinburgh. The SCAI has already investigated abuse of children in care at Nazareth House, Lasswade. It is alleged in one book that a boy who had been in care in Ponton House Children's Home died when he threw himself off the top of the building at 37 Palmerston Place, Edinburgh. The foreword to the book is written by Dr Sarah Nelson of Edinburgh University. Members of the senior SCAI team have already met with Dr Nelson.

- The detail contained in the Nimmo Smith Report in respect of the case of M clearly links Paton's property to the exploitation of M, a child in care. It is not possible, without significant further investigations being carried out by the SCAI, to conclude at present that Paton himself was actually implicated in the abuse of children <u>in care</u>. However, there is sufficient concern, on the basis of a diverse range of sources alleging Paton's involvement, to provide a clear public interest basis for a detailed investigation into Paton's activities and interests insofar as they relate to the exploitation of children in care in order to establish whether or not he was implicated for the SCAI's purposes.

- It appears that the exploitation of children in care happened over a number of years at Paton's property at 37 Palmerston Place Edinburgh and at Paton's home at Little Kellerstain, Gogar, Edinburgh. It is incredible that newspaper reports of court proceedings detail facts relating to the abuse of children in or before October 1979. It is incredible because nothing appears to have been successfully done to prevent similar abuse happening to M in 1990. The state of knowledge, practices and procedures in the criminal justice system, the care system, the police, social work, the courts, the children's hearing and other relevant institutions needs to be investigated. What is presented appears to be a web for the exploitation and trafficking of children, including children in care, which has not been conclusively or thoroughly investigated. This is a matter of considerable concern in the public interest. It is also a matter falling within the SCAI's TORs, in particular TOR 6. The public interest would demand thorough

investigation of these matters by the SCAI.

- The Glasgow Herald newspaper reported on 9 February 1982 that John Wilson (John “Sticky” Wilson referred to above in relation to boys at Wellington School) of an address in Loanhead, Midlothian, wept in the dock as he was sentenced to four months in custody having pled guilty to four offences of gross indecency against teenage boys, as young as 13, in the home (at Little Kellerstain) of Paton. As part of a plea bargain (accepted by Andrew Hardie, AD), Wilson had undertaken to give evidence against his co-accused, Paton. This is the same Sticky Wilson referred to above about whom there were concerns about his conduct toward children in care at Wellington School in the late 1980’s and early 1990’s.

- There are also subsequent Herald and other press reports that Paton was convicted of serious charges against young boys and was sentenced to 3 years in custody in 1982. He was also tried and acquitted of further child sexual abuse charges in about 2003. These are matters that the SCAI ought to investigate further.

- Dr Sarah Nelson of Edinburgh University is reported in the press to have carried out two separate research projects which disclosed a network of abusers, including Paton, in 2004 with a follow up in 2009. There is a summary of her work, with comment, reported in an article in the Scotsman dated 11 April 2009.

- Part of the Scotsman report’s summary is in the following terms:-

  “A GOVERNMENT adviser on sex crimes has claimed Bay City Rollers manager Tam Paton was involved with an abuse ring which claimed dozens of youngsters as victims. Sarah Nelson last night called for a full investigation into the depraved activities of Paton, who last week died of a heart attack at his luxury home near Edinburgh. Nelson, speaking in her capacity as an Edinburgh University researcher, said she had uncovered numerous allegations made against Paton over the years, many of them involving teenage boys who were afraid to go to the police at the time. Paton, who was 70, was convicted in the early 1980s of abusing two boys aged 16 and 17. Last week, Rollers frontman Les McKeown finally broke his silence on the issue, claiming he was raped by Paton. Nelson is now revealing that she came across a raft of allegations as she examined the extent of sex abuse against young men for two key reports, published in 2004 and earlier this year. She told Scotland on Sunday: "I became very concerned in the in the

course of both studies, but particularly in 2004, to come across repeated allegations of sexually abusing activities involving Mr Paton and rings of unknown others. I think it is safe to say there are dozens of alleged victims. **"They were mainly very vulnerable teenagers, for instance those from a care background who should have been under society's protection**. "They were groups of severely damaged young men, offenders who were now in the criminal justice system, but who had eventually revealed being abused in some kind of network involving Mr Paton."

- She added: "The allegations included that extreme fear of the repercussions of reporting kept them silent, along with their fear of entrapment if they spoke out, since they had themselves been inveigled into crime. They would not agree to speak out about the abuse." Nelson said the allegations included the existence of a network of flats in Edinburgh where vulnerable male teenagers and young men were placed – men who were beholden to Paton – and which were scenes of criminal activities. She said: "There were also allegations that abuse and criminal activities involving boys took place regularly at Mr Paton's home, which surveillance over a period would surely have revealed." The claims were reported – usually reluctantly – to various workers, including those in the prison, criminal justice, housing and social work sectors but, Nelson believes, never pursued because the alleged victims did not want to take them further.

- She said: "Given that my own research report of February 2009 raised some very disquieting issues about apparently **continuing risks to boys in care**, **especially those with a history of residential care and offending**, I believe such an inquiry must be instigated in order to protect others and to learn lessons for protecting these boys in future."

- Clearly, Dr Nelson envisaged that any Scottish Child Abuse Inquiry which was eventually established would, indeed, investigate the matters she reported upon and made reference to. It appears that, from the content of what she is quoted as having said, and from her clear references to knowledge and research involving the sexual exploitation of children in the care system, there is a powerful need and a clear duty on the part of the SCAI to investigate the matters referred to. These matters appear to relate to trafficking of children in care.

- Against the background of Dr Nelson’s knowledge of allegations of the abuse of children in care, through prostitution of young men as rent boys, the Crown Office policy, detailed in circular 2025/1, dated 20 December 1991, takes on a much more concerning significance. It

appears that there was, or ought to have been, detailed knowledge and concern on the part of the authorities about the activities of Paton and others well in advance of the case of M arising in January 1990.

- It is very difficult to understand how the known sexual exploitation of young men, some of whom appear to have been in care, could have been regarded as "consensual"; or, worse still, as circumstances in which there was no public interest in prosecuting those exploiting such children because money had changed hands. If this is a reasonable representation of the Crown Office policy and its effect, it appears to represent gross mis-judgment at best.

- Matters may have been understandably confused by the clear need to ensure that consensual homosexual relationships and actings between adults were not criminalised. This was obviously the primary concern at the time. However, it must be viewed as obviously wrong for the SCAI to ignore the sexual exploitation of rent boys who were in care because money had changed hands (ie because their consent was being paid for). The same attitude was and is unacceptable in respect of young women in care. Such situations must be investigated, identified and properly labelled as child trafficking through prostitution.

- It is unclear for how long the Crown Office policy detailed in circular 2025/1 remained operative. The fact of its existence, however, means that it may have provided the rationale for disposing of many prospective prosecutions which ought properly to have been prosecuted in the public interest involving trafficking of children as rent boys and, typically, older men.

- This scenario has been a reported concern in various newspapers and internet blogs over a number of years. A simple google internet search produces detailed reports and allegations. Some are far-fetched and firmly rooted in unfeasible conspiracy theory. Some allegations are repeatedly and consistently made against people in prominent positions. It is right and proper, for the sake of public confidence in the interests of justice, that SCAI should fully and properly investigate matters in which the same Crown Office policy operated where there are factual allegations (not necessarily made by the complainers) and they fall within the TORs.

- It is a matter of grave concern, in the public interest, when cases involving prominent people and raising issues of possible child trafficking through rent boy exploitation have been reported in the public

domain and a perception remains of cover up. In some these cases it is unclear whether or not the rent boy was a child in care. However, this is a matter that the SCAI should be careful to investigate and establish in each and every known case, whether an application is made to the SCAI by the complainer or not. The SCAI should be alive to the danger that the public is left with the perception that any such case has been subject to the policy detailed in Crown Office circular 2025/1. That would be wholly unacceptable. It appears likely, however, to have been the case.

- It is particularly important for the SCAI's credibility that cases involving allegations against lawyers are not perceived to have been either ignored, glossed over, or simply not considered worth investigating in accordance with Crown Office circular 2025/1. This is especially important if the public might perceive there to be close personal and/or professional connections between lawyers.

Cases relating to Douglas Haggarty, Head of Legal Services, SLAB

- On 3 May 2009 it was reported in the press that Douglas Haggarty, aged 57, Head of Legal Services at the Scottish Legal Aid Board, was arrested and charged in connection with offences arising from sexual activity with a teenage rent boy in BHS toilets in the St Enoch Centre, Glasgow.

- It is unclear from the report what age the young man was, or whether he was, or had been, in care. The SCAI should be careful to be seen to have thoroughly investigated this case and to act if it is found to fall within the TORs. This is especially important because the press reports from 2009 appear to suggest that Haggarty's "lawyer", Paul McBride, QC, was able to persuade the Crown to "drop" its investigation of the case and any intended proceedings. This perception, and the identities of the persons involved in the scenario, presents a concerning picture in the public perception. McBride was a board member of SLAB at the time.

- The concern, in the public perception, is more serious because it appears that this case appears *prima facie* to have been dealt with in accordance with Crown Office circular 2025/1. The author of the policy and circular was Elish Angiolini (see Nimmo Smith report, para 3.4, reference to Elish McPhilomy, Senior Legal Assistant at Crown Office). By 2009, Ms Angiolini was Lord Advocate. Paul McBride, QC, had been counsel acting for one of the accused in respect of whom not guilty pleas were accepted in the prosecution against Neil Bruce Duncan and others in 1991. Mr McBride's client in that case was also

therefore charged with rent boy offences, it can be inferred. From the perspective of the public perception, and of public confidence, it does appear that the treatment of rent boy cases (involving children in care and children not in care) may have been consistently dealt with between about 1991 and 2009 in accordance with Crown Office circular 2025/1. It is incumbent upon the SCAI, in these circumstances, to investigate and, where within the TORs, to deal with these matters. This is especially important in relation to Crown Office policy.

- A further concern, in the public perception, arises because of the identity of Haggarty, his very senior position in the Scottish Legal Aid Board and the professional connections with whom he is, or may be, associated. The administration of legal aid is a particularly sensitive area of public life. People are very likely to view it as completely unacceptable that a person holding such a position, affecting access to justice and peoples' lives, comes to public attention in such circumstances. In his role, Haggarty will routinely have access to statements, precognitions and case summaries taken by solicitors in order to assess the merits of legal aid applications and to be satisfied of work undertaken by solicitors and others for payment purposes. Some of these will involve rent boy cases, accused persons and witnesses whom he may know from the rent boy scene. The SCAI requires to investigate this. It requires to address any substantial element of public perception (whether wholly accurate or not) that a known abuser of teenage boys routinely contributes to, or even makes, decisions about whether accused people are granted legal aid for representation in similar and other cases. For example, the simple question arises as to whether McBride was paid by SLAB to represent Haggarty's interests to Crown Office? Haggarty will certainly have played some role in assessing McBride's legal aid fees in many, many other cases.

A further case involving Haggarty

- There is a further concerning case reported in the press, in relation to the activities of Douglas Haggarty and the exploitation through trafficking of a different rent boy. The rent boy's name is Jamie Coltart. Jamie Coltart was accommodated in residential care at St Katharine's Centre, Edinburgh, between January and June 1996. It is understood that Jamie Coltart was arrested by police and charged with theft of Haggarty's car at Longniddry. This was alleged to have happened on 12 June 1996. Haggarty had driven Coltart to Longniddry for sexual activity for which he paid Coltart. After sexual activity had taken place, Coltart stole Haggarty's car keys, ran away and drove away in Haggarty's car. Haggarty reported the theft of his car to the police. Coltart left the car in York Place, Edinburgh, according to the allegations on which he was later charged.

- Jamie Coltart was represented by Alex Lafferty, Solicitor, Tranent, East Lothian. Lafferty was contacted on Coltart's behalf and consulted with him in custody following the incident at Longniddry. Lafferty is now retired. He is understood to have a progressive cognitive difficulty, perhaps in the nature of demintia. However, his assistant at the time was involved in representing Jamie Coltart in at least his first application for bail when he appeared on petition at Haddington Sheriff Court. Lafferty's assistant is (now) Sheila McCall, QC. Ms McCall will have knowledge of these and other matters in which Lafferty's firm acted for Coltart. On the dates libelled in each of the offences, he was a child in care who was acting as a rent boy. This necessarily, therefore, appears to raise issues relating to child trafficking.

- It is understood that proceedings against Coltart for the theft of Haggarty's car, and related driving offences, at Longniddry and Edinburgh were discontinued without further action. He had appeared on a petition on which they were libelled. It is understood that the rationale for this decision may have been the application of the policy in Crown Office circular 2025/1. This application of the policy was in respect of a child (for the SCAI's purposes) aged under 18 and accommodated in care at St Katharine's Centre, Edinburgh on the date of the offences, namely 12 June 1996. The circumstances, if true, appear to amount to trafficking of a child in care by Haggarty.

- Coltart acted as a rent boy at other times between about January and June 1996, while he was accommodated at St Katharine's Centre, Edinburgh. He was exploited by older men. Press reports from the time confirm this. His social work history and care records from St Katharine's will confirm this.

Andrew Hardie, QC, as complainer

- The press reports from late 1996 and early 1997 relate to proceedings against Coltart for theft and other offences of dishonesty, as well as driving offences. The main "complainer" (although no complaint was made by him) was the then Dean of the Faculty of Advocates, Andrew Hardie, QC, now Lord Hardie. The complainer in respect of charges involving theft of a car at Longniddry and driving offences committed there and at York Place, Edinburgh, was Douglas Haggarty of SLAB.

- The Glasgow Herald reported, on 4 December 1996, in the following terms:-

"**A YOUTH appeared in court yesterday accused of using cheques and a credit card understood to belong to one of Scotland's top lawyers to buy a car and more than £200 of petrol.**

Jamie Coltart, 17, also known as Michael Stewart, was charged with using two Bank of Scotland cheques totalling £325 which bore to be signed by Mr Andrew R Hardie to obtain a motor car by fraud from James Hawthorn at a lock-up garage in Dundas Road, North Berwick, East Lothian on May 3.

He faces a further fraud charge relating to a Bank of Scotland Premier Visa Card held by Mr Andrew R Hardie, used at service stations after May 3.

Stewart is accused of stealing a car in Longniddry on June 12 and driving without an appropriate licence and insurance in York Place, Edinburgh, later on the same day.

Stewart, whose address was given as Stenhouse Street West, Edinburgh, appeared from custody at the city's sheriff court. Sheriff Alexander Wilkinson continued the case without plea until this morning and remanded Stewart in custody."

- On 15 February 1997, the Glasgow Herald reported:-

"**A teenager forged the signature of Scotland's most senior advocate on two cheques and used them to buy a car, Edinburgh Sheriff Court was told yesterday**.

The court heard that Jamie Coltart had never met Mr Andrew Hardie QC and had got the cheques and a credit card from a friend.

Mr Hardie, the Dean of the Faculty of Advocates, did not know his cheques and card had gone missing until the police contacted him.

They wanted to trace the keeper of the car and Mr Hardie's name was

on the cheques which had been used to buy it.

Coltart, 17, a first offender, was admonished by Sheriff Andrew Bell yesterday.

Sheriff Bell said he would have fined Coltart but for the fact that he had no income.

Coltart, also known as Michael Stewart, of Allan Breck Gardens, Edinburgh, admitted uttering two cheques for a total of £325 with Mr Hardie's signature forged on them.

He used them to buy a car in North Berwick on May 3 last year.

Coltart's plea of not guilty to another charge of fraudulently using Mr Hardie's Visa card to buy more than £200 in goods from service stations was accepted by the Crown.

Senior depute-fiscal Alastair Brown said that Coltart was caught after an English police force traced the registered keeper of the car.

Mr Hardie's name was on the cheques but it was clear that he had not bought the car, said Mr Brown.

"I am informed that Mr Hardie does not know and has never met the accused," Mr Brown said. He said Coltart had told police he had got the credit cards from a friend.

Mr Brown said that the only loss was to the Bank of Scotland which had paid out the £325.

Mr Hardie had been cited as a witness but chose not to go into the courtroom to hear the case after Coltart's plea was tendered.

Later, he said: "I understand it's a guilty plea, I have no further comment."

- There are several aspects of the press reports that require comment. Firstly, the offences alleged at the initial reported diet on 3 December 1996 were reduced from Solemn to Summary proceedings and transferred from Haddington Sheriff Court to Edinburgh. Secondly, the driving offences alleged to have taken place in Longniddry and York Place, Edinburgh had been "dropped" by the Crown by the time of the trial diet in February 1997. These related to the alleged theft by Coltart of Haggarty's car. It is understood that Coltart did not even have a driving licence at the time of these offences. He was a young person in care. There was therefore no proper scope for the Crown to simply withdraw the allegations of driving offences. Driving offences have statutory penalties. None were ever imposed. This is of significance because, in these circumstances, it appears that the policy in Crown Office circular 2025/1 may have been applied. It appears that this is a case which was concerned with trafficking of a child in care through rent boy activities or prostitution. This clearly brings the case within the SCAI's TORs. The whole case appears to require thorough and careful consideration and investigation.

The involvement of the Metropolitan Police

- It is understood that Jamie Coltart was arrested in relation to this case some time in 1996 by police officers from the Metropolitan Police from London. It is not clear on what date this happened. The Met operating in Edinburgh and East Lothian appears very unusual in itself. It is understood that the Met were investigating the purchase and arrangement of rent boy services from Edinburgh, made in the City of London. It is understood that Andrew Hardie's bank card details may have been used.

- Information and materials relative to this investigation, and the conduct of proceedings, may be unlikely to be retained in Crown Office, in the whole circumstances. However, there may be material relative to this investigation which has been retained by the Met on the HOLMES database.

- It should also be noted that the allegation was that Coltart had used Andrew Hardie's "cheques". There was no allegation that Coltart had possession of Andrew Hardie's cheque book. It may be difficult to understand how cheques could be taken from a cheque book (still retained by Hardie) if Hardie had never met Coltart (or another person, unidentified, who had access to Hardie's cheque book).

- It is also understood that the Met officers interviewed Andrew Hardie in the Dean's room at Parliament House. It is understood that they asked him, among other questions, whether he had been in London within an identified time period. He is said to have told them he had not. They are said to have later checked his diary and discovered that Hardie had, indeed, been in London during the relevant time period he was being asked about. He had been there accepting an award on behalf of the Faculty of Advocates. Marcello Mega, journalist, wrote an article for the Sunday Times reporting on these matters closer to the time or some time after they happened. Ultimately, the article was not published.

- It is inconceivable that the fact of the Dean of Faculty having been interviewed by officers of the Met in the Dean's room at Parliament House in connection with a rent boy case would not be known to the other Faculty officers at the time, and to many other members of the Faculty of Advocates. Yet none (it is understood) have ever come forward to report any concern to the SCAI or elsewhere. Bert Kerrigan, QC, is said to have obviously known something about it. There are some distinguished names among the Faculty officers of the time. Their knowledge may be important in any investigation. The investigation, progress and conduct of the proceedings against Jamie Coltart were certainly known to the law officers. Lord Mackay of Drumadoon was Lord Advocate. Paul Cullen, QC, was Solicitor General. He is said to have retained copies of papers in relation to the case. It is inconceivable that the cadre of ADs at the time did not know essential details. Various current judges (at all levels) and sheriffs were ADs and Crown Office officials at the time. All are likely to have known something about this. None appear to have volunteered information of concern to the SCAI or elsewhere, then or since.

- Jamie Coltart is understood to have initially appeared on petition from custody at Haddington Sheriff Court, notwithstanding the detail in the press reports. Alex Lafferty's assistant, Sheila McCall, represented him. The only issue at that stage was whether or not Coltart should be admitted to bail. Ms McCall persuaded the sheriff that he should be admitted to bail. The date of this appearance is unclear.

- It is critical to note, at this stage, the following:- (i) the allegations relating to theft of, and driving, a car at Longniddry and Edinburgh on 12 June 1996 related to Douglas Haggarty's car and the circumstances previously detailed; (ii) in order to secure legal aid cover for Jamie Coltart's representation and to be paid for his work, Alex Lafferty required to provide SLAB with statements and precognitions that he had obtained or prepared for the case; (iii) this, in itself, was and is wholly inappropriate (standing Haggarty's position at SLAB) and compromises the interests of justice; (iv) Lafferty was able to (properly)

use the information relating to Haggarty's involvement in sexual conduct with a child in care to secure the Crown's agreement to withdrawing the charges relating to driving offences, all to his client's advantage; and (v) the Crown, in any event, appears to have been guided in a manner consistent with Crown Office circular 2025/1. This presents just one example of a very concerning and apparently defective legal system in operation insofar as it relates to the welfare of trafficked children in care and from the perspective of TOR 6. Coltart was a child in care as at June 1996.

- Alex Lafferty also succeeded in persuading the Crown that the case against Coltart should be reduced from solemn to summary procedure. It appears likely that the fact of the Haggarty charges having been dropped, and the policy in circular 2025/1, featured in the decision. In connection with the allegations relating to Hardie's bank card and cheques, Coltart had been interviewed under caution by Met officers. He had been taken to London to be interviewed. Coltart's explanation during the interview detailed the defence which was adhered to by Alex Lafferty on his behalf throughout the proceedings.

- Coltart's position was that he did not steal the card and cheques, he had possession of them because he was given them. His explanation was that he got the items from the complainer, Andrew Hardie. Coltart said he went with another person (unspecified) to London and they stayed in hotels. In discussions with Alex Lafferty, Coltart never used Hardie's full name. He said he could identify Hardie.

- The case against Jamie Coltart was not dealt with in Haddington as was normal practice. Instead, it was dealt with by the PF's office at Edinburgh. Senior PFD Alistair Brown was allocated the case with a high level of secrecy. Alex Lafferty conducted negotiations on Coltart's behalf with Alistair Brown. Coltart's defence, throughout, was that he was given the card and cheques to use by the complainer.

- Alex Lafferty precognosced Andrew Hardie in the Dean's room at Parliament House. Herbert Kerrigan, QC, had phoned Alex Lafferty out of the blue. Lafferty had instructed Kerrigan as counsel on some previous occasions. He did not do so thereafter. Kerrigan appeared to want to emphasise what a marvellous man Andrew Hardie was. Hardie was asked by Lafferty how his card and cheques went missing. He said he didn't know how. He said he didn't know they were missing for about a week or two weeks. Hardie said he didn't go to the police. The police came to him. He was told about the missing card and cheques by the police (ie the Met). He said he had no idea who had them. He

said he didn't know the person responsible.

- On 14 February 1997, Alex Lafferty represented Jamie Coltart at the trial diet at Edinburgh Sheriff Court. Andrew Hardie was required to wait in a witness room. It was envisaged he would require to give evidence at the trial. Lafferty was asked to come up from the court to meet with the PFD, Alistair Brown. That had never happened before in any case in Lafferty's long career. The Crown case was still that Coltart had stolen the card and cheques and used them as libelled. Lafferty was told the Crown was prepared to reduce the allegations for a guilty plea. There were 3 senior PFDs involved in this discussion. They suggested restricting the libel to using the card once. The offer was for a guilty plea to one charge of reset of a bank card which was accepted not to have been in Coltart's possession all of the time. They needed pleas in relation to the cheques. Ultimately, it appears, from the press reports, to have been agreed Coltart would plead guilty to the offences involving the cheques only. There was also some discussion about the disposal (a matter for the Sheriff). One important issue that may arise is whether Crown Office circular 2025/1 was relevant to the Crown's approach to the plea negotiations. This is an issue, in the circumstances, that the SCAI will be anxious to investigate thoroughly.

- Alex Lafferty was invited to bring Jamie Coltart into the PF's office. This requires a journey from one virtual world, populated by criminals and drug addicts, to a very different, sanitised, office domain populated by polite professionals. The transformation is effected by a journey in a lift in the Edinburgh Sheriff Court building.

- After the plea was recorded and the case disposed of by way of admonition, Coltart was taken out of the building by the rear entrance to the staff car park to avoid the press.

- It had been Alex Lafferty's intention, in accordance with his instructions, to go to trial on the basis that Hardie had given the card and cheques to Coltart. Hardie's position, as presented to the court, was that he had never met Coltart and did not know him. Alistair Brown, with habitual great care to represent what the Crown actually accepted, said "I am informed that Mr Hardie does not know and has never met the accused…". This is not necessarily an acceptance by the Crown of Hardie's position as fact. It is not known what other information the Crown had in its possession, for example, from the Met. Had the case not been resolved by a reduced guilty plea, as reported in the press, Coltart's position would have been put to Hardie in evidence. If there is any element of truth in Coltart's version, Hardie must have met Coltart. It appears that this may have been a possibility that the

PFD could not rule out for the plea which was accepted to be deemed acceptable in the public interest. Coltart was a trafficked rent boy who was accommodated in care at the time (May-June 1996). Hardie was the Dean of Faculty and became Lord Advocate just a few weeks after the trial diet.

- One question that remains is as follows:- why was the Crown so apparently keen to dispose of this case without a trial? If it was as straightforward as Coltart must be lying, and the Crown accepted Hardie's position on the evidence available, why wasn't the trial run on that basis? In the whole circumstances, there is a significant and substantial public interest in the SCAI thoroughly investigating this aspect of the case involving Hardie as complainer, as well as the charges involving Haggarty as complainer. The accused was a child in care who was known to prostitute himself as a rent boy. The SCAI must investigate this case and consider whether the policy in Crown Office circular 2025/1 played any part in the Crown's approach. To what extent, if any, was this whole case concerned with child trafficking?

- The SCAI must investigate the whole facts and circumstances of this case within the TORs. It may also be necessary to report the conduct of this case for independent investigation elsewhere, for example, to Crown Office and to the police (again). There is an apparent need to rule out and exclude the apprehension that the Crown's approach, accepted by the Dean of Faculty as complainer, amounted to any perversion of the course of justice which resulted in a child in care (at the time of the offences) being convicted of a criminal offence on a pretext that was, factually, knowingly false even to a minimal extent. This would be a very serious matter indeed. The case appears to have involved trafficking through prostitution of a young person who was in care. It may relate to arrangements to purchase the services of other rent boys. The presentation of accepted facts by the Crown did not mention these aspects of the Met investigation.

- Alex Lafferty was contacted much more recently by police in connection with this case. It was reported in the Sun newspaper. This happened in about late 2015. They mentioned the name of Jamie Coltart. They mentioned Lord Hardie. They asked Lafferty to give a statement. He agreed to do so and went to Linlithgow police station to do so. They asked Lafferty questions about how the trial proceedings in 1997 were disposed of. This is clearly a matter that the SCAI will require to investigate. The police appear to have been re-investigating the disposal of a case in which the accused was a rent boy in care. One the face of matters, a child trafficking case. No doubt they will have spoken to Lord Hardie and to Jamie Coltart. It is unclear whether

they were re-investigating the disposal of the charges relating to Haggarty. If they were not, they ought to have been. This is a matter of priority for the SCAI to investigate in the public interest and having regard to TOR 6. It may appear that Scotland's justice system has still not caught up with what was thought necessary by Williams of Mostyn in 1996.

- On account of the fact that the subject matter of the recent police investigation appears to have related, in part, to a case in which a rent boy who was in care may have been exploited by a public figure (Haggarty), the police investigation ought to have been notified to the SCAI. It appears to have been a case of trafficking of a child in care. The other aspects of the case, relating to Lord Hardie, may also have related, to some extent, to the activities, and trafficking, of a rent boy and the purchase of rent boy services. The rent boy was in care at the material times. The SCAI must investigate.

- It is understood that Lord Hardie may have been interviewed by police even more recently in connection with allegations made about him by Susie Henderson, the daughter of Robert Henderson, QC.

- For the sake of completeness, there is another allegation at large in respect of Lord Hardie by a person who posted his allegation on a blog site. It is in the following terms:-

  "Garry Watson 22 October 2015 at 16:50

  I was abused in a caravan near ingliston by Lord Hardie in the 70's".

  The blog site is at: http://aanirfan.blogspot.com/2014/08/the-magic-circle-pedophile-ring.html

  I have been able to find no further information about this allegation.

Marc Strachan, Advocate

- On 23 May 2007, the following report appeared in The Scotsman newspaper:

  "A TOP Lothians lawyer has been accused of carrying out an indecent act on a 13-year-old boy in a shopping centre toilet. Mark Strachan, a married advocate from Linlithgow, West Lothian, is alleged to have

committed the offence at McArthur Glen Shopping Centre on February 13 last year.

Strachan has been charged with an indecent assault on the boy, as well as using lewd, indecent and libidinous behaviour and making sexual remarks. The 48-year-old's solicitor, Cameron Tait, denied the charge on his behalf at Edinburgh Sheriff Court today during a brief hearing. Strachan was excused attendance and is expected to appear at another preliminary hearing next week.

He could face a trial before a jury later this year and could be jailed if found guilty. Having studied and practiced law as a solicitor in Aberdeen, Strachan became an advocate in 2004 and currently is attached to the same stable as famed QC Donald Findlay. He is still working in the courts and has not been suspended by the Faculty of Advocates despite the allegations."

- The reported allegations related to events said to have taken place on 13 February 2006.

- Then, on 31 May 2007, the following report appeared in The Scotsman:

"CHARGES against a top lawyer accused of carrying out an indecent act on a 13-year-old boy in a public toilet have been dropped. Mark Strachan, a married advocate from Linlithgow, West Lothian, was alleged to have committed the offence in a toilet at McArthur Glen Shopping Centre on February 13 last year. But Crown Office officials ended the proceedings against Mr Strachan, who is attached to the same stable as famed QC Donald Findlay, after new evidence emerged in the inquiry. The 48-year-old had been due to answer the charges in person at Edinburgh Sheriff Court yesterday but was excused attendance at the last minute. The case was not called and later the fiscals at the court confirmed they would not pursue the case."

- The obvious question that arises for the SCAI is wether this a further application of the policy in Crown Office circular 2025/1? But, on this occasion, in relation to alleged acts with a 13 year-old boy. The SCAI must investigate the application of the policy. Was the 13 year-old in care?

Conclusion

- TOR 6 sets out:-

- "To consider the extent to which failures by state or non-state institutions (including the courts) to protect children in care in Scotland from abuse have been addressed by changes to practice, policy or legislation, up until such date as the Chair may determine."

The detail set out above provides analysis and examples which point to a number of very grave problems in relation to the policy and practice of the courts, COPFS, social work services, the police, the Faculty of Advocates and every other part of the systems which ought to have been configured to protect children in care who have been trafficked through involvement in prostitution. The cases detailed above are mere examples of cases in which multiple failures by state and non-state institutions (including the courts) to protect children in care in Scotland can be seen. There are likely to be many, many more.

- There are likely to be cases of exploitation of young people and children in care who will not themselves make applications to the SCAI. That is known from other inquiries such as that carried out in relation to the exploitation of children in Rotherham. Manifestly, that does not relieve the SCAI of the duty and responsibility to fearlessly and thoroughly search for and investigate these cases.

- The particular failures by each of the systems will require to be investigated, identified and detailed by the SCAI within the TORs. This task ought to be undertaken as a discrete and free-standing chapter for evidence and research by the SCAI.

- It also appears that there have been multiple failures, at every level, to report the issues of trafficking of children in care through prostitution, summarised in this note. The obligation to report "suspicions" about such matters endures to the present day. There are many examples, in various countries, of public figures being presently held to account for their failures to report child abuse of this kind which they knew about in the past.

- It is most concerning that there is nothing at all to suggest that the very obvious systemic failures which must exist to permit the gross exploitation of children in care by trafficking through prostitution have been addressed by any changes to practice, policy or legislation. In order to even embark on the process of correcting failures, those failures must be identified, recognised, addressed and then rectified. For example, it is unclear whether the policy in Crown Office circular 2025/1 continues to operate in Crown Office and beyond. If it does not, when and why did it end? Who was involved in making decisions about

this? What were the considerations?

- The most recent investigations by police of the Jamie Coltart case appear not to have led to the identification of the child trafficking issues detailed above. Even on a reconsideration of the case by police in present times, the issue of exploitation of a child in care through prostitution appears to have been obscured. Instead, Coltart has again been portrayed as a "fraudster". He ought, instead, to be recognised as a victim.

- This case is just one example of what appears to be a systemic failure in Scotland to identify, acknowledge, quantify and rectify child trafficking of children in the care system through prostitution.

- The detail set out in this note appears to engage all of the SCAI's TORs; but especially TORs 1, 2, 3, 4, 6 and 7.

John Halley, Advocate

1 April 2019.