

Q: "What about things that he did then what what mean things did he actually do to you that you remember"

## SOCIAL PRESSURE

50. It is submitted that the interviewer has to rely on social pressure, i.e. what parents have said, to extract from information adverse to Peter, for example, at page 18: "Yeah and then you told mum something about ah something else that happened at the party too when you and Peter were somewhere else in the house". This leads to allege that Peter "frightened" her with his imitation of a crocodile's jaws, having read her "Peter Pan". Clearly this did not satisfy the interviewer who resorted to additional social influence prompts, for example, at page 20: "Right, its just that you said something to mum about um something about ah having your hair done?". This further statement elicited an allegation that Peter Ellis kissed on the cheek after he had done her hair.

51. In addition, the interviewer relied on social pressure to try to elicit from an account of events that was consistent with what her parents had told the interviewer (at page 21):

Q: "Im hym I mean were you still in the bedroom or did you come downstairs"

A: "Oh we came downstairs by mum's study"

Q: "Right, and then you went and said something to dad"  
"Mum"

A: "Do you remember saying something to dad about about um"

Q: "What's that say."

52. This line of questioning reinforces with that the interviewer knows more than what is telling.

53. The interviewer summarised the accounts has given of things that Peter did that were mean: sitting on , call seemed an angry person, said things about the doll not having knickers on, did her hair, read a story, big sort of kiss and made a big noise and then suggestively asks:

Q: "Well is there any other things that you can think of that Peter did or said that you didn't like" (at page 25).

54. then described a (non-incriminating) bottle being opening in the kitchen.

55. Suggestive leading questions using social pressure are then put to

Q: "Right and um when mum and dad talked to you a wee while ago about um that Peter had been mean to kids."

A: "Yeah"  
Q: "And you said that you have some things to tell the lady about Peter being mean to other kids and you got quite angry didn't you."  
A: "Yeah"  
Q: "And you said and me, he's done mean things to me. Sort of something like that aye."  
A: "Mym"  
Q: "So the mean things that he did to you are they the things that you're telling me about now or are there other things."  
A: "Both"

the interviewer then suggests to \_\_\_\_\_ that Peter Ellis was scary, a suggestion that \_\_\_\_\_ accepted:

Q: "Right is there anything that that you um, I mean how did you sort of \_\_\_\_\_, you said you didn't really like him and he was pretty, he seemed a pretty angry person, was he scary-or"  
A: "Scary". (at page 26)

demonstrating clearly the dangerous potential effect of suggestive questioning.

### "DON'T KNOW'S"

56. It is submitted that the valuable tool of "Don't Know" was not explained to \_\_\_\_\_ until such time as the interviewer introduced the topic of any "good" things Peter had done. It is submitted that not only did this demonstrate a dangerous omission but also interviewer bias. The interviewer stated (at page 27):

Q: "Did he ever do any of those sorts of things. Look I'm just really interested in what you you know in what you remember, I mean if I ask you a question and you're not sure or you don't remember it's so it's fine to say that, don't don't just make something up for me right."  
A: "I'm not"  
Q: "So you know if you remember things that's okay and if you don't remember because you were too little, just say I don't remember that I was too little or something. I just thought"  
A: "I'm not making anything up"  
Q: "Okay I just thought that you might remember some, whether he did do any nice things or kind things or whether he was always scary and sort of angry."

57. \_\_\_\_\_ described Peter allowing her to go out for lunch without her asking him and then the interviewer draws the focus back to the "bad" things that Peter did:

Q: "Yeah okay so he had this kind of scary look and he made this buzzing sound which seemed to be a bit frightening"  
A: "Ah ha"  
Q: "And was there any other times that you say him being mean to other children apart from \_\_\_\_\_ (at page 28)."

## FURTHER INVITATION TO SPECULATE

58. The interviewer then again invites \_\_\_\_\_ to speculate "do you think she enjoyed that being chased" (at page 28). Again, this indicates to \_\_\_\_\_ that she is entitled to "guess" or speculate about issues.

## LEADING, SUGGESTIVE QUESTIONS AND SOCIAL PRESSURE

59. Of specific significance is the further questioning by the interviewer of \_\_\_\_\_ on the topic of tickling, at page 29: "Right, Okay and one of the other things that you that you talked to mum about was that you said um you said that you didn't like him and um something about something about tickling. You remember telling mum something about tickling." \_\_\_\_\_ responded by saying that Peter Ellis would tickle her and \_\_\_\_\_: "lots and lots of times" and that "we couldn't stop giggling half the time."
60. The interviewer asked an open question "So where would he tickle you" coupled with a suggestive aspect "what parts of your body" to which \_\_\_\_\_ identified "under the arms because I'm very ticklish under the arms" (at page 30) and "on the heels".
61. The interviewer then asks a suggestive question which implies that another part of her body was involved and that some form of touching other than tickling occurred: "And um any other parts of your body that that he would tickle you and stuff" to which \_\_\_\_\_ responded "Well he'd poke you in the crotch" and this happened to \_\_\_\_\_ and that it happened to \_\_\_\_\_ "When the other teachers were at the other end looking after the deaf children" (at page 32).

## TOPICS LEFT UNEXPLORED

62. When \_\_\_\_\_ alleges that the touching happened in the presence of the deaf children this point is not explored by the interviewer.
63. It is worthy of note that \_\_\_\_\_ alleged that Peter poked her in the "crutch". When the interviewer asks \_\_\_\_\_ "So which which part's your crutch" \_\_\_\_\_ indicates between her legs and says that the other name for it is "vagina" (at page 31). The interviewer later asked \_\_\_\_\_ "Right so you call that part your your fanny, do you do you have any other name for it as well. I mean just to just so that I'm really clear about it" (at page 34). \_\_\_\_\_ stated "Well there's a real real real private word" which she first whispers to Lynda Morgan and then says out loud "Guts" (at page 35). The interviewer then summarizes the words that \_\_\_\_\_ uses "fanny" (which is in error); "guts", "crutch", "vagina" (page 35). The

confusion demonstrated by \_\_\_\_\_ in her use of words for "crutch" ought to have been clarified more by the interviewer.

### THE DETAIL OF THE ALLEGATION THAT PETER ELLIS TOUCHED ON THE VAGINA.

#### SUGGESTIVE MULTIPLE CHOICE QUESTIONS

64. The interviewer returns to the allegation that Peter Ellis poked \_\_\_\_\_ in the crutch later in the interview in an attempt to elicit detail (at page 46). The detail is elicited from \_\_\_\_\_ by way of suggestive multiple choice questions, for example:

Q: *"..and what would the feeling of that be like"*

A: *"Um a bit like"*

Q: *"I mean did it hurt or was it tickly or was it just sort of nothing or"*

A: *"It hurt" (at page 46)*

65. \_\_\_\_\_ then added "a weeny bit" and that "When I got home I had a little cut on my vagina" to which the interviewer seeks an explanation:

Q: *"Oh really. So it must have been quite hard"*

to which \_\_\_\_\_ replied "His nail was long". The interviewer fails to follow up on how \_\_\_\_\_ had a cut on her vagina when the touching was outside her clothing.

66. Similarly as submitted earlier, the interviewer failing to follow up with \_\_\_\_\_ about the presence of the deaf children was an important error by the interviewer and one that could only be rectified at the time. It demonstrated a major inconsistency with the child's evidence and it was the obligation to address it with her when it was meaningful.

#### SUMMARY OF THE NEW POINTS RELATING TO THE INTERVIEWING OF \_\_\_\_\_

67. It is submitted that from what is now known in relation to interviewing techniques the following criticisms can be made of the interview of \_\_\_\_\_ that demonstrate that a miscarriage of Justice has occurred:

1. The effect of the leading questions
2. Invitations to speculate
3. The effects of interviewer bias
4. The lack of interview follow-up
5. Social Pressure



8. [redacted] was aged 6 years 2 months at the time of the first interview, 6 years 5 months at the time of the second, third and fourth interviews and was aged 6 years 7 months at the time of the fifth interview [redacted] was aged 7 years 2 months at the time of Trial. There was a delay of 15 months between the time [redacted] last attended the creche and his first formal interview.

## **B. PARENTAL CONTAMINATION**

9. [redacted] mother, [redacted] stated at trial that she first learnt of the inquiry into the Crèche from a friend (who is not identified)<sup>213</sup>:

*"My knowledge of the inquiry into the creche, I heard there was an inquiry when a friend had received a letter inviting her to a meeting at the Knox Church in March 1992. I attended that meeting."*

10. [redacted] indicated her impression of the Knox Hall meeting in her original Police statement where she stated that there must have been some validity to the complaints because of the size of the meeting.<sup>214</sup>

11. At trial [redacted] stated that she asked [redacted] very direct questions".<sup>215</sup> [redacted] denied that she was told at the Knox Hall meeting she should not ask "direct questions", but rather claimed that the advice was that she should not ask leading questions.<sup>216</sup>

12. However, at the depositions hearing [redacted] accepted that she was told that she should not put "direct questions" but ignored this advice<sup>217</sup>:

Q. "Did you understand that in putting a direct question (sic) to a child you could actually put an idea into that child's head which might not have been there but for the question"

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<sup>213</sup>Source: Notes of Evidence at Trial, p170

<sup>214</sup>Source: Statement of [redacted] to Police dated 23 June 1992 p4-5, see also Depositions Statement at pages 4-5: "My impression of the meeting as a whole was that it was a serious matter and there must have been some validity to the complaints because of the large number of people at the meeting. That's when the seriousness occurred to me really. The impression I got was that you don't approach the child directly in regard to what happened. I chose to ignore this. The way we work with [redacted] is that if there was a problem you ask a direct question. I did that fairly soon after the meeting. His response was total denial that anything had happened to [redacted] and that Peter would never do anything like that because he was his friend. I had asked [redacted]; Peter had touched his bottom or penis."

<sup>215</sup>Source: Notes of Evidence at Trial, p172

<sup>216</sup>Source: Notes of Evidence at Trial, p174

<sup>217</sup>Source: Notes of Evidence at Depositions, p439

- A. "No I don't believe that. I don't believe that did happen. I ask a direct question (sic) because I have always dealt with him in a direct manner."
- Q. "Did you know why you were being told not to ask the children direct questions?"
- A. "Well to be quite honest no I didn't really know the reason why. It seemed rather odd to me given the fact I knew my son better than anybody."
- Q. "So as you said you chose to ignore the advice given at that (sic) meeting about questioning the children."
- A. "That's correct"

13. [redacted] began questioning [redacted] following the Knox Hall meeting<sup>218</sup>:

- A. "What I said to him was after the meeting that some people believe Peter has been naughty and hurt some children, has Peter hurt you and said to me What do you mean by hurt and I said Did he ever touch you. He asked me touch me where so I said has he touched your bottom or has he touched your penis."
- Q. "How long after the meeting at Knox Hall did you ask him those questions?"
- A. "Within 2 days"
- Q. "Did you ask him those questions again?"
- A. "As [redacted] behaviour became progressively worse I knew very well as his mother that something was very wrong and yes I did ask him. I said probably once a week have you got anything to tell me about the creche."

14. On 1 April 1992 [redacted] was referred for an interview at the Specialist Services Unit. The Crèche investigation sheet recorded that his parents had concerns for [redacted] that he did not display any inappropriate sexual behaviour, had no urinary infections, had no genital inflammations, had no disturbed sleep patterns, had no toileting problems and that he had not made any verbal disclosure of abuse.<sup>219</sup> The reason for the referral was recorded as:

"Went for walks to the park with accused. Feels child was at risk given inf. come to light."<sup>220</sup>

15. However, despite this request, Detective Eade advised [redacted] on 14 April 1992 that an interview would be as far away as June or July. Detective Eade also recorded that [redacted] would contact him "if [redacted] says anything."<sup>221</sup>

16. Throughout April [redacted] consistently questioned [redacted] as follows<sup>222</sup>:

<sup>218</sup>Source: Notes of Evidence at Trial, p172-173

<sup>219</sup> Source: Specialist Services Unit Crèche Investigation Referral Form

<sup>220</sup> Source: Specialist Services Unit Crèche Investigation Referral Form

<sup>221</sup>Source: Police Job Sheet of Detective Colin Eade dated 15 April 1992, relating to

<sup>222</sup>Source: Notes of Evidence at Depositions, p484-85

"I would say that, some people are [talking] about Peter and they said he has hurt some children, do you think that is true I don't know [he said] but he did not hurt me".

### Initial Allegations

17. On 14 April 1992 first alleged abuse against Mr Ellis while being questioned by his elder brother In his statement of 20 July 1992 recorded that he directly questioned about the creche and asked him if he had ever been taken anywhere alone by Peter Ellis. When asked whether Peter had touched him anywhere he didn't like responded "No", not content with this answer, pushed the point and then agreed that he had been touched. continued with to suggestively question and the eventual "disclosure" was as a result of this questioning.<sup>223</sup>
18. recorded in her original Police statement that she then spoke with and he told her that Peter Ellis had wobbled his penis and smacked his bottom really hard. reinforced the allegation by telling he was "a good boy for telling"<sup>224</sup>
19. It would appear did not report the complete conversation as, at the depositions hearing, added when prompted that had also indicated that at some stage he was on a changing table up high.<sup>225</sup>

<sup>223</sup> Source: statement dated 20 July 1992, p1-2: "After I read him the story I asked him how his day was and how he was. I asked him how was school going. I started to talk to him about the creche and asked him how different it was from the school. He was talking to me and he said school was much better and there were more children his own age. I asked him about the staff at the creche. I asked him who they were. He said the names of some of the staff and also mentioned Peter. I asked if Peter ever took him out. He said yes he used to take them out as a group with other children. I asked him if Peter had ever taken him anywhere alone. He said that Peter had taken him to the toilet. I asked him if Peter had ever touched him anywhere he didn't like. He said, "No". I said, "Are you sure?" Then he said, "He touched my bottom and smacked my bottom....I asked him if he had ever touched his penis and he said, "Yes he rubbed my penis.He said it happened in the toilet. I chatted to him for a while longer and then read him a story. I then went into the lounge again and told mum."

<sup>224</sup> Source: statement dated 23 June 1992, p5-6: "when I walked in I do remember something that happened that Peter did to me." I asked him what it was. He said, "Peter wobbled my penis from side to side" and he showed me with his hand. He said, "He smacked me really hard on the bottom and that really hurt." I asked him if he heard the smack and made a clapping noise. He said "No". I did ask him why he smacked him and he said, "I don't know." Then he said, "I am telling the truth fully." I said of course I believed him and he was a good boy for telling. At that point I asked him where it happened. He said, "In the toilet" and that Peter was standing behind him."

<sup>225</sup> Source: Notes of Evidence at Depositions, p475-476



20. The first Specialist Services Unit interview took place on 14 May 1992.

21. In 1997 Joy Bander published a book under the pseudonym of Joy Bander.<sup>226</sup> In her book she indicated that she and her partner, Peter Ellis, made the Specialist Services Unit aware of the manner in which she had questioned Peter Ellis and yet she was not cautioned against such questioning<sup>227</sup>:

22. Following the first Specialist Services Unit interview Peter Ellis increased her level of questioning of Peter Ellis<sup>228</sup>:

Q. "Because after the first interview isn't it true you started questioning your son once or twice a week about whether or not he had more to say about Peter Ellis?"

A. "Yes I did do that. Peter Ellis has said to me Peter's my friend, he would not hurt me and then he talked about the wobbled penis and smacked bum and how very much it hurt the smacked bottom and he didn't hear the clap of the smack on his bottom and I thought as his mother there was something quite wrong and yes I did ask him regularly if he had more to tell me."

23. Joy Bander indicated in her book that she "should have felt satisfied" but could not accept Peter Ellis' denials that he had anything further to "disclose" and so began to regularly talk to Peter Ellis about Peter Ellis and the creche.<sup>229</sup>

24. Joy Bander indicated that she continued to question Peter Ellis approximately once or twice a week throughout May, June and July 1992.<sup>230</sup>

25. Peter Ellis himself recalled at trial his mother's questioning of him<sup>231</sup>:

Q. "Can you remember what sort of questions or if any sort of question your Mum and Dad asked you?"

A. "Sighs".

<sup>226</sup>Joy Bander, "A Mother's Story: The Civic Creche Child Sex Trial" (1997) A Howling at the Moon Production

<sup>227</sup> Source: Joy Bander Book, at page 33: "Before the interview with Peter Ellis and I were interviewed and asked about the circumstances under which the disclosure had taken place and also about whether I had talked to Peter Ellis about the creche after the parent's meeting. I was completely honest about what I has (sic) said, I wasn't told that I had done anything wrong, and my answers seemed to satisfy them."

<sup>228</sup>Source: Notes of Evidence at Trial, p173

<sup>229</sup> Source: Joy Bander Book page 33: "I should have felt satisfied - now that statement had gone into official records and he was adamant that he had nothing more to tell - but I wasn't. Feeling a hard smack on the bottom and yet not hearing it seemed odd, to say the least...I just couldn't [let it be] and so from time to time I began again to speak to Peter Ellis about the creche and Peter Ellis as I had before."

<sup>230</sup> Source: Notes of Evidence at Depositions, p443

<sup>231</sup>Source: Notes of Evidence at Trial, p160-161

- Q. "Can you remember times [when] you asked them to ask you questions about things?"  
 A. "Nods"  
 Q. "And can you remember your Mum asking you if you had more to tell about Peter during May June and July?"  
 A. "Yes"  
 Q. "And she used to ask you that quite often didn't she?"  
 A. "Yes"

26. also stated that his mother asking him questions helped him to remember.<sup>232</sup>

### August Allegations

27. At the depositions hearing confirmed that at the beginning of August she told that she thought he had more to tell and that he was to think about it and come and talk to her about it.
28. finally began to "disclose" to his mother on 3 August 1992. At trial confirmed that on 3 August she arranged to have a serious talk with at 7.30pm about the Crèche.<sup>233</sup>
29. A more detailed account of this two and a half hour discussion with was given in book.<sup>234</sup>
30. At the depositions hearing Ms Sidey referred to a telephone conversation with on 4 August during which reported that a social worker had visited the previous day and had mentioned Mr Ellis either to or in front of <sup>15</sup>
31. On the morning of 4 August, the day of first August interview, drove her son to and stopped outside 404 Hereford Street, a previous address of Mr Ellis.<sup>236</sup> At trial

<sup>232</sup>Source: Notes of Evidence at Trial, p166

<sup>233</sup>Source: Notes of Evidence at Trial, p 174

<sup>234</sup> Source: Joy Bander Book page 36: "About 5pm on 3 August yet another trivial incident got blown up into yet another storming tantrum... It started when I called inside and asked him to take his muddy shoes off. He refused so I sat him down and started to undo the laces. Nothing unusual in that, you would think. But he became absolutely furious and began kicking and shouting abuse....he had kicked a large hole in the bathroom wall. I flared up again, but somehow managed to keep my cool, at least enough to make a firm resolution. Taking a deep breath I said, with unmistakable determination in my voice, "Right, we are going to have tea now, but at seven thirty you and Daddy and I are going to sit down and talk about the creche. I believe you've got a lot to tell me, and now it's time to talk. The older boys are going out, so we won't be interrupted. Somewhat to my surprise responded to the way I had put things."

<sup>235</sup> Source: Notes of Evidence at Depositions, p54

<sup>236</sup> Source: Notes made by see also Notes of Evidence at Trial p174 where claims she cannot confirm that this occurred on 4 August 1992