

1

Tuesday, 3 May 2022

2

(10.00 am)

3

LADY SMITH: Good morning and welcome to the first day of

4

our hearings into the provision of foster care in

5

Scotland.

6

As I explained at the end of our last case study,

7

this is going to be quite a substantial one, but I'm

8

delighted that we've been able to get to the stage of

9

going ahead, as we'd hoped we'd be able to do, today,

10

and we're all ready to do so.

11

I'm not going to say anything else at the moment,

12

other than the usual encouragement not to hold back if

13

anyone has any queries or concerns about anything that's

14

happening.

15

I'm going to hand over to Ms Innes, the Senior

16

Counsel who is leading in the foster care case study,

17

and she'll take it from there, I hope.

18

Thank you.

19

Opening submissions by Ms Innes

20

MS INNES: Thank you, my Lady.

21

This case study is perhaps unique in that it covers

22

care within a family rather than an institutional

23

setting. It is a type of care which has existed

24

throughout Scotland for the whole period covered by the

25

terms of reference and encompasses boarding out and

1 formal kinship care.

2 Over the next three weeks in phase one of the case
3 study the purpose is to set the context. We will see
4 the development of foster care over time, both
5 nationally through legislation and regulations, and at
6 local level, through periods of Local Authority
7 reorganisation.

8 This week the Inquiry will hear from experts,
9 firstly from Professor Norrie and Professor Kendrick,
10 both of whom have given evidence before and have already
11 covered aspects relevant to foster care.

12 The intention is not to repeat that evidence, but
13 rather to provide a brief overview in relation to foster
14 care and considered aspects not previously covered.

15 Evidence will then be led from Professor Nina Biehal
16 and Dr Maggie Grant on research into abuse in foster
17 care, which was specifically commissioned in respect of
18 this case study.

19 Finally, evidence will be led from Professor Abrams,
20 who has given evidence to the Inquiry before, but on
21 a different topic.

22 Next week, we will start with evidence from the Care
23 Inspectorate and the SSSC before moving on to hear from
24 some Local Authorities and voluntary organisations.

25 Evidence from applicants and other witnesses,

1 including alleged and convicted abusers, will commence
2 on 30 May and will be led over several blocks of weeks,
3 concluding in the autumn. Evidence will be broadly
4 chronological, so starting with applicants who were in
5 care toward the start of the relevant period. That
6 evidence is in the process of being scheduled at
7 present, and therefore no firm dates can be provided
8 until the work is complete. There are a substantial
9 number of witnesses.

10 Thereafter, at the end of the case study, it is
11 intended to lead evidence from some other Local
12 Authorities and a voluntary organisation, as well as
13 perhaps recalling some of the witnesses from phase one.
14 At that point, the focus will be primarily on responses
15 to abuse, including, importantly, evidence which will
16 have been led by that time.

17 As Your Ladyship will be aware, primary
18 responsibility for the provision of fostering services
19 lies with Local Authorities, who are, of course, also
20 responsible for children in care. Voluntary
21 organisations also provide foster carers with whom Local
22 Authorities may place children in their care.

23 It is perhaps noteworthy that some of those who are
24 responsible for the provision of foster care, who have
25 provided responses to the section 21 notices issued by

1 the Inquiry and from whom witnesses will be giving
2 evidence have not sought leave to appear. That may
3 suggest that they do not consider themselves to have
4 a direct and substantial interest in this case study.

5 Whatever the reason, the lack of leave to appear
6 will not prevent them being asked to respond to the
7 evidence led.

8 Thank you.

9 LADY SMITH: Thank you, Ms Innes.

10 Before I move on to ask INCAS to address me,
11 I should perhaps add in relation to the last point you
12 made that this case study has been unique in the number
13 of late applications for leave to appear that we have
14 had, some of them extremely late. Allied to that have
15 been very late applications for WebEx applications.

16 This has caused difficulty in our administration,
17 and whilst of course I have an entirely open mind, it's
18 not a great way to start your engagement with this
19 Inquiry. I very much hope that as we move forward, that
20 everybody who is now engaged and on board recognises how
21 important it is that they continue doing so.

22 MS INNES: Thank you, my Lady.

23 LADY SMITH: INCAS and Mr Collins, you're here to address me
24 on behalf of INCAS. When you're ready. Thank you.

25

1 Opening submissions on behalf of INCAS by Mr Collins

2 MR COLLINS: Thank you, my Lady.

3 On behalf of INCAS, can I start by welcoming this
4 chapter of the Inquiry's work. Foster care in one form
5 or another has been a feature of childcare throughout
6 the history of Scotland, whether in the form of boarding
7 out, as it used to be known, or as it's now developed
8 into the regulated foster care system that we know
9 today.

10 The history and the historical development of this
11 care provision is set out very helpfully and very fully
12 in the report by Professor Kendrick and others from the
13 University of Strathclyde, which is contained within the
14 documentary release for this chapter of hearings and the
15 reference is LIT-000000025.

16 The remit of this Inquiry of course focuses upon
17 times within living memory, perhaps taking us back to
18 times around the Second World War and the post-war
19 years. With that in mind, it's interesting to note that
20 the Clyde Commission, reporting in 1946, reflected on
21 the provision of foster care, and I'm quoting here from
22 the Strathclyde University report at page 65:

23 "The Clyde Committee however stressed the value of
24 family in addressing the issues of homeless children and
25 it saw the solution in the foster care system.

1 Undoubtedly the solution of the problem is the good
2 foster parent. By this means the child should get the
3 nearest approximation to family life and receive that
4 individual treatment whereby it secures the necessary
5 opportunity to build up its own personality and equip
6 itself for the transition to independent and
7 self-reliance in later years."

8 The committee went on to recommend better selection
9 and inspection of foster parents, more specialised
10 training for Local Authority officials, along with
11 a standard minimum rate of payment to foster parents,
12 although financial gain must never be the main motive
13 for doing such work. The Commission highlighted the
14 need for improvements in the inspection and supervision
15 of foster placements.

16 The Clyde Commission was focused on homelessness and
17 though there are many other reasons why a child may come
18 to be in foster care, as we'll hear, their observations
19 remain pertinent.

20 As the Inquiry moves on now to consider the
21 provision of foster care, INCAS welcomes the opportunity
22 to consider how those concerns that were apparent in
23 1946 have been addressed and whether and to what extent
24 those stated objectives have been achieved.

25 INCAS is concerned that certain aspects of foster

1 care or boarding out be given consideration within this
2 chapter, and whilst I believe it's appropriate to set
3 out these particular concerns in opening statement, I do
4 so with comfort and the knowledge that these concerns
5 will no doubt be shared by counsel for the Inquiry in
6 preparing this chapter.

7 INCAS looks forward to full consideration being
8 given to the plight of those children boarded out in the
9 post-war years, to crofts or remote Highland locations.
10 Many of those children faced the trauma of removal to
11 a completely different cultural setting, perhaps similar
12 to that suffered by those who we heard about in the
13 child migration case study. They were put to work on
14 crofts as labourers, in many cases they were faced with
15 carers who didn't share the same language as the child.

16 We've heard from the survivors of child migration
17 and INCAS welcomes now the opportunity for those boarded
18 out at that same time to also be heard.

19 INCAS looks forward to consideration of whether the
20 Clyde Committee's ideal of the good foster parent was
21 one that has been pursued throughout the period of this
22 Inquiry's remit. Were there cases of children who
23 perhaps, because of developmental or behavioural issues,
24 were difficult to place in appropriate care? Were there
25 cases where such children were either placed in less

1 suitable care placements or allowed to remain in
2 placements that were clearly and obviously inappropriate
3 as a result of difficulties in finding alternatives?

4 The Clyde report stressed that financial gain should
5 never be the main motive for foster carers and INCAS
6 would ask that the Inquiry considers whether there were
7 examples of carers motivated by personal gain, whether
8 that be financial gain or the standing and reputation
9 within the community that has at times been afforded to
10 those who undertake such work.

11 If such examples exist, how did those with
12 responsibility for the oversight of such placements
13 react? Were the needs of the child always at the centre
14 of those arrangements?

15 The systems in place for vetting and selecting
16 foster carers failed to prevent those with ulterior
17 motives from being given the care of children. Was
18 enough done to try to safeguard those children in care?
19 Were appropriate efforts made to ensure that siblings
20 were placed together wherever possible?

21 INCAS invites the Inquiry to ask the difficult
22 questions on behalf of the survivors of abuse. INCAS
23 understands that survivors who have been subject to
24 abuse in one care setting often found themselves to be
25 the target of abusers when they were moved to another

1 placement. INCAS invites the Inquiry, wherever it is
2 appropriate, to consider whether those who had been
3 abused were more vulnerable to further abuse in other
4 placements and if so, to consider why that was the case.

5 There are many and varied reasons why children over
6 the years have found themselves to be cared for away
7 from the family. Whatever the circumstances of those
8 individual children, they all shared the vulnerability
9 of being removed from familial support.

10 When that care is provided within a foster care
11 setting, as opposed to in a structured setting with many
12 individual carers, the opportunity for day-to-day
13 monitoring of the standard of care is reduced.

14 The role of the good foster parent in providing care
15 for such vulnerable children must always be recognised
16 and appreciated. INCAS wishes to thank the Inquiry for
17 the opportunity to consider those cases where the care
18 provided did not meet that standard and to allow those
19 survivors who suffered as a result to be heard.

20 Thank you, my Lady.

21 LADY SMITH: Thank you very much.

22 I'd now like to turn to Ms O'Neill for Scottish
23 Ministers, please.

24 Opening submissions on behalf of Scottish Ministers by

25 Ms O'Neill

1 MS O'NEILL: My Lady, in line with the Inquiry's guidance as
2 to the brevity of opening statements, a short written
3 statement was prepared and lodged at the end of last
4 week. I adopt that statement and make the following
5 short submissions in support of it.

6 LADY SMITH: Thank you.

7 MS O'NEILL: The Scottish Ministers continue to have
8 an interest in all aspects of the Inquiry's work and to
9 be represented throughout the hearings of evidence from
10 applicants and others. My Lady, that includes
11 attendance virtually as well as physically and I say
12 that in the event that there are applicants giving
13 evidence who do not see representatives of the Scottish
14 Ministers attending: they are attending every hearing of
15 evidence.

16 As Ms Innes mentioned in her opening submission, the
17 operation of foster care and kinship care is principally
18 a matter for Scottish Local Authorities rather than the
19 Ministers. Nevertheless, the Scottish Ministers have
20 a direct interest in this aspect of the Inquiry's work,
21 because the Ministers are responsible for the
22 over-arching policy framework within which foster care
23 and kinship care are delivered. Policy responsibility
24 sits with the Directorate for Children and Families.

25 The Scottish Government wants and needs to

1 understand the nature and the extent of the abuse
2 suffered by the survivors who have engaged with the
3 Inquiry and how that abuse was able to happen.

4 It appreciates that the evidence of these survivors
5 may lead the Inquiry in due course to make
6 recommendations about the further regulation of foster
7 care and kinship care.

8 As far as recommendations for future reform are in
9 contemplation, the Scottish Government is conscious that
10 the Inquiry will be aware of the outcome of the
11 Independent Care Review, otherwise known as "the
12 Promise". It may be of assistance to the Inquiry in
13 relation to this phase of its work and more widely to
14 have evidence from the Scottish Government in due course
15 on the work that is under way to implement the Promise
16 and the government would be happy to provide that
17 evidence by whatever means would be most useful to the
18 Inquiry.

19 Implementation includes measures to improve the
20 experience of children in fostering and kinship care
21 environments, but extends much more widely and is
22 a significant development in relation to the care of
23 children in Scotland.

24 Finally, my Lady, the Scottish Government has
25 a direct interest in supporting those who were abused

1 while in foster or kinship care and ensuring that they
2 secured acknowledgement of and accountability for the
3 abuse that they experienced. The Scottish Government
4 will reflect on all evidence given during these
5 hearings, including evidence that may relate to how the
6 government has responded and continues to respond to
7 survivors of abuse.

8 My Lady, that's the opening submission for the
9 Ministers.

10 LADY SMITH: Thank you.

11 Can I now turn to the opening submissions for the
12 Lord Advocate, please. Ms Laurie, when you're ready.
13 Opening submissions on behalf of COPFS by Ms Laurie

14 MS LAWRIE: My Lady, I'm grateful for the opportunity to
15 make this opening statement on behalf of the Lord
16 Advocate. As with previous phases of the Inquiry, the
17 Lord Advocate's interest in the work of the Inquiry
18 stems from her responsibilities as head of systems of
19 criminal prosecution and investigations of deaths in
20 Scotland.

21 The Lord Advocate has responsibility for Scotland's
22 prosecution service, the Crown Office and Procurator
23 Fiscal Service, often shorted to COPFS. These are
24 responsibilities the Lord Advocate exercises
25 independently of any other person.

1 COPFS plays a pivotal role at the heart of the
2 criminal justice system and accordingly has important
3 responsibilities in relation to allegations of criminal
4 conduct, involving the abuse of children in care in
5 Scotland.

6 During this particular case study, which will focus
7 on the abuse of children in foster care, it is
8 anticipated that the Inquiry may hear evidence about
9 COPFS involvement in relation to the prosecution of
10 offences committed against children within the foster
11 care setting.

12 Given this involvement, COPFS was asked to assist
13 this phase of the Inquiry by providing details of cases
14 that concern the abuse of children within the foster
15 care setting.

16 I would like to take this opportunity to explain why
17 COPFS was unable to provide precise data in such cases
18 and the steps taken by COPFS to proactively assist the
19 Inquiry in identifying cases of abuse of children in
20 foster care.

21 COPFS uses a live operational case management
22 system, specifically designed to receive criminal and
23 death reports from the police and other specialist
24 reporting agencies. The operational case management
25 system comprises several electronic systems that are

1 used together to manage case work.

2 A wide variety of information is held on these case
3 management systems and these systems are structured for
4 COPFS's operational needs.

5 These case management systems are developed and
6 maintained by COPFS information systems division. Each
7 case that is reported to COPFS by the police or other
8 specialist reporting agency has a designated reference
9 number, known as a PF reference number. This reference
10 is made up by two letters, which identify the area from
11 where the case originates, and eight numbers, which
12 identify the year in which the case was reported and
13 where the case falls in the chronology of reported
14 cases.

15 As a rule, information in the case management
16 systems is accessed by virtue of inputting the
17 appropriate PF reference number.

18 One of COPFS's case management databases, the PROMIS
19 database, allows a user to search for information in
20 a variety of ways beyond the inputting of a reference
21 number.

22 For example, it would be possible to search for
23 a case by the name of the accused person, which would
24 result in the return of data about all the cases
25 featuring an accused by that name.

1 During the course of this phase of evidence, it is
2 anticipated that evidence will be heard in respect of
3 the emotional, physical and sexual abuse of children in
4 foster care and that the behaviour described may fall
5 within a number of different categories of criminal
6 offence. There's no specific category of criminal
7 offence that is particular to abuse in the foster care
8 setting. Given the breadth of criminal offences and the
9 disparate loci of that offending, whether a complainer
10 is in foster care or whether the offending took place
11 within the foster care setting is not a category in
12 which it is possible to search.

13 With the COPFS case management systems, there are
14 some categories of offences that have a modifier
15 attached to them. A modifier is a means of recording
16 additional information about a charge. For example, in
17 respect of offences under the Misuse of Drugs Act 1971,
18 it is possible to add a modifier which details the exact
19 drug the offence relates to. There's no modifier in
20 respect of offences committed against children who are
21 in foster care, and, as such, it is not possible for
22 a user to search COPFS systems on that basis.

23 In order to illustrate the difficulty of providing
24 the Inquiry with precise data on certain cases of
25 interest to the Inquiry, in May 2016 the COPFS

1 information systems division undertook a pilot exercise
2 whereby the raw data behind the case management systems
3 was searched. A search of standard police reports, or
4 SPRs, submitted in the Aberdeen area were searched for
5 the term "foster". An SPR is the document submitted by
6 the police when an accused is reported to COPFS. The
7 search was in respect of SPRs from 2000 until 2016. At
8 the time of the pilot, there were around 173,400 SPRs
9 for Aberdeen cases from the year 2000 onwards. From
10 a search of the raw data, COPFS information systems
11 division identified 855 SPRs containing the word
12 "foster". Non-Aberdeen SPRs account for around
13 95 per cent of all SPRs. As such, it would appear that
14 a search across SPRs in the COPFS database up to 2016
15 would result in identification of around 17,100 cases.

16 The 855 SPRs identified proved on examination to
17 include cases where an accused person was named Foster,
18 cases where a witness was named Foster, cases where the
19 word Foster appeared for some reason in the SPR and
20 cases where children of accused were in foster care and
21 this was noted as background information on the accused,
22 not because the children were necessarily involved in
23 the case.

24 Additional manual checks would be required in every
25 single case in order to identify the very small subset

1 of those cases where a foster child was in fact
2 a complainer.

3 While recognising that it was not possible to
4 interrogate the COPFS case management systems to obtain
5 precise data, COPFS sought to proactively assist the
6 Inquiry by publishing announcements on the COPFS
7 internal intranet in autumn 2021 asking staff to
8 identify cases involving abuse in foster care of which
9 they were aware to the COPFS specialist team.

10 As a result, a number of COPFS staff got in touch
11 with the specialist team to highlight cases that may be
12 of interest to the Inquiry. In total, 31 cases were
13 highlighted by staff. Some of the highlighted cases
14 were cases of which the Inquiry was already aware and in
15 some of the highlighted cases the offending post-dated
16 17 December 2014.

17 However, a total of 15 cases, which included 20
18 accused, fell within the requisite date parameters and
19 COPFS was in a position to pass details of those cases
20 to the Inquiry.

21 COPFS has given careful consideration as to whether
22 going forward there is a way in which it would be
23 possible to identify cases within the case management
24 databases that involve offending against children who
25 are or were at the time of the offending in a foster and

1 residential care setting.

2 With the assistance of COPFS information systems
3 division, a new abuse of children within a foster and
4 residential care setting code has been created for use
5 within the COPFS PROMIS database. This code will be
6 manually added to cases that are reported to COPFS and
7 pertain to the abuse of children within a residential
8 care setting.

9 Whilst this will not enable COPFS to track cases
10 that have been reported historically, it will, going
11 forward, enable COPFS to track and gather data on the
12 abuse of children within the residential care setting.

13 In conclusion, may I once again repeat the Lord
14 Advocate's public commitment first to supporting the
15 Inquiry's work and to contributing positively and
16 constructively to that work, and, secondly, to the
17 effective, rigorous and fair prosecution of crime in the
18 public interest consistently and for all, including the
19 most vulnerable in our society.

20 Unless I can be of further assistance, my Lady, that
21 concludes the opening for the Lord Advocate.

22 LADY SMITH: I have just one query that you may not be able
23 to answer, and I hear what you say about having
24 discovered that it wasn't possible to search for
25 children who had been in foster care who had become

1 complainers in prosecutions. Are steps being taken to
2 change that for the future so that it will be possible
3 easily to identify where any cohort of foster care
4 criminal cases is?

5 MS LAWRIE: That was the purpose, my Lady, of adding this
6 code, it's abuse of children within a foster and
7 residential care setting.

8 LADY SMITH: Right, so that should pick up any existing
9 investigation as well as any existing case, should it?

10 MS LAWRIE: Going forward, my Lady. The limitation is
11 looking backwards.

12 LADY SMITH: Yes, I get that. Are you confident that the
13 importance of implementing that system for the future
14 has now been taken on board?

15 MS LAWRIE: I would like to say that it was. I know that
16 it's something that has also been identified and
17 addressed with case preparers, those who are responsible
18 for inputting. I understand there's going to be
19 a period of training.

20 LADY SMITH: Good. Thank you very much.

21 We have, I think, representation for -- is it Police
22 Scotland next we're going to, Ms Innes, or am I out of
23 order?

24 MS INNES: Yes, I think we have representation from the
25 police, Ms Pender.

1 LADY SMITH: Yes, Ms Pender.

2 Thank you.

3 Opening submissions on behalf of Police Scotland by

4 Ms Pender

5 MS PENDER: Thank you, my Lady. I'm grateful for the

6 opportunity to make this opening statement --

7 LADY SMITH: Ms Pender, could I just ask you to pull your

8 microphone a little nearer to you for everybody's

9 benefit, and particularly the stenographers who need to

10 hear you through the system.

11 MS PENDER: Thank you, my Lady, I'll begin again.

12 I'm grateful for the opportunity to make this

13 opening statement on behalf of the chief constable of

14 the Police Service of Scotland.

15 Firstly, the chief constable wishes to express

16 sympathy to all survivors of childhood abuse, including

17 survivors who have experienced abuse within foster care.

18 Police Scotland remains committed to delivering its

19 response to the Inquiry and ensuring that all relevant

20 information held is provided in compliance with the

21 terms of notices issued under the Inquiries Act 2005.

22 This information includes policies, procedures and

23 documents relating to investigations into the abuse and

24 neglect of children in establishments falling under the

25 Inquiry's remit.

1 With regards to this phase of the Inquiry's
2 hearings, Police Scotland has identified and provided
3 all material meeting the terms of request from the
4 Inquiry relating to previous police investigations into
5 the abuse and neglect of children within foster care.

6 Police Scotland also wishes to inform the Inquiry
7 that in keeping with its continued commitment to
8 non-recent investigations, it is currently conducting
9 a number of investigations across Scotland into
10 non-recent child abuse within foster care.

11 Police Scotland continues to build on its engagement
12 with adult survivors of childhood abuse, seeking views
13 and consulting with survivors, support services and
14 statutory partners in an effort to enhance public
15 confidence and improve service provision to adult
16 survivors.

17 Police Scotland recognises the importance of using
18 organisational learning to ensure its staff have the
19 capabilities and skills required to effect continuous
20 improvement. As such, Police Scotland will take into
21 account any good practice or areas of learning that may
22 be identified from this phase of the Inquiry's hearings,
23 as part of its commitment to developing and improving
24 its service provision.

25 Police Scotland remains committed to child

1 protection, both locally on a daily basis as a core
2 statutory child protection agency but also nationally in
3 partnership with multi-agency and strategic leadership
4 groups to implement continuous improvements and make
5 a positive contribution to protecting Scotland's
6 children, both now and in the future.

7 My Lady, that is the opening submission we have for
8 the chief constable.

9 LADY SMITH: Thank you very much.

10 I'd now like to turn to the representation for the
11 Scottish Social Services Council, often referred to as
12 SSSC. Is it Mr Weir? Yes, good morning, thank you.

13 Opening submissions on behalf of SSSC by Mr Weir

14 MR WEIR: Thank you for allowing me the opportunity to
15 provide this opening statement on behalf of the Scottish
16 Social Services Council for this phase of the Inquiry.
17 Your Ladyship may recall that we were invited to give
18 evidence to the previous phase of the Inquiry and during
19 my opening statement I gave more information on the
20 SSSC, how we came into being and touched on our
21 governance arrangements. I don't intend to say any more
22 on that, other than to remind Your Ladyship that we are
23 the regulator for the Social Services workforce in
24 Scotland. If Your Ladyship would like more detail about
25 our organisation, then I am, of course, very happy to

1 provide this.

2 LADY SMITH: I well remember what you helped me with on the
3 previous occasion, Mr Weir, thank you.

4 MR WEIR: Thank you.

5 The SSSC does not regulate foster carers, however,
6 we do receive complaints about social workers'
7 professional practice and how they support foster
8 placements. Our interest in this phase of the Inquiry
9 is therefore to assist by providing information about,
10 firstly, specific fitness-to-practice cases involving
11 social workers practice relating to foster care and,
12 secondly, the development of the standard for foster
13 care.

14 To that end, we continue to engage openly with the
15 Inquiry and are committed to providing the Inquiry with
16 any information you need to ensure you're able to fully
17 consider these matters and we will continue to do this
18 for as long as we can be of help.

19 Your Ladyship will hear from one witness on behalf
20 of the SSSC, Maree Allison, who Your Ladyship may recall
21 is our director of regulation. There are 10,766 social
22 workers on our register and 2,609 of those have been
23 referred to the fitness-to-practice department for
24 investigation. Of those, there have been 269 sanctions
25 imposed at the time of our submission to the Inquiry.

1 LADY SMITH: Over what period is that, do you know?

2 MR WEIR: Over our entire existence, so from our

3 establishment, 2001.

4 LADY SMITH: So 20-odd years now?

5 MR WEIR: Yes.

6 LADY SMITH: Thank you.

7 MR WEIR: We have assessed six of those to be about the

8 social workers' practice relating to foster care.

9 In relation to the standard of foster care, we have

10 a workforce development remit which extends beyond the

11 registered workforce. In 2014, the Scottish Government

12 asked us to develop a framework for learning, which

13 applies to foster carers and foster care organisations

14 in Scotland.

15 This work was overseen by the Foster Care Review

16 Implementation Reference Group, which was chaired by the

17 Foster Care Review.

18 Membership included the Scottish Government, CELCIS,

19 Care Inspectorate, Social Work Scotland, foster carers

20 and COSLA.

21 The SSSC was responsible for developing and

22 consulting on the standards. As part of that process,

23 a number of areas of concern were prevalent, including

24 doubts about the appropriateness of supervising social

25 workers carrying out the assessor role, the capacity to

1 accommodate the assessor roles within current
2 structures, the lack of uptake in qualifications among
3 foster carers and the time they would have to study.
4 The standard was published in November 2016.

5 Maree is very happy to answer any specific questions
6 the Inquiry has in these areas and welcomes the
7 opportunity to give evidence on behalf of the SSSC.

8 Finally, I would like to reiterate from my previous
9 opening statement that the SSSC is committed to
10 continually reviewing and improving how we regulate the
11 social services workforce, we welcome any
12 recommendations that Your Ladyship makes in this area
13 and will consider them very carefully to make sure users
14 of services are protected as much as possible in the
15 future.

16 Thank you, my Lady. Those are my opening
17 submissions on behalf of the SSSC.

18 LADY SMITH: Thank you very much.

19 Now can I turn to Glasgow City Council, please,
20 Mr Pugh.

21 Opening submissions on behalf of Glasgow City Council by

22 Mr Pugh

23 MR PUGH: Yes, good morning, my Lady. Glasgow City Council
24 is grateful to be able to appear and to make submissions
25 within this case study concerning foster care. The

1 Council doesn't intend to say much this morning, the
2 time for saying more will be once the evidence has been
3 heard.

4 The Council is, as I'm sure Your Ladyship is aware,
5 the largest in Scotland. For most of its history it has
6 been a standalone entity. From 1930 the Glasgow
7 Corporation, and, since 1996, Glasgow City Council.

8 However, for the period between 1975 and 1996 it
9 formed the Glasgow District of Strathclyde Regional
10 Council.

11 In whichever form, the Council has been responsible
12 over many decades for fostering out tens of thousands of
13 children. The Council's practices around fostering have
14 changed over years, often in response to the
15 availability of foster carers, the developing
16 understanding of what's best for children or in response
17 to inquiries and changes in the law. The modern
18 practice of fostering is a long way from the practices
19 that pertained in the past.

20 Whilst fostering offered safety and sanctuary to
21 many children, those who benefitted from the good foster
22 parent, it was not that way for all. The Council
23 accepts that some children were abused within foster
24 care, and at the outset to this phase of the Inquiry,
25 my Lady, I can say that the Council's sympathy is with

1 anyone who survived such abuse. The Council considers
2 that the abuse of children in whatever form is always
3 reprehensible.

4 The challenge within foster care is that children
5 have, over many decades, been placed within family
6 units. While that has many benefits compared to some
7 alternatives, it comes with the consequence that
8 children are placed into the care of those whose actions
9 are not supervised daily by the Council.

10 Of course that makes selection, supervision,
11 training of foster carers, together with empowering
12 fostered-out children and hearing their views, all the
13 more important. Those are matters in which practice has
14 developed and improved over many decades and those are
15 undoubtedly issues that this Inquiry will explore in
16 detail over the coming weeks.

17 My Lady, the Council will listen carefully to the
18 evidence in order to address what more needs to be said
19 on its behalf at the close.

20 However, at the outset, I wish to make three points.

21 Firstly, my Lady, the Council sees its role here as
22 being to assist the Inquiry, both in its section 21
23 response and the assistance given to Abrams and Fleming
24 in their detailed study, which focuses largely on
25 Glasgow. The Council has striven to assist.

1 That assistance will continue throughout this case
2 study. It is anticipated that one senior member of the
3 Council's social work department will give evidence
4 during this first phase of the Inquiry and it will be
5 learned what more is to follow further down the line.

6 The Council has produced documents to assist the
7 Inquiry, as well as those documents strictly concerning
8 only Glasgow the Council has produced documents relating
9 to the former Strathclyde Regional Council, whose
10 archive it holds. I have an open line to the Council's
11 archivist, Irene O'Brien, who is specifically mentioned
12 as having provided assistance to Abrams and Fleming in
13 their work, my Lady.

14 Secondly, my Lady, the Council does not come here to
15 challenge the accounts of applicants. The Inquiry's
16 terms of reference are understood. In particular it
17 understands that within the Inquiry's remit is the need
18 to consider both the abuse suffered by children and
19 whether there are any systemic failures leading to that
20 abuse.

21 It also understands that it's not here to paint
22 an alternative account of foster care focusing on those
23 who benefitted from it, other than in framing what
24 foster care ought to have looked like those matters are
25 largely irrelevant.

1 Instead, my Lady, the Council is here to listen to
2 the evidence of applicants who were abused while
3 fostered out by it under its care.

4 The third point, my Lady, is that it's intended,
5 within the constraints of a job that can often have very
6 urgent demands, to have a senior member of the Council's
7 health and social care partnership available to listen
8 to the accounts of those who will testify to abuse
9 whilst under the Council's care.

10 That may be in person, it may be online. That may
11 depend in large part as to what the rules are at the
12 relevant time, my Lady.

13 LADY SMITH: Thank you.

14 MR PUGH: The purpose of doing so is because the evidence of
15 those who have suffered abuse is of the utmost
16 importance and listening to it to allow the current
17 social work department to respond properly and fully to
18 the matters being considered is essential.

19 Unless there's anything else I can help with,
20 my Lady, that's all I intend to say in opening.

21 LADY SMITH: Thank you for that, Mr Pugh, and for the
22 assurances regarding the depth and nature of the
23 Council's interest.

24 Another Council I turn now to is the City of
25 Edinburgh Council, Ms Springham.

1 Opening submissions on behalf of City of Edinburgh Council

2 by Ms Springham

3 MS SPRINGHAM: Thank you, my Lady, and good morning. The
4 City of Edinburgh Council appreciates the opportunity to
5 make a brief opening statement before the Inquiry starts
6 its important work in looking at the experience of
7 children in foster care.

8 In this opening statement I will say something about
9 three matters.

10 Firstly, the Council and its predecessors.

11 Secondly, the Council's provision of information to
12 the Inquiry.

13 Finally, the Council's acknowledgement that some
14 abuse took place in respect of children cared for in
15 foster care.

16 The City of Edinburgh Council came into existence in
17 1996 following local government reorganisation. Before
18 then, the current functions of the City of Edinburgh
19 Council in relation to foster care were part of Lothian
20 Regional Council.

21 Lothian Regional Council, as I'm sure the Inquiry is
22 aware, covered a much larger geographical area than is
23 covered by the City of Edinburgh Council. Lothian
24 Regional Council was in existence from 1975 to 1996.

25 Before 1975, the Local Authority for Edinburgh was

1 Edinburgh Corporation.

2 In the period which the Inquiry is considering, 1930
3 onwards, there were therefore three different
4 organisations in existence.

5 That has impacted on the second matter which I wish
6 to touch on, namely the provision of information by the
7 Council to the Inquiry.

8 As is evident from the experience of other
9 organisations, searching back almost a century for
10 records is no easy matter. That is so even where the
11 organisation remains the same. It is even more
12 difficult when there have been reorganisations such as
13 in local government. I'm afraid, my Lady, this is
14 compounded by the fact that Lothian Regional Council had
15 no professional archival presence or a centralised
16 records management programme to manage social work
17 client records during its years of operation.

18 Nonetheless, the Council has made considerable
19 efforts to provide as much information to the Inquiry as
20 can be found and has established a dedicated permanent
21 team to assist with this process and to support the care
22 experienced in accessing their records.

23 The Council estimates that over 28,000 children were
24 in foster placements between 1930 and 2015. That figure
25 is an underestimate, because the Council has not been

1 able to locate annual figures between 1973 and 1999.
2 There were also thousands of foster carers over that
3 period. The precise figure is unfortunately impossible
4 to state because of the way in which information was
5 recorded at that time.

6 The third and final matter which I wish to address
7 is the Council's acknowledgement that some abuse took
8 place in respect of children cared for in foster care.
9 Abuse within the care system was examined by an inquiry
10 commissioned by the City of Edinburgh Council, which
11 reported in 1999, known as the Edinburgh Inquiry or as
12 the Marshall Inquiry.

13 The 1999 report, "Edinburgh's Children", produced by
14 that Inquiry, made a number of recommendations directly
15 relating to the fostering services provided by the
16 Council. All of the recommendations contained in the
17 Edinburgh's Children report were accepted and
18 implemented into practice and policy by the Council.

19 The Council has, nonetheless, identified from
20 records 126 allegations of abuse within foster care
21 services up until December 2014. The Council
22 acknowledges that there may be other allegations and
23 incidents of abuse that it has not yet identified. The
24 Council knows of four individuals who were prosecuted
25 and convicted, three were registered as foster carers,

1 the fourth was the son of a foster carer. The details
2 are contained in the Council's response to the Inquiry.

3 The abuse of children in whatever form is utterly
4 abhorrent. Children who come to the attention of
5 a Local Authority social work department generally have
6 already been subject to adverse childhood experiences.
7 A placement with a foster carer is designed to provide
8 the child with the security, stability, guidance and
9 support missing from their lives. The Council deeply
10 regrets and apologises for any abuse which any child
11 placed in foster care by it or its predecessors may have
12 experienced. It's also committed to supporting those of
13 its care experience community who come to it now seeking
14 what answers and what aid it can provide today.

15 The Council stands ready to assist the Inquiry in
16 investigating what abuse took place and understanding
17 how to reduce, if not eliminate, the risk of any such
18 abuse taking place in the future.

19 The Council's chief social worker, Ms Jackie Irvine,
20 is scheduled to give evidence to the Inquiry as part of
21 phase one.

22 Unless there's any points, my Lady, that concludes
23 the opening statement for the City of Edinburgh Council.

24 LADY SMITH: I have nothing else. Thank you very much.

25 If I can now turn to East Lothian Council, please,

1 Mr Watson.

2 Opening submissions on behalf of East Lothian Council by

3 Mr Watson

4 MR WATSON: I'm obliged, my Lady. My Lady, I do appear on
5 behalf of East Lothian Council this morning. Also
6 present, albeit virtually, is Emma Clater, the service
7 manager for children and young people.

8 My Lady, East Lothian Council is grateful for the
9 opportunity to take part in this case study. That
10 participation will allow them to listen to, reflect on
11 and to respond to the evidence of applicants,
12 particularly, of course, those who speak to their
13 experiences in East Lothian.

14 East Lothian Council was formed on the
15 disaggregation of Lothian Regional Council in 1996. The
16 Council therefore has over 20 years of direct experience
17 of childcare, including fostering within and after the
18 period of interest to the Inquiry.

19 Prior to the formation of Lothian Regional Council
20 in 1975, the predecessor authority was East Lothian
21 County Council. Where possible, the Council has also
22 responded in respect of that authority.

23 However, to a large extent, records predating the
24 formation of regional councils in 1975 are not now held
25 by East Lothian Council.

1 Before 1975, there was a joint committee of East
2 Lothian County Council, Midlothian County Council and
3 Peeblesshire County Council involved in social work
4 relating to the care of children and including
5 fostering, at a tier below each council.

6 Those councils retained individual responsibility
7 but worked, at least in part, together, and East Lothian
8 Council will strive to respond, as far as is possible,
9 in respect of that period also.

10 East Lothian Council has sought to respond to
11 section 21 notices from the Inquiry. They have received
12 follow-up questions and again have provided
13 a supplementary report to address those points,
14 including the methodology adopted for the sampling
15 process of records for the purposes of the Inquiry.

16 They have provided their available policies and set
17 out to demonstrate how those were reviewed and updated
18 across the years.

19 If there are further queries as the applicant
20 evidence progresses, East Lothian Council will be very
21 happy to undertake further searches and to answer
22 specific queries. They are committed to assisting the
23 Inquiry as fully as possible.

24 They are also committed to listening to the
25 survivors of abuse. The Council knows from their own

1 records of a number of occasions when a foster child did
2 suffer abuse. Where there are applicants who suffered
3 abuse while in foster care within East Lothian, the
4 Council will be present to hear that evidence, to
5 reflect on it and, at a later stage, to respond to it.

6 However, even in advance of that, East Lothian
7 Council wants to make express their commitment to the
8 ongoing improvement of safeguarding for children within
9 their care. To any child who suffered abuse while in
10 their care, they offer a sincere apology.

11 To those who are in care now, they renew their
12 commitment to listen, to learn and to seek to adopt best
13 practice. They hope that this Inquiry will help share
14 and indeed to shape best practice for the coming years.

15 East Lothian Council well understands the
16 responsibility upon them and they commit themselves
17 wholeheartedly to the work of this Inquiry, so that the
18 wrongs of previous years within foster care may not be
19 repeated.

20 My Lady, that concludes the opening submission on
21 behalf of East Lothian Council, unless I can assist any
22 further.

23 LADY SMITH: Thank you very much for East Lothian.

24 Now, I understand you also represent East
25 Dunbartonshire, Mr Watson, is that correct?

1 Opening submissions on behalf of East Dunbartonshire Council

2 by Mr Watson

3 MR WATSON: I do indeed, my Lady.

4 At the outset, may I pass on the thanks of those
5 instructing me to Your Ladyship for allowing them leave
6 to appear at a late stage. They are grateful to
7 Your Ladyship for granting that application, but they
8 are grateful also to Your Ladyship and indeed to the
9 solicitors to the Inquiry for dealing with that
10 application so swiftly.

11 LADY SMITH: Thank you. It was very late, Mr Watson.

12 MR WATSON: It was, my Lady.

13 My Lady, East Dunbartonshire Council is keen to
14 assist the Inquiry as the case study progresses, to
15 listen to evidence that relates to them directly or
16 tangentially, and to provide more detailed submissions
17 at the close of this case study to anything that has
18 arisen.

19 With that in mind, let me restrict this opening
20 submission to three very short points.

21 First, East Dunbartonshire Council is one of the
22 successor authorities following the disaggregation of
23 Strathclyde Regional Council in 1996. Their assistance
24 to the Inquiry is therefore primarily for that period.

25 They have sought to respond as fully as possible to

1 earlier eras within the scope of the Inquiry, but there
2 is no doubt that their records are of a different order
3 for the period of the current council structure.

4 Second, the Council has sought to provide a detailed
5 narrative of the structure of foster care over the
6 years, evidenced by the policies that were in place and
7 evidencing also the development of those policies as
8 they were reviewed and updated, either learning from
9 best practice or in the light of societal changes.

10 They developed both operational procedures and
11 separate guidance for fostering and have made that
12 available. They have kept those under review and
13 development and Caroline Sinclair, chief social work
14 officer, can speak to those developments when she gives
15 evidence later within this phase.

16 Thirdly, and finally, East Dunbartonshire Council
17 does want to be able to respond through this Inquiry
18 directly and with compassion to anyone who suffered
19 abuse in foster care under their auspices. A senior
20 representative of the Council will be present for all
21 applicant evidence relating to the Council, they will be
22 listening carefully to that evidence and indeed
23 following the evidence of applicants from other areas.

24 The Council is determined to ensure that they do
25 what they can to promote the highest standard of

1 on, let's see how we get on.

2 MR BLAIR: Thank you, my Lady.

3 The intention today rather is to highlight what
4 appear to the Council key areas.

5 At the outset I can advise my Lady that the
6 proceedings today are being watched by the chief social
7 work officer and the deputy chief social work officer of
8 the authority, and they are very grateful for that
9 opportunity.

10 Mr Hunter, who is the chief social work officer,
11 director of social work of the authority, will appear
12 and give evidence in due course.

13 Essentially the position of the Council is to
14 participate fully in this case study and to welcome the
15 opportunity to participate in this historic process.
16 The Council would wish to stress its intention of
17 assisting the Inquiry in every way that it can with the
18 making of findings of fact and ultimately and hopefully
19 in assisting the Inquiry to make any recommendations it
20 may see appropriate.

21 In doing so, the Council wishes to strive to learn
22 both from the good practice from the past but also,
23 sadly, from mistakes that inevitably will occur in any
24 authority.

25 This is with the aim of ensuring that all those who

1 are placed in foster care are supported in the best
2 possible way, according to their needs.

3 At the outset, the Council would wish to acknowledge
4 the suffering of all of those who have been subjected to
5 abuse of any kind while in foster care and the
6 tremendous courage of any of those who have come forward
7 to narrate their experiences to this Inquiry.

8 This serves as a salutary reminder to us all of the
9 need for vigilance where the care of the vulnerable is
10 concerned, the devastating consequences which can be
11 lifetime and life-lasting of abuse, and the importance
12 of seizing every opportunity to improve the protections
13 we can offer to the young and vulnerable in our society.
14 It is very much in that spirit that North Ayrshire
15 Council wishes to participate in this Inquiry.

16 The Council does accept that within its lifetime as
17 a Local Authority and within its predecessors, in terms
18 of the region and the predeceasing Ayr County Council
19 that abuse will have occurred, physical, sexual or
20 emotional.

21 It's also probable there may be other instances
22 where abuse took place that were not reported or where
23 records do not exist.

24 The Council would wish to use the Inquiry as a way
25 of openly and consciously recognising the occurrence of

1 abuse and apologising sincerely to those whose lives
2 have been impacted by the abuse they may have suffered
3 while in foster care.

4 In saying that, the Council wishes to stress that
5 its doors are open to anyone who wishes to come forward
6 and seek assistance from specially trained social
7 workers within the Council or others who can afford
8 support to try to deal with the consequences of any
9 abuse they may have suffered.

10 In terms of the locus of the Council and its aims in
11 participation, I've set out in some detail in the
12 submission what those aims are, but in summary I'd like
13 to highlight a couple of those aims.

14 The Council would like to highlight the important
15 role of fostering in nurturing and protecting children.
16 The Council would hopefully use this Inquiry as a way of
17 highlighting the strengths of the Council in this area,
18 in terms of its understanding of the legislation,
19 guidance and in good practice and to secure, if
20 appropriate, positive findings.

21 It would equally wish to show a recognition to this
22 Inquiry that from the outset the Council has been and is
23 willing to learn from and improve practice in relation
24 to this sector.

25 The Council hopes to do that through demonstrating

1 to the Inquiry that through -- in terms of its
2 commitment through its ethos and culture, as reflected
3 in policy documents produced to the Inquiry, which are
4 constantly updated and reflected on, that it operates
5 very much in accordance with national standards and
6 practice.

7 The Council would also wish to acknowledge the
8 important role of foster carers, without whom this very
9 valuable system could not operate, and to invite the
10 Inquiry in due course to make findings on the important
11 role and importance of foster carers.

12 In addition to hopeful evidence of adherence to the
13 law, the Council would stress that it recognises that
14 good practice is as important as the black letter law.
15 In that regard, this authority would hope to demonstrate
16 to the Inquiry that it continues to strive for
17 excellence, including through training, awareness
18 sessions, the reflection on emerging research in
19 relation to the signs of abuse and improved child
20 protection practices.

21 That being said, of course, as my Lady will be
22 aware, the Council does recognise that in terms of its
23 section 21 response there have been sadly instances of
24 abuse within the Council's remit.

25 Without being complacent, the position of the

1 Council is though that there would not appear to be
2 evidence of systemic abuse within the Local Authority or
3 its predecessors, subject of course to any limitations
4 in terms of evidence that might be available.

5 Abuse of any kind, even one case of abuse, is
6 of course abhorrent and the Council in no way is
7 complacent when it makes the point that its review in
8 terms of the section 21 response has hopefully
9 highlighted that on the whole the practice has been
10 good.

11 The Council does of course recognise there can be
12 areas of improvement and very much approaches this
13 Inquiry with the aim in view of learning from others,
14 everyone involved in the fostering process, how practice
15 can be improved.

16 Lastly, my Lady, the Council would also in due
17 course ask the Inquiry, if appropriate, to make
18 recommendations in relation to certain areas. For
19 example, in relation to the funding of foster care,
20 whether and to what extent funding issues may impact on
21 the quality of care and the detection of abuse and
22 whether the current level of support and training for
23 foster carers is appropriate.

24 My Lady, I simply wish to renew what I said at the
25 outset and again stress the seriousness with which North

1 instances of abuse within its service and that of
2 predecessor authorities, and these are set out of course
3 in the section 21 response. Again, this authority would
4 wish to use the process as a way of recognising and
5 acknowledging and indeed apologising to those lives that
6 have been impacted by the abuse suffered at the very
7 point at which they should have been in the greatest
8 care of all.

9 An apology can only go so far in addressing that
10 pain, and again this Council is open to anyone who
11 wishes to come forward to approach them for support that
12 they may feel that they could secure from the Council.

13 In relation to the locus of the Council and its aims
14 and participation, again I've endeavoured to set out
15 what those might be in some detail, but in particular
16 this authority would invite the Inquiry in due course to
17 accept that it has shown a continuous commitment to
18 improvement in practice and to learn from the mistakes
19 that are set out in the section 21 response.

20 This particular authority, perhaps consistent with
21 others, would also wish to stress the particularly
22 important role that fostering has within its social work
23 provision. It takes the view that foster care can
24 perhaps be regarded as a primary tool in its armoury of
25 protecting children in society from the risks of abuse

1 that may exist already in a family home or wider social
2 problems.

3 My Lady, in relation to how this might be shown, it
4 would be the submission of this Council that South
5 Ayrshire Council has shown and can show commitment to
6 the protection of children through a range of robust
7 policy documents, including the Services Plan, the
8 Shared Vision of the Council, Corporate Parenting Plan,
9 Parenting Promise, the Integrated Joint Board Strategic
10 Plan, the Well-being Pledge, among other documents, and
11 of course also through its affirmation to delivering the
12 principles in the UN Convention on the Rights of the
13 Child.

14 Apart from these broader positions, this authority
15 would also wish to stress to the Council its awareness
16 of the need to have in place robust and effective
17 practice and procedure, as well as an awareness and
18 knowledge of the law. In that regard, this Council has,
19 for example, supported the creation of a Champions Board
20 to champion the experiences of care-experienced children
21 and young people.

22 This Council also stresses the need for multi-agency
23 working, particularly through the implementation of
24 GIRFEC.

25 Of course there are issues in this authority and

1 those are set out in the section 21 response, and it is
2 the hope, the sincere hope, of this Council that it has
3 provided information which allows the Inquiry to
4 consider where mistakes have occurred, whether they have
5 been tackled effectively and timeously.

6 My Lady, drawing matters to a conclusion for this
7 authority, again there is a recognition of areas of
8 improvement. This is an ongoing process, and the
9 Council very much views this process, this Inquiry, as
10 key to further improvement within the Council.

11 In due course this Council may make recommendations
12 to the Inquiry. Among those recommendations is whether
13 foster carers are given an appropriate value by society,
14 whether they are sufficiently valued by society, and
15 whether there are other ways in which Local Authorities
16 can seek to recruit and indeed retain foster carers.

17 The Council would also wish to highlight the
18 importance of children having routine and systematic
19 access to specialist independent advocacy services.

20 My Lady, against those brief remarks and the whole
21 extended submission, South Ayrshire Council hopes to
22 participate in this Inquiry fully and to give the
23 Inquiry all the assistance it requires.

24 Those are the submissions for South Ayrshire
25 Council.

1 LADY SMITH: Can I invite you to move to another part of the
2 country then, please, Mr Blair, I think Midlothian?
3 Opening submissions on behalf of Midlothian Council by
4 Mr Blair
5 MR BLAIR: Midlothian. From west to east, my Lady, I'm very
6 much obliged.
7 Again, Midlothian Council very much welcome the
8 opportunity to be part of this Inquiry and to, with the
9 other authorities, learn from this process and to
10 reflect on the evidence that comes from all quarters,
11 whether children, persons formerly in care, experts and
12 other authorities, among others.
13 The Council has reflected and wishes to acknowledge
14 that there has been suffering within its area and within
15 the predecessor authorities, and wishes to acknowledge
16 that suffering and again to stress its enormous empathy
17 and sympathy and recognition of the tremendous courage
18 of those who have come forward to narrate their
19 experiences to this Inquiry.
20 Again, it's a reminder to this Council that one can
21 never be complacent.
22 My Lady, Midlothian Council has provided what I hope
23 is a helpful and detailed section 21 response, and
24 hopefully through that response, but also through
25 further material referenced in it and beyond, the

1 Inquiry will accept that this is a Council with
2 a vision, that the vision is that all children, young
3 people and adults and communities in Midlothian are
4 supported to be the best they can be. That's a quote
5 from the relevant children's services plan.

6 This is a Council which also considers its approach
7 reflects the principles of the Convention, the Human
8 Rights Act and the forthcoming and emerging Promise.

9 Given that, this Council also sincerely offers its
10 apologies to those who have been abused while in foster
11 care, it recognises that abuse and apologises for it.

12 Again, the Council recognises that where abuse has
13 occurred, those who may have been abused may have views
14 about the role of the Council and the efficacy of the
15 Council, and that is understandable, but equally this is
16 an authority that is committed to heal, and if there are
17 people out there taking part in this Inquiry who are
18 children in the system, former children or anyone who
19 has been abused within the foster care system in some
20 shape or form, to recognise that this is a listening
21 authority and an authority that is prepared to hear from
22 those with issues and indeed to offer what support it
23 can in going forward in their lives.

24 This is also an authority, my Lady, that very much
25 values the role of foster care and carers, and

1 a particular theme that emerged in the preparation of
2 this submission was the huge value placed by Midlothian
3 Council on fostering as a valuable means of ensuring the
4 best life, the best start in life for children born into
5 very difficult circumstances or those whose
6 circumstances change and become very difficult.

7 In terms of its aims in participating in this
8 Inquiry, this Council would hope to achieve a number of
9 aims, including: assisting, as with the other
10 authorities, the provision of an evidence base to assist
11 the Inquiry; to highlight the strengths of the Council
12 in terms of understanding of the law, guidance and good
13 practice; to secure findings on that knowledge; and to
14 learn from and improve practice in relation to
15 situations where abuse has occurred or was suspected.

16 In relation to good practice within this authority,
17 the Council has at its forefront the need to involve
18 children in their own care planning and in setting of
19 policies and procedures in furtherance of such national
20 measures as GIRFEC and SHANARRI.

21 The letter of the law and good practice are not the
22 whole picture, and this is an authority which wishes to
23 put before this Inquiry the notion, the vision, that the
24 ethos of the organisation is every bit as important as
25 the paperwork. It is the sincere hope of this authority

1 that the ethos of the Midlothian Council will be shown
2 up to be a positive one.

3 Areas where issues have emerged are of course
4 recognised in the section 21 response within the file
5 review and within the limitation of the records
6 available, given that this particular authority is
7 a successor to a regional authority, occurrences of
8 abuse have been found, some 23. These are detailed in
9 the section 21 response.

10 There are certain matters of note, six specific
11 matters have been raised within the response, and the
12 section 21 response in its submission attempts to engage
13 with those and to analyse where problems may have come
14 from and what reaction was taken and whether it was
15 appropriate, timely and proportionate.

16 Again, this is an authority that is very much
17 willing to learn from experience and to learn further
18 from this Inquiry in terms of how to make what is
19 hopefully good practice even better.

20 There are some recommendations for law reform or
21 change in policy or practice that this Council would
22 invite the Inquiry to consider, including but not
23 limited to the national review of the Children's Hearing
24 system as a consequence of the work undertaken by the
25 Promise, which highlighted areas for improvement and the

1 interface between that and the fostering system is
2 something that the Council would very much wish the
3 Inquiry to consider.

4 A further consideration in conclusion relates to the
5 expansion of the independent care sector, perhaps with
6 more attractive rates of recompense and whether and to
7 what extent that takes foster carers out of the Local
8 Authority services, at the same time against the
9 background of a rising number of children in care. The
10 Inquiry is invited by this Council in due course to
11 reflect upon the role of private foster care and whether
12 and to what extent that may have an impact on the
13 provision of Local Authority foster care.

14 My Lady, I simply repeat the position I said at the
15 outset. This is a learning authority, an authority that
16 wishes to benefit from this process. It very much
17 welcomes this opportunity.

18 LADY SMITH: Thank you, Mr Blair.

19 Finally, can I invite you to go north to Perth and
20 Kinross Council?

21 Opening submissions on behalf of Perth and Kinross Council

22 by Mr Blair

23 MR BLAIR: Indeed, my Lady, I'm crossing the river now to
24 sunny Perth.

25 Again, the Perth and Kinross Council is very

1 grateful for this opportunity to appear at this Inquiry
2 and to make known its position publicly.

3 This is a Council that again wishes to acknowledge
4 the suffering of all of those who have been subjected to
5 abuse of any kind in foster care and to publicly
6 recognise their courage, fortitude and strength of
7 character in coming forward and making their experiences
8 known.

9 This is a Council that accepts that within its
10 fostering service and those of its predecessor
11 authorities there have been incidents of physical,
12 sexual and emotional abuse. There may be other
13 instances where children experienced abuse and
14 ill-treatment where there are no records of that, and of
15 course, in the nature of abuse, there may be cases that
16 never come to light and sadly remain hidden.

17 This is a Council that apologises unreservedly to
18 those whose lives have been impacted by the abuse they
19 have suffered whilst in foster care. While an apology
20 can only go so far in addressing the pain they have
21 suffered and the lived experience, nevertheless it is
22 offered sincerely and wholeheartedly and unreservedly.

23 This is a Council that wishes to use the Inquiry as
24 a way of recognising that abuse, and again as a way of
25 offering to those who may have been abused its sincere

1 commitment to providing support in coming to terms with
2 that abuse and to seek out support from this Council if
3 children, young people, former care-experienced people
4 wish to come forward and share their experience of abuse
5 and seek help.

6 My Lady, this is a Council which hopes to show that
7 it has a vision and commitment to the protection of
8 those in foster care. For example, its Corporate
9 Parenting Plan, current to 2024, Our Promise to You,
10 sets out the Council's vision and commitment to children
11 and young people, expressed in a way that Perth and
12 Kinross will be the best place for all of our children
13 and young people, especially those with care experience,
14 to grow up in.

15 That reflects a national ambition that children and
16 young people should grow up in an environment where they
17 are loved, safe and respected, so that they can realise
18 their full potential.

19 The Tayside plan, it's a joint plan with the Angus
20 and Dundee City Councils, also has a clear vision as to
21 the treatment of all children and young people, and in
22 particular to ensuring they have the best start in life.

23 This is a Council that recognises the principles of
24 the UN Convention, the Human Rights Act and of course
25 the Children (Scotland) Act 1995 and subsequent

1 legislation. This is a Council with hopes that the
2 Inquiry will find there is a sound basis for the view
3 that whether there have been shortcomings, as there have
4 been within the authority, but on the whole this is
5 a Council that understands and understood its legal
6 obligations and seeks to deliver upon them.

7 In terms of the aims of participation of this
8 Council, again the Council would hope to achieve
9 a number of aims, including but not limited to securing
10 positive findings on good practice and to secure
11 findings on good practice could be better, to assist in
12 providing an evidence base on fostering practice to
13 properly inform the recommendations and findings of this
14 Inquiry, to highlight the strengths of the Council in
15 terms of its guidance, policy and practice.

16 This is a Council that has in place a number of
17 means of demonstrating what is hoped good practice,
18 including the capturing of the views of children through
19 a range of media, stemming from old-fashioned routine
20 social work visits but also through electronic
21 mechanisms, group work, routine access to advocacy and
22 age-appropriate methods for younger children by way of
23 examples of good practice and the culture that is so
24 important in building upon the legal framework.

25 There is a children's rights officer in place to

1 advocate on behalf of children in their daily lives.

2 These are only some of the examples which it's hoped
3 that this authority brings to this Inquiry and hopefully
4 examples that others can learn from and indeed insofar
5 as there may be problems with any of these forms of
6 practice, to learn how they can be made better.

7 There are of course records of failure within the
8 system, both historic and within the lifetime of the
9 immediate council. That is set out in Part D of the
10 response. There is no evidence of systemic abuse, of
11 failure within the Council, nor indeed within Perth and
12 Kinross as a Local Authority area generally among foster
13 care providers. That is not to downplay the importance
14 and seriousness of the 47 complaints that have been made
15 as detailed in the records, nor that three of those
16 cases led to convictions in court.

17 This is a Council which wishes to improve and it
18 does accept from the records provided that there are
19 areas where better training and support for staff as
20 well as carers may have avoided children being
21 traumatised further in their lives.

22 My Lady, this is also a Council which would invite
23 recommendations in due course, including but not limited
24 to, for example, the possibility of national guidance on
25 the recording and record-keeping to support best

1 practice, the improvement of advocacy services for
2 children and the continual need to address challenges
3 arising from recruitment and resources which arise when
4 seeking to place children in their home area of Perth
5 and Kinross.

6 My Lady, I simply reiterate the commitment of this
7 Council to participating fully and seriously in this
8 Inquiry.

9 LADY SMITH: Thank you very much, Mr Blair.

10 Let us go further north again, I think, Mr Crosbie,
11 you take us to Aberdeen. Is that right?

12 Opening submissions on behalf of Aberdeen City Council by
13 Mr Crosbie

14 MR CROSBIE: It is, my Lady, yes. Good morning.

15 I appear on behalf of Aberdeen City Council. I am
16 mindful, my Lady, of the Inquiry's request that opening
17 submissions be kept brief. In the circumstances, my
18 Lady will be aware that Aberdeen City Council's request
19 for leave to appear at these proceedings came about at
20 the eleventh hour and on behalf of the Council
21 I apologise for that and express the Council's gratitude
22 for leave to appear indeed being granted at short
23 notice.

24 In essence, my Lady, Aberdeen City Council took the
25 view that ultimately it would be best placed to assist

1 this Inquiry, having had access to the particular
2 materials disclosed to all participants. That reflects
3 both the substantial interest it has in both learning
4 from past mistakes in the placement and oversight of
5 children who were boarded out and in foster care and its
6 desire to place on public record its sincere and
7 heartfelt regret that any mistakes may have led to such
8 dreadful consequences for children who deserved better.

9 To be clear, Aberdeen City Council apologises
10 unreservedly to those to whom it was responsible who
11 suffered abuse in foster care, whether the Inquiry has
12 heard or will hear from each of those people or not, the
13 evidence is that vulnerable young people had their care
14 entrusted to their Local Authority and their Local
15 Authority did not always discharge that duty well
16 enough.

17 Children in foster care have always had the right to
18 expect a loving and supportive home life and Aberdeen
19 City Council's very sorry for those occasions when it
20 let children down.

21 Each and every mistake made in the past, whether
22 that was a failure to be proactive enough in minimising
23 risks of childhood abuse or whether it was a failure to
24 listen and respond appropriately to concerns of abuse is
25 inexcusable and Aberdeen City Council will not try to

1 excuse them now.

2 I say this in the knowledge that an apology can
3 never fully redress the pain that has been caused to
4 those who have suffered and who show incredible strength
5 despite the inevitable and ongoing consequences of
6 experiencing such suffering in their formative years.

7 The Council fully supports the ongoing work of this
8 Inquiry. I have no doubt that I'm not the first to be
9 in this room and say words to the effect of sunlight
10 being the best disinfectant, but that expression is
11 quite right. It's extremely important that Local
12 Authorities listen to those who experienced abuse in
13 foster care and it's equally important to learn from
14 their experiences.

15 People in Aberdeen in particular and particularly
16 young people in foster care in Aberdeen have the right
17 to expect that the modern system of foster care is fit
18 for purpose and their Council is grateful for the
19 opportunity to publicly reassure everyone that the
20 mistakes of the past will never be repeated.

21 This Inquiry will hear evidence from Graeme Simpson,
22 the chief social work officer for Aberdeen City Council,
23 who can assist in that regard. The Council is currently
24 responsible for the foster care of 240 children and that
25 responsibility is embraced wholeheartedly.

1 For the sake of relative brevity, my Lady, I will
2 close these submissions by reiterating Aberdeen City
3 Council's gratitude for the granting of leave to appear
4 and its eagerness to listen and learn from those who
5 will be giving evidence in the current phase of the
6 Inquiry.

7 LADY SMITH: Thank you, Mr Crosbie. Do I understand you're
8 also here for Aberdeenshire?

9 MR CROSBIE: No, my Lady, it's Angus Council.

10 LADY SMITH: Sorry, Angus. A little bit further south, yes.
11 Opening submissions on behalf of Angus Council by Mr Crosbie

12 MR CROSBIE: My Lady, yes, indeed I appear as well on behalf
13 of Angus Council and again I'm mindful of the request
14 for as brief as possible submissions in the
15 circumstances.

16 LADY SMITH: Thank you.

17 MR CROSBIE: Again, my Lady, Angus Council is very grateful
18 for the opportunity to participate in theses hearings in
19 its capacity as a Local Authority, constituted in its
20 current form in 1996, having previously been a district
21 of Tayside Regional Council. Representatives of the
22 Council are attending today by remote means and will be
23 following this phase of the Inquiry as it progresses.

24 My Lady, children in foster care have always had the
25 right to expect that loving and supportive home life

1 that I referred to earlier and Angus Council deeply
2 regrets and offers an unreserved and heartfelt apology
3 to those who were failed while in its care.

4 Those who give evidence to this Inquiry and those
5 who have suffered can be assured that Angus Council will
6 hear them and will learn from them. Angus Council
7 commits to protect children in foster care today,
8 tomorrow and into the future, and that commitment is
9 given without hesitation.

10 The Inquiry will hear evidence in due course from
11 Kathryn Lindsay, the chief social work officer for Angus
12 Council. While the start of her tenure with the Council
13 postdates 17 December 2014, so she cannot claim
14 firsthand experience of relevant events prior to then,
15 she will do her very best to assist the Inquiry in terms
16 of the provision and oversight of foster care in Angus
17 Council today.

18 The Council is currently responsible for the foster
19 care of exactly 100 children and the Inquiry can be
20 assured that it treats that responsibility with the
21 utmost care.

22 Again, my Lady, for the sake of relative brevity
23 I'll close my submissions simply by reiterating Angus
24 Council's gratitude to the Inquiry for its ongoing work
25 and to those who show such resilience in reliving

1 publicly such terrible experiences, which must never be
2 repeated.

3 LADY SMITH: Thank you very much, Mr Crosbie.

4 I'm going to break now just a little early for the
5 morning break and resume again in 15 to 20 minutes,
6 please.

7 Thank you.

8 (11.26 am)

9 (A short break)

10 (11.47 am)

11 LADY SMITH: I'd like to move now, please, over to
12 Mr Cheyne. Mr Cheyne, you're here, I think, for two
13 different Local Authorities. West Lothian Council,
14 first of all?

15 Opening submissions on behalf of West Lothian Council by
16 Mr Cheyne

17 MR CHEYNE: Yes, that's correct.

18 Can I perhaps begin by addressing the Inquiry in
19 relation to West Lothian Council.

20 First of all, I might echo some of the remarks made
21 by some of the other participants and express on behalf
22 of West Lothian Council their gratitude of being able to
23 participate in this Inquiry.

24 My Lady will perhaps know that they have made
25 extensive compliance in relation to the notice that was

1 served upon, they have a dedicated group of people who
2 have been putting together a relatively large number of
3 documents for the benefit of the Inquiry.

4 During the course of that, my Lady, of course one
5 can detect changing attitudes in the way in which foster
6 care has been dealt with by Local Authorities. Now, in
7 relation to West Lothian, they are of course a successor
8 to a previous authority, but they have done their very
9 best to comply, even with the historic documents, and
10 they have also answered some of the questions which have
11 been put to them the Inquiry in respect of clarification
12 of some of the matters which have arisen.

13 They welcome the opportunity to participate in this
14 Inquiry. They have a senior officer -- senior officers
15 are actually listening in and observing the proceedings
16 this morning, my Lady, and they stand by to give
17 evidence, if so required, in the fullness of time.

18 They have expressly instructed me to tender on
19 behalf of the authority the deep regret at the way in
20 which foster children in general over very many years,
21 many of them had been deeply failed by a system which
22 was only in part redolent of the social conditions of
23 the time, but was perhaps also the subject of a lack of
24 care, perhaps due to a lack of funding, over very many
25 years and decades, and that is a situation which I think

1 has been taken on board by West Lothian Council and
2 I know that they have done this, because I have their
3 instructions. They say that they wish fully to
4 participate in this ongoing Inquiry and to learn from it
5 in a way which perhaps has not been open to any of the
6 Local Authorities who are here present today, because
7 this is indeed a historic Inquiry which is subjecting
8 many decades of practice to the closest scrutiny I think
9 that there ever has been.

10 That's what I wish to say on behalf of West Lothian
11 council, unless my Lady has anything particular she
12 wishes to ask me.

13 LADY SMITH: Not at the moment, thank you, Mr Cheyne.

14 Dumfries and Galloway is also you, I understand,
15 yes?

16 Opening submissions on behalf of Dumfries and Galloway
17 Council by Mr Cheyne

18 MR CHEYNE: That's correct, my Lady.

19 Dumfries and Galloway are the statutory successors
20 to Dumfries and Galloway Regional Council and the former
21 district councils of Wigtown, the Stewartry of
22 Kirkcudbright, Nithsdale and Annandale and Eskdale.
23 They have also complied with the section 21 notice and
24 they have made very full compliance, from what I can
25 see. Also on behalf of, in historic terms, Dumfries

1 Town Council, they have produced a large number of
2 documents, dealing both historically and also they have
3 produced some policy documents.

4 Again I can say, my Lady, that officers of that
5 Council are participating in this Inquiry by WebEx at
6 the present moment and their senior social work officer
7 is again standing by to give evidence if so required.

8 Again, when one looks at the -- and this has been
9 a matter of discussion, consultation which I had with
10 those instructing me. When one looks at the witness
11 statements which have been produced for this phase of
12 the Inquiry, one cannot but be moved by an ineffable
13 sense of sadness that vulnerable children, often poor,
14 disadvantaged children, were treated by foster parents.
15 They had no voice and absolutely no redress, and I think
16 that I speak on behalf of Dumfries and Galloway Council
17 when I echo with others the confident expectation that
18 this Inquiry will give a voice to those brave
19 survivors -- and they are survivors, my Lady, when one
20 learns that many of them are now in their 60s and 70s,
21 and the lives that they've led, these people are
22 survivors and they need to be listened to. I can say on
23 behalf of those instructing me at Dumfries and Galloway
24 Council that they will learn and they will listen.

25 LADY SMITH: Thank you.

1 If I could turn next to Scottish Borders Council,
2 Mr Batchelor, you represent them, is that right?
3 Opening submissions on behalf of Scottish Borders Council by

4 Mr Batchelor

5 MR BATCHELOR: That's right, my Lady, thank you.

6 The Scottish Borders Council is one of Scotland's 32
7 Local Authorities. As its name suggests, it provides
8 Local Authority governance for the Borders region in the
9 south-east of Scotland. The population of the Local
10 Authority area is approximately 115,000.

11 Historically from 1930 to 1975 the area was managed
12 by four individual county councils, Berwickshire County
13 Council, Peeblesshire County Council, Roxburghshire
14 County Council and Selkirkshire County Council.

15 From 1975 until 1996, governance was managed by
16 Borders Regional Council.

17 From 1996 onwards, Scottish Borders Council has
18 provided Local Authority governance for the area.

19 The Council and its predecessor authorities have
20 a long history of fostering. In the times of the county
21 councils and the regional council, fostering was managed
22 through various committees, notably the Social Work
23 Committee of Borders Regional Council between 1975 and
24 1996.

25 In 1992, the Family Placement Team was established;

1 this is a centralised team of social work professionals
2 which continues to have responsibility for fostering
3 policy, procedure and practice. The provision of foster
4 care in Scottish Borders is now managed by the Scottish
5 Borders Fostering Service, which was first registered
6 with the Care Inspectorate in November 2005. Children
7 are placed through a mixture of direct placements with
8 foster carers and placements with independent providers
9 as well as currently two placements with another Local
10 Authority.

11 The number of children in foster placements has
12 varied over the years; however, as a general indication,
13 as at January 2020, 60 children were in foster care
14 placements across 42 households, with an additional 13
15 continuing care placements and 12 children in respite
16 placements.

17 The Council acknowledges that a number of children
18 placed in foster care have been subjected to physical,
19 sexual and emotional abuse and neglect. The Council
20 apologises to any child abused in its care.

21 It's likely that some specific cases will be looked
22 at throughout the course of this case study. For
23 example, in 2011 a Scottish Borders foster carer was
24 convicted of the sexual abuse of two children in his
25 care and sentenced to four years prison. In that case

1 and others where abuse and neglect in foster care has
2 been identified, the Council sought to examine the
3 reasons why and to consider what changes in policy or
4 practice would lower the level of risk in the future.

5 The Council is committed to providing a high
6 standard of care and to support children in foster care
7 and to foster carers. It's also committed to assisting
8 the Inquiry in its work and welcomes the opportunity to
9 learn from the evidence to and findings of the Inquiry.

10 LADY SMITH: Thank you, Mr Batchelor.

11 Now North Lanarkshire Council you also represent,
12 I think, yes?

13 Opening submissions on behalf of North Lanarkshire Council
14 by Mr Batchelor

15 MR BATCHELOR: I do, my Lady, thank you.

16 North Lanarkshire Council is located in the central
17 belt, covering an area from Cumbernauld and Kilsyth in
18 the north to Wishaw in the south, with its primary
19 administrative base in Motherwell. The population of
20 the Local Authority area is approximately 340,000.

21 From 1930 onwards, the history of the Local
22 Authority can be split into three distinct time periods.

23 From 1930 until 1975, the area of North Lanarkshire
24 fell within Lanarkshire, Dumbartonshire and
25 Stirlingshire County Councils.

1 From 1975 until 1996, the area fell within the
2 boundary of the former Strathclyde Regional Council.

3 From 1996 onwards, responsibility for delivering
4 public services in the area has been the responsibility
5 of North Lanarkshire.

6 The Council and its predecessor authorities were and
7 continue to be responsible for the provision of foster
8 care in line with their statutory authorities. Records
9 held in the Council archives indicate that in 1930, at
10 the start of the time period under consideration in this
11 case study, the Local Authority held a register of
12 children boarded out, along with details of where
13 children were boarded out and visits undertaken to those
14 placements.

15 It has been difficult to ascertain the precise
16 number of children in foster care within the North
17 Lanarkshire Council area over the years from 1930
18 onwards; however, the available figures indicate that
19 there were approximately 482 children in foster care or
20 kinship care placements in 2019. At the time of
21 compiling the section 21 response in April 2020, there
22 were 70 foster families and 38 supported carers. In
23 addition, there were 216 kinship carers providing formal
24 kinship care.

25 There have been many developments in governance,

1 practice, procedure and policy relating to foster care
2 over the years, which the Inquiry will likely wish to
3 consider.

4 Since 1 April 2004, the Council's fostering and
5 adoption services has been registered with the Care
6 Inspectorate and its predecessor organisations. The
7 team supporting foster carers, kinship carers, supported
8 carers and continuing care within North Lanarkshire are
9 located within a single children's carer service --

10 LADY SMITH: Mr Batchelor, could I put in a plea for
11 a little less speed?

12 MR BATCHELOR: Apologies.

13 LADY SMITH: Thank you. That would help.

14 If you just want to go back a sentence or two.

15 MR BATCHELOR: I'll restart that paragraph.

16 Since 1 April 2004 the Council's fostering and
17 adoption service has been registered with the Care
18 Inspectorate and its predecessor organisations. The
19 team supporting foster carers, kinship carers, supported
20 carers and continuing care within North Lanarkshire are
21 located within a single children's carer service.
22 Assessment and support for carers is undertaken
23 independently from planning and support arrangements for
24 children. The Council is committed to continuous
25 improvement of services and practice in line with

1 feedback, internal and external review and the
2 aspirations of the Promise.

3 North Lanarkshire Council acknowledges that some
4 children in foster and kinship care were abused. It is
5 acknowledged that children were subjected to physical
6 abuse, sexual abuse, emotional abuse and neglect.

7 The Council is aware of two criminal convictions
8 relating to children in foster care. One foster carer
9 has been convicted of physical abuse of a child in their
10 care, one family member of a foster carer has been
11 convicted of sexual abuse of children in foster care.

12 There are three further foster carers who are
13 considered by the Council to have abused children in
14 their care, other children have complained of abuse at
15 the hands of foster carers or others.

16 North Lanarkshire Council apologises to any person
17 who suffered abuse as a child while in the care of the
18 Council or its predecessor authorities.

19 The Council regards its participation in the Inquiry
20 as an opportunity to listen to applicants, to reflect
21 upon weaknesses in previous and current practices and to
22 learn lessons for the future. The Council is committed
23 to best practice in supporting children in foster care
24 and the families that support them.

25 Thank you.

1 LADY SMITH: Thank you.

2 Then Stirling Council as well, I think,

3 Mr Batchelor, yes?

4 Opening submissions on behalf of Stirling Council by

5 Mr Batchelor

6 MR BATCHELOR: That's right, my Lady.

7 Stirling Council is also one of Scotland's 32 Local
8 Authorities, created under Local Government (Scotland)
9 Act 1994. It has been responsible for social services,
10 including foster care, within its Local Authority area
11 since 1996.

12 Stirling Council is one of the successor authorities
13 to Central Regional Council, Central Regional Council
14 had responsibility for the Local Authority area between
15 1975 and 1996. On disaggregation in 1996,
16 responsibility for the region previously overseen by
17 Central was split between Stirling Council, Falkirk
18 Council and of Clackmannanshire Council.

19 For the period 1930 to 1975, the predecessor
20 authorities for the Stirling Council area included
21 Stirling Borough Council, Stirling County Council,
22 Bridge of Allan Borough Council, Doune Borough Council
23 and Dunblane Borough Council. The Local Authority
24 population is approximately 95,000.

25 The Council and its predecessor authorities have

1 been involved in fostering throughout the time period
2 which the Inquiry is considering. The first reference
3 to a child being boarded out to foster care which has
4 been found is in Public Assistance Committee minutes
5 from May 1936. The Council currently has 34 children in
6 full-time foster care placements and a further nine
7 children accessing short-break foster care from the
8 community.

9 The Council has carried out a significant amount of
10 work in order to assist the Inquiry in identifying
11 lessons to be learned. In particular, the Council has
12 reviewed in excess of 2,400 files, as well as voluminous
13 organisational documentation. As a result of that work
14 the Council has identified weaknesses in its systems in
15 the late 1990s and an occasion where this may have
16 increased the risk of children being abused.

17 In particular, following a child protection
18 investigation in 1998 and 1999, two independent reports
19 were commissioned.

20 One report considered the specific circumstances of
21 a household where a number of foster children were
22 placed and where abuse was found to have occurred.

23 A separate report considered the efficacy of the
24 council's fostering and child protection practices more
25 broadly.

1 This latter report was critical of several aspects
2 of the council's governance, policies and procedures in
3 relation to fostering at that time. The report
4 concluded that by the end of 1998 the quality of support
5 provided to young people had fallen below an acceptable
6 standard. A complete new set of standards and
7 procedures for the children and young people in family
8 service were formulated as a result of this in 1999.

9 Stirling Council acknowledges that children in its
10 and its predecessor authorities' care were subjected to
11 physical, sexual and emotional abuse. The work
12 undertaken in preparation for the case study has
13 identified that three foster carers were convicted of or
14 admitted to abuse of children. In particular, one
15 Central Regional Council foster carer has been convicted
16 of the sexual abuse of children in his care. Two other
17 Central Regional Council foster carers admitted to
18 physical abuse of children in their care.

19 In the late 1990s, one child admitted sexual abuse
20 of other children within the same household. This was
21 the case which led to the instruction of the independent
22 reports in 1998 and 1999.

23 A number of other complaints of abuse have been
24 identified as a result of the file review carried out
25 and passed to the Inquiry.

1 Stirling and Clackmannanshire Councils, was Central
2 Regional Council. In line with other Local Authorities
3 here today we have statutory duties in relation to
4 children in our care, hence our involvement and interest
5 in this phase.

6 The council has fully engaged with the Inquiry and
7 complied with all requests for information and records
8 in a positive and comprehensive way. We will,
9 of course, continue to do so and assist the Inquiry
10 however that may be required.

11 Our section 21 response is part of the evidence
12 bundle, as are copies of the file reading templates we
13 used as the basis for sampling child and foster carer
14 files which helped inform our response.

15 Although we've not been asked to provide a witness
16 at this stage of the Inquiry, we sought leave to appear.
17 We want to be present at this Inquiry and to have sight
18 of and understand the evidence before it. We want to
19 listen to the testimony of those who appear before the
20 Inquiry and acknowledge its importance and we want to
21 learn lessons from what's said at the Inquiry, and in
22 due course from the findings of the Inquiry, which are
23 relevant to our work as a Local Authority.

24 Our chief social work officer will attend virtually
25 the session where evidence is given by Stirling Council,

1 given our close links and shared history, and indeed any
2 sessions where there's testimony given which is relevant
3 to our Council, and I will follow proceedings over WebEx
4 whenever I can.

5 We do want to acknowledge at this stage that there
6 are cases where the Council and its predecessors have
7 got it wrong for children in their care. For that we
8 apologise. That apology is made with the full support
9 of our Chief Executive and our chief social work
10 officer.

11 There may be times when we did not listen, when we
12 failed to act or when we did not act appropriately.
13 Sometimes our record keeping wasn't as good as it should
14 have been. We've already learned lessons as a result of
15 the work done to prepare our section 21 response,
16 particularly through reviewing a substantial number of
17 records of children carer files over the past 25 years.

18 Practices have of course changed over time and we
19 seek to continually improve on those.

20 We will continue to listen, to reflect and to learn
21 and to help inform how we safeguard, support and nurture
22 children in our care today and in the future so that
23 they have every opportunity to thrive.

24 Falkirk Council seeks to uphold the Promise.

25 On behalf of my Chief Executive and chief social

1 work officer I have been asked to make it clear that the
2 Council welcomes any recommendations of this Inquiry in
3 relation to this phase which are relevant to Local
4 Authorities.

5 My Lady, that concludes my opening submission.

6 LADY SMITH: Ms Barber, thank you very much and thank you
7 for the point you make about learning starting at the
8 first moment you have to respond to what this Inquiry is
9 looking for. Learning doesn't have to wait until the
10 eventual outcome in terms of recommendations. I think
11 it's important that we all recognise that.

12 Next, if I could turn to Barnardo's and Ms Comiskey,
13 when you're ready.

14 Opening submissions on behalf of Barnardo's by Ms Comiskey

15 MS COMISKEY: Thank you, my Lady.

16 My submissions today fall under three headings.

17 The first, fostering background.

18 The second, acknowledgement of abuse.

19 The third, co-operation with the Inquiry.

20 The personnel involved in the fostering case study
21 for Barnardo's are Richard Simpson, head of safeguarding
22 and quality, and Brenda Farrell, UK head of fostering
23 and adoption. They will be providing evidence to the
24 Inquiry later in this case study.

25 I wish to reassure that in the event that

1 representatives of Barnardo's are not present in the
2 room, they will be viewing the proceedings online via
3 WebEx.

4 The first heading of fostering background.

5 Barnardo's fostering services, initially referred to
6 as boarding out, have been in place since the 1880s.
7 Children were not, however, routinely boarded out in
8 Scotland by Barnardo's until after World War II, when
9 Barnardo's opened its first residential children's homes
10 in Scotland. The majority of children were admitted to
11 residential care homes in the first instance and a small
12 number were boarded out between 1943 and 1961.

13 Barnardo's selected and approved foster carers and
14 carried out regular visits to the children placed by
15 them.

16 The number of children that Barnardo's fostered
17 decreased in the 1960s and the 1970s. By then, all
18 foster children placed by Barnardo's were referred
19 through Local Authorities.

20 Barnardo's worked closely with Local Authorities and
21 sponsored the New Families Project in Glasgow in 1976
22 and then further fostering schemes in Edinburgh in the
23 1980s.

24 Barnardo's continued to work with Local Authorities,
25 including Strathclyde and Dundee, for the provision of

1 family placement schemes aimed at children and young
2 people with learning difficulties or disabilities.

3 In 1995 Barnardo's opened the Family Placement
4 Project, which provided a network of specialist foster
5 carers to teenagers in care as a result of sexual abuse.

6 In partnership with Glasgow's social work and
7 education services, Barnardo's developed the Shield
8 Service in 2000, which provided an outreach service for
9 children under 13 who would otherwise be looked after
10 and accommodated in residential schools.

11 Barnardo's continued to work with Local Authorities
12 in Edinburgh, Glasgow and the north of Scotland for the
13 provision of fostering placements. Foster carers
14 started to be recruited for a range of fostering
15 placements. These regional fostering services became
16 a single Scotland-wide service under one assistant
17 director in 2008.

18 The provision of today remains as a mix of
19 short-break, emergency, interim, long-term and permanent
20 care. All services have qualified social workers who
21 support the foster care placements, as well as
22 children's workers, psychotherapists and an art
23 therapist.

24 As an organisation, Barnardo's recognises that both
25 the context and care of vulnerable children has changed

1 markedly over the decades, and the way in which that
2 care is provided continues to evolve as societal needs
3 and pressures change.

4 Barnardo's has retained the files of all those
5 children fostered by Barnardo's. Initially, the
6 information was in a bound ledger. Individual files are
7 now retained in a variety of forms.

8 An aftercare and access to records service is
9 provided by its dedicated Making Connections department.
10 They would be happy to assist anyone who was previously
11 fostered by Barnardo's.

12 The records for the children are well maintained, in
13 good order and retained. However, that degree of
14 completeness does not cover staff, foster carers,
15 administrative or governance records. A fuller paper
16 part is being prepared on record-keeping at Barnardo's
17 and will be provided to the Inquiry shortly to assist in
18 understanding the nature and type of records that are
19 available on Barnardo's staff, foster carers,
20 administration and governance in general.

21 2, acknowledgement of abuse.

22 From the information available in its archives and
23 the contemporary databases, Barnardo's estimates that
24 the number of children who were fostered or boarded out
25 in Scotland between 1930 to 2014 was 2,656. Barnardo's

1 is currently aware of 25 individuals having made
2 allegations of abuse against foster carers and foster
3 family members.

4 Barnardo's is aware that further disclosures of
5 abuse may have been made by those who have come forward
6 to the Inquiry and that others may never come forward to
7 report abuse.

8 Barnardo's would like to acknowledge at the outset
9 that any instance of abuse represents a failure for the
10 organisation responsible for caring for them. It is
11 a matter of deep regret to Barnardo's that it failed to
12 protect children in its care and Barnardo's apologises
13 to those children who suffered abuse when they were
14 placed with foster carers by Barnardo's. Barnardo's is
15 truly sorry for the harm they have suffered.

16 3, co-operation with the Inquiry.

17 Barnardo's recognises the importance of the
18 Inquiry's work to survivors. It is committed to
19 learning lessons from the past and to always work to
20 improve the safeguarding and protection of children.

21 Barnardo's continues to welcome the opportunity to
22 take part in this Inquiry and to assist the Inquiry in
23 its task of addressing the issues raised in the terms of
24 reference.

25 Barnardo's has always cooperated fully with the

1 Inquiry's work and will continue to assist in any way it
2 can.

3 Unless I can be of any further assistance, my Lady,
4 that ends my opening submissions.

5 LADY SMITH: That's all very helpful, thank you,
6 Ms Comiskey.

7 Finally, if I can turn to Swiis Foster Care
8 Scotland, a provider of foster care services. I think,
9 Ms Ross, you're here for them. Is that right?

10 Opening submissions on behalf of Swiis Foster Care Scotland
11 by Ms Ross

12 MS ROSS: I am. Thank you, my Lady.

13 My Lady, Swiis Foster Care welcomes the opportunity
14 to participate in this part of the Inquiry and it is
15 grateful for all of the help in preparation provided
16 thus far.

17 Swiis aims to do all that it can to assist the
18 Inquiry. If I may start with a brief introduction to
19 the organisation. The Swiis Group was founded in 1988,
20 Swiis Foster Care was established in 1999 and Swiis
21 Foster Care Scotland in 2005. At that point, in 2005,
22 in Scotland, 22 children were provided with placements.
23 By 2014, that had grown to 222 in foster care.

24 Swiis currently supports 274 children in foster care
25 in Scotland. They have 220 fostering households,

1 providing both full-time and short-break care. Swiis is
2 now one of the largest, if not the largest, independent
3 foster care providers in Scotland.

4 The vision for Swiis was and remains to meet the
5 growing need for quality assured placements, offering
6 the highest standards of care for children and young
7 people, whilst providing real placement choice for Local
8 Authorities. Each child is unique and all have the
9 fundamental right to love and care within a supportive
10 and safe family, which respects them as individuals.

11 Swiis provides a wide variety of placement options
12 and support measures matched to and tailored for each
13 child, aimed at helping that child achieve the best
14 possible outcome.

15 Staff and carers work closely with social workers,
16 families and other agencies and with specialists in
17 education and direct therapeutic work.

18 Swiis can provide information about support for and
19 supervision of foster carers. In supporting them to
20 feel confident and competent Swiis has clear policies
21 and guidelines. It provides supervising link workers,
22 who give structured work and more informal help.
23 There's a 24-hour carer support phone line and all Swiis
24 carers are encouraged to undertake and to continue with
25 accredited training.

1 Swiis hopes to assist the Inquiry in looking at how
2 safeguarding practices have developed, both up to 2014
3 and since, that may assist the Inquiry in relation to
4 terms of reference 6 and 7. It may also be helpful to
5 share information about experiences with different Local
6 Authorities.

7 Swiis' own experience of providing foster care in
8 Scotland over the last 16 years has developed.

9 In the early years, Swiis offered an intensive
10 multidisciplinary service, primarily aimed at fostering
11 children with complex needs as an alternative to secure
12 or residential care. These children present high levels
13 of risk associated with abuse.

14 Since 2013 Swiis has also offered Local Authorities
15 a standard foster care service, and that's led to
16 an increase in the number of younger children and
17 sibling groups being referred and placed with Swiis, and
18 also to a decrease in the overall level of risk.

19 There have also been developments in the way in
20 which services are purchased by Local Authorities.
21 Swiis now tenders through the Scotland Excel framework
22 agreement. That has brought changes to the way services
23 are delivered and to the range of children who are cared
24 for. Thinking about different service delivery models
25 might assist when considering whether further changes

1 are needed in practice, policy or legislation.

2 The statutory regime regulating foster care means
3 that in practice providers must operate on
4 a not-for-profit basis, and in Scotland Swiis operates
5 as a voluntary organisation in accordance with that
6 legislation.

7 It is regulated by the Care Inspectorate and is
8 subject to exacting statutory obligations. It sets its
9 own policies, procedures and practices so that at
10 a minimum it meets all statutory requirements and all
11 national care standards.

12 Swiis can share with the Inquiry its experiences in
13 developing and implementing policies and practices in
14 this heavily regulated environment while working with
15 regulators and procuring Local Authorities and in
16 translating this into something which is supportive and
17 ambitious, helping carers and children to flourish.

18 Most children placed with Swiis Foster Carers during
19 the relevant period up to 2014 had been affected by
20 social deprivation, poverty, neglect, parents's alcohol
21 or substance misuse or domestic violence. Many had been
22 subjected to emotional, physical or sexual abuse and
23 neglect. All of the children had experienced some level
24 of trauma due to their lived experiences and many had
25 had multiple placements and moves prior to being placed

1 with Swiis Foster Carers.

2 While Swiis undertook rigorous checks and a thorough
3 matching process, one cannot absolutely avoid the
4 possibility of problems arising from time to time,
5 whether that was a match not working well or serious
6 concerns about a foster carer abusing a child.

7 On the whole, the care provided did reflect Swiis'
8 organisational culture and adhered to policies and
9 procedures. However, at times, some foster carers' and
10 staff members' practices fell short of organisational
11 expectations.

12 In dealing with issues, however urgent or severe,
13 Swiis was able to rely on positive relationships with
14 regulators and Local Authority clients, as well as its
15 own robust suite of policies and procedures. Whether
16 the complaints were against foster carers or staff Swiis
17 always seeks to take swift action, ranging from
18 additional training through to a foster carer being
19 de-registered or, for staff, termination of employment.
20 Any qualifying incidents are reported to the Care
21 Inspectorate and/or the procuring Local Authority.

22 The Swiis witness can explain the experiences that
23 Swiis has had when engaging with safeguarding issues and
24 with the relevant authorities.

25 If I may conclude by making some observations at

1 this point which might assist the Inquiry.

2 In the past, relatively little research has been
3 conducted specifically on abuse and maltreatment within
4 foster care and so the findings from the Inquiry will be
5 welcomed to further knowledge and practice.

6 Secondly, inconsistencies in information shared can
7 impact on the organisation's ability to make suitable
8 matches and to keep all parties safe.

9 Thirdly, differing thresholds and processes are used
10 by different Local Authorities seeking foster placements
11 and this can cause confusion, particularly for carers
12 looking after children for more than one Local Authority
13 and for staff supporting them.

14 Fourthly, the relationship between foster carers and
15 supervising social workers is very complex. Indeed,
16 unique. They are both part of the team around a child,
17 but they also have a supervisor/supervisee relationship
18 where trust is paramount. Maintaining this trusting
19 relationship alongside respectful uncertainty is
20 a difficult balance to achieve.

21 Finally, it is important for children and young
22 people to have a trusting relationship with a consistent
23 person so that they can share if mistreatment is taking
24 place. That might be the Local Authority social worker,
25 but some children experience several changes of worker

1 and perhaps also, for example, a change of school, so
2 such trusting relationships have been ruptured.

3 In concluding, a word about the witness for Swiis,
4 Sam Arnott, who is Swiis' director of Scotland, and what
5 she can offer at the Inquiry.

6 In the first place, she has direct experience of
7 living within a fostering household. Her family
8 fostered from when she was about 9 years old until she
9 was 18, so she has experience of being a child in
10 a fostering environment in the late 1970s and 1980s.
11 She also has very extensive social work experience, in
12 total 28 years across Local Authorities, the NHS and the
13 charity and third sectors, including in child protection
14 and in adult mental health services. Through that, she
15 is aware of the impact of historic abuse on individuals
16 and their families. She has worked with Swiis for
17 15 years and has direct experience of working with the
18 majority of Scottish Local Authorities.

19 She would very much like to assist the Inquiry in
20 any way that would be helpful.

21 Those, my Lady, are my submissions. Thank you.

22 LADY SMITH: Ms Ross, thank you very much indeed for that.

23 Ms Innes, I think that takes us to a pause before
24 Professor Norrie arrives and will be giving evidence at
25 2 o'clock. Is that right?

1 MS INNES: That's right, my Lady, yes.

2 LADY SMITH: Very well.

3 Thank you all for your contributions this morning.

4 Thank you for paying heed to the warning that you are

5 not going to get long periods during which to deliver

6 your submissions, but you've managed to cover a lot of

7 material in what you have done. I've found that very

8 helpful.

9 As I say, I'll rise now and sit again at 2 o'clock,

10 when we'll start hearing Professor Norrie's evidence.

11 Thank you.

12 (12.16 pm)

13 (The luncheon adjournment)

14 (2.00 pm)

15 LADY SMITH: Ms Innes.

16 MS INNES: Thank you, my Lady. This afternoon, we have

17 evidence from Professor Norrie.

18 LADY SMITH: Thank you.

19 Professor Kenneth Norrie (affirmed)

20 LADY SMITH: As a returning attender, or attendee I should

21 say, you know the ropes, I don't have to tell you about

22 that.

23 Just one thing and it's your choice, what would you

24 like me to call you? Professor Norrie, Kenneth,

25 something else?

1 A. Professor Norrie is fine. Thank you.

2 LADY SMITH: Professor Norrie, if you're ready, and I see
3 you're ready with your wonderful report in front of you,
4 I'll pass over to Ms Innes and she'll take it from
5 there. Is that all right?

6 A. Yes.

7 LADY SMITH: Ms Innes, when you're ready.

8 Questions from Ms Innes

9 MS INNES: Thank you, my Lady.

10 Good afternoon, Professor. As Her Ladyship said,
11 I think you've given evidence to the Inquiry on three
12 previous occasions, twice in 2017 and then once in 2019,
13 going through your report in some detail.

14 On those occasions you also gave evidence about your
15 experience, so I'm not going to go through that, but you
16 have provided us with an updated CV, which is at
17 WIT-3-000001159, which we have in front of us now. On
18 page 4 of that to begin with, at the bottom of that
19 page, this is a list of your publications, we see that
20 since you last gave evidence, you've published a history
21 of Scottish child protection law.

22 A. (Witness nodded)

23 Q. Then over the page on page 5, again a recent
24 publication, I think, in relation to children's hearings
25 in Scotland?

1 A. Yes.

2 Q. I think these are the most substantial developments
3 since you last gave evidence in April 2019?

4 A. In my CV, yes.

5 Q. Thank you.

6 As Her Ladyship mentioned, you have your report
7 there in front of you. I will be going to parts of your
8 report during the course of your evidence, but because
9 you've already gone through it in some detail, I don't
10 propose doing the same exercise again.

11 Rather, what I would like to do is take you to some
12 historical documents that we've recovered and that
13 you've had, I think, the opportunity to see in advance
14 of your evidence.

15 Thereafter, I'm going to hopefully go through
16 a high-level view of the development of regulations in
17 relation to foster care over the relevant period of
18 time.

19 And then bring us up to date in relation to some
20 developments since you last gave evidence.

21 If I can start in the 1930s, in the beginning of the
22 1930s, you've previously given evidence that there were
23 different routes by which children could be boarded out
24 in Scotland. Can you just remind us of what those were?

25 A. At the start of the 1930s there were a number of routes.

1 There was -- in a sense the oldest and most traditional
2 route was what was called the Poor Law, and the Poor Law
3 Authorities had long before the beginning of the 19th
4 century adopted the practice of children who would
5 otherwise be boarded in poorhouses, they were boarded
6 out with what at that point in time tended to be called
7 guardians.

8 So there was the Poor Law Authorities that did the
9 boarding out.

10 Towards the end of the 19th century, a number of
11 child protection societies had been established on
12 a sort of private basis, really, and towards the end of
13 the 19th century also, the courts were given the power
14 to make what at that time was called a fit person order,
15 so that if a child, generally in criminal proceedings
16 against family members, if a child was found to be in
17 some sort of danger in the family environment, they
18 would be boarded out with a fit person named by the
19 court.

20 So there were at least these three routes by which
21 children would be boarded out.

22 Q. Were there different regulations in respect of each of
23 these routes?

24 A. There wasn't really regulations as such in the sense
25 that we would tend to understand them ourselves.

1 Obviously practices had been developed. There was
2 primary legislation which governed, for example,
3 boarding out with a fit person, but they tended simply
4 to give the power, in that example, on the court to name
5 a fit person and it was really left to either the Local
6 Authority or the Poor Law Authorities -- by the 1920s
7 they were beginning to merge in any case. It was really
8 for them to develop in a sense their own practices as to
9 how to go about identifying a suitable guardian for the
10 child.

11 Q. Okay, thank you.

12 I would like us to go to the first of the documents
13 that I've referred to, CLC6, and this will come up on
14 the screen in front of you, Professor.

15 Do you see that this is headed, over to the
16 right-hand side, a public assistance circular number 18
17 from the Department of Health for Scotland on
18 29 June 1931, and then it appears to be in relation to
19 boarded-out children.

20 A. (Witness nodded)

21 Q. I should say, the document is highlighted. It was
22 highlighted when it was sent to us, so the highlighting
23 is not ours.

24 A. Okay.

25 Q. Do you know, Professor Norrie, which of the various

1 routes that you've referred to that this circular would
2 relate to?

3 A. I would imagine, because it's headed right at the top,
4 "Public Assistance circular no.18", by that stage in
5 time the Poor Law Authorities were known as the Public
6 Assistance Authorities, so I would imagine we're talking
7 about the poor -- this relates to children boarded out
8 under what was generally called the Poor Law.

9 Q. Thank you.

10 If we look into the body of the document in
11 paragraph 1, at the end of that it gives some history of
12 the boarding-out system and then it says:

13 "Its object is, briefly, the placing of the children
14 in homes where they will be brought up under the
15 conditions obtaining a normal family life."

16 Is that something that you've seen before in the
17 earlier work?

18 A. Yes, it is.

19 It's a pretty ubiquitous understanding of what was
20 going on here, which was the replacement of
21 unsatisfactory family life with a new environment in
22 which the child would be brought up. We tend to see
23 fostering today as a short-term temporary situation in
24 which children are provided with a safe and secure
25 environment as an interim measure, though of course,

1 sometimes it doesn't work out like that. But up until
2 the 1930s and well, well before that, boarding out was
3 seen as this was a replacement family for the child to
4 replace bad and unfortunate influences on the child as
5 they were going up.

6 This is 1931, which is just a year after adoption
7 was introduced into Scotland -- I know that adoption is
8 outwith the terms of reference of this Inquiry, but the
9 distinction between adoption and fostering or boarding
10 out was not nearly as clear in 1931 as we would perceive
11 it today.

12 Q. Okay, thank you. If we go on to paragraph 2 of this
13 document, we see that it talks here about:

14 "The system has grown naturally and is not regulated
15 by statute."

16 Then at the end of that paragraph it refers to:

17 "... the transfer of Poor Law functions to new
18 authorities ..."

19 It says there is an opportunity afforded of
20 reviewing existing practice and of making improvements
21 where necessary. Do you understand what it is talking
22 about when it talks about that transfer of functions?

23 A. I think they're talking about the Local Government
24 (Scotland) Act 1929, where Local Authorities effectively
25 became Public Assistance Authorities, which were the

1 Poor Law Authorities, the functions were very much
2 merging. The education authorities at that time,
3 similarly, were technically something separate, but the
4 1929 Act brought them within the aegis of what today we
5 would recognise as the Local Authorities.

6 Q. Then in the next paragraph it starts by talking about
7 children not being brought up in the environment of
8 a poorhouse.

9 Then, in the highlighted section, it talks about:

10 "... children going into homes which are used as
11 clearing houses for children prior to boarding out,
12 where they may be temporarily accommodated until
13 a suitable guardian is found or where they may be
14 trained in decent habits and improved physically in
15 preparation for boarding out."

16 Is that a concept that you've seen from other
17 sources in your researches in this area?

18 A. Yes, it is. It's very similar to the sort of clearing
19 houses which were explored -- I think the last time
20 I gave evidence was in relation to the emigration of
21 children. Similarly thereto children were put into
22 establishments designed, I suppose, to make them fit
23 then for emigration and here to give them some sort of
24 familiarly, I suppose, with family life.

25 A lot of children at this stage were what might have

1 been referred to as street children, who had never
2 really understood basic hygiene and things like that,
3 and these sort of children would be very difficult to
4 find a family willing to take them in. So here and in
5 other things, such as with the emigration situation,
6 I suppose the idea was to teach children basic hygiene,
7 basic manners, decent habits, as it says.

8 Q. If we can go on to the next page now, please,
9 paragraph 4. Again it talks about different ways of
10 dealing with children and then it says again in one of
11 the highlighted sections:

12 "The department are anxious that authorities should
13 not be disposed to meet their difficulties ..."

14 I think that's difficulties in finding accommodation
15 for children?

16 A. (Witness nodded).

17 Q. "... by accepting a lower standard of guardian or
18 placing an excessive number of children with a guardian.
19 The boarding-out system has proved successful and the
20 recommendations in the succeeding paragraphs aim at the
21 maintenance of this standard."

22 Again this issue of the standard of guardian and
23 difficulties in finding suitable guardians, again is
24 this something that you've seen from other sources?

25 A. Yes, I have. I can immediately think of two other

1 sources in the parliamentary debates that led to the
2 Poor Law of, I think, 1934, which kind of regularised
3 this. Quite a few of the speakers emphasised the fact
4 that while boarding out works really well, it only works
5 really well if certain care is taken in identifying
6 suitable guardians and also not placing too many
7 children in the same placement.

8 So that's one place I've seen it before.

9 Another place I've seen it before, there's a report
10 from 1875 or 1876, a date round about then, by
11 an advocate called John Skelton, who reported in to the
12 operation of boarding out and he made exactly the same
13 points, more than 50 years prior to that.

14 Q. If we go on to paragraph 5, just below that, we see
15 a number of -- it says there:

16 "It was pointed out many years ago that the success
17 of the boarding-out system depends on ..."

18 Various points, care and judgement with which
19 selection is made, limitation on the number of children,
20 limitation on number of children boarded in each area
21 and the thoroughness of inspection and supervision. Do
22 you know what it's referring to when it's saying these
23 points have been made before?

24 A. I would imagine that's the Skelton report, because these
25 are exactly the points that he makes.

1 Q. Thank you.

2 Then it goes in to each of the headings that it's
3 mentioned and I think if we go down the page again, we
4 have, "Selection of guardians and homes", and we see
5 there at 6(a):

6 "The guardian and members of his or her household
7 must be of good character and of industrious habits."

8 Then the final sentence there:

9 "The type of home where the guardian depends for
10 a living on the payments received for boarding children
11 should not be chosen."

12 Again, is that something that we see in other
13 regulations and rules?

14 A. It converts directly into the regulations in 1933, the
15 boarding out and ... it's quite long. The 1933
16 regulations explicitly, explicitly, turns that into
17 rules, yes.

18 Q. Then there's reference in this next subparagraph:

19 "Particular care should be taken when selecting
20 guardians who have children of their own."

21 Then there's talk about food being taken together
22 and then, in the final sentence:

23 "In short, distinction should not be drawn between
24 the children."

25 Again, is that something that we see then further in

1 regulations and guidance?

2 A. Well, maybe not quite in the detail of the food and
3 where the children are to be fed, but certainly -- nor
4 indeed the distinction be drawn between children, but
5 again I think this reflects something Skelton mentioned,
6 his report, which tended to give quite a benign view of
7 fostering, of boarding out in Scotland, but nevertheless
8 he did caution that in some cases the children who were
9 boarded out would tend to be used almost as servants, so
10 they would be regarded not as children of the family but
11 really as servants to the family.

12 Q. If we go on to the next page, please, and the top of the
13 next page, again at (c) we see:

14 "The guardian should preferably be one with
15 a natural fondness for children and should be of age and
16 disposition to be able to properly control the child."

17 Then there's reference to the age of the guardian.
18 Again, is that something that you've seen in other
19 sources?

20 A. Not the reference to age, I don't think, no.

21 Q. Then it moves on to:

22 "It is undesirable to board a child with a person in
23 receipt of poor relief ..."

24 There's reference to it's also undesirable to board
25 a child with a person of a different religious creed

1 from the child. Again, is that something that we see in
2 the regulations?

3 A. Yeah, again in the Skelton report and again we see these
4 in the 1933 regulations.

5 Q. Then at (f) there's reference to sleeping accommodation.

6 A. Yes.

7 Q. It says:

8 " ... attention should be given to the suitability
9 of sleeping accommodation."

10 Then an example is given:

11 "Children should not sleep with old or infirm
12 persons, boys and girls over eight should not occupy the
13 same bedroom and not more than two children should sleep
14 in one bed."

15 Have you seen that level of detail in documents
16 before?

17 A. I think the 1933 regulations talks about the suitability
18 of sleeping accommodation, but to my recollection it
19 doesn't specify no more than two to a bed or no sleeping
20 with old and infirm persons.

21 Q. Then at (g):

22 "The house should be in a healthy and cheerful
23 locality, preferably in a rural area."

24 Again, is this something that you've seen or the
25 concept of boarding out in the countryside, is that

1 something you're familiar with?

2 A. It is, I am familiar with it in the sense that it's
3 clear from the historical documents that there was
4 a strong tendency, a strong preference, even, to take
5 children from cities and board them out in rural areas.

6 I suppose the assumption might have been that cities
7 tend to be unhealthy, less healthy than rural
8 environments, but on the other hand there's clear
9 dangers there that the rural population at that time
10 tended to be much more constrained financially and the
11 risk, therefore, that little bit higher that the child
12 would simply be used as an extra pair of hands to help
13 around the home or the farmstead, or the croft often.

14 The Skelton report in the 1800s, the Clyde report in
15 1946 and a later report in 1959, I think, all talk about
16 the fact that the authorities involved in identifying
17 suitable guardians had a preference to send the children
18 to rural localities, but there were -- as well as the
19 assumption of health, there were clear dangers.

20 Q. Thank you.

21 Then at paragraph 7 we see a limitation on numbers
22 of boarded-out children in each dwelling and there's
23 a suggestion that it would be inadvisable to board out
24 more than three children in one house, unless the
25 children are all of one family.

1 A. Yes.

2 Q. Then it talks about instances where numbers in excess of
3 that have been placed with the same guardian. Is
4 a limitation on numbers something that you've seen
5 through regulations?

6 A. I think that appears in the 1933 regulations and I think
7 that's -- we see the first reference to keeping families
8 together as an exception to the general principle.

9 Q. Then under that in paragraph 8:

10 "Limitation of numbers of boarded-out children in
11 each area."

12 There's an expression that there is a concern that
13 an area or a village might become a colony of Poor Law
14 children.

15 A. Yes.

16 Q. Was that something again that was an issue that was
17 raised around this time?

18 A. It was raised many years before as a potential issue.
19 The Clyde report of 1946 mentions the undesirability of
20 boarded-out children in particularly outnumbering the
21 local children. I suppose it's one of the risks of
22 sending children to rural areas where the population is
23 necessarily small. It's much easier for numbers to
24 overwhelm -- "overwhelm" is the wrong word, but -- the
25 proportions to be less than ideal, let's put it that

1 way.

2 Q. If we go on to the next page, please, we have a heading,
3 "Inspection and supervision". I think we see here at
4 paragraph 9:

5 "The department cannot too strongly emphasise the
6 need for exercise of constant vigilance. It will be
7 apparent to authorities that the real safeguard against
8 possible abuse of the system is careful inspection and
9 supervision of the children and of the homes in which
10 they are living. It is for consideration to what extent
11 the services of qualified women can be engaged in this
12 work."

13 Again, is this something that you've seen elsewhere,
14 Professor?

15 A. It's something which as the years and decades have gone
16 on since then the regulations have become much more
17 detailed and much stricter about the amount, for
18 example, of visitation the authorities are required to
19 show and there becomes increasing detail in the
20 regulations about who might be suitably chosen as
21 a potential guardian for these children.

22 I don't quite know what the services of qualified
23 women -- I read that two or three times, it's slightly
24 ambiguous as to whether that's women who will act as
25 guardians or women who will act as supervisors. I'm not

1 very sure.

2 Q. Paragraph 10, there's a discussion there again in the
3 highlighted section about a relationship between the
4 boarding authority and the authority in whose area the
5 child is boarded. There's discussion of having:

6 "... a qualified local agent or agents, a minister,
7 doctor, schoolmaster, local public assistance officer,
8 a local voluntary committee, available in the area of
9 residence whose duty it should be to maintain
10 a continuous supervision over children and report to the
11 boarding authority any incidents which they consider may
12 affect the children's welfare."

13 Again, do you see that issue arising in other
14 regulations, the interaction between the boarding-out
15 authority and the authority where the child is actually
16 living?

17 A. Yes, yes. Some of the early regulations, certainly in
18 the 1930s there were different sets of regulations
19 requiring different things of different authorities.
20 The Poor Law Authorities still had their rules and
21 practices, and Local Authorities that by this stage
22 themselves were beginning either to provide homes or to
23 take some sort of responsibility for regulating the
24 homes of charities in their areas. Local Authorities
25 began to be more heavily involved in just ensuring that

1 standards were maintained.

2 Q. I'm perhaps jumping a bit ahead here, but is this issue
3 of responsibility as between the boarding-out authority
4 and the authority where the child is residing, is this
5 something that comes up in the Clyde report?

6 A. It is. I mean, one of the major findings in the Clyde
7 report was that there were numerous different ways in
8 which children could find themselves boarded out, each
9 of these routes having different sets of regulations.

10 I mean, during the war -- I think it was after the
11 first war, the Ministry of Pensions became one of the
12 other routes when fathers had been killed during the
13 war, which is another route which I didn't mention
14 earlier. And Clyde does deprecate the fact that all of
15 these are subject to different sets of regulations.
16 Many overlapping and effectively providing the same
17 sorts of rules, but he points out quite forcefully that
18 actually trying to identify who's ultimately responsible
19 is really difficult. In some cases if a child is
20 boarded out in another Local Authority area from the
21 area where they're boarded out from, the authority that
22 boards them out, there's a potential for clash of
23 responsibilities, which is never good.

24 LADY SMITH: I suppose there may be potential for assumption
25 on the part of one party that they have responsibility

1 or they don't have responsibility, it must be the Local
2 Authority or the boarding-out authority, and so
3 something important gets lost?

4 A. Yeah, and again we saw that very, very clearly in the
5 emigration situation, where the sending authority said,
6 "Oh, well, that's fine, the Australians can deal with
7 that".

8 LADY SMITH: Job done.

9 A. "... the problem is solved".

10 And the Australians thought, "Well, it's your
11 responsibility to provide".

12 At a local level, it's very similar I think to what
13 happened in that worldwide problem.

14 LADY SMITH: Going back a layer, were there problems in
15 clarity as to which authority could get the funding it
16 needed to do its job in relation to the boarding out of
17 children?

18 A. Yes. Yes. One of the things that comes out clearly
19 from all of the reports is that -- I suppose this is the
20 way of the world, but Local Authorities particularly are
21 conscious that they have duties to expend the money that
22 they have to fulfil their statutory responsibilities,
23 not other Local Authorities' statutory responsibilities.

24 LADY SMITH: Thank you.

25 Ms Innes.

1 MS INNES: Thank you.

2 Could we look on to the next page, please, page 5.

3 At paragraph 15 there's a heading, "Rules for
4 guardians". It says there:

5 "It is desirable that authorities should generally
6 draw up rules to be observed by guardians undertaking
7 the care of children. This has been the practice of
8 certain parish councils hitherto and the department are
9 satisfied that it has been very definitely in the
10 interests of the children concerned."

11 This seems to be suggesting from this circular that
12 the Local Authorities, whatever those are, the Public
13 Assistance Committee, for example, should be creating
14 their own rules for guardians.

15 A. Yes. Yes. It wasn't until the 1933 regulations that
16 any rules were put on a Scotland-wide basis.

17 Q. I suppose there would be a danger of a lack of
18 consistency if everybody's making up their own rules?

19 A. Yes.

20 Q. The next paragraph just below that is "Overwork", and it
21 says:

22 "Complaints are occasionally received by the
23 department that boarded-out children are overworked by
24 their guardians. While it is fitting that the older
25 children should assist in household or other work to

1 a reasonable extent, authorities will appreciate that it
2 is undesirable that the children should be overworked to
3 the detriment of their health or educational [the next
4 page] progress. Local agents should report to the
5 boarding authority any well-founded instance of
6 overworking of such children and no child should be
7 allowed to remain with a guardian who is definitely
8 exploiting its labour."

9 Does this address the idea of children working in
10 a boarding-out --

11 A. Yes, it does, and it's actually quite depressing because
12 in the 1959 memorandum from whichever department --
13 department of social -- I can't quite remember, but
14 I refer to them in my report. Exactly the same point is
15 made sort of a quarter of a century -- more than
16 a quarter of a century after this. Again, I think it
17 relates back to the fact that the idea or the practice
18 had developed of sending town children to crofters and
19 rural populations. Arran was a very popular place to
20 send children from the city of Glasgow, for example, and
21 if a child is brought up on a croft, a child from quite
22 an early age will be expected to contribute physical
23 labour and sending town children to do the same thing,
24 if that's combined with an attitude that they're there
25 as free labour, that's not really achieving what the

1 purpose of boarding out hopefully was designed for.

2 LADY SMITH: Of course we saw extremes of this in quite

3 a bit of the evidence in the child migration case

4 study --

5 A. Yes.

6 LADY SMITH: -- where children particularly -- well, it

7 happened in Canada as well, but we heard of prime

8 examples in Australia of barefoot children being used to

9 do hard building work.

10 A. Yes.

11 LADY SMITH: Hard physical building work, and their

12 education was more or less being abandoned because they

13 were needed on the building sites.

14 A. Yes. It obviously was a very real danger that the

15 receivers of children weren't seeing what the -- the

16 sort of rose-tinted, perhaps, view that the sending

17 authorities, whoever they were, actually had.

18 LADY SMITH: No shared vision.

19 A. Yes.

20 LADY SMITH: Ms Innes.

21 MS INNES: If we can just stay on this page for one final

22 thing on this document, Professor, if you go down to the

23 heading, "Miscellaneous", I think it's on this page --

24 yes. Paragraph 21:

25 "Authorities should always be prepared to offer the

1 parent or other relative facilities for communicating
2 with the children through the office of the authority
3 and for receiving through the same channel periodical
4 reports from the guardian as to the children's welfare
5 and progress."

6 This seems to be talking about some kind of
7 information sharing or contact between parents and
8 children. Is this something that you see in other
9 regulations or not?

10 A. Well, what you see in the regulations from the 1930s and
11 1940s is that parental contact with the child is a very,
12 very low priority, and that might consist with the
13 notion that boarding out is taking children away from
14 bad influences. That's putting it at its, in a sense,
15 most benign. What you do see is that contact with the
16 parents is seen really as a privilege that has to be
17 earned by either the parents or the child. There's
18 absolutely no understanding -- until the 1980s there's
19 no understanding that maintaining some sort of contact
20 with your original family is remotely a good thing.

21 LADY SMITH: I see at paragraph 20 it's recommended that
22 Local Authorities continue supervision of boarded-out
23 children, at least until they reach the age of -- is
24 that 16? That would be at a stage that the
25 school-leaving age was 14?

1 A. That's correct.

2 LADY SMITH: The idea is there's a couple of years during
3 which the children will be possibly in the outside
4 world, but the Local Authority are supposed to carry on
5 the responsibility for them for a couple of years?

6 A. Yes, it's an early example, I suppose, of what we might
7 today call "aftercare", the aftercare provisions. It's
8 not unique, you see it in the reformatory school and
9 industrial school regulations as well, that even after
10 the child has moved -- I think in these regulations the
11 age of 19 is specified where those who run these schools
12 will supervise the child even after they have left
13 school. I have no idea how effective that supervision
14 was, but one of the things that struck me as really
15 interesting is the focus on assistance in finding
16 employment, which of course in the early 1930s would be
17 a very difficult but very valuable support, if indeed it
18 translated into practice.

19 LADY SMITH: Thank you.

20 MS INNES: Thank you, Professor.

21 I'd like to take you to another document, it's
22 ABN-000000216, which I think is an example of rules for
23 guardians of boarded-out children. We see that this is
24 from the council of the County of Aberdeen public
25 assistance department. If we could move down to the

1 bottom of the page slightly, I think on the left-hand
2 side we see that this was approved by the Public
3 Assistance Committee on 30 September 1932 and confirmed
4 at meeting of the council on 28 October 1932.

5 If we look at the substance of what's in this
6 document, I just want to have a look at some of the
7 provisions.

8 Paragraph 1 we see, "Guardians must be
9 well-recommended persons".

10 At paragraph 2, the reference to guardians shouldn't
11 be in receipt of poor relief and should have an income
12 other than that to be received from the boarding-out
13 provision.

14 Paragraph 3, a kindly feeling should be cultivated
15 and children ought to be treated as far as possible as
16 members of the family, partaking of their meals at
17 a common table and sharing a common family life.

18 Are these the sorts of things that we've seen in the
19 circular --

20 A. Yes.

21 Q. -- now in guidance?

22 A. Yes. That circular which recommended Local Authorities
23 set their own rules, they're clearly taking guidance
24 from the earlier document.

25 Q. If we look at paragraph 4, I think we see that it says:

1 "The public assistance officer, district nurse and
2 members of the Public Assistance Committee will visit
3 the homes of boarded-out children periodically without
4 previous notice."

5 A. Mm-hmm.

6 Q. The concept of an unannounced visit to inspect, is that
7 something that we see through regulations in the future
8 or not?

9 A. Yes, it is. I think the reason is fairly obvious, that
10 they don't want to give notice so that the environment
11 can be spruced up and suddenly there's a chair at the
12 table for this child, who normally eats in the kitchen
13 or whatever. But it is something that appears fairly
14 regularly.

15 I think it's the first reference to district nurse
16 that I've seen.

17 Q. If we look on to the next page, please, and the top of
18 the left-hand side there's reference to clothing, so
19 provision for clothing.

20 At the end of that, paragraph it says:

21 "Where the clothing is found to be neglected by the
22 guardian, the children may be removed. Guardians are
23 warned that if they or their families are found wearing
24 any articles of clothing belonging to the children or
25 otherwise disposing of them, the children will be

1 removed."

2 Is that something that you've seen before or is that
3 perhaps a local issue?

4 A. Certainly in the 1933 regulations there's a provision
5 saying -- but much broader, I think it uses the words
6 "adequate clothing has to be provided", but I don't
7 recall seeing anything that it's a specific ground to
8 remove the child from the guardian if the guardian has
9 sold off the clothes that have been provided.

10 Q. If we go to paragraph 7, there's reference there,
11 I think, to education:

12 "No child should be taken from school for employment
13 and herding, berry gathering or other such employment
14 during school hours."

15 Then:

16 "No child shall be removed from one school to
17 another without consent of the Public Assistance
18 Officer."

19 Does this again go back to the issue of work and the
20 interaction of that with attendance at school?

21 A. It does, although I think that's much more specific in
22 its terms again than the sort of national regulations
23 are.

24 Q. If we can just scroll up again to the top of the page
25 and go over to the right-hand side. At paragraph 10

1 I think we see the concept of work discussed again:

2 "Children should be taught by precept and example to
3 cultivate industrious habits. They must not, however,
4 be overstrained with labour or caused to work on Sundays
5 or during school hours or when home lessons should be
6 prepared."

7 Then there's certain provisions about:

8 "Boys should be taught to make themselves useful and
9 girls to sew, knit, darn and to perform as they grow
10 older general household duties. There must be no
11 attempt however to take advantage of the children in
12 this respect or to deprive them of the necessary play or
13 recreation."

14 Again, is that something that you've seen before or
15 is it a more detailed provision?

16 A. It's not perhaps much more detailed than something
17 you'll see in the regulations. There's clearly
18 a tension going on here, particularly children who have
19 been boarded out under the Poor Law. They have been
20 taken from what was perceived by the authorities as
21 an environment of indolence in which the parents are not
22 bringing the children up to be useful economic members
23 of society, but are indolent, which is a word that
24 appears in a lot of these things.

25 The idea here is that children are to be educated

1 towards economic activity, but at the same time there's
2 a risk that if you're putting these children in
3 environments without terribly much supervision, then
4 they'll just be used as workhorses and their education
5 will suffer.

6 The reference to play and recreation is interesting,
7 because that does appear too in the 1933 regulations,
8 which says something like, "Children should be given
9 sufficient time for play", which I thought was quite
10 an interesting concept. I hadn't seen it there before.

11 Q. At paragraph 11 we see:

12 "Indiscriminate or harsh punishment of children will
13 not be permitted on any pretext whatsoever."

14 Then it goes on to say:

15 "Any serious act of misconduct on the part of
16 a child or any behaviour which is unsatisfactory should
17 be reported to the public assistance officer."

18 Do we see the terms "indiscriminate" or "harsh
19 punishment" in other regulations?

20 A. Yes, again, we do. I think I might say in my report or
21 somewhere that I'm not sure that it adds terribly much
22 to the general law. It's tied in with the rules
23 relating to corporal punishment particularly.

24 A reasonable chastisement until very recently has been
25 a legitimate defence.

1 It would not be reasonable if it was indiscriminate
2 or harsh. So it's interesting to see it specifically
3 laid down here, but I'm not myself convinced it added
4 any more teeth for these children than for children
5 generally.

6 LADY SMITH: It strikes me that it's laying down the duty
7 not to abuse children.

8 A. (Witness nodded)

9 LADY SMITH: Excessive punishment, excessive corporal
10 punishment, these are all forms of abuse.

11 A. Yes. Well, I doubt if anybody today would deny that
12 these are clear forms of abuse.

13 LADY SMITH: An early awareness without perhaps following
14 through and thinking about the wider risks of abusing
15 children in circumstances where so much power is able to
16 be wielded over them.

17 A. I think that's absolutely right, that in one sense the
18 authorities were all clearly aware of risks, and a lot
19 of these rules, a lot of the practices that were
20 developed of visitation and the like was
21 an acknowledgement of risk, taken for presumably benign
22 motives, but nevertheless putting children in private
23 environments is in one sense even riskier than putting
24 children in an institutional environment.

25 LADY SMITH: Yes.

1 Ms Innes.

2 MS INNES: Taking that forward, in paragraph 12 I think we
3 see:

4 "Cases of neglect, cruelty or misconduct on the part
5 of guardians are fortunately rare, but where such cases
6 occur, the children will be immediately removed and
7 steps taken to secure the punishment of the offenders.
8 Children may be removed at any time by the authority of
9 the Public Assistance Committee without any reason being
10 given."

11 That seems to be a recognition that abuse might
12 occur in this setting and the consequence is: removal of
13 the children and punishment of the offenders
14 essentially.

15 A. Yes. One of the other reports which this Inquiry
16 commissioned was on the prevalence of abuse in
17 a fostering setting and that makes quite plain these
18 things did happen, they were known to happen.

19 One of the problems, I think, is the underlying
20 assumption which this paragraph makes quite explicit:
21 these are fortunately rare. There's a bad apple. It's
22 not an institutional, it's not a structural thing, but
23 in the nature of human existence in society there will
24 always be a few bad apples. That has serious dangers if
25 that's the mindset that really it's just a criminal law

1 matter, it's not an institutional or structural matter.

2 Q. Thank you.

3 I think paragraph 13 goes on to talk about the
4 relationship with the parents, and there it notes:

5 "Children may have been removed from the influence
6 of degraded and immoral parents. Guardians should keep
7 in view that it is the general rule that no parent,
8 relative or friend should be allowed to visit a child
9 without the sanction of the public assistance officer
10 and should any visits be made, guardians are especially
11 warned not to allow the child to go out with such
12 visitors or to accompany them to the point of their
13 departure and should at once report the visit to the
14 public assistance officer."

15 It says:

16 "As a rule, the council wish all correspondence
17 between the child and relatives to cease. Guardians are
18 therefore advised that written communications should not
19 pass between the child and relative but should be
20 transmitted to public assistance officer."

21 Pausing there before I go on to the last sentence,
22 again this seems to be talking about the contact or lack
23 of contact with the child's parents or relatives?

24 A. Yeah, and again it's motivated by this feeling, what we
25 are doing here or what the Public Assistance

1 Authorities, the Poor Law Authorities are doing here is
2 removing the child from an environment in which they're
3 going to be influenced towards a bad life, a life of
4 poverty and begging and not being a productive member of
5 society. The fear is that any contact with parents who
6 lead that life, or indeed other family members who lead
7 that life, that's necessarily going to be bad for
8 children. Again, it represents or it reveals what's
9 perceived about boarding out: this is not a temporary
10 situation. At its most benign, it's designed to give
11 the child a new, better family. Kind of in the way that
12 adoption was designed to do also.

13 Q. Just looking then at the last sentence in this
14 paragraph, it says:

15 "Guardians should not refer, either within or
16 without the hearing of the children, to the fact that
17 they are boarded out."

18 Again, does that have some resonance with perhaps
19 adoption or a long-term situation, that the children are
20 to be effectively a member of the family?

21 A. Yes, it's consistent with this idea that boarded-out
22 children shouldn't be treated differently from the
23 natural children of the family. I mean, I think the
24 idea behind that last sentence is entirely benign. But
25 it does reveal again the mindset that sees boarding out

1 as a permanent arrangement, nearer what today we call
2 the "permanence order", nearer that environment than
3 what today we see as a fostering environment.

4 LADY SMITH: Also what today we see as the importance of
5 being absolutely frank and open with the child about
6 their own circumstances.

7 A. Yes, absolutely. Though I suspect a lot of these
8 children will know pretty well that they have been
9 removed from their family and the people they're boarded
10 with are not their real parents. I mean, adoption at
11 that early stage tended to be babies where the secrecy
12 was much easier to maintain. But you're absolutely
13 right, nowadays we recognise that's seriously bad social
14 policy and psychologically bad for effectively everybody
15 involved.

16 LADY SMITH: Because if you do that, you're going to destroy
17 any chance of hanging on to any resilience built by
18 early attachment --

19 A. Yes.

20 LADY SMITH: -- with the parent or parents that the child's
21 no longer with?

22 A. But I'm sure that was not seen as a bad thing in 1933 --

23 LADY SMITH: No, exactly.

24 A. -- or 1932, whenever this document was ...

25 LADY SMITH: Ms Innes.

1 MS INNES: If we could go over the page in this document to
2 page 3, I think we see here an application form for
3 children to board. It says:

4 "Dear sir.

5 "I have read the rules for guardians of boarded-out
6 children and I apply for [blank] children, subject to
7 the approval of the Public Assistance Committee."

8 Then there's a heading, "Particulars", where the
9 guardian or proposed guardian has to set out their name,
10 age, address, occupation, religion, marital status and
11 other people who are living in the home and their
12 relationship. Then at the bottom of the page. Exact
13 situation of home, number of rooms, acres of land,
14 distance from school, distance from church and then two
15 references to character.

16 Then there's a note at the bottom, which may be
17 quite small to read:

18 "Preference will be given to those who have reared
19 children and to guardians who are crofters or farmers.
20 No applications will be entertained from persons in
21 receipt of poor relief or from those who have no income
22 other than that to be received for children to be
23 boarded with them."

24 The economic position that we've seen before, but
25 here we see a specific preference for those who have

1 children already or who are crofters or farmers.

2 A. Mm-hmm.

3 Q. Is that something that you've seen elsewhere or is this

4 something that's perhaps a local policy?

5 A. It's a national policy in the sense that it was locally

6 adopted. I already mentioned the example of Arran as

7 a place where children from the big conurbations in the

8 west of Scotland tended to be put.

9 It was a fairly universal practice across Scotland

10 to take children from the big cities and towns and put

11 them into rural settings.

12 I haven't seen before it expressed in any official

13 document as a preference.

14 LADY SMITH: Did you come across any evidence of cases where

15 boarding-out parents, guardians, had been found to have

16 harmed children and it was attributed to them regarding

17 the children as a source of income rather than as

18 children who needed to be cared for? It's this

19 provision that you see again and again about it not

20 being allowed to place children with people who are

21 going to be dependent on the boarding-out income, have

22 you come across anything?

23 A. I mean, I can think of nothing where it's been

24 specifically -- where the criticism has been

25 specifically that the children have been seen purely in

1 terms of being an economic asset, but all the reports
2 from 1876 onward explicitly mention that as a risk.
3 This may be speculation, but I assume that the
4 drafters of these reports are getting a message or
5 getting an impression of what's actually happening on
6 the ground.

7 LADY SMITH: Maybe one has to remember that this is before
8 the era of modern social security assistance.

9 A. Absolutely, yes.

10 LADY SMITH: Ms Innes, would that be a good point for us to
11 take the afternoon break?

12 MS INNES: It would. I'm going to move, hopefully quickly,
13 from the 1930s.

14 LADY SMITH: As you know, Professor Norrie, we take a break
15 in the middle of the afternoon, not too long but
16 hopefully it will give you a breather and the
17 stenographers a breather.

18 I'll do that just now and we'll be back in five or
19 ten minutes.

20 (3.02 pm)

21 (A short break)

22 (3.12 pm)

23 LADY SMITH: Professor Norrie, are you ready for us to carry
24 on?

25 A. Yes.

1 LADY SMITH: Good.

2 Ms Innes.

3 MS INNES: Thank you, my Lady.

4 Now, Professor Norrie, as I said earlier, what

5 I planned to do is to take you briefly through the main

6 regulations and legislation that affected foster care

7 over the period 1930 to 2014.

8 A. (Witness nodded)

9 Q. You've already given evidence about this and it's in

10 your report, so all that I'm hopefully focusing on is

11 main changes.

12 You mentioned that there were regulations in 1933.

13 A. Yes.

14 Q. I think those were the Children and Young Persons

15 (Scotland) Care and Training Regulations 1933, which

16 came in after the Children and Young Persons (Scotland)

17 Act 1932?

18 A. That's correct.

19 Q. Then there was a Poor Law Act in 1934, followed by Poor

20 Relief Regulations in 1934.

21 A. Yes.

22 Q. Did these two Acts do the same thing in relation to

23 boarding out or were they doing different things?

24 A. They were basically doing the same thing for different

25 categories of children.

1 Q. So the Poor Law, the clue might be in the name, that
2 would have been the type of boarding out that you've
3 referred to --

4 A. Yeah.

5 Q. -- where there was no statutory regulation?

6 A. Yes.

7 Q. Then the children that the 1932 Act, what type of
8 boarding out was that?

9 A. These, I suppose, would primarily be children subject to
10 a fit person order made by the court, the order was
11 amended slightly by the 1932 Act and these were the
12 regulations that followed from that.

13 Q. Okay. Then the next major development, I think, came
14 after the Clyde report, and you mentioned the Clyde
15 report earlier in your evidence. I wonder if I can just
16 take you to a couple of matters raised in this report.
17 It's at LEG.001.001.8681.

18 If we can go to page 16, please. At this part of
19 the report, there's a discussion about selection of
20 foster parents and it talks at paragraph 49 about:

21 "The success or failure of the boarding out of
22 children depends on the choice of a suitable home and
23 foster parents. There exists evidence that the standard
24 of selection in many cases is extremely low and in some
25 cases entirely fortuitous. There is no uniform method

1 of selection."

2 Is that the type of thing that you were referring to
3 in your evidence earlier where there were a variety of
4 different approaches?

5 A. A variety of different -- I think what I was talking
6 about earlier was Clyde deprecates the fact that there
7 were all these different routes into effectively the
8 same environment. I think what he's saying here is that
9 even within any individual routes, because it's a local
10 thing and the Local Authorities are responsible, there's
11 very, very different practices across the country.

12 Q. At paragraph 50, just below that, we see that it's said
13 there:

14 "We do not consider that the remedy necessarily lies
15 in adding to the regulations governing the system of
16 boarding out but in the implementing of these
17 regulations. In view of the grave discrepancies and the
18 standards applied by various Local Authorities we cannot
19 too strongly recommend that the regulations be observed
20 not only in the letter but in their spirit."

21 What could we take from that?

22 A. A very depressing message, I think, that the
23 regulations -- you know, this is something we've seen
24 time and again. If you read nothing but the regulations
25 throughout the 20th century you would think Scotland is

1 in the forefront of doing really well for its children.
2 Then if you drill down and see, well, are these
3 regulations being followed in spirit and in letter, in
4 letter even, you find a very different picture.

5 LADY SMITH: In your work I think you told me before you've
6 come across numerous examples of the need not being for
7 new law, the need being to use the law you already have.

8 A. Exactly, yes. Exactly that.

9 LADY SMITH: Even if it means creating some more regulations
10 under primary legislation that's already there, there
11 was a child migration example of that, but sometimes the
12 regulations were there but not being applied.

13 A. Yes, exactly.

14 LADY SMITH: Ms Innes.

15 MS INNES: Here, under the solution to this issue in respect
16 of the selection of foster parents, it says at
17 paragraph 51:

18 "What is required therefore is a much higher
19 standard of selection of foster parents. The defects of
20 today are due to lack of sufficient knowledge or insight
21 on the part of those making the selection."

22 Then it goes on to talk about training. It's
23 training of essentially social workers or childcare
24 officers as opposed to training of the foster parents,
25 is that --

1 A. Yes, that's right. I mean the 1933 regulations
2 throughout talks about ensuring suitable people, and
3 your idea of what's suitable may be very different from
4 my idea, which may be very different from a Local
5 Authority in the Western Isles or in the Borders or
6 wherever. I think that's the issue that he's getting
7 at. A much higher standard of selection than the most
8 general meaningless standard of suitability.

9 Q. We know from your previous evidence that Clyde
10 emphasised the good foster parent and that foster
11 children being boarded out was to be preferred --

12 A. Yes.

13 Q. -- to residential care. Was that the main thrust of his
14 recommendation or would you say that there were others?

15 A. I'm not sure I'd describe it as the main thrust of his
16 recommendation, because in a sense it simply reflected
17 what had been going on in Scotland for at least 100
18 years at that stage.

19 I think in that paragraph 51 he emphasises the need
20 for training and for an advisory committee on training
21 so that proper standards can be identified and applied
22 across Scotland. I think that's a much more important
23 recommendation than the presumption that went on to be
24 created that fostering is preferred to institutional
25 care, because that's what effectively was already

1 happening.

2 Q. Could we look, please, on to page 19 of this report. If
3 we can scroll down, please, and under the heading,
4 "Inspection", at paragraph 69, do we see there that he
5 says:

6 "Apart from this, however, the real safeguard is the
7 periodical inspection. Too few visits may fail to
8 disclose defects, too many tend to unsettle the child
9 and its foster parents."

10 Then there's a recommendation that there should be
11 a visit within a month and then a six-monthly visit
12 thereafter:

13 "The first visit is of particular importance, and
14 should be carried out by the specifically trained worker
15 who selected the home."

16 Then there's a suggestion that members of the
17 committee of the authority should also make periodical
18 visits:

19 "All these visits should be made without prior
20 warning to the foster parents."

21 Again here do we see an emphasis on inspection,
22 although does he suggest a change in terms of the
23 frequency of visits?

24 A. He does, and in one sense it's quite a surprising
25 change, because it decreases -- the 1933 regulations

1 somewhere I think talks about three-monthly visits and
2 here the recommendation is six-monthly.

3 I suspect Lord Clyde is seeing this as
4 a consequence, if you get the foster parents right in
5 the first place, then you don't need to be inspecting
6 them quite so much. Again the emphasis on proper
7 selection and proper training is perhaps what he is
8 seeing as the key to all of this.

9 But when I first read that, I was a little surprised
10 that he would suggest that there should be less
11 visitation, but it's consistent, I suppose, with this
12 idea that once children are in a family environment, we
13 should make that family environment as similar to
14 a normal family environment as we possibly can. But
15 there's -- in other bits of the Clyde report, I can't
16 remember quite where, there is a suspicion of parents,
17 so it's kind of consistent with this idea that you keep
18 the child firmly away from the birth parents and the
19 birth family.

20 LADY SMITH: There's also an interesting argument in what
21 he's saying that if you inspect too often, you're
22 actually running the risk of destabilising the
23 placement.

24 A. Yes.

25 LADY SMITH: The foster parents and the child won't settle.

1 The answer, of course, is, well, he may be right, so
2 long as you've got the right people in the first place
3 in the right home, and you've got to trust them and let
4 them get on with it. Weighing up risks each way.

5 A. Yes, yes. Personally, I'm less convinced that
6 an unannounced visitation is as unsettling, if everybody
7 is coming to it with: this is not about judging the
8 environment in which the child is put --

9 LADY SMITH: Yes.

10 A. -- this is about just ensuring the safety of the child.

11 I suppose he's fearing that the child might think,
12 "I can never settle because I might be removed if the
13 inspection turns out poorly", but to me -- maybe this is
14 a very 2022 attitude, but to me -- if the ultimate aim
15 of all of this is the protection of children, and if
16 people perceived it in that way, then the risk of
17 destabilisation is less, in my view.

18 LADY SMITH: Yes, yes. Thank you.

19 MS INNES: I'd like to move on from Clyde now to something
20 that we will no doubt come back to with other evidence.
21 Just in case Your Ladyship wanted to ask
22 Professor Norrie anything else about Clyde at this
23 stage?

24 LADY SMITH: No, that's fine, thank you.

25 MS INNES: We know, Professor, that rules and regulations in

1 relation to boarding out were made in 1947.

2 A. Yes.

3 Q. So before any change in the primary legislation. Did
4 those 1947 regulations come about as a result of the
5 Clyde report?

6 A. Yes, they did. Yes. There's a longer list, for
7 example, in the 1949 regulations of exclusions who would
8 be unsuitable as foster parents than you'll find in the
9 1933, and that's trying to give effect to the Clyde
10 report: choose with care.

11 Q. Then we know that there was primary legislation in 1948.

12 A. Yes.

13 Q. That, I think you've said before, placed the Local
14 Authority at the centre of childcare and protection in
15 Scotland?

16 A. Yes.

17 Q. Was that the most significant change brought about by
18 the 1948 Act, would you say?

19 A. It was a hugely significant piece of legislation. Prior
20 to then we as a society were still very much relying on
21 voluntary associations, charities and the like, the
22 churches, to be the practical movers in this. What the
23 1948 Act did was to say Local Authorities have to be
24 central in this, so you have to have a child committee,
25 a children's committee, you have to have a children's

1 office of every Local Authority. Prior to 1948 they had
2 effectively the choice of whether to be involved in the
3 protection of children. The 1948 Act turned that into
4 a duty.

5 Q. Just to go back a step, the 1947 regulations, did they
6 apply to voluntary organisations as well as other
7 authorities or --

8 A. I'm sorry, I can't remember.

9 Q. I think you have probably covered it in your evidence
10 already, I think.

11 A. I'm sure it's in my report.

12 Q. We then know that there were boarding out regulations in
13 1959 made under, I think, the 1948 Act.

14 A. Yes.

15 Q. It obviously took 11 years for there to be new
16 regulations put in place.

17 A. Yes.

18 Q. Were you able to find any reason for that time lag?

19 A. It's a time lag which we see again after the 1968 Act,
20 it retained the 1959 regulations until the mid 1980s.
21 Purely speculating, all I can suggest is that certainly
22 between 1947 and 1948, the 1947 regulations were still
23 very new. The 1959 regulations, when it came to be
24 examined in 1968, they were still less than a decade
25 old. Both the 1948 and the 1968 Act, I suppose the

1 primary goal was almost a background thing in terms of
2 organisational structures. Neither of them really
3 changed the nature of the fostering -- of boarding out
4 relationship between the child -- I'm speculating, but
5 I suppose the feeling was: we have these relatively
6 recent regulations, there's nothing inconsistent between
7 them and shortly thereafter the primary legislation, so
8 there's no real urgency at the moment to change them
9 again.

10 Q. I think in terms of the 1959 regulations you've
11 previously given evidence that, for example, the number
12 of visits increased at that stage from the six months to
13 three-monthly.

14 A. Yes.

15 Q. I think you've also noted that the power to terminate
16 a placement was much wider than before --

17 A. Mm-hmm.

18 Q. -- and there's reference to the best interests of the
19 child in relation to that.

20 A. Yes.

21 Q. Is that the first time that you see that sort of
22 formulation?

23 A. I think it is. I think it is. I mean, the 1932 Act at
24 various points talks about the welfare of the child, but
25 within this context, I think 1959 is the first time that

1 we see as part of the inspection and monitoring and
2 supervision of the placement explicit reference, one of
3 the things not just that you have overworked the child
4 or whatever, but a much broader best interests and
5 welfare factor has to be taken into account.

6 Q. Then we move into the 1960s and before you get to the
7 1968 Act, there was the Children and Young Persons Act
8 1963.

9 A. Mm-hmm.

10 Q. Did that have any significance for fostering and
11 regulation of it?

12 A. Again I've slightly forgotten. The 1963 Act was
13 significant, but I --

14 Q. I think you perhaps -- I hope I'm not misquoting you,
15 but I think you've probably given evidence before that
16 it imposed on the Local Authority a duty to take
17 preventive action.

18 A. That's it, that's it.

19 Q. That, I suppose, would have an impact on the Local
20 Authority dealing with children in care?

21 A. Yes.

22 Q. How would it impact on foster care?

23 A. Well, that's it. Thank you for reminding me. The
24 importance of the 1963 Act, it's that it required Local
25 Authorities to be proactive. The 1948 Act, it simply

1 obliged Local Authorities to react. Now they have to be
2 proactive in terms of preventing harm to children.

3 Primarily it was preventing harm within the family,
4 but it's actually worded much more generally, and within
5 the fostering environment it would, I suppose, colour
6 the inspection and monitoring and supervision regimes
7 which the 1959 regulations had envisaged.

8 Q. Then you mentioned the 1968 Act --

9 A. Yes.

10 Q. -- which was another significant development. What was
11 its main significance in relation to fostering?

12 A. In relation to fostering, the 1968 Act itself doesn't do
13 terribly much. The 1968 Act was again -- it was
14 restructuring Social Services within Scotland and
15 slightly pre-empting the restructuring of Local
16 Authorities themselves in I think 1972. Of course the
17 1968 Act created the Children's Hearing System,
18 following the recommendations of the Kilbrandon Report.

19 I don't think it changed in any significant way our
20 understanding of fostering and it certainly didn't
21 immediately lead to any revision of the regulations. We
22 waited until 1985 for that.

23 LADY SMITH: I think it tweaked the wording so that the
24 reach of the legislation became as far as private
25 fostering arrangements without any payment being made --

1 A. Yes.

2 LADY SMITH: -- is that right? Whereas before private
3 fostering arrangements were only caught if they were for
4 payment?

5 A. Yes, thank you. Private fostering was --

6 LADY SMITH: Private.

7 A. It was affected, it was sort of concentrating on the
8 public law stuff.

9 MS INNES: Then you've mentioned, Professor, that the
10 regulations didn't change from 1959 up to 1985.

11 A. Yes.

12 Q. At that stage, those regulations, I think, were still
13 made under the 1968 Act?

14 A. The 19 ...?

15 Q. The 1985 regulations were going back to the 1968 Act.

16 A. Yes, yes.

17 Q. Do you know -- it may be the same explanation as you've
18 given before -- why was there such a time lag between
19 these changes in the 1960s and then no new regulations
20 up until 1985?

21 A. Yes, again it's speculation. The 1959 regulations were
22 less than ten years old. There was at that stage, that
23 point in time, I think, no real criticism on how they
24 were operating. There was no urgency to change them in
25 terms of the very concept of fostering, which hadn't

1 really changed under the 1968 Act. There was nothing
2 perceived as being particularly problematical with them.
3 It wasn't therefore a particularly high priority.
4 This is all speculation.
5 Q. I think again you've given evidence previously that in
6 1985 we saw the setting up of fostering panels for the
7 first time --
8 A. Yes.
9 Q. -- and foster care agreements --
10 A. Yes.
11 Q. -- and an ongoing requirement to review the placement.
12 A. Mm-hmm.
13 Q. All of which were new in 1985; is that right?
14 A. Yes, that's correct.
15 Q. Then moving forward again, we come in terms of
16 legislation to the Children (Scotland) Act 1995. Again
17 I think you've given evidence before in relation to that
18 piece of legislation, particularly in relation to the
19 views of the child.
20 A. Mm-hmm.
21 Q. Also the replacement of the parental rights resolution
22 with the PRO.
23 A. Mm-hmm.
24 Q. I think you've given some evidence about the
25 difficulties with the resolution, the parental

1 resolution before.

2 Is there anything else from the 1995 Act that was
3 a particular change that should be highlighted in
4 relation to fostering?

5 A. Well, perhaps the most significant change in the 1995
6 Act is the creation of this new concept of "looked-after
7 child" to replace the old informal language of "children
8 in care". Of course, the vast majority of children who
9 are fostered are looked-after children.

10 That may be why the new regulations in 1996 came
11 relatively shortly after the 1995 Act, and around about
12 the time the 1995 Act was brought into force. So
13 I think that would be the major change because it's,
14 I think, more than a mere change of terminology. It was
15 the creation almost of a new legal status of
16 looked-after child and the obligations in I think
17 section 17 of the -- or is that the definitional
18 section? The obligations on Local Authorities to
19 looked-after children, it became much, much more
20 explicit and detailed.

21 Q. Thank you, Professor. You've mentioned the 1996
22 regulations and there were the Fostering of Children
23 Regulations and the arrangements to Looked After
24 Children (Scotland) Regulations, both of which you've
25 given evidence about before.

1 A. Yes.

2 Q. I think at this point, and again you've given evidence
3 about this before, that this is the first time that we
4 see in the fostering agreement an issue raised in
5 relation to corporal punishment.

6 A. Yes.

7 Q. And that foster carers agreed in terms of that
8 regulation not to administer corporal punishment.

9 A. That's correct, yes.

10 Q. The next piece of significant legislation that we have
11 is the Adoption and Children (Scotland) Act in 2007 and
12 that, as you've mentioned already, brought in permanence
13 orders and I think the opportunity for foster parents to
14 share some parental rights and responsibilities --

15 A. Yes.

16 Q. -- with the Local Authority. Beyond that, is there
17 anything else of significance in that primary
18 legislation relevant to fostering?

19 A. No. I think, as you've mentioned, the really
20 significant feature of the permanence order was the
21 flexibility and the ability of the court to grant
22 particular responsibilities to a number of different
23 individuals in the child's life, including the Local
24 Authority may have certain decision-making powers,
25 foster parent, carers would have certain parental

1 responsibilities and even the parents may retain some of
2 their responsibilities and rights.

3 The whole point of the permanence order was to be
4 much more flexible, to allow a much more individualised
5 approach to come to an arrangement where the child is
6 permanently away from home, but nevertheless there may
7 be an ongoing relationship with the parent that it's
8 valuable to retain.

9 Q. Then we have in terms of the regulations the Looked
10 After Children (Scotland) Regulations 2009. Am I right
11 in thinking that although those have been amended in
12 2014, those remain in place?

13 A. They do.

14 Q. In terms of the amendment in 2014, can you recall what
15 that is? I can take you to it.

16 A. Does that bring in the kinship care provisions?

17 Q. I think that's a separate provision. If we could look
18 at LEG-000000202 and onto page 2 of it. This seems to
19 insert a placement limit.

20 A. Yes.

21 Q. It says there:

22 "A Local Authority must not place a child with
23 a foster carer where the placement would result in more
24 than three children being placed with that foster carer
25 at any one time."

1 Although there are exceptions if it's a group of
2 more than three siblings or if it's an emergency
3 placement. So I think that was an amendment to the 2009
4 regulations in 2014.

5 A. Yes. It's the first time it's written into the actual
6 legislation rather than being a sort of strongly urging
7 thing that the 1930s guidance, that we already looked
8 at, was giving.

9 Q. Yes, I think we saw very similar terms in the guidance
10 in 1930 that you just mentioned.

11 The 2009 regulations, as you say, those remain in
12 force, and what were the most significant developments
13 in relation to fostering in the 2009 regulations?

14 A. One of the changes that's quite important in the 2009
15 regulations is that it removed the existing
16 specification on the make up of the household. This had
17 originally, I think, come in in 1947, that foster
18 parents, as they were called then, had to be either
19 a married couple or a single woman. That progressively
20 was chipped away at in the 1985 and 1996 regulations,
21 which allowed single men, for example, and then
22 unmarried couples and the final thing in the 2009
23 regulations was the removal of the ban on same-sex
24 couples being foster carers.

25 It kind of reflects the Adoption and Children

1 (Scotland) Act of 2007, where couples could adopt
2 irrespective of the gender make up or indeed whether
3 they were couples, and that then worked its way through
4 into the fostering regulations of 2009.

5 Q. Okay. The next piece of legislation I just want to
6 touch on very briefly, the Children's Hearings
7 (Scotland) Act 2011. You gave evidence previously and
8 mentioned in your report that there was a provision for
9 children's advocacy before the children's hearings.

10 A. Yes.

11 Q. And when you gave evidence previously, that hadn't been
12 brought into force.

13 A. Yes.

14 Q. Has that now changed?

15 A. That provision, I think it's section 122 of the --

16 Q. It is.

17 A. -- 2011 Act. I think I've been writing about it quite
18 recently. That has now been brought into force, yes.

19 Q. Okay. Moving forward again, there was the Children and
20 Young People (Scotland) Act 2014. Again, you've given
21 evidence about this before and I would like to ask you
22 about two aspects of it. One is corporate parenting,
23 and you have given evidence before about organisations
24 having a corporate parenting policy.

25 A. Mm-hmm.

1 Q. What would this mean for Local Authorities who are
2 looking after children in care? What difference does
3 the corporate parenting make?

4 A. The idea behind corporate parenting was I think to give
5 recognition to the fact that looked-after children, when
6 they're no longer children and therefore no longer
7 looked-after children, they're nevertheless still
8 disadvantaged, because children who have not been looked
9 after tend to be able to rely on parental support longer
10 than their childhood. The idea behind corporate
11 parenting was to ensure that a whole variety of
12 organisations provided some sort of additional support.

13 With Local Authorities particularly, that taps into
14 the aftercare provisions, which are contained in the --
15 I think primarily in the 1995 Act. It just increases
16 their awareness of the need, because the 1995 Act as
17 originally drafted, as originally enacted, had a lot of
18 provision allowing Local Authorities at their discretion
19 to provide aftercare. That has since been tightened up
20 to ensure that they're actually obliged to do so.

21 Q. I think the age increased as well, up to 26?

22 A. Yes.

23 Q. The other aspect of the 2014 that I wanted to ask you
24 about was the named person.

25 A. Mm-hmm.

1 Q. When you gave evidence in 2019, there was a bill I think
2 at stage 1 in the Scottish Parliament intended to
3 replace the provisions that were problematic and a code
4 of practice was being drafted in relation to information
5 sharing and you gave evidence about issues with the
6 drafting of that.

7 What has happened since then?

8 A. I think what has happened since then was that the people
9 responsible for drawing up the code of practice felt
10 that it was impossible to meet the requirements of the
11 Supreme Court's decision in the Christian Institute case
12 where the named person provisions were challenged, while
13 at the same time achieving what the named person
14 provisions actually wanted. The Scottish Government
15 withdrew that draft legislation and have, as far as
16 I understand, effectively abandoned their aims for
17 making the named person scheme a Scotland-wide scheme.

18 Q. Another matter on which you gave evidence previously and
19 you alluded to it briefly in your evidence earlier was
20 what might be colloquially known as "the smacking ban".
21 When you last gave evidence, you advised that there was
22 a private members' bill before the Scottish Parliament
23 in relation to that, removing the defence of reasonable
24 chastisement completely.

25 A. (Witness nodded)

1 Q. Am I right in thinking that that legislation is now in
2 force?

3 A. That was passed pretty decisively and has now been
4 brought into force, I think in 2019.

5 Q. It passed in 2019, yes.

6 A. Right, I think it was brought into force some time in
7 2020 then, but it is now in force.

8 LADY SMITH: In the case of foster care, do you know whether
9 an agreement about corporal punishment, or rather not
10 using corporal punishment, still has to be entered into
11 by foster parents? I think that was for some time part
12 of the standard fostering agreement, wasn't it?

13 A. It was. It was required under the 1996 regulations that
14 such a term of the agreement -- I haven't thought to
15 check whether that part of the 1996 -- I suspect it's
16 still there.

17 LADY SMITH: There'd be no harm, I suppose.

18 A. Yes, yes. I suspect it's still there, but in a sense
19 it's now been rendered redundant.

20 It is quite interesting, because the aim had always
21 been that a child in foster care would be treated
22 exactly the same as the natural child and that was one
23 provision where an exception was made and parents,
24 between 1996 and 2020, were allowed to smack their own
25 children but would not be allowed to smack any children

1 they were fostering.

2 LADY SMITH: Thank you.

3 MS INNES: Another matter which you covered previously in

4 your evidence, Professor, was the increasing

5 professionalisation of foster care.

6 A. Mm-hmm.

7 Q. I think you'll be aware of the EAT decision in a case

8 called Glasgow City Council v Johnston.

9 A. Yes.

10 Q. Do you have any comment in relation to that case? What

11 was it about?

12 A. I mean, maybe not on the case itself, but the case,

13 I think, represents an ambiguity, an increasing

14 ambiguity in the nature of what a foster carer actually

15 is. As we've already been discussing, for much of the

16 20th century and before then it was a replacement

17 parent. Whether it worked out like that or not is

18 an entirely different thing, but that was the benign

19 aim, that the foster carer would be a replacement parent

20 and wouldn't expect, for example, to be paid except any

21 incidental expenses.

22 Once training came in, that perhaps was the

23 beginning of a professionalisation of the role, and

24 certainly in the past ten years or so we've seen

25 a number of court cases arising in all sorts of

1 different environments, whether it's vicarious
2 responsibility, whether it's in relation to attendance
3 at a Children's Hearing, or whether foster carers are
4 protected by the employment legislation. All of these
5 are questioning the precise understanding of what
6 a foster carer is and I don't think as at today's date
7 there's any very clear notion of what a foster carer
8 actually is.

9 Maybe that's appropriate, because of the variety of
10 situations and environments in which we classify foster
11 care.

12 Q. I just have a couple more things to ask you, Professor,
13 about two other areas of legislation.

14 One is the Children (Scotland) Act 2020. Is there
15 anything within that which is of relevance to foster
16 care which it would be important to know about or
17 perhaps for the Inquiry more generally?

18 A. As you know, there's a lot of stuff in the 2020 Act that
19 has not yet been brought in force, but there has been
20 significant elements that have been brought into force,
21 in particular contributions to Children's Hearings by
22 siblings and I suppose from the foster relationship
23 point of view, the significant thing there is that it's
24 siblings and sibling-like relationships that are
25 included in these provisions, which give a siblings and

1 people in sibling-like relationships opportunities to
2 participate in Children's Hearings and they all came
3 into force in July of last year. I think that's
4 potentially significant.

5 Q. Then the final matter is incorporation of UNCRC. Can
6 you bring us up to date in relation to the path of that
7 legislation?

8 A. I'm not sure I can say very much. As you'll be fully
9 aware, the Supreme Court felt that certain crucial
10 provisions of the bill, which it passed very decisively,
11 were beyond the competence of the Scottish Parliament.
12 The Scottish Government immediately said, "We are
13 pushing ahead with this to the extent that we are able
14 within our legislative competence", and I know that they
15 have been approaching a number of constitutional
16 experts. I'm not a constitutional expert, but they did
17 ask me a couple of things.

18 I know that the aim is to satisfy what the Supreme
19 Court has required of them. I have no doubt that we
20 will get an incorporation bill. The extent to which it
21 looks like the bill that is currently in the public
22 domain or not, I couldn't say.

23 MS INNES: Thank you, Professor. I have no more questions
24 for you.

25 LADY SMITH: Nor have I. Just an apology for putting you

1 through the mill a bit. I'm sorry if some of this has
2 sounded like putting you through an oral exam. I'm sure
3 you're kinder to your students than maybe you felt we
4 are to you, but, seriously, I'm so grateful for all the
5 work you've done for us, Professor Norrie. It is
6 invaluable. It's hard to find words to properly express
7 our appreciation for the value of that work.

8 A. Thank you.

9 LADY SMITH: Thank you very much, and I'm now able to let
10 you go.

11 A. Thank you very much.

12 (The witness withdrew)

13 LADY SMITH: That's us until tomorrow morning, is that
14 right?

15 MS INNES: Yes, that's right, my Lady. When
16 Professor Kendrick will be coming to give evidence,
17 focusing on his report insofar as it's not been spoken
18 to in evidence before, so 1995 to 2014 relative to
19 foster care.

20 LADY SMITH: Good. He'll be followed tomorrow by?

21 MS INNES: He's the only witness tomorrow.

22 LADY SMITH: Oh, he's the only witness tomorrow, that's
23 right. Then it's Thursday we go on to Nina Biehal and
24 Maggie Grant?

25 MS INNES: And Maggie Grant, yes.

1 LADY SMITH: Thank you very much.
2 I'll rise now until tomorrow morning. Thank you,
3 all.
4 (4.05 pm)
5 (The Inquiry adjourned until 10.00 am on
6 Wednesday, 4 May 2022)
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1

2

3

I N D E X

4

5 Opening submissions by Ms Innes1

6 Opening submissions on behalf of5
INCAS by Mr Collins

7

8 Opening submissions on behalf of9
Scottish Ministers by
Ms O'Neill

9

10 Opening submissions on behalf of12
COPFS by Ms Laurie

11 Opening submissions on behalf of20
Police Scotland by Ms Pender

12

13 Opening submissions on behalf of22
SSSC by Mr Weir

14 Opening submissions on behalf of25
Glasgow City Council by

15

Mr Pugh

16 Opening submissions on behalf of30
City of Edinburgh Council by

17

Ms Springham

18 Opening submissions on behalf of34
East Lothian Council by

19

Mr Watson

20 Opening submissions on behalf of37
East Dunbartonshire Council by

21

Mr Watson

22 Opening submissions on behalf of39
North Ayrshire Council by

23

Mr Blair

24 Opening submissions on behalf of45
South Ayrshire Council by

25

Mr Blair

1	Opening submissions on behalf of	49
2	Midlothian Council by Mr Blair	
3	Opening submissions on behalf of	53
4	Perth and Kinross Council by	
5	Mr Blair	
6	Opening submissions on behalf of	58
7	Aberdeen City Council by	
8	Mr Crosbie	
9	Opening submissions on behalf of	61
10	Angus Council by Mr Crosbie	
11	Opening submissions on behalf of	63
12	West Lothian Council by	
13	Mr Cheyne	
14	Opening submissions on behalf of	65
15	Dumfries and Galloway Council	
16	by Mr Cheyne	
17	Opening submissions on behalf of	67
18	Scottish Borders Council by	
19	Mr Batchelor	
20	Opening submissions on behalf of	69
21	North Lanarkshire Council by	
22	Mr Batchelor	
23	Opening submissions on behalf of	73
24	Stirling Council by	
25	Mr Batchelor	
26	Opening submissions on behalf of	76
27	Falkirk Council by Ms Barber	
28	Opening submissions on behalf of	79
29	Barnardo's by Ms Comiskey	
30	Opening submissions on behalf of	84
31	Swiis Foster Care Scotland by	
32	Ms Ross	
33	Professor Kenneth Norrie (affirmed)	91
34	Questions from Ms Innes	92
35		

