



Midlothian

**Scottish Child Abuse Inquiry
Foster Care
Section 21 Notice 190827**

**Midlothian Council Response
27th January 2020**

1. On **27 August 2019**, Midlothian Council received a Section 21 notice (Inquiries Act 2005) requiring the Council to provide a report in relation to the provision of foster care services, as detailed in the four parts of the appendix attached to the notice. The Council was required to provide the report not later than by 27 January 2020.
2. On **23 December 2019**, Midlothian Council applied for a variation of the notice under section 21 of the Inquiries Act 2005 dated 27 August 2019 by seeking an extension of the submission deadline for parts C and D of the report to 27 April 2020.
3. On **03 January 2020** the Rt Hon Lady Smith granted Midlothian Council a variation which extends the deadline for compliance for parts C and D to **27 April 2020**.
4. On **09 January 2020**, Midlothian Council applied for a variation of the notice under section 21 of the Inquiries Act 2005 dated 27 August 2019 by seeking an extension of the submission deadline for part B of the report to 27 April 2020.
5. On **13 January 2020** the Rt Hon Lady Smith granted Midlothian Council a variation which extends the deadline for compliance for part B to **27 April 2020**.
6. Midlothian Council advises the Inquiry that the best placed witnesses to speak to all parts of the report are **Joan Tranent**, Chief Officer Children's Services, Partnerships and Communities and **Alison White**, Chief Social Work Officer.
7. All references to "local authority" mean the local authority and its statutory predecessors. All references to "foster care" include boarding out with private families.

Part A – Background

1. Characteristics

1.1 History of the Local Authority

a) Over the period from 1930 to date, please provide details of the predecessor authorities for the local authority area for which the authority is now responsible, and the time periods during which these authorities were the responsible authority for the area, or any part thereof.

Burgh Council

Burghs were communities with special privileges conferred by charter. They were run by a municipal corporation, often known as the burgh or town council, which had responsibilities for the management of their local area. The oldest burgh in Midlothian is Dalkeith which was created a burgh of barony in 1401. Between 1760 and 1878, Dalkeith was run by twelve trustees who were appointed for life with their successors chosen by the remaining trustees. In effect, the town was controlled by the occupants of Dalkeith Palace.

In the nineteenth century, the government of Scottish burghs was reformed in an attempt to make the system more effective and root out existing mismanagement and corruption. Successive legislation led to the creation of police burghs where communities over a certain size were entitled to police many of their own affairs, such as cleansing, street lighting and water supply as well as public order. Police burghs were run by elected commissioners or magistrates who recorded their decisions in minute books.

In Midlothian, police burghs were created at Bonnyrigg, 1865; Penicuik, 1867; Dalkeith, 1878; Lasswade 1881; and Loanhead, 1884. In 1901, their functions were taken over by town or burgh councils. Under the terms of the Local Government (Scotland) Act 1929, Bonnyrigg and Lasswade were united to become the burgh of Bonnyrigg and Lasswade.

Burgh or town councils were abolished in 1975 and were replaced by district and regional councils, which in turn were replaced by the current one-tier council system in 1996.

Burghs produced characteristic forms of historical records of both an administrative and judicial nature. These records included administrative

records, such as minute books of council meetings and special committee meetings. These record the administration of burgh functions, such as water supply, housing, roads, trade supervision, financial accounts, and records of council-owned buildings. In addition, the records include the administration of the judicial functions of the burgh authorities and minutes of the Dean of Guild Court, licensing courts and Police Court. The burgh also had responsibility for the administration of health matters and the records in this collection also pertain to the administration of poor assistance and nursing and mental health provisions.

Midlothian County Council, 1889–1975.

Midlothian County Council was established by the Local Government (Scotland) Act, 1889, taking over powers from the Commissioners of Supply, County Road Trust, and other local authorities. Originally, it included the burghs of Bonnyrigg, Dalkeith, Lasswade, Loanhead and Penicuik as well as the burghs of Musselburgh, Leith and Portobello. The county boundaries were changed over time, and some parishes and burghs were removed to other administrative areas.

Midlothian County Council had four District Committees (Calder, Gala Water, Lasswade and Suburban) which became District Councils in 1929 (with the addition of Newbattle and Penicuik District Councils as well as Currie, East and West Calder, and Musselburgh).

To summarise:

- Midlothian County Council administered the major services throughout the whole county, such as finance, education, roads and bridges, town planning, health, welfare, care of children, and the valuation and registration of Parliamentary and local government electors.
- District Councils administered minor functions such as recreation grounds, public ways, allotments, etc.
- Burgh Councils administered all local government functions for their respective burghs, except those conferred on the County Council.

County Councils produced characteristic forms of historical records of both an administrative and judicial nature. These records included administrative records, such as minute books of council meetings and special committee meetings. They record the administration of council functions, such as water supply, housing, roads, trade supervision, financial accounts, and records of council-owned buildings. The County Council also had responsibility for the administration of health matters and some of the records in this collection pertain to the administration of poor assistance, and nursing and mental health provisions. The records are, therefore, an essential resource for both local and

family history, and for understanding the function and administration of a Scottish local authority during this period.

Following the Local Government (Scotland) Act 1973, Midlothian County and District Councils were abolished in 1975 then Lothian Regional Council formally took over responsibility for social work and education from the old Lothian County Councils of Midlothian, East Lothian, West Lothian and Edinburgh, in May 1975. The 2-tier system under regionalisation was subsequently ended by the Local Government (Scotland) Act 1994 and Midlothian Council then existed as a unitary council from April 1996. The changes brought about by regionalisation and subsequent restructuring of the four Lothian Divisions back to unitary councils has had an impact on the location of Lothian Regional Council social work and education historic records during this period of May 1975- April 1996. As the Midlothian Division HQ, during regionalisation, was located on George IV Bridge in Edinburgh City centre we have no doubt that a large number of historical Midlothian documents and records for social work and education from this period are held by the (current) City of Edinburgh Council.

b) When and how did the local authority become involved in the provision of foster care for children in Scotland?

The Local Authority has been designated with varying forms of legal responsibility for the care, welfare and protection of children under different legislative frameworks at specific periods across the timespan in scope and undertook the provision of boarding out and fostering children as part of a wider range of duties and functions which are consistent with other Scottish local authorities in this period. (Shaw 2007) (Norrie 2017 at page 140- "PART TWO: Regulatory Structures governing particular types of accommodation. SECTION A: Boarding out and Fostering of Children".)

Between 1930 to 1948, approval was received from the Secretary of State for Council schemes covering Education, Lunacy and Mental Deficiency, Public Assistance and Public Health. Councils were responsible for providing Public Assistance (formerly under the Poor Law (Scotland) Act 1845) encompassing the care, welfare and protection of children under the legal framework of the Children Act 1908, the Children and Young Persons (Scotland) Acts, 1932 and 1937 and the Children Act 1948.

There is evidence of a circular letter (No 18) of 29th June 1931 from the Department for Health for Scotland in regard to the duties resting upon Public Assistance Authorities in dealing with orphan, deserted or separated children who have become chargeable to the authorities. The circular was reported as

dealing generally with the boarding –out system which had been in successful operation in Scotland for many years.

Regulations under the governing legislation were: (from 1st November 1933), the Children and Young Persons (Scotland) Care and Training Regulations 1933 and from 20th October 1947, the Children (Boarding-Out etc) (Scotland) Regulations 1947, and from 1st August 1959, the Boarding – Out of Children (Scotland) Regulations, 1959.

Norrie (2017) reports that the “Boarding-out of Children (Scotland) Regulations, 1959 continued to apply until 1st April 1986, when they were revoked and replaced by the Boarding-out and Fostering of Children (Scotland) Regulations 1985. While the 1959 Regulations were based on the understanding that boarding out was a long-term solution, the 1985 Regulations perceived fostering as a temporary placement, reflecting the shift presaged by the 1968 Act from replacement families to short-term non-institutional care. This is probably why the provisions in the 1959 Regulations permitting boarding-out outside Scotland and allowing the Secretary of State to limit the number of children boarded out in particular areas were not repeated in the 1985 Regulations”.

“One of the major innovations in the 1985 Regulations was the requirement on care authorities to establish fostering panels, whose functions were to “consider every person referred to it by the care authority as a prospective foster parent” and to make recommendations to the care authority as to the suitability of such a person to act as a foster parent either for any child, any category of child or any particular child”.

“The other major innovation in the 1985 Regulations was that the care authority became obliged to enter into an agreement with approved foster parents regarding the care to be provided for any children who might be placed with them, including details of the financial arrangements; the care authority’s policies and practice regarding the welfare of children for whom it had responsibility, the ways foster parents would be expected to follow these policies and practices and the assistance to be provided by the care authority to that effect; and the arrangements made by the care authority to review “at appropriate intervals” its approval of foster parents for the purposes of the regulations”

“The Boarding-out and Fostering of Children (Scotland) Regulations 1985 were in force for exactly 11 years until 1st April 1997, when they were revoked and replaced by the Fostering of Children (Scotland) Regulations 1996.”

The Arrangements to Look After Children (Scotland) Regulations 1996, which required local authorities to make a care plan for each child looked after by them (whether in foster care, in a residential establishment, or otherwise), also came into force on that date.

"The Fostering of Children (Scotland) Regulations 1996 were revoked by the Looked After (Children (Scotland) Regulations 2009 which have governed public fostering arrangements from 28th September 2009 until the present day."- Norrie 2017. Quoting from Wilkinson and Norrie he states: "Since the coming into force of the 2009 Regulations there has been no limitation on the type of family structure that potential foster carers can belong to and foster carers are assessed as suitable according to their own merits, without legally specified preconceptions about their lifestyles."

1995-2014: The Children (Scotland) Act 1995, Adoption and Children (Scotland) Act 2007 and Children's Hearings (Scotland) Act 2011 imposed statutory duties on the organisation.

2014-2017: The Children and Young People (Scotland) Act 2014 imposed statutory duties on the organisation.

Public Assistance Circular 1934 was written by the Secretary for the County Clerk/Town Clerk following the Poor Law Scotland Regulations 1934. It states "For many years the policy has been that children should not be brought up in the environment of the poorhouse, and the boarding-out system has long been a successful feature of Scottish poor law administration, though hitherto it has been without specific statutory foundation. Experience has shown that the success of the system depends upon (a) care and judgement in the selection of suitable guardians; (b) the limitation of the number of children boarded with each guardian; (c) the limitation of the number of children boarded in a particular district; and (d) the thoroughness of inspection and supervision".

c) How has the involvement of the local authority in the provision of foster care changed/developed over time?

See response to 1.1 b)

Public Assistance Circular 1934 was written by the Secretary for the County Clerk/Town Clerk following the Poor Law Scotland Regulations 1934. It refers to notifications of particulars of boarded-out children, "The notifications are required for the Central Register of Boarded-Out Children which the Department has maintained since 1913...Authorities are recommended to continue, so far as possible, their supervision of boarded-out children at least until they reach the age of sixteen, even though the children may have ceased

to be chargeable. Authorities are reminded that they have no power to relieve any person residing out of Scotland, and that, accordingly, no child should be placed outwith Scotland”.

1.2 Funding of Foster Care

Past

a) How were the local authority’s operations and activities, so far as relating to the provision of foster care, funded?

Central government funding and local taxation.

There is reference in legislation e.g. the Children and Young Persons (Scotland) Act 1937 and the Children Act 1948 to “grants paid to local authorities “and to “monies provided by parliament to local authorities” to support the carrying out of their duties under these Acts.

Norrie 2017 at page 38 describes how, following the introduction of the Children and Young Persons Act 1932, fostering became “a major component of state care”. He states further “committal to a fit person was possible for any child or young person who was in need of care and protection or who had committed an offence. Every Education Authority was deemed a fit person with the Treasury bearing the cost.” and that the only mechanism available to them was “to board them out with private families- in other words, fostering.”

b) To what extent, if any, did the local authority provide funding to other organisations for the purposes of provision of foster care?

There are three main categories of records that were searched for information regarding request 1.2a and 1.2b

- i) Historical archives (1930-1995);
- ii) Operational paper records (1995-2014);
- iii) Operational electronic records (1997-2019).

Operational paper records produced no results.

Historical archives produced:

MCC/1/5 Clothing Book, Page 38 lists clothing provided for West Lothian Boarded-out child 1945-1949. (from the record it is not clear if the child was Boarded-out from Midlothian or West Lothian).

MCC/1/19 Other Parish Poor Ledger, Page 118 lists general expenses for Boarded-out child from Midlothian to West Lothian for 1945-1947. (from the record it is not clear if the child was Boarded-out from Midlothian or West Lothian).

MCC/1/25 Midlothian County Council Miscellaneous Assistance Payments 1944-1949, lists payments given for Boarded-out children.

Operational electronic records produced results from 2009 onwards:

Agency	Date From	Date to
Aberdeenshire Council	2016	2017
Aberlour	2009	2015
Action for children	2009	2014
Adopters for Adoption	2016	2018
Barnardo's	2009	2020
Carevisions	2009	2012
CCS Adoption	2015	2017
Core Assets, previously Foster Care Associates, changed to FCA on 06/02/2013	2009	2019
Dundee Council	2016	
East Lothian Council	2009	2020
Edinburgh Council	2009	2020
Foster Care Connect	2009	2020
Fostering Solutions	Used in 2011	Used in 2016
Fosterplus (Fostercare) Ltd	2009	2020
Jane Moore Trust	2009	2015
NFA (National Fostering Agency)	2014	2017
Perth & Kinross Council	2017	2018
Quarriers	2017	2020

Scottish Adoption	2016	2020
Scottish Borders Council	2015	2017
St Andrews C S Ltd	2009	2019
St Margaret's Children & Family Care Society	2015	2018
States of Guernsey	2016	2017
SWIS	2009	2020
TACT	2009	2020

c) If funding was provided by the local authority to other organisations for the provision of foster care, to whom was it provided, when was it provided and what criteria were applicable to its provision?

See 1.2 b

No information exists about the applicable criteria.

d) To what extent was financial state support available to foster carers? How were foster carers made aware of that state support? How was that state support accessed by foster carers (e.g. directly or via the local authority)?

Historical archives produced:

MCC/1/3 Application for Poor Relief Book, there is reference to Boarded-out children in an Application for Relief, as "particulars as to income of applicant". Applicant states that she earns £1 7s per week as Assistance for the Boarded-out children.

e) To what extent was financial support from the local authority available to foster carers?

In terms of the Children and Young Persons (Scotland)act 1937- s 88 (3) "An Education Authority may board out children and young persons committed to their care for such periods and on such terms as to payment and otherwise as they think fit..."

f) If financial support was available, what was the source of those funds (i.e. from local or central government)? What criteria did the local authority apply to the distribution of such funds?

Please refer to response 1.2 e) it would appear that the financial support came from local government and, as stated above was in response to requests for support in education or on the basis of financial hardship of the foster carers.

g) How were foster carers made aware of any financial support available from the local authority? How was that financial support accessed by foster carers?

Since 2008 the foster carers handbook is given to all newly approved foster carers. Within the handbook the foster carers can find information about Additional Allowances, such as Birthday, Christmas and Holiday Allowances, and further information about special tuition or learning opportunities, spectacles and lenses, Passports and Documents. Midlothian Council's Family Placement Team and the Finance Department are responsible for the financial support to the foster carers. Before that the Family Placement team would notify the prospective foster carers directly.

h) What other sources of funding were available to foster carers in relation to the provision of care for children?

Please see 1.2 (g).

i) Was the funding adequate to properly care for the children?

Edinburgh Corporation Committee Minutes Education Committee 1939-40, page 176-177, paragraph titled Boarded-out Children Rate of Maintenance Payments, where it is stated that Foster Parents were asking for an increase in the amount paid for the maintenance of the children in their care. The same book there is a continuation of the "Rate of Maintenance Paragraph". Where sub committees recommendation that an all-round increase of 1s per week should be granted.

j) If not, why not?

Not known.

Present

k) With reference to the present position, are the answers to any of the above questions different?

No.

l) If so, please give details.

Not applicable.

1.3 Legal Status

(i) Local authority

Past

a) What was the legal basis which authorised or enabled the local authority to become responsible for the provision of foster care for children in Scotland?

Norrie 2017 sets out the legislative framework from 1933 to present day.

See response to 1.1 a) and 1.1b).

Poor Law Scotland Regulations 1934 states "The Department of Health for Scotland, in exercise of the powers competent to them under sections 9,10 and 12 of the Poor Law (Scotland) Act, 1934, and of all other powers enabling them in that behalf, hereby make the following regulations:- ...Part III – Boarding-out of children and placing of children in institutions other than poorhouses".

Future of Adoption and Fostering Panel refers to Boarding Out and Fostering of Children (Scotland) Regulations 1995 "Regulation 4 specifies that a care authority must appoint a fostering panel. Regulation 6 in describing the panel's function, states that a fostering panel shall consider every person referred to it by the care authority as a prospective foster parent, and that they shall make a recommendation as to whether such a person is suitable to be a foster parent. The panel must also recommend whether they consider the foster parent to be a suitable carer for any child to whom the Boarding Out Regulations apply, certain categories of children to whom the Regulations apply, or a particular child or particular children.

"Nothing in the Regulations nor the accompanying SWSG Circular makes specific reference to the panel's composition, although Regulation 5 does place a duty on the care authority to satisfy itself that the numbers, qualifications or experience of individual members enables it to effectively discharge its functions (Appendix 3)...

Future of Adoption and Fostering Panel – Appendix 3 has a copy of 'The Boarding-out and Fostering of Children (Scotland) Regulations 1985 which came into operation on 1st April 1986.

Future of Adoption and Fostering Panel – Appendix 6, 'Adoption Agencies (Scotland) Regulations 1984 Scheme for the Establishment of Adoption Panels' – There were two panels established: Aberdeen, Gordon, Kincardine/Deeside Division and Healthcare; and Banff/Buchan and Moray Divisions. Function 6 states that each panel, in relation to their area, would "Consider applications by persons for approval as prospective foster parents", and under Function 7 "consider the placement of particular children with approved foster parents in appropriate cases".

b) Did that legal basis require the local authority to meet, or fulfil, any legal and/or regulatory requirements in respect of children in its care? If so, please give details.

See response to 1.1 a) and 1.1b).

Yes.

Public Assistance Circular 1934 was written by the Secretary for the County Clerk/Town Clerk following the Poor Law Scotland Regulations 1934. It states "It will be noted that Article 25, which deals with the making of rules to be observed by guardians, requires that those rules shall ensure that a guardian does not make use of the services of any boarded-out child for the purpose of any trade, business or calling carried on by him, except in the performance of such light agricultural or horticultural work as may be done by the child without risk of injury to the child's health or of detriment to his educational progress and general welfare. Authorities are reminded, however, that the employment of children in general is regulated by Part IV of the Children and Young Persons (Scotland) Act, 1932, and by any by-laws made by education authorities under that Act. Article 25 of the regulations imposes an additional restriction upon the work that may be performed by boarded-out children. Care should be taken by authorities that the rules for guardians do not permit employment which is prohibited by the statute or by-laws made under the statute or by the Department's regulations".

Future of Adoption and Fostering Panel – Appendix 3, The Boarding-out and Fostering of Children (Scotland) Regulations 1985 outline that the authority had responsibility for appointing foster carers in accordance with Schedule 1 of the Act. The authority approved foster parents under regulation 7 of the Act.

c) Did the local authority have a legal duty of care to each child in its care?

Yes, see response to 1.1 a) and 1.1b).

Future of Adoption and Fostering Panel – Appendix 3, The Boarding-out and Fostering of Children (Scotland) Regulations 1985 outline that the authority had responsibility for appointing foster carers in accordance with Schedule 1 of the Act. The authority approved foster parents under regulation 7 of the Act.

Present

d) With reference to the present position, are the answers to any of the above questions different?

No.

e) If so, please give details.

Not applicable.

(ii) Foster carers

Past

a) Did foster carers have a special legal, statutory or other status?

No.

b) If not, how did the local authority classify a foster carer?

In terms of the Children (Boarding-out)(Scotland) Rules and Regulations 1947 "foster -parent" was defined to mean "a husband and wife ,or a woman, with whom a child is boarded out by a local authority." Since the coming into force of the Looked After Children (Scotland) Regulations 2009 there has been no limitation on the type of family structure that potential foster carers must belong to and foster carers are assessed as suitable according to their own merits....the local authority is responsible for approval of foster carers..." Norrie 2017.

c) What was the legal basis which authorised, or enabled, a foster carer to become responsible for caring for children?

This was based on the legislation applicable at the time and on the regulations made thereunder.

d) Did that legal basis require a foster carer to meet, or fulfil, any legal and/or regulatory requirements in respect of children in his or her care? If so, please give details.

Yes. See response to 1.3 (ii) c)

e) Did the foster carer have a legal duty of care to each child in his or her care?

Yes. Children (Boarding-out etc) (Scotland) Rules and Regulations 1947 - "foster- parents shall accordingly bring up a child placed by the local authority in their custody as one of their own children and devote to this duty the care which good parents give to their children". Norrie 2017

Present

f) With reference to the present position, are the answers to any of the above questions different?

No.

g) If so, please give details.

Not applicable.

1.4 Legal Responsibility

(i) Local authority

Past

a) Did the local authority have any legal responsibility for the children in its care?

Yes, see response at 1.1 b).

b) If so, what was the nature and extent of that legal responsibility?

Legal responsibilities are those laid out in the relevant statutes and regulations that pertained at the time. See response at 1.1 a) and 1.1 b).

Independent Visitation Memo 1934: The memo is "regarding independent visitation of boarded-out children as called for by the poor relief regulations (Scotland), 1934 – Statutory Rules and Orders, 1934, No 1296/S.69". It is

stated that Section 21 of the regulations says where a child is boarded-out in the area of another local authority, the child is to be supervised by a 'reliable' person and a report provided every 6 months on the circumstances of the child.

Poor Law Scotland Regulations 1934 states under Part III of the regulations that:

"11. A local authority shall not board-out a child without a certificate of a medical officer of the local authority as to the child's bodily health and mental condition and as to his suitability for boarding-out.

"12. A child shall not be boarded out in a house –

- a) Which is so situated, or in such sanitary condition as to be injurious or dangerous to his health;
- b) Which is not within reasonable distance from a school; or
- c) Which does not permit of suitable sleeping accommodation for the child in a room properly lit and properly ventilated.

"13. So far as reasonably practicable, a local authority shall board-out children of the same family in the same house.

"14. Except with the sanction of the Department –

- a) Not more than three children shall be boarded-out in the same house at the same time, unless all the children are children of the same family; and
- b) A child shall not be boarded-out in a house in which there are more than three other children resident unless one or more of these children is a brother or sister of the child to be boarded-out.

"15. If the number of children in a house in which a child is boarded-out by a local authority subsequently exceeds four, including that child, the child shall, unless the child is a brother or sister of one or more of the boarded-out children resident in the house or unless the Department otherwise direct, forthwith be withdrawn.

"16. A child shall not be boarded out or be allowed to remain boarded-out –

- a) In a house in which a certified lunatic or mental defective is residing;
- b) With a guardian occupying or residing in a house or premises licensed for the sale of excisable liquor;
- c) In a house where any member of the household has at any time been convicted of an offence which, in the opinion of the local authority, renders him unfit to be associated with a child; or
- d) With a guardian other than a relative, of a religious persuasion different from that to which the child belongs.

"17. A local authority shall, before boarding-out any child with a guardian, satisfy themselves that the guardian is of good character and of industrious habits, and is a person who is in all respects fit to look after the health, education and general well-being of the child.

"18. A local authority shall ensure that when a child is first boarded-out he is provided with sufficient boots and stockings and at least two outfits of outer and of under-clothing, and that thereafter the child is kept supplied with boots and stockings and suitable clothing, and for that purpose they may arrange with the guardian for an adequate supply of the same.

"19. A local authority shall arrange for the provision of the necessary medical attendance on every child boarded-out by them and for his receiving necessary dental treatment, medicines and medical or surgical appliances and extras ordered by the medical attendant and shall notify the guardian of the arrangements made.

"20. Where a local authority board-out a child in the area of another local authority, they shall immediately furnish that authority with particulars of the child and with the name and address of the guardian with whom he has been boarded-out.

"21. Where a local authority board-out a child in the area of another local authority, they shall make suitable arrangements for the child's supervision. Such arrangements shall include provision for the child to be supervised by some reliable person resident in the district where the child is boarded-out, and for the person by whom the child is supervised to furnish to the local authority a report every six months on the matters specified in paragraphs (a) to (h) inclusive of Article 23 of these regulations.

"22. A local authority shall in January of each year furnish the local authority of each area in which a child is boarded-out by them with a list giving the name, age and religion of each child boarded-out by them in that area and the name and address of his guardian.

"23. Unless the Department on the application of a local authority in any particular case otherwise direct, every child boarded out by a local authority shall be visited at least once in every twelve months by an inspector of the local authority who may be accompanied by not more than two members of the local authority, and the inspector and the members, if any, shall furnish to the local authority a report with respect to –

a) The general conditions of the home where the child is boarded-out, including the suitability of the guardian;

- b) The sleeping arrangements for the child and the condition of his bed, bedclothes and night apparel;
 - c) The condition of the child's clothing;
 - d) The child's health, general welfare and behaviour;
 - e) The progress the child has made at school;
 - f) The manner in which the child is occupied outwith school hours;
 - g) Any complaints made by, or concerning, the child; and
 - h) Any other matters relative to the care and supervision of the child by the guardian or to the child's welfare which they consider should be reported;
- and the local authority after taking any necessary action on such report shall retain it for reference.

"24. Where the local authority have reason to believe that a guardian is party to any contract for the purpose of ensuring the payment to him a sum of money upon the illness or death of the child boarded-out with him, they shall forthwith withdraw the child from the guardian.

"25. A local authority shall make rules to be observed by guardians and shall furnish the Department with a copy of such rules. The rules shall contain provisions for ensuring the general welfare of every boarded-out child, including provisions with regard to general training and discipline, attendance at school, feeding, clothing, sleeping accommodation and medical attendance and for ensuring that no guardian shall make use of the services of any boarded-out child for the purposes of any trade, business or calling carried on by him except in the performance of such light agricultural or horticultural work as may be done by the child without risk of injury to the child's health or of detriment to his educational progress and general welfare.

"26. Where it appears to the Department that an excessive number of children is boarded-out in an area, the Department may, after consultation with the Scottish Education Department, give intimation of such excessive boarding-out to any local authority who have boarded-out children in that area and the local authority shall, within the time prescribed by the Department, reduce the number of children so boarded-out by them to such number as the Department may require.

"27. No child shall be boarded-out in any area which the Department, after consultation with the Scottish Education Department, have declared to be unsuitable for that purpose.

Public Assistance Circular 1934 was written by the Secretary for the County Clerk/Town Clerk following the Poor Law Scotland Regulations 1934. "Generally speaking, the regulations do not introduce any radical changes in the arrangements hitherto in force in the spheres of poor law administration

covered by the regulations...Part III (boarding-out of children) incorporates in regulation form many of the recommendations made by the Department and their predecessors in various administrative circulars, particularly in the Department's Public Assistance Circular No. 18, dated 29th June 1931".

c) Did any other person or organisation have any legal responsibility for the children while they were in the local authority's care?

People holding parental responsibilities and rights continued to have some legal responsibility for their children while they were in the care of the organisation.

d) If so, what was the nature and extent of that responsibility?

Parental rights and responsibilities are now as defined in the Children (Scotland) Act 1995. Prior to that, the Social Work (Scotland) Act 1968 refers to 'rights and powers' without further definition.

e) If the local authority had no legal responsibility for children in its care, where or with whom did legal responsibility lie?

Not applicable.

Present

f) With reference to the present position, are the answers to any of the above questions different?

No.

g) If so, please give details.

Not applicable.

(ii) Foster carers

Past

a) Did the foster carer have any separate legal responsibility (separate from the local authority) for children in his or her care?

Norrie 2017 –" In terms of the Children and Young Persons (Scotland) Act 1932, the person to whose power the boy or girl is committed shall, whilst the order is in force ,have the same rights and powers, and be subject to the same liabilities

in respect of his or her maintenance, as if he were his or her parent. The Children and Young Persons (Scotland) Act 1937 replicated this provision. The provision was repealed in the Social Work (Scotland) Act 1968 and no equivalent provision was enacted.”

Thereafter, those employed to provide care at the establishment would have undertaken the provision of care for the child on behalf of the organisation. In terms of the Fostering of Children (Scotland) Regulations 1996, “to foster was stated to mean to “arrange for a child to live as a member of the family of a person who is not a parent, does not have parental responsibilities in respect of the child and who is not a relevant person in relation to the child and who undertakes to look after the child other than in accordance with the Adoption Agencies (Scotland) Regulations 1996.” Norrie 2017

b) If so, what was the nature of that responsibility?

Please refer to response to 1.4 (ii) a).

Present

c) With reference to the present position, are the answers to either of the above questions different?

Yes.

d) If so, please give details.

Norrie 2017 “From 1968 decision making powers relating to children in care rested with the local authority and foster carer’s powers have been traced to and constrained by the applicable regulations.”

1.5 Ethos

Past

a) What did the local authority see as its function, ethos and/or objective in terms of the foster care service it provided for children?

See response at 1.1 a) and 1.1 b).

In Minute of Council Meeting on 15th October 1945, at pages 906 & 907, reference was made to the publication of the Monkton Report following the death of a child who had been boarded out in England and to the notification to Local Authorities by the Secretary of State who considered the lessons learned from the report, worthy of study and asked that local authorities review their arrangements to secure the wellbeing of children in their care. The following was discussed: "PRINCIPLES -The aim of boarding out is to substitute the best obtainable guardians and homes for (a) unworthy ones and (b) those who through force of circumstances are unable properly to provide for their children; to train the child to develop into an intelligent, self-respecting, useful citizen, to achieve a good upbringing in a working class home; to obtain for the child a strong bond of affection, if love is too strong a word, in his new surroundings, and to give him a solid and secure anchorage; to allow him to grow happily as one of a family..... the guardian whose attraction to the amount of aliment paid is to be avoided, for it is not board and lodging only that are necessary. The problem is to find people willing to care for children and provide home life out of affection for and interest in children and that is the real limitation. The child must, however pay his way. It is for consideration whether more generous terms or other means might attract those in more affluent circumstances to provide material advantages of a higher order than are obtainable with our present guardians, but affection cannot be purchased."

b) What did the local authority see as the foster carer's function, ethos and/or objective in terms of the service that the foster carer provided to children placed with him or her?

Earlier policy moves are reflected in answers as per 1.1, 1.2. Following the introduction of the regulatory body; the Care Commission in April 1992, new requirements were introduced. As a result all fostering agencies must comply with the published national care standards and provide a statement of function and purpose when they are applying to register their service. They were developed to make sure that the services that they provide are of high quality.

c) Were there changes over time in terms of what the local authority saw as its function, ethos and/or objective in terms of the foster care service it provided for children?

Yes, See 1.1 b – social policy, relevant legislation, regulations and the introduction of the Children (Scotland) Act 1995, Children and Young People (Scotland) Act 2014 and the looked after and fostering regulations had a significant impact in terms of the rights of children and young people.

d) If so, what were the changes and when and why did they come into effect?

See C – the changes were underpinned by the children's rights agenda and robust monitoring and scrutiny of services by external regulatory bodies.

e) Were there changes over time in terms of what the local authority saw as the foster carer's function, ethos and/or objective in terms of the service that the foster carer provided to children placed with him or her?

Yes, as a result of Inspection and Regulation of Services and various policy and legislative directions illustrated in B and C.

f) If so, what were the changes and when and why did they come into effect?

Poor Law (Scotland) Act 1934,
Children and Young Persons (Scotland) Act, 1937
Children Boarding-out (Scotland) Regulations, 1947.
Boarding-out of Children (Scotland) Regulations, 1959.
The Social Work (Scotland) Act 1968
Boarding-Out and Fostering of Children (Scotland) Regulations 1985:
Application of Regulations-
Children (Scotland) Act 1995,
The Adoption and Children Act (Scotland) 2007
The Looked After Children (Scotland) Regulations 2009
Children and Young People (Scotland) Act 2014 (the 2014 Act)
National Care Standards, April 2002
Guidance on Looked After Children (Scotland) Regulations 2009
Adoption and Children (Scotland) Act 2007
Scottish Commission for the Regulation of Care, 2002
National Care Standards: Foster Care and Family Placement Services (Scotland)
Getting it Right for Every Child: Guidance on Overnight Stays for Looked After and Accommodated Children –Managing Allegations Against Foster Carers and Approved Kinship Carers: How Agencies Should Respond –

g) With reference to the present position, are the answers to any of the above questions different?

No

h) If so, please give details.

Not applicable.

1.6 Numbers

(i) Local authority

Past

a) How many children did the local authority accommodate at a time in foster care and in how many placements?

1930-1948 - Archival records were searched no records were identified to contain this information

1949-1968 - in the Medical Officer of Health reports yearly figures of children can be found in the following categories: from Midlothian Boarded out in Midlothian, from Midlothian Boarded out in other areas, Children from other Areas Boarded out in Midlothian.

1969-1975 Midlothian, East Lothian, and Peebles Social Work Department would be responsible. Midlothian do not hold any of these records, although City of Edinburgh may hold them.

1976-1995 – This is the period of regionalisation and Lothian Regional Council was responsible for Social Work functions, operational records from this time period are thought to be held by City of Edinburgh Council.

1996-2008 – There were no statistical reports from this period. Midlothian Council's Records Centre Database does not allow search for this inquiry.

2009-2014 – results of children in foster care can be provided from 2009, when our electronic records started.

b) How many foster carers were approved/registered by the local authority at any given time? How many placements for children did this represent? How many placements were in use at any given time?

No information exists within Archival material relating to this question. City of Edinburgh Council may hold information relating to Lothian Regional Council.

Midlothian Council cannot answer this question as it is however, the Records Officer has put in place a database with all the foster carers that appear in at least one of the council's electronic systems or physical records. The earliest year of registration is 1933.

c) If foster carers were approved/registered by the local authority as providing only specific types of care – e.g. respite care, short-term foster care, long-term foster care – please provide details of the categories and the numbers of placements in each.

In the earlier Midlothian County Council minutes the term used to describe fostering is "boarded-out".

In Midlothian Councils physical files the category types of care are: respite care, community care, short term fostering service, emergency fostering scheme, community care scheme, planned placement scheme, day care, share the care, long term foster care.

In Midlothian Councils electronic databases the types of care mentioned are: day care, respite care, short term care, long term care, community care, share the care, emergency respite care, interim care, short break care.

These two lists of types of care are not exhaustive as there might be files not yet catalogued that contain a type of care not yet listed. There is no way to provide numbers of placements in each care as this information was not recorded at the time.

d) Please provide details of any material changes in numbers of children, placements or foster carers, and the reasons for those changes?

Current records are maintained in individual foster cares records either as part of the formal Foster Care Review. Since 2013/14 Midlothian Council also record the information on individual chronologies which are regularly updated and presented to the Foster Care Review.

e) How many children in total were accommodated by the local authority (whether in foster care or otherwise)?

The only archival material that exists is the Medical Officer of Health reports, dated from 1949 – 1968. Within these yearly reports there are figures for Children a) from Midlothian Boarded out in Midlothian, b) from Midlothian Boarded out in other areas, c) from other areas Boarded out in Midlothian, and d) from Midlothian in Homes in Midlothian. In 1958 this category changed to Children from Midlothian in Midlothian County Council Homes, and then changed again in 1962 to Children from Midlothian in Joint Children's Committee Homes. Although there are no figures for this category for 1962, results are recorded until 1968, the remaining two categories stated in the reports are e) from Midlothian in Homes in other areas, this category also changed in 1958 to Children from Midlothian in Registered Voluntary Homes, and f) Children on Infant Protection Register.

1969-1975 Midlothian, East Lothian, and Peebles Social Work Department would be responsible. Midlothian do not hold any of these records, although City of Edinburgh may hold them.

1976-1995 – This is the period of regionalisation and Lothian Regional Council was responsible for Social Work functions, operational records from this time period are thought to be held by City of Edinburgh Council.

1996-2008 – There were no statistical reports from this period. Midlothian Council's Records Centre Database does not allow search for this inquiry.

2009-2014 – results of Looked After Children can be provided from 2009, when our electronic records started.

f) In general terms, was the main service provided by the local authority the provision of residential care for children in establishments, or was it the provision of foster care?

Midlothian Council does not have sufficient evidence to compare the services provided for Looked After Children through the years, however from the statistical analysis of records held in our electronic database for the years 2009 to 2014 it would appear that more children are in foster care than residential care.

Present

g) With reference to the present position, are the answers to any of the above questions different?

No.

h) If so, please give details.

Not applicable.

1.7 Children's Background/Experience

Past

a) Did the children placed in foster care generally have a shared background and/or shared experiences?

Whilst it would be probable that children within the same family generally had shared experiences and backgrounds, without going into every single child's file we could not guarantee this for every case. The reasons for being placed in foster care will be varied and have changed over the years.

b) Were children admitted into the care of the local authority, or were they admitted into the care of particular foster carers?

Part One of the 1908 Act enhanced the regulation of what was then known as "baby-farming", that is to say the practice of boarding out infants (often "illegitimate") by their parents with individuals paid to look after them (what today would be termed 'private fostering').

The 1908 Act expanded the power of the state in this area by (i) requiring that any reception of a child by a child-minder keeping the child of another on a residential basis for reward had to be notified to the local authority, (ii) limiting the number of infants under the age of 7 that any child-minder could receive (for reward) into their home and (iii) requiring that child protection visitors, who would visit any notified child, be appointed by the local authority. Local authorities could also remove (with court authority) any child to "a place of safety." The Act therefore heralded a greater involvement of the local authority, representing the state, in the welfare of vulnerable children & early regulatory system.

Boarding out was also a mechanism under the Poor Law (Scotland) Act 1934, which allowed public assistance authorities – without court order – to "make arrangements for the lodging, boarding, or maintenance otherwise than in a poorhouse of children under the age of sixteen years who are orphans, or who

have been deserted by, or are separated from, their parents...& that any arrangements so made shall be subject to such regulations as the Department may make with respect thereto.”

Based on the 1936 Act it was the Education Officer who reported cases of children in respect of whom it was proposed that proceedings should be instituted under the Act. The Education Officer was reporting to the Sub-Sub-Committee of the General Purposes Sub-Committee of the Education Committee.

If carers took on the responsibilities of parents, then the state itself also undertook the responsibility to ensure that the child was not subjected to cruelty or neglect at the hands of these very people charged with their care.

Two significant changes happened in 1948;

- on a local level was the set-up of Mid/East Lothian Joint Committee (East Lothian has the minute of first meeting of this joint committee)
- & on a national level was The Children Act 1948, a UK statute applicable in England, Wales, and Scotland. The major aim of the 1948 Act was to simplify the regulatory mechanisms under which children and young persons could be looked after & accommodated away from their parents, either by the state in its various manifestations or by private institutions (religious or philanthropic), each mechanism having different regulatory oversight, and there being a bewildering range of different Government departments with ultimate responsibility.

The Committee identified the “three main solutions at present adopted in Scotland...” (of children and young persons who cannot reside with their parents):

- (i) boarding out the children with foster parents,
- (ii) sending the children to homes run by charities (“voluntary homes”),
- (iii) maintaining the children in homes run by local authorities.

Significantly, the Act recognised the importance of the welfare of children as a distinct function of the Local Authority, and not as an incidental function of a group of separate committees of different Local Authorities primarily concerned at present with other functions. To achieve this, “each County and large Burgh there should be established a Children’s Care Committee which would administer the whole of this field. This Committee should have transferred to it all the functions at present exercised by the Public Assistance and Public Health Committees regarding these children. This would no longer then be regarded as an incidental matter in Poor Law or Local Health administration. Further, to the Town Councils of large Burghs and to the County Councils of Counties, and through them to their respective Children’s Care Committee,

would be transferred all the functions at present exercisable by Education Authorities in relation to care and protection cases under the Children and Young Persons (Scotland) Act, 1937.”

Under the 1948 Act, for any child in the care of a local authority, “it shall be the duty of that authority to exercise their powers with respect to him so as to further his best interests, and to afford him opportunity for the proper development of his character and abilities.”

Underpinning this was to be a move away from “the large institution” & ensuring that a substitute family, in a private home, was provided for the child who could not remain with his or her parents. In the words of the Clyde Report: “The answer is certainly not to be found in the large Institution. That is an outworn solution, and some of them have left a bad impression upon the Members of the Committee who have visited them. The uniformity, the repression, the impersonality of these cold and forbidding abodes afford no real consolation to the children who grow up in them....”. State provision of foster care was seen by 1948 to be the primary solution for children unable to live with their birth families.

Key to oversight:

- that the boarding out (local) authority should be ultimately responsible for the child,
- that boarded out children be visited (by officials) every six months,
- that the existing control of voluntary homes be extended to all institutional homes in which children may reside

Structure: “that the local authority should be the primary state body for dealing with all such children, with each local authority being required to establish a children’s committee and to appoint a children’s officer”. The children’s committee are to appoint a children’s officer for the area of each local authority, with a possible right of combination of more than one area. It was the purpose of the Children’s Officer to have oversight of the wellbeing of all the accommodated children within that authority.

The children’s committees, in the event, operated for only 20 years, before being subsumed into the wider social work departments of local authorities set up in 1968 when the children’s officers’ role was taken over by the new Directors of social work.

The 1959 Regulations represented more detailed regulation of boarding out than its predecessor had done, especially in relation to the co-operation required between different local authorities (to facilitate the long-established practice of boarding-out children in areas other than their local area). The focus

of the 1959 Regulations is far less than the 1947 Regulations on such matters as the child's sleeping arrangements and clothes, and more on the duties that local authorities have to ensure suitability of foster parents and supervision of children.

The Social Work (Scotland) Act 1968 brought about major changes in the direction of child care law & policy, largely based on proposals of the Kilbrandon Report & the later White Paper, 'Social Work & the Community'. Instead of the "social education departments" with an exclusive focus on children the White Paper suggested that every local authority should establish a broad social work department which would be responsible for a wide range of social work functions.

The children's committees established under the 1948 Act were therefore subsumed into the new social work committees, which had far wider responsibilities than children alone. Just as the 1948 Act had required local authorities to appoint children's officers, so the 1968 Act required them to appoint, instead, directors of social work.

Also repeated was the provision that "where a child is in the care of a local authority...it shall be the duty of that authority to exercise their powers with respect to him so as to further his best interests..."; this was subsequently replaced in 1975 by a somewhat stronger requirement to focus on the child's welfare & this focus was sharpened by a new requirement on local authorities to review the child's case at least every six months.

As well as the creation of a single agency within local authorities to perform functions that different local authority departments had previously performed, the 1968 Act also effected a significant shift of responsibility from central to local government. Local authorities had long been responsible for identifying, vetting and overseeing foster carers with whom children could be boarded out, but prior to the 1968 Act it was the Secretary of State who "approved" schools for children sent to them and who vetted and registered voluntary homes. That approval and registration, with consequent monitoring duties that involved inspecting and visiting homes and those accommodated therein, now largely passed to local authorities.

The 1995 act it is clear that it is the Local Authority that is responsible for any Looked After Child and therefore any admitted child falls into the care of the Local Authority.

c) **Who placed children with the local authority?**

Since 2009 the drop down menu in the electronic referral form contains these values:

CS Staff, Emergency SW, Family, Other, Other Authority SW, Police, School, Voluntary Sector, Unknown.

Please also refer to 1.7 a) and b)

d) From 15 April 1971 (the date on which the Children's Hearing system was introduced), did the local authority receive children mainly through the Children's Hearing system?

While children were accommodated via the Children's Hearing system, children could also be accommodated by local authorities using emergency and voluntary duties and responsibilities as Social Work (Scotland) Act 1968.

e) If not, generally how did children come to be admitted into the care of the local authority?

Through Social Work (Scotland) Act 1968 as part of local authority duties and responsibilities.

f) How long did children typically remain in the care of the local authority?

Variable, depending on circumstances

g) In respect of children who were admitted into the care of the local authority, who made the decision as to whether they should be placed in foster care?

Please refer to 1.7 b)

h) If the decision was made by the local authority, what criteria were applied?

A foster carer was first looked for in the family of the child, if not suitable carer found then external options were considered.

i) Were children moved between different foster care placements?

Yes.

j) If so, in what circumstances?

Reasons can be examined on a case by case basis.

k) Generally did children typically stay in one, or more than one, foster care placement?

Midlothian Council does not hold this statistical record to answer the question.

l) What was the process for review of children's continued residence in foster care, in terms of whether they continued to require to be (a) in foster care and/or (b) in that particular placement?

The process of review pre-1995 was in line with Social Worker (Scotland) Act, 1968. Post 1995 the process follows the regulations which are in line with the relevant legislation;

Children (Scotland) Act 1995,

The Adoption and Children Act (Scotland) 2007

The Looked After Children (Scotland) Regulations 2009

Children and Young People (Scotland) Act 2014 (the 2014 Act)

National Care Standards, April 2002

Guidance on Looked After Children (Scotland) Regulations 2009

Adoption and Children (Scotland) Act 2007

m) When children left foster care, what was the process for discharge?

In Midlothian County Council minutes dated 1935-1938, stated within the foster parents rules that: The foster-parent shall endeavour, in conjunction with the Education Authority, to find employment for each boy or girl when he or she leaves school.

n) What support was offered to children when they left foster care?

Variable as there was no supporting provision or legislative underpinning young people having the choice to remain in placement or transition until Section 29 and Section 30 of the Children (Scotland) Act 1995. This has been strengthened on the back of the 'Staying Put' publication, the 2014 Act and the development of Continuing Care arrangements.

o) What information was sought by the local authority about what children leaving foster care planned to go on to do?

Looked after and accommodated review process in accordance with the LAC Regulations and Section 29-30 Children's (Scotland) Act, 1995.

p) Was such information retained and updated?

We are presently reviewing files in order to fully answer sections B, C and D of this Notice. At present, as we have not reviewed every file we are unable to state how detailed or what information would be retained.

q) What was provided in terms of after-care for children/young people once they left foster care?

This information would be variable depending on what the young person wanted to do. As above, we are in the process of reviewing files and so as we have not accessed all individual files we may not have identified all options. Some young people would go onto independent living or go into homeless accommodation or return home. As stated earlier this was strengthened in the 2014 Act to include more details on Continuing Care and After care. The emergence of the Continuing Care agenda came as a result of the findings of the 'Staying Put' publication which highlighted that Local Authorities were not consistent towards their Through Care commitments. A significant influence was the increased awareness of the inequality and disadvantage many care experienced young people encountered which in turn influenced their 'rights' agenda.

r) With reference to the present position, are the answers to any of the above questions different?

Yes, the Continuing Care agenda has influenced future service delivery for care experienced young people in Scotland. Midlothian Council's Children's Services Review was predicated on delivering services more creatively up to the age of 26.

s) If so, please give details.

The 2014 Act made provision for Continuing Care. In 2015 the Education and Children's Services Division published the "Support to Young People Leaving Care Throughcare and Aftercare – Principle Statement and Review of Legislation".

Midlothian Council's Children's Services Review took place in 2014 and created teams based on children and young people aged 0-12 and 12-26. In 2019 Midlothian's Children's Services published the "Looked After Children Practice Standards – Procedure and Forms" and also the "Independent Reviewing Officers Practice Standards Procedure and Forms".

Midlothian Council had informal Continuing Care arrangement for individual young people remaining with foster carers. In 2019 Midlothian Council developed formal procedures for young people remaining in their foster care placement. This included the foster carer undergoing a conversion assessment and being named as an adult carer for that young person. The services were registered by the Care Inspectorate towards the end of 2019.

1.8 Local authority staff and foster carers

(i) Local authority

Past

a) How many people were employed by the local authority who had some responsibility for foster care services for children?

We are unable to advise how many staff were employed by the local authority who had responsibility for foster care services for children.

b) How many people were employed by the local authority at any one time who had some responsibility for foster care services for children?

Unable to confirm numbers as no information available from the past that would give us this information.

c) What roles and responsibilities did such staff have? Please specify in which roles staff met with children and foster carers.

The roles that met with children and foster carers frequently were Supervising Social Worker, Social Worker, Social Worker Assistants, Practitioners, and Team Leaders.

d) In relation to each role, what experience/qualifications did such staff have?

SVQ

HNC
CQSW
Dip Social Work CP
Social Work Degree BA/McC
Management and Leadership PQ's

e) When were fostering panels set up? What was their purpose and remit?

Norrie 2017 page 168 - " One of the major innovations of the 1985 Regulations (Boarding - Out and Fostering of Children Regulations 1985) was the requirement on care authorities to establish Fostering panels, whose functions were "to consider every person referred to it by the care authority as a prospective foster parent" and to make recommendations to the care authority as to the suitability of such a person to act as a foster parent either for any child, any category of child or any particular child".

f) How were fostering panels constituted? What skills and experience were the members required to have?

In 2009 Midlothian Council published the "Fostering Panel – Policy & Procedure", which has been updated 3 times since.

Present

g) With reference to the present position, are the answers to any of the above questions different?

Yes.

h) If so, please give details.

Panel consists of professionals such as nurses, social workers, practitioners. The panel also has lay person, foster carers form other local authorities, young person when appropriate. Panel has a dedicated learning and development programme which members need to commit towards. Some members already due other training in their own individual CPD.

(ii) Foster carers

Learning and Development/robust supervision.

Past

a) How were foster carers identified and approved/registered?

See 1.1 . Historical policy and publications highlight the growing awareness of the needs of vulnerable children. In 1926 the Government published a Report of the Departmental Committee on Sexual Offences against Children and Young Persons in Scotland & “the heinous nature of some of the offences involved” (which challenges the commonly held view that awareness & concern for the long-term emotional effect of sexual abuse of children developed only in the latter part of the 20th century).

Boarding Out Under the Poor Law: Boarding out was also a mechanism under the Poor Law (Scotland) Act 1934, which allowed public assistance authorities – without court order – to “make arrangements for the lodging, boarding, or maintenance otherwise than in a poorhouse of children under the age of sixteen years who are orphans, or who have been deserted by, or are separated from, their parents...& that any arrangements so made shall be subject to such regulations as the Department may make with respect thereto.” Regulations by the Department of Health and the Boarding Out Rules/Care and Training Rules 1933, explicitly covered children boarded out under the Poor Law (Scotland) Act 1934 as well as those boarded out under the 1932 and 1937, were replaced by The Children (Boarding-Out etc) (Scotland) Rules and Regulations 1947.

Such arrangements shall be subject to the approval of the Department” and shall include “keeping a list of persons, referred to in these rules as ‘foster parents’, who are willing and fitted to undertake the care of boys and girls.” No mechanism was provided to assess “fitness” (nor criteria against which it was to be judged) other than the rules below excluding certain categories of individual from acting as foster parent.

If carers took on the responsibilities of parents, then the state itself also undertook the responsibility to ensure that the child was not subjected to cruelty or neglect at the hands of these very people charged with their care. And it is important to remember that “neglect” for the purposes of s. 12 still encompassed, with its reference to “mental derangement” and “unnecessary suffering” beyond injury to health, emotional neglect.

The power to board out had to be exercised in accordance with the rules (set out below) and if possible the person with whom the child or young person was boarded out was to be of the same religious persuasion, or willing to give an undertaking that

the child or young person would be brought up in accordance with that religious persuasion.

The nature of the care and training expected of foster-parents was set out in revealingly specific terms: "The foster-parents shall be required (a) to give boys and girls the care and attention necessary for their proper training in habits of punctuality and thrift, of good manners and language, of cleanliness and neatness, of cheerful obedience to duty, of consideration and respect for others, and of honour and truthfulness to word and act

Boarding out was not permitted with a person who had at any time been convicted of an offence that rendered them unfit to be a foster-parent, or with a person occupying or residing in a house or premises which were licensed for the sale of any excisable liquor. There was no definition of "fitness" for this purpose but it would be safe to conclude that unfitness included convictions for offences (of whatever nature) against children.

"No boy or girl shall be boarded out with a foster-parent who depends for a living mainly on the payments received for boarding boys or girls." This exclusion reveals an official understanding that children are best brought up in an environment in which they are not seen as a source of income-generation, but rather by individuals motivated by altruism.

Two significant changes happened in 1948;

- on a local level was the set-up of Mid/East Lothian Joint Committee (East Lothian has the minute of first meeting of this joint committee)
- & on a national level was The Children Act 1948, a UK statute applicable in England, Wales, and Scotland. The major aim of the 1948 Act was to simplify the regulatory mechanisms under which children and young persons could be looked after & accommodated away from their parents, either by the state in its various manifestations or by private institutions (religious or philanthropic), each mechanism having different regulatory oversight, and there being a bewildering range of different Government departments with ultimate responsibility.

The Committee identified the “three main solutions at present adopted in Scotland...” (of children and young persons who cannot reside with their parents):

- (i) boarding out the children with foster parents,
- (ii) sending the children to homes run by charities (“voluntary homes”),
- (iii) maintaining the children in homes run by local authorities.

Significantly, the Act recognised the importance of the welfare of children as a distinct function of the Local Authority, and not as an incidental function of a group of separate committees of different Local Authorities primarily concerned at present with other functions. To achieve this, “each County and large Burgh there should be established a Children’s Care Committee which would administer the whole of this field. This Committee should have transferred to it all the functions at present exercised by the Public Assistance and Public Health Committees regarding these children. This would no longer then be regarded as an incidental matter in Poor Law or Local Health administration. Further, to the Town Councils of large Burghs and to the County Councils of Counties, and through them to their respective Children’s Care Committee, would be transferred all the functions at present exercisable by Education Authorities in relation to care and protection cases under the Children and Young Persons (Scotland) Act, 1937.”

Under the 1948 Act, for any child in the care of a local authority, “it shall be the duty of that authority to exercise their powers with respect to him so as to further his best interests, and to afford him opportunity for the proper development of his character and abilities.”

Underpinning this was to be a move away from “the large institution” & ensuring that a substitute family, in a private home, was provided for the child who could not remain with his or her parents. In the words of the Clyde Report: “The answer is certainly not to be found in the large Institution. That is an outworn solution, and some of them have left a bad impression upon the Members of the Committee who have visited them. The uniformity, the repression, the impersonality of these cold and forbidding abodes afford no real consolation to the children who grow up in them....”. State provision of foster care was seen by 1948 to be the primary solution for children unable to live with their birth families.

An exception was the system of Local Authorities boarding out children on crofts in remote parts of the Highlands; children were sent to unfamiliar environments which,

due to underlying poverty, required them to work for their keep & children were seen to be overworked by their foster parents.

Key to oversight:

- that the boarding out (local) authority should be ultimately responsible for the child,
- that boarded out children be visited (by officials) every six months,
- that the existing control of voluntary homes be extended to all institutional homes in which children may reside

Structure: "that the local authority should be the primary state body for dealing with all such children, with each local authority being required to establish a children's committee and to appoint a children's officer". The children's committee are to appoint a children's officer for the area of each local authority, with a possible right of combination of more than one area. It was the purpose of the Children's Officer to have oversight of the wellbeing of all the accommodated children within that authority.

The children's committees, in the event, operated for only 20 years, before being subsumed into the wider social work departments of local authorities set up in 1968 when the children's officers' role was taken over by the new Directors of social work.

Assessment/vetting of foster parents: An important addition was that these regulations included basic provisions for ensuring that the household into which a child was boarded was approved. The Care and Training Regulations of 1933, which applied before then, had merely listed types of person with whom a child could not be boarded out: now all foster households were to be positively vetted. Vetting had indeed been introduced very shortly before the 1948 Act was passed, when Part C of the Care and Training Regulations, 1933 was replaced by the Children (Boarding-out, etc.) (Scotland) Regulations, 1947.

One of the issues was the appropriate frequency of official visitation of boarded out children. Noting that differing views had been offered to them, they concluded that "four visits a year to each boarded out child should not be necessary", if the foster parents "have been wisely chosen in the first place".

The 1947 Regulations were later replaced by the Boarding-out of Children (Scotland) Regulations, 1959. The Social Work (Scotland) Act 1968 The 1959 Regulations

Children (Boarding-out etc) (Scotland) Rules and Regulations, 1947 "A local authority shall satisfy themselves by all necessary enquiries that any person whom they propose to select as a foster-parent for the care of boarded-out children is of good character and is in all respects fit to look after the health, education and general well-being of children.", it also stated that only married couples & single women could foster. Unmarried couples, of any gender, & single men could not foster. It was further provided that the local authority "shall, if possible, select a person who is of the same religious persuasion as the child or who gives an undertaking that the child will be brought up in accordance with that religious persuasion."

The 1959 Regulations represented more detailed regulation of boarding out than its predecessor had done, especially in relation to the co-operation required between different local authorities (to facilitate the long-established practice of boarding-out children in areas other than their local area). The focus of the 1959 Regulations is far less than the 1947 Regulations on such matters as the child's sleeping arrangements and clothes, and more on the duties that local authorities have to ensure suitability of foster parents and supervision of children, for example by requiring three monthly rather than six monthly visits.

The Social Work (Scotland) Act 1968 brought about major changes in the direction of child care law & policy, largely based on proposals of the Kilbrandon Report & the later White Paper, 'Social Work & the Community'. Instead of the "social education departments" with an exclusive focus on children the White Paper suggested that every local authority should establish a broad social work department which would be responsible for a wide range of social work functions.

The children's committees established under the 1948 Act were therefore subsumed into the new social work committees, which had far wider responsibilities than children alone. Just as the 1948 Act had required local authorities to appoint children's officers, so the 1968 Act required them to appoint, instead, directors of social work.

Also repeated was the provision that "where a child is in the care of a local authority....it shall be the duty of that authority to exercise their powers with respect to him so as to further his best interests..."; this was subsequently replaced in 1975 by a somewhat stronger requirement to focus on the child's welfare & this focus was sharpened by a new requirement on local authorities to review the child's case at least every six months.

As well as the creation of a single agency within local authorities to perform functions that different local authority departments had previously performed, the 1968 Act also effected a significant shift of responsibility from central to local government. Local authorities had long been responsible for identifying, vetting and overseeing foster

carers with whom children could be boarded out, but prior to the 1968 Act it was the Secretary of State who “approved” schools for children sent to them and who vetted and registered voluntary homes. That approval and registration, with consequent monitoring duties that involved inspecting and visiting homes and those accommodated therein, now largely passed to local authorities.

Boarding-Out and Fostering of Children (Scotland) Regulations 1985: Application of Regulations- “to foster” was defined in the 1985 Regulations as meaning “to arrange for a child to live as a member of the family of a person who is not the child’s parent or guardian”. The Regulations applied to fostering of children in the care of either local authorities (under a variety of statutory authority) or voluntary organisations. This included fostering made a condition of a supervision requirement by a children’s hearing. Indeed, a local authority could not recommend to a children’s hearing a placement with a particular foster parent unless the procedures in the Regulations had been followed and the conditions satisfied: this imposed significant obligations on local authorities in respect of children brought before children’s hearings the outcome for whom was likely to be a placement away from home. The Regulations also applied to respite care where “a child with particular handicap or needs who is normally cared for by his parent, guardian or relatives is cared for by others for a short period”.

One of the major innovations in the 1985 Regulations was the requirement on care authorities to establish fostering panels, whose functions were to “consider every person referred to it by the care authority as a prospective foster parent” and to make recommendations to the care authority as to the suitability of such a person to act as a foster parent either for any child, any category of child or any particular child. In considering its recommendations, the care authority had to have regard to its duties under regs. 14 – 16 (see below), and also to its duties under s. 20 of the 1968 Act.

A care authority could not approve any person as a potential foster parent unless:

“(a) the care authority has, so far as reasonably practicable, obtained the information set out in Schedule 1;

(b) the prospective foster parent has been interviewed by or on behalf of the care authority;

(c) the care authority has conveyed to the fostering panel a report including the information gathered under sub-paragraph (a) together with such other information and such comment as it thinks appropriate;

(d) the care authority has considered a report from the fostering panel containing recommendations on the suitability of the prospective foster parent; and

(e) the care authority is satisfied, having regard to the duty imposed on it by section 20 of the [1968] Act, that the prospective foster parent is a suitable person with whom to place children.”

Another change in the 1985 Regulations was that the care authority was now obliged to enter into an agreement with approved foster parents regarding the care to be provided for any children who might be placed with them, including details of the financial arrangements; the care authority’s policies and practice regarding the welfare of children for whom it had responsibility, the ways foster parents would be expected to follow these policies and practices and the assistance to be provided by the care authority to that effect; and the arrangements made by the care authority to review “at appropriate intervals” its approval of foster parents for the purposes of the regulations.

In any case, a care authority could not place a child for fostering in any household except one that comprised a man and a woman living and acting jointly together, or a man or a woman living and acting alone. This represented a substantial increase in the pool of potential foster carers, for both unmarried cohabiting couples and (non-related) single men had been excluded from the 1959 and earlier regulations. Same sex couples remained absolutely and in all circumstances barred irrespective of whatever they could offer any individual child.

From 2008 Midlothian Council has the “Becoming a Foster Carer” Policy which specifies the process, criteria, and competencies needed for prospective foster carers. This policy was updated twice once in 2012 and once in 2014.

- b) What experience and/or qualifications, if any, did a foster carer require to have?**

Please refer to answer 1.8 (ii) a)

- c) What checks were carried out in relation to a prospective foster carer, including criminal record checks, references and interviews?**

An important addition was that the 1947 regulations included basic provisions for ensuring that the household into which a child was boarded was approved. The Care and Training Regulations of 1933, which applied before then, had merely listed types of person with whom a child could not be boarded out: now all foster households were to be positively vetted. Vetting had indeed been introduced very shortly before the 1948 Act was passed, when Part C of the Care and Training Regulations, 1933 was replaced by the Children (Boarding-out, etc.) (Scotland) Regulations, 1947.

The physical files that have been checked hold references, police checks, and home study reports, this confirms that the council was following the Boarding-out and Fostering of Children (Scotland) Regulations 1985.

After applicants have attended preparation groups they were invited to complete an application form. The authority followed up any Police checks. Applicants with a record of offending against children or a record of violence or substantial dishonesty were not considered for fostering.

Evidence of medical checks from GP were shared with the authority's medical adviser. People who had medical conditions which could be aggravated by fostering, or whose medical condition could affect their ability to foster might have been turned down for those reasons.

References from people who knew the applicants well were sought, as well as members of their family and their employer if applicable.

The final stage in the process involves face to face interviews by a social worker. The social worker then would prepare a report which the applicant would see and be asked to contribute to as well as having the opportunity to comment on.

In the "Becoming a Foster Carer" policy that was first introduced in 2008 there is a section titled what is the process and explains in detail all checks that the prospective foster carer needs to expect to be carried out.

d) What checks were carried out in relation to other persons residing with the prospective foster carer, including criminal record checks, references and interviews?

The "Becoming a Foster Carer" policy which was introduced in 2008 states that: other adult relatives living in the home will be required to have Disclosure Scotland checks and a request will be made to their G.P. for medical information. They will be interviewed by the social worker preparing the report and will be part of the assessment process even if their involvement will be minimal. In 2012 update the disclosure requirement became enhanced disclosure.

- e) **What checks were carried out in relation to other family members and friends of a prospective foster carer including criminal record checks, references and interviews?**

The "Becoming a Foster Carer" policy which was introduced in 2008 states that: Children in the household will also be seen by the Supervising Social Worker as part of the assessment process. They are regarded as important contributors to the fostering task.

- f) **To what extent, if any, were the checks referred to at paras (c) to (e) above reviewed? If so, how frequently and what checks were done? If not, why not?**

On regular basis, every 1-2 years.

- g) **What checks were carried out by the local authority of the available accommodation? How frequently were these carried out? Were they repeated? If so, how frequently? If not, why not?**

Midlothian County Council Education Committee Minutes from 1930-1935 contain information about specific rules the foster-parent should adhere to including rules about sleeping accommodation. Additionally in section 9. "Inspection" It states that The foster-parent shall allow any person acting on behalf of the Scottish Education Authority to visit a boarded-out boy or girl without notice and to inspect arrangements made for him or her. A Visiting Book will be supplied to the foster-parent and a record of all official visits to the foster-home shall be made therein. The Visiting Book shall be carefully preserved and shall be produced to any authorised person when called for."

Part One of the 1908 Act enhanced the regulation of what was then known as "baby-farming", that is to say the practice of boarding out infants (often "illegitimate") by their parents with individuals paid to look after them (what today would be termed 'private fostering').

The 1908 Act expanded the power of the state in this area by (i) requiring that any reception of a child by a child-minder keeping the child of another on a residential basis for reward had to be notified to the local authority, (ii) limiting the number of infants under the age of 7 that any child-minder could receive (for reward) into their home and (iii) requiring that child protection visitors, who would visit any notified child, be appointed by the local authority. Local authorities could also remove (with court authority) any child to "a place of safety." The Act therefore heralded a greater

involvement of the local authority, representing the state, in the welfare of vulnerable children & early regulatory system.

- “The medical officer of the Education Authority shall visit boarded-out boys and girls in their foster-homes every six months, provided that where boys or girls are boarded out in the area of another Education Authority
- “The Education Authority to whose care boys and girls are committed shall cause them to be visited within one month of their being boarded out and thereafter at least once in every three months. No boy or girl shall be visited at school. The Authority shall forward to the Department half-yearly reports of these visits and shall notify them immediately of any change of address of the foster-home.” The prohibition on school visits emphasises that it is the child’s or young person’s home surroundings (and their continuing suitability) that was to be the focus of inspections. That reports were required to be submitted indicates that visits were individualised and the opportunity was therefore present to identify and raise any welfare concerns in relation to any child, or his or her treatment by foster parents.
- Any boy or girl may be visited at any time by any person acting on behalf of the Scottish Education Department”.
- “Every boy and girl shall be examined by one of the Education Authority’s medical officers before being boarded out” and given medical attention if required.
- No more than 2 children were to be boarded out at one address, unless of the same family “whom it is desirable to keep together”; and boarding out was not permitted in foster-homes where there are more than four other boys or girls resident.

It was not until 1947 that Regulations set out rules for the management and monitoring of voluntary homes.

1948 TO 1968

Visits:

Where a local authority board-out a child, they shall send immediately to the education authority of the area in which the child is boarded-out particulars of the child’s full name, age and religion and of any bodily or other condition that may require special attention, his Medical and Educational Record Card and also the name and address of the foster-parent with whom he has been boarded-out.

They shall also in January of each year furnish each education authority in whose area children are boarded out by them with a list giving the full name, age and religion of each child and the name and address of his foster-parent. These regulations imposed a substantial increase in the record-keeping requirements.

"Where a local authority board-out a child in their own area they shall arrange for his supervision by an officer of the authority duly appointed for the purpose or by some other reliable person resident in the locality where the child is boarded-out."

or "Where a local authority board-out a child in the area of another local authority they shall arrange for his supervision by some reliable person resident in the locality in which the child is boarded-out, and in selecting such person shall consult with the local authority of that area."

"The boarding-out authority shall arrange that the person appointed to supervise a boarded-out child under Articles 14 and 15 hereof shall-

- (a) report to them within three months of the boarding-out of the child...&
- (b) report immediately on any particular matter which in his or her view should be brought to the notice of the boarding-out authority".

These rules, required (in the way that the 1933 Regulations had not) that each boarded-out child be allocated to a named individual whose duty was to supervise the child to ensure that the foster-parents and the home chosen continued to be suitable for the child, and to draw up a report thereon at regular intervals. "The local authority shall appoint an officer with experience and knowledge of social service for the purpose of assisting them in the performance of their functions under these Rules and Regulations, including the selection of foster-parents and the visitation of children boarded out by the authority."

"The officer appointed under Article 17 hereof shall visit or cause to be visited by persons with suitable qualifications and experience every child boarded-out by the authority within one month of the boarding out of the child and thereafter at intervals of not more than six months. The authority shall also arrange that such children shall be visited by members of the authority at least once a year. The officer or members, as the case may be, shall furnish to the authority a report on each visit in respect to-

- (a) the suitability of the foster-parent;
- (b) the general conditions of the home;
- (c) the number of other children in the house, keeping in view the requirements of Article 11 hereof;
- (d) the sleeping arrangements for the child and the condition of his bed, bed-clothes and night apparel;
- (e) the condition of the child's clothing;
- (f) the child's general well-being and behaviour;
- (g) the progress the child has made at school;

- (h) the manner in which the child is occupied outwith school hours;
- (i) any complaint made by, or concerning, the child; and
- (j) any other matter relative to the child's welfare which they consider should be reported."

Of particular note is the provision in article 18(i) which for the first time provided the child with an opportunity to make complaints.

Medical examination: The local authority was to be responsible for arranging for the child's medical care; medical examination was to be at six monthly intervals.

1968-1995

Regulatory Structures Governing the Accommodation of Children 1968-1995

Section 5 of the Social Work (Scotland) Act 1968 empowered the Secretary of State to make regulations governing how local authorities exercised their boarding out functions, including ensuring that both the persons boarded out and the places where they were boarded out would be "supervised and inspected by a local authority or voluntary organisation, as the case may be, and that those persons shall be removed from those places if their welfare appears to require it". But new regulations were not made immediately and the Boarding-out of Children (Scotland) Regulations, 1959 continued to apply until the making of the Boarding-out and Fostering of Children (Scotland) Regulations 1985, which came into force on 1st April 1986.

The 1985 Regulations were in force for exactly 11 years until 1st April 1997, when they were revoked & replaced by the Fostering of Children (Scotland) Regulations 1996.

Monitoring and Termination of Placement

An important monitoring obligation was placed on the care authority (whether local authority or voluntary organisation) by reg. 18, which obliged the authority to ensure that the child and foster parent were visited within one week of the placement and thereafter at intervals of no more than three months, as well as "on such other occasions as the care authority considers necessary in order to supervise the child's welfare and to give support and assistance to the person caring for him". The care authority was obliged to terminate the placement as soon as practicable where it appeared to the authority that it was no longer in the child's best interests to be cared for by the person fostering him or her under the Regulations.

Since 2008 the Family Placement Team has published the "Assessment of Foster Carers" procedures that includes screening visits guidelines aiming to identify potential problem areas and a Health and Safety checklist where the social worker can make a note of any improvements required. The procedures were updated in 2013 and 2014.

From 2008 Midlothian Council has the "Becoming a Foster Carer" Policy which specifies the accommodation requirements for prospective foster carers. This policy was updated twice once in 2012 and once in 2014.

- h) Was the gender of the foster carer of any relevance to approval as a foster carer or in relation to the placement of a child with a particular carer? If so, why?**

Please refer to 1.8 ii) a)

From 2008 Midlothian Council has the "Becoming a Foster Carer" Policy which specifies that a man and a woman living and acting jointly together, or a man or a woman living and acting alone. A household should not contain other adults, except relatives.

In the 2012 version of the policy the paragraph changed to: single adults, male or female. Couples including those in a same sex relationship or civil partnership. A household should not contain other adults, except relatives.

- i) Was the gender of other persons (including children) residing in the same house of any relevance to the approval of a foster carer or to the placement of a child with a carer? If so, why?**

Midlothian County Council Education Committee Minutes from 1930-1935 contain information about specific rules the foster-parent should adhere to including rules about sleeping accommodation. That states that (a) No more persons shall be allowed to occupy a bedroom in which a boy or girl sleeps that may be approved by the Education Authority. The bedroom shall have a window opening to the outside air and not into another apartment. (b) The bedding for each boy or girl shall be adequate and comfortable and shall be kept clean and well aired. (c) No boy or girl shall occupy the same bedroom as an invalid or an old or infirm person. (d) Boys and girls over eight years of age shall not occupy the same bedroom, and not more than two shall sleep in one bed.

From 2008 Midlothian Council has the "Becoming a Foster Carer" Policy which specifies that:

- Foster children may share a room with a child of the same sex, within the age criteria for room sharing but they should have adequate space for personal belongings. The foster child must have a bed to him/herself. It is essential to bear in mind the possibility that the child may have suffered abuse in the past and could present a risk to other children so full information should be sought prior to room sharing.

- Since 2012 the rule changes to: The foster child must have their own room. They can share with same sex siblings and can share with opposite sex siblings, only if the eldest sibling is no more than 10 years of age. There must never be any bed sharing. It is essential to bear in mind the possibility that the child may have suffered abuse in the past and could present a risk to other children so full information and an assessment will be undertaken prior to any sibling room sharing.

- Children in the household will be seen by the social worker, and their views assessed. They are regarded as important contributors to the fostering task.

j) **Were foster carers required to provide any services for children in their care beyond accommodating them? If so, what were they?**

To care for the child as if he / she were a member of their own family.

k) **Did children work manually in the placement or externally (e.g. farming work or other labour), or both? If so, did that change at any point? If so, why?**

An Education Authority was enabled to board children out in an area of another Education Authority. This was the basis upon which many children from central belt towns and cities were boarded out in the Highlands and Islands of Scotland.

Based on a retired social worker, children were sent to unfamiliar environments which, due to underlying poverty, required them to work for their keep & children were seen to be overworked by their foster parents.

l) **Were fostering agreements entered into? If so, were these in a prescribed form or created on an ad hoc basis?**

Please see 1.1 b)

Please see 1.8 ii) a)

Present

m) **With reference to the present position, are the answers to any of the above questions different?**

Yes

n) If so, please give details.

Since 2014 the majority of the Midlothian Fostering Service policies and procedures have been updated.

In the "Handbook for Foster Carers" (2019) foster carers are described as an integral part of the plan around the child in. The role as an approved foster is;

- To care for the child as if he / she were a member of your own family - in a safe and appropriate manner.
- To respond to the child's basic health needs and alert the placing Social Worker where there is an obstacle to the same.
- To promote the child's welfare in accordance with the care plan.
- To be aware of the child's emotional, social, educational, religious and physical needs and respond to the same.
- To help preserve the memories of the child for their time in placement, no matter how short. This includes printing photographs and the safe keeping of awards and certificates and special items of clothing or toys, for example.
- To provide the child with food, clothing and warmth. Unrelated children cannot share a bedroom.
- To establish clear expectations and limits and to discipline without the use of physical chastisement. Sanctions should never involve humiliation of the child.
- To encourage development of the child's self-esteem and positive self-image.
- To encourage and promote contact between the child and his / her family where this is in the best interests of the child.
- To work alongside the child's family.
- To help prepare the child to return to his / her family or to be placed with alternative carers.
- To recognise, understand and encourage a child's cultural and religious heritage and be non-discriminatory in this respect.
- To be a positive advocate for the child to ensure their views are heard.
- To arrange for routine and emergency medical, optical and dental care and to promote a healthy lifestyle.
- To provide educational support to the child and encourage the child in the development of special interests and abilities.
- To work in partnership with the Children and Families Teams and any other agencies involved with the child. This will include preparing reports ahead of, and then attending meetings.
- To record accurately an effectively sharing information with professionals that is appropriate.

2. Organisational Structure and Oversight

2.1 Culture

Past

- a) What was the nature of the culture within the local authority in relation to the provision of foster care?

Please refer to earlier answers throughout Question 1. Children and the protection and /or safeguarding of children were viewed within a wider societal lens depending on the prevailing culture and attitudes towards children in general. The changing cultures and attitudes towards the provision of foster care is illustrated in the changing societal norms and legislative and policy direction.

- b) Was that culture reflected in the local authority's policies, procedures and/or practice in relation the provision of foster care?

Yes

- c) How can that be demonstrated?

Please read answers to question 1-8 and the changing legislation and regulation

- d) Did the provision of care by foster carers reflect the local authority's culture, policies and procedures?

Usually.

- e) If not, please provide a representative range of examples and explain, by reference to those examples, why particular foster carers did not, in material ways, work in accordance with the local authority's then culture, policies and procedures and what, if anything, was done to change that?

Not applicable.

- f) When and why did any changes in the culture of the local authority in relation to the provision of foster care come about?

Please refer to previous answers in Question 1 which outline the internal and external influences which have informed policy, practice, legislation, knowledge and skills.

g) Were any changes in culture driven by internal influences, incidents, experiences or events within the local authority, or any of the foster care placements?

Yes, internal influences such as complaints and inquiries have influenced change. An example of this is Midlothian Council's introduction of chronologies for individual foster carers. These chronology contains any instance of allegations, how this was investigated and the outcomes which in turn is presented to the Foster Panel either for early review or annual review depending on the severity; using the Allegations against Foster Carers and Child Protection Procedures.

h) Were there any changes in culture that were driven by abuse, or alleged abuse, of children in foster care?

Yes – see above eg in relation to the development of the 'allegations' policy, child protection procedures and chronologies. Learning from other local authorities and child protection Initial Case Reviews/Serious Case Reviews

i) If so, when did they occur and how did they manifest themselves?

These documents were developed in 2013/14 following some analysis of allegations against foster carers and how these were investigated. The chronology is a result of similar analysis in 2013/14 regarding recent de-registrations, earlier complaints and how CP concerns were being investigated. Previous practice appeared to link any Child Protection directly on the child's files and not the foster carers. This meant that previous allegations/complaints/patterns or concerns raised by other children were not triangulated or collated as part of investigation. The chronology now makes it possible to ascertain other inquiries in relation to the conduct of carers and whether there were earlier allegations. The system also safeguards the carer by ensuring allegations are investigated, recorded and outcome also entered onto the chronology and sent to Foster Panel

j) Were any changes in culture driven by any external influences or factors and if so what were those influences or factors?

Children (Scotland) Act 1995,
The Adoption and Children Act (Scotland) 2007
The Looked After Children (Scotland) Regulations 2009
Children and Young People (Scotland) Act 2014 (the 2014 Act)
National Care Standards, April 2002
Guidance on Looked After Children (Scotland) Regulations 2009

Adoption and Children (Scotland) Act 2007
Scottish Commission for the Regulation of Care, 2002
National Care Standards: Foster Care and Family Placement Services (Scotland)
Getting it Right for Every Child: Guidance on Overnight Stays for Looked After and Accommodated Children –Managing Allegations Against Foster Carers and Approved Kinship Carers: How Agencies Should Respond –
Children’s Regulations
Child Protection
Children Act; 1995, 2014

Growing awareness of abuse inquiries such as Edinburgh and Jersey Inquiries and while their focus was on care homes it became evident children in foster care were perhaps more vulnerable to abuse and/or harm. There was also an increased awareness of the need for foster care training and development and to view foster care as more of a profession and not a vocation for ‘helping poorer families’.

Present

- I) With reference to the present position, are the answers to any of the above questions different?**

Yes, changing nature of the rights of children and UNRCC used to underpin children’s legislation and regulatory documents such as the National Care Standards,
Scottish Commission for the Regulation of Care, 2002
National Care Standards: Foster Care and Family Placement Services (Scotland)
Getting it Right for Every Child: Guidance on Overnight Stays for Looked After and Accommodated Children –
Managing Allegations Against Foster Carers and Approved Kinship Carers: How Agencies Should Respond –
Children and Young People (Scotland) Act 2014 (the 2014 Act)
Midlothian Council, policies, guidance and procedures can be obtained from Midlothian council

- I) If so, please give details.**

The above documents and publications led to improvements in policy and practice which provided higher standards of the quality of care, both for foster carers and practitioners as well as increased and improved monitoring and

reviewing services using quality assurance mechanism data/performance information and regular supervision of staff and foster carers. The changing nature of the documents meant monitoring and review became more evidence-based.

To what extent, if any, has abuse or alleged abuse of children cared for in foster care caused, or contributed to, the adoption of the current policies, procedures and/or practices of the local authority, in relation to the provision of foster care services for children including the safeguarding and child protection arrangements applying to its current foster care placements?

See answer to question 2.1. Midlothian Council also use learning from national findings around safeguarding processes, complaints, disruptions, de-registration and external regulation to improve services

2.2 Structure, leadership and accountability

Past

a) What was the structure of responsibility within the local authority in relation to foster care?

Midlothian County Council Minutes December 1932-1935 MCC/3/5 Page 106 paragraph titled Boarded out Children Visiting Committee – four members were appointed as the visiting committee for Boarded out Children.

Previous research has shown that Midlothian County Council was considered 'the local authority' under the Children Act From 1948 and as such was responsible for 'the care and welfare of children who, through being orphans, homeless or neglected or abandoned by their parents, are deprived of a normal home life...[or] in cases of ill-treatment or neglect.' Under this legislation, Midlothian County Council provided these services via the Midlothian, East Lothian and Peebles (MELP) Children's Committee, which was established as 'the Children's Authority for the combined area' and included representatives from all three Councils.

The Children's Officer appointed by the Committee held ultimate responsibility for the welfare of children, including fostering & children's homes in the three areas. Under the 1948 Act.

On 17 November 1969, a new Social Work Department came into effect under the 1968 Act, The City & County Councils had to appoint a Social Work Committee which in turn had to appoint a statutory officer as Director of Social Work. Midlothian, East Lothian & Peebles used their powers to set up combined Social Work Committee with a single Social Work department & a single Director of Social Work. The first Director of Social Work was Maurice G. Speed, then for a short while before regionalisation in 1975 James Gardiner became Director of Social Work. The name of the Joint Children's Committee is recorded variously as the 'Joint Children's Committee for Midlothian, East Lothian and Peeblesshire' (Midlothian County Yearbook c.1960) and the 'Midlothian, East Lothian and Peebles Social Work Committee (MCC/3/9 – Midlothian County Council Minutes for 1973).

From 1975-1995: As a result of the Local Government (Scotland) Act 1973, Midlothian County Council, District Councils and Town Councils were abolished, and the new Lothian Regional Council and Midlothian District Council were established. Lothian Regional Council expanded the local authority area to include what is now East Lothian, West Lothian and the City of Edinburgh, and assumed responsibility for social care. Operational responsibility for children's services was assumed by the Lothian Region Social Work Department, with governance via the Council's Social Work Committee.

Chief Executives, Directors & Depute Directors of Social Work during 1975-95: CEO's during this period were R.G.E Peggie, G.M. Bowie & Tom Aitchison.

Just before regionalisation James G. Gardener was appointed Director of Social Work in MELP then became the first single Director of Social Work in Lothian Regional Council in 1975.

Roger Kent succeeded James Gardner in the 1980's as Director of Social Work followed by John Chant as Director of Social Work in 1989. In the final year of LRC, Les McEwan took over as Director of Social Work in 1995 & who then remained as Director of Social Work for the City of Edinburgh (when regionalisation ended) up until 2003.

Lothian Regional Council had a Depute Director, Rossie Simpson, then W.H. (Bill) Challoner then Les McEwan who became Senior Depute Director following a further re-organisation in preparation for the NHS & Community Care Act, the Iain Patterson.

The next tier of managers were the Divisions/Divisional Directors. Field Services were structured geographically into the 4 Divisions, each headed by a Divisional Director. As in MELP the Social Work Divisions function was the delivery of field services which had no management role for residential services however social workers would be visiting children accommodated in foster care.

Edinburgh Divisional Director: Alan McRoberts
West Lothian Divisional Director: Tom (or Tommy) Watson, later Les McEwan,
later Mike Cairns
East Lothian Divisional Director: Angus Binnie, later David Affleck
Midlothian Divisional Director: Les McEwan, later Anne Black

This structure also had 5 branches each headed by an Assistant Director of Social Work, who reported either to the Director or Depute, these were:

Field Services: AD's were in order Chris Jay; Bill Challoner; Martin Manby; Ivan Middleton; Iain Patterson

Residential & Day Care: AD's were Audrey Lowe; Ivan Middleton

Other posts appear which may have arisen from further restructuring; Gerry O'Hara (Regional Officer Children & Families, from the mid 1980's) & Divisional Director of Social Work for the Under Fives (Margaret Anne Gilbert, also from mid to late 1980's).

& the next tier was Area Teams/Area Officers & in Midlothian this was:

Dalkeith Area Officer: Richard Payne

Penicuik Area Officer: Jim Kennedy, later as Loanhead Area Office an A. Dawson, then Robert H. Swift.

While elections to the new Midlothian Council took place on 06 April 1995, Lothian Regional Council and Midlothian District Council continued to provide existing services until 01 April 1996 to enable new organisational and staffing structures to be put in place for Midlothian Council.

On 10 September 1995 Malcolm McEwan became Chief Social Work Officer & Head of Service for a full range of services which included Children & Families, Community Care, Criminal Justice & Welfare Rights Service. In 2001 the authority re-structured and Social Work was split into three separate departments: Adults and Community Care, Children and Families, and Criminal Justice. The Children and Families department held responsibility for the delivery of children's services, including residential care.

Norman Glennie (now deceased), who had in the previous LRC structure been Children's Services Manager on 01 April 1996 in Midlothian was appointed as Operations Manager, Children & Families, based in Fairfield House. Norman remained in this post until January 2007.

Other managers appointed into the new staffing structure in Midlothian Council on 01 April 1996 included: Gary Pinnons, Alistair Morton & Christine Anderson (later Christine Schaffer) & Anne Martin who became Practice Team Managers.

Anne Martin went on to manage Resources, which had oversight & supervisory role of fostering service, day care & children's residential services. When Anne retired she was succeeded as Resource Manager (family placement & residential services) by Andrew Gillies then by Duncan Craig who came from Residential Services, then Paul Jacobs.

John Scott had become the newly created Head of Service (Children & Families, which at the time still included Criminal Justice). Christine Schaffer was Fieldwork Group Manager & Agency Decision Maker (ADM) by 2009 during the same period when Anne Martin managed Resources, including residential.

In 2004 Malcolm McEwan then became the first Director of Social Work in this newly created position.

Colin Anderson took over as Acting Director of Social Work by 2008 when Malcolm McEwan left, succeeded by Don Ledingham then Donald McKay as Director of Education & Children's Services. Mary Smith was Director of the newly formed directorate of Education, Communities & Economy restructure which took place in August 2013, with Eibhlin McHugh Director of Health & Social Care.

Prior to the 2016 restructuring within Midlothian Children's Services Jo Foley had been Resource Manager of fostering, day care & residential services.

b) What were the oversight and supervision arrangements by senior management?

Please refer to 2.2 a)

c) What were the lines of accountability?

Please refer to 2.2 a)

d) Within the local authority, who had senior management/corporate/organisational responsibility for the managers/management teams/leadership teams who had responsibilities in relation to children in foster care?

Please refer to 2.2 a)

e) Who, within the local authority, took decisions on matters of policy, procedure and/or practice in relation to foster care?

Please refer to 2.2 a)

f) To whom were foster carers accountable?

Foster carers' accountability was dictated by the current legislation of the time.

g) Who, within the local authority, was responsible for the implementation of, and compliance with, the local authority's policies, procedures and/or practices in foster care both by local authority staff and by foster carers?

Please refer to 2.2 a)

h) To whom were fostering panels accountable?

Since 2008 Midlothian Council has put in place the Fostering Panel Procedures, where it states that the Fostering Panel is appointed by the local authority to consider whether to recommend approval of foster carers. Where the Panel recommends approval, it must also recommend whether approval is for any child, or for certain categories of children, for instance a particular age range.

The Fostering Panel recommendations are made to the agency, which must make the decision. This is the responsibility of the Agency Decision Maker, Operations Manager, Children and Families Social Work, Midlothian Council.

i) What were the oversight and supervision arrangements in respect of fostering panels?

Please see 1.8 (i) f).

Present

j) With reference to the present position, are the answers to any of the above questions different?

Yes.

m) If so, please give details.

The 2016 service review, which appointed 3 Services Managers saw Jo Foley appointed as Service Manager of Resources in the new structure headed by Joan Tranent, who was appointed Head of Children's Services.

Due to Senior Management Review of Directors/Heads of Service and third tier managers, Fiona Robertson has been appointed the new Executive Director of Children, Young People and Partnerships, and Chief Education Officer, Joan Tranent has been appointed Chief Officer Children's Services, Partnerships and Communities and Alison White has been appointed as Chief Social Work Officer.

2.3 External Oversight

Past

- a) **What were the arrangements for external oversight of the local authority's foster care services?**

The standard external oversight arrangements applying to local authorities over the period in question. For example, the earlier (pre 2002) Arm's length inspections, Care Commission, Social Work Inspection Agency, the Care Inspectorate, the Scottish Public Services Ombudsman and Audit Scotland.

- b) **Who visited the local authority's foster care services in an official or statutory capacity and for what purpose?**

Until the introduction of external scrutiny and external regulation (above questions) services were managed via line management structures and overall accountability and responsibility was through Directors of Social work/Children's Services

- c) **How often did this occur?**

Not sure.

- d) **What did these visits involve in practice?**

Responsibility often sat with the manager of the particular service.

Present

e) With reference to the present position, are the answers to any of the above questions different?

Yes

f) If so, please give details.

Annual Inspection- Care Inspectorate external regulation

Reports to Council on findings of Inspectors

Senior Management Overview

Policies for reporting various issues such as complaints, disruption learning, allegations, child protection.

In Midlothian the registered Manager of the service reports directly to a Service Manager who is responsible for overseeing the service and ensuring the transparency of managing incidents, complaints and /or allegations.