



Midlothian

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

**Midlothian Council Response
30 September 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. On **27 January 2020** Midlothian Council submitted electronically its response for part A.
7. On **19 March 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 parts B, C, and D of the report to 31 July 2020.
8. On **24 March 2020** the Rt Hon Lady Smith granted Midlothian Council a variation which extends the deadline for compliance for parts B, C, and D to **31 July 2020**.
9. On **10 July 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 parts B, C, and D of the report to 31 December 2020.
10. On **22 July 2020** the Rt Hon Lady Smith granted Midlothian Council a variation which extends the deadline for compliance for parts B, C, and D to **30 September 2020**.

11. 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.
12. 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 B – Current Statement

3. Retrospective Acknowledgement/Admission

3.1 Acknowledgement of Abuse

- a) Does the local authority accept that between 1930 and 17 December 2014 any children cared for in foster care were abused?

In common with many other local authorities, records for Midlothian covering the period in question are not comprehensive. There are several areas where they are incomplete. Records of predecessor authorities containing procedures and policy decisions are not comprehensively available; not all files on individuals who may have been in the care of public bodies during this period may have been retained; some individual case records do not contain all the documents and information that would be needed to answer the questions posed with reliability and accuracy; some of these records may have been lost or destroyed; and some gaps may be the result of records never having existed. It should also be borne in mind that expectations in respect of recording and documentation have changed over time, and what may have been standard practice several decades ago would not be seen as acceptable today. Electronic databases of social work service users, introduced in the 1990s, provide much more reliable information for recent years. The development of electronic record systems specifically geared towards the documentation needs of social care services has ensured both that better and more consistent data is recorded about individuals, and that aggregated information is much more readily retrievable.

Midlothian Council will, therefore, seek to answer the questions to the best of its ability, but requests that the Inquiry acknowledges that the data on which the answers are based are not comprehensive. Calculating incidence and extent, particularly for less recent records, for example, will be speculative at best.

Midlothian Council accepts that, between 1930 and 17 December 2014 there were some instances of abuse of children in foster care placements within Midlothian Council's current geographic boundaries and also that it is likely that there were likely to have been children from Midlothian, but placed elsewhere, who were abused. We are using the term 'abuse' to mean actions that would constitute a child protection concern under current legislation and guidance in respect of physical abuse and sexual abuse, with associated psychological and emotional abuse. Of course, this interpretation will differ from what may have been in place at the time the events took place. For example, corporal punishment of children was, until comparatively recently, not seen as objectionable or harmful but, indeed, as an imperative to preserve and improve the moral character of young people. Furthermore, situations of serious neglect or cruelty have been subject to formal investigation, legal sanction and intervention for well over a hundred years but physical neglect has often been an aspect of poverty and inequality so, in the past (and arguably even now) has been subject to wide variation in thresholds for intervention. Compared to 'cruelty', sexual abuse is a fairly recent concern and remains inadequately defined, particularly since the advent of the internet.

Since its inception in 1995, Midlothian Council has had in place, specific reporting and recording systems for concerns, allegations and complaints. Its immediate predecessor authority, Lothian Regional Council, had a formal complaints procedure in place for social work services from around 1990. This of course did not mean that complaints were not received nor acted on before that date. Complaints could be and were made to managers, elected members and to the Scottish Commissioner for Public Administration (which later became the Scottish Public Service Ombudsman). As far as complaints about foster care are concerned, comprehensive records are available only from 2017 onwards so do not cover the Inquiry period. It is therefore possible to provide accurate and reliable data on the nature and incidence of abuse of children in foster care placements only from then onwards, and on action taken by Midlothian Council to investigate and deal with it. We have reported our findings based on such information as we still had access to and have had time to examine.

b) If so, what is the local authority's assessment of the extent and scale of such abuse?

The record book of Midlothian Register of Guardians covering the period 1911 to 1934 is still in existence. It holds the records of periodic statutory visits carried out by the Poor Law Authorities to boarded-out children. Though visits appeared to take place with reasonable regularity and frequency, with most placements being visited at around six weekly intervals, little is documented about the visits. Other than address and occupation, no information is recorded about the foster family and in some cases only a name is documented. Most of the names recorded are women, though there are a few men. Where an occupation is recorded it appears that the majority of households providing care in Midlothian were either engaged in coal mining or agricultural work. Records are mostly along the lines of "House tidy" and "Child healthy". From this record it appears that only three children were the subject of such visits during the period 1930 to 1934.

The Register was not maintained after 1934, as the 1908 Act under which such visits were required was superseded by the Children Act 1932 and the 1934 Poor Law Regulations. Visits ceased when the child attained seven years of age, as statute no longer required this. There are no instances of concern recorded in the period covered by the Inquiry, but an earlier record mentions a child being removed by his mother because the foster carer was drinking. In two records predating 1930 records indicate that the child died, apparently of illness, but little other information is recorded. There is no indication that children were always seen during the visit, and some may have been, for example, at school. There is certainly no indication that children were seen or spoken to independently of the foster carer.

From 1949 to 1968 recorded data exists in the annual reports of the Medical Officer of Health on the number of boarded out children. These figures indicate that the number of Midlothian children in foster care steadily increased over this period, rising from 39 in 1949 to 149 in 1968. While most of these children remained within the Midlothian area, a sizeable minority did not. In 1963, for example, out of 151 Midlothian children boarded out, 69 were placed in other areas. The number of children from other areas boarded out in Midlothian also increased substantially during this period, from 26 in 1949 to 384 in 1968. The total numbers for this period are appended. It is not clear,

however, whether the figures represent the number of individual children who had been in placement at any point during the year, irrespective of the number of times they may have been admitted and discharged, the number of existing placements and new admissions, or the number in placement at a specified point in the year. This, of course, makes a significant difference to the calculation of incidence.

Records of Midlothian County Council are incomplete. Only those covering the periods 1929 – 1943 and 1970 – 1974 appear still to exist. It is not clear from these records how duties in respect of 'boarded-out' children were administered. No reports in the County Council records available refer to the boarding out of children nor contain any information about the welfare of such children. Periodically a minute refers to 'notifications' which are apparently from persons with whom children had been boarded out, as was legally required. A 1935 minute of the County Council Education Committee advises of such notifications and also notes that the Council's rules in respect of boarding out of children, required under the 1932 and 1934 legislation, had been approved by the Scottish Education Department. The minute of 09/12/1941, also notes that "The receipts of eight notifications under the Children and Young Persons Act was intimated", which can be assumed to be notifications from persons who were receiving 'boarded-out' children. No information other than this brief statement is recorded.

Reporting on welfare of boarded out children may have taken place to other bodies to whose records we do not have access, such as public health or Poor Law authorities, and not to the Council as such. It is also possible that reporting took place at officer level only. Elected members may not have received nor scrutinised any formal reports on such activities, though records do show that certain of the Council members were appointed as visitors to boarded out children.

Between 1969, in line with the Social Work (Scotland) Act 1968 which required local authorities to appoint a Director of Social Work to ensure that the requirements of the legislation were complied with, and 1975, social work services in Midlothian were overseen by a consortium arrangement of Midlothian and two neighbouring local authorities, East Lothian and Peebles. This followed on from the Children's Committee of the same authorities which appears to have been set up to discharge duties required by the 1948 Children Act. No records of either body are now extant. Midlothian County Council records are available for the period 1970 – 1974, but do not contain any reports of the joint social work body.

From 1975, until the full inception of Midlothian Council as a unitary authority in 1996, social work services in Midlothian were governed by Lothian Regional Council. This period saw a substantial shift in practice in relation to out of home care placements, with a move away from placing children in residential settings and a significant expansion in foster care. Emerging research provided an increased knowledge base of the impact on children of disrupted attachments, frequent moves and institutional living. Lothian Regional Council responded quickly and extensively to this developing knowledge and was viewed as a pioneering authority in relation to placing children in family rather institutional settings.

It is, however, true that the numbers of families experiencing poverty and disadvantage and the extent of social problems such as serious drug misuse, were more widespread

within the city of Edinburgh than in the landward areas of the Region at that time. This meant that far higher numbers of children in care placements originated from the city than from Mid, East or West Lothian. While there was a sufficient number of residential care homes within the city boundaries, there was invariably a shortfall in the city of foster carers, compared to the number of children needing placement. The shift towards placing more children in family settings meant that many children from Edinburgh were placed with carers in East, Mid and West Lothian. At any given time, therefore, many of the children placed with Midlothian foster carers were not from Midlothian and this obviously caused complications in terms of maintaining contact with families, schools and communities.

Records for this period that survive are held by the City of Edinburgh Council. These are likely to contain some information on the numbers of children in foster care, the areas from which they originated and where they were placed. They will probably also describe the different types of family placements that existed, the responsibilities carers were expected to discharge and the practical and financial support with which they were provided. Unfortunately restrictions in access to these records due to the current coronavirus pandemic has meant that we have been unable to examine this information and extract data relevant to Midlothian.

An earlier check and cataloguing exercise of archived social work records was carried out by records officers. Over 1,500 children's records were reviewed as well as a substantial number of adult case files. A number of files were identified where there were indications of possible concern that required more detailed scrutiny. These have now been examined by experienced social work managers. A sample of other archive case files covering the Inquiry period have been checked to identify any files that relate to a child had been in foster care at any point. Those files where a foster care placement has been documented, or referred to, have also been thoroughly examined. The timescales involved have precluded, at this stage, identification and, hence, detailed scrutiny, of all the archive files in storage. A sample of thirty archive boxes was checked. Within the 189 files contained in these boxes, 106 were child records, though there are 177 children referred to in these records as some contain information on siblings and/or parents. The number of records we hold is therefore not the same as the number of individuals for whom we hold a record. Additionally, for a number of reasons, there may be more than one record pertaining to an individual. Of the 106 child records, 52 included at least one foster care placement. A further 17 files of the 189 were records of foster carers.

In addition to the above, we also retrieved records for carers where we identified a possible concern in a child's file, and vice versa, and where files in our original sample were incomplete and additional volumes were stored elsewhere. We have therefore scrutinised 78 archive case records in detail, and have examined any electronic records relating to the people who are the subjects of these archive files. To put this in context, Midlothian Council holds over 30,000 archived social work case records and over 80,000 electronic records.

It is evident, therefore, that calculation of any total from which extent of abuse could be assessed, is not possible in any meaningful way. Professor Andrew Kendrick, in his oral testimony to the Inquiry, referred to his 2016 report for the Scottish Government, 'A History of the Legal Framework and the Implementation of Foster

Care, including Private Fostering, in Scotland, 1945 to 2014'. This report indicates that 5,623 children in Scotland were placed with foster carers on 15 November 1948 and remained at around this number over the subsequent twenty years. Of course this represents a snapshot on a particular date and we have no idea of turnover. The Midlothian figures mentioned above appear to show that numbers increased steadily throughout this time, which differs from the national picture. The reasons for this divergence are unknown.

Moving on to the extent of abuse, all we can state conclusively are the numbers we have identified from the records to which we have access. There are no instances recorded for the period concerned in the Midlothian Register of Guardians. From the archive files we have scrutinised, we have found 17 occurrences in 78 file records and 6 in 21 electronic records, all of which were looked into. We have classed as an occurrence any concern noted by a professional, any issue raised by a child and any allegation or complaint, irrespective of nature or outcome. We have found a number of 'one-off' incidents but have not come across any instances where unacceptable practices in respect of a particular child were sustained over a period of time. It is important to bear in mind, however, that practices and activities that nowadays would be seen as, at least, unacceptable, would not at the time have been seen as unusual. Corporal punishment of children, for example, was not banned in schools in Scotland until 1987. Physical chastisement of children within foster care was only made illegal in 1995 and within families in 2019. We have found some instances, not of abuse, but of practice which fell short of what was expected that recurred over time. No single instance would be likely to be categorised as abuse, but an accumulation of such concerns did, in a few cases, eventually lead to carers being de-registered.

Separation from the child's own family was often seen as a positive benefit. Professor Lynn Abrams, in her book 'The Orphan Country' relates how poor children from inner cities were frequently placed in farming and crofting communities, often far from their community of origin, as it was thought this provided them with a healthier lifestyle and better diet. Lack of contact with parents and siblings was seen as of little importance. The Clyde report of 1946, which endorsed fostering over residential care as the best kind of out of home care, in fact saw this lack of family contact as advantageous for many children, as their own families and communities were perceived as negative influences. This practice continued well into the 1960s. Abrams' book also includes personal testimony from many boarded out children. While some were made to undertake manual labour on farms and crofts, and some were treated harshly in terms of both physical and emotional wellbeing, others described being part of loving families who treated them well and were conscientious about looking after their health and education.

All we can conclude from Midlothian's early records is that no significant indication of abuse has been documented. Perusal of the archive files has uncovered 23 complaints or concerns. None appear to have been overlooked and all appear to have been considered, with appropriate proportionality, according to the systems that were in place at the time. What is more concerning, perhaps, is the extent to which parenting that was at least ineffective and at worst harmful appeared to be tolerated. Some situations and events are recorded in files relating to families with whom social services were involved that nowadays would certainly be seen as matters requiring more intensive investigation and intervention.

For more recent years we have been able to draw reliable information on foster carers from data held electronically and from the records of the Fostering Panel. Though much of this period is not pertinent in terms of the remit of the Inquiry, as the data is comprehensive and reliable it provides some illustration of the incidence of issues of concern. For the years 2012 to 2020 Midlothian Council had 95 registered foster carers. During these years 331 placements were made. Five carer households were deregistered because of unsatisfactory or unacceptable practice and one resigned pending investigation of an allegation which was eventually unsubstantiated. There are a few of these where practice might be construed as abusive or unacceptable behaviour against one or more children in placement.

1. In two cases it appears that social workers had raised concerns about quality of care provided, but that the Fostering Panel did not act quickly enough in deregistering the carers concerned.
2. In one of these cases, a Children's Hearing returned children to a foster care placement about which there were concerns, despite social work advice to the contrary.
3. A serious breach of confidentiality was found in one case.
4. Persistent unhygienic conditions in the house resulted in one deregistration.
5. One carer was deregistered because of lifestyle issues within her close family.
6. There are also several cases of unplanned endings of placements where carers did not appear to demonstrate sufficient understanding of how trauma, neglect and abuse affect children's behaviours; this may reflect an underlying lack of empathy in practice or may be related to a need for better preparation of foster carers.

No civil actions or criminal proceedings were taken against any carers during this period.

c) What is the basis of that assessment?

The basis of our assessment is

1. Detailed perusal of such archived material and other records of Midlothian Council and its predecessor authorities as we have access to.
2. Identification of foster care records from archived individual and/or family case files.
3. Detailed scrutiny of 52 case records of children who had been in foster care dating from 1953 and of 26 foster carer files dating from 1966.
4. Information drawn from the carer complaint log of MLC relating to carers who fostered during the Inquiry period, though the complaints arose after that time.
5. Data drawn from the MOSAIC electronic record system covering the period 2008 to 2014.
6. Information supplied by managers and officers of Midlothian Council.
7. Interviews with the Family Placement Team manager and social workers and the Fostering Panel administrator.

8. Information supplied by managers of fostering and child protection services of Lothian Regional Council and Mid and East Lothian and Peebles Joint Social Work Committee.

9. Evidence from academic research and published literature, notably

- Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes, 1845 to the Present* (John Donald, 1998)
- John Murphy, *British Social Services, the Scottish Dimension* (Scottish Academic Press, 1992)
- Andrew Lockyer and Frederick Stone, *Juvenile Justice in Scotland: Twenty-five Years of the Welfare Approach* (T & T Clark, 1998)
- Andrew Kendrick, *A History of the Legal Framework and the Implementation of Foster Care, including Private Fostering, in Scotland, 1945 to 2014* (Scottish Government, 2016)
- Independent Care Review, *Evidence Framework* (2020)
- Kenneth Norrie, *Legislative Background to the Treatment of Children and Young People Living Apart from their Parents* (Scottish Child Abuse Inquiry, 2017)
- John Triseliotis et al, *Adoption: Theory, Policy and Practice* (Bloomsbury, 1997)
- Kirstie Maclean & Barbara Hudson, *Fostering and Adoption in Scotland: 1980–2010* (Adoption & Fostering, 2010)
- Steve Rogowski, *Social work: The rise and fall of a profession?* (The Policy Press, 2010)

3.2 Acknowledgement of Systemic Failures

- a) Does the local authority accept that its systems failed to protect children in foster care between 1930 and 17 December 2014 from abuse?

Given the severe limitations of the available information, it would be hard to identify conclusive evidence of systemic failure. For much of the period concerned very little is documented about foster placements in terms of foster carer practice or the child's lived experience. Though Abrams quotes the oral testimony of 'boarded-out' children in her book extensively, these are from retrospective interviews. Little or nothing is documented either in literature or in case records of the views and reported experiences of children in foster placements at the time they were in placement, probably up until the 1980s. From then on, there is evidence in archive files that children were asked to contribute at some level to their care planning, but their full involvement in the process of planning, setting objectives and reviewing effectiveness of placements developed incrementally over subsequent decades and indeed could be said to be still developing and improving. The Children (Scotland) Act 1995 introduced, for the first time, a legal requirement for children's views to be sought in respect of formal proceedings that affected them.

There certainly appears to be systemic lack of documentation, (and, possibly, of awareness) of children's own perspectives on their placements and of description or observation of how foster carers actually carried out their duties towards children in placement. It should always be remembered, however, that local authorities in Scotland are, and have historically been, bodies whose activities are, by and large, defined by statute. As mentioned above, the legal duty to seek children's views was not introduced till 1995, and this was only in respect of formal proceedings. Nothing in

the records would indicate that statutory duties up until this point were not generally fulfilled. Equally there is no indication that children were exposed to harm or danger to any great degree, or that protection was not provided when there were clear indications that it was needed. If there were systemic failures they were those of a system much bigger than that of a relatively small local authority.

It is important to acknowledge that there was general acceptance and tolerance of views and actions that would differ greatly from what would be seen as acceptable today. It also needs to be recognised that the knowledge base from which services operated was far less extensive than what currently exists. The law which governs boarding out of children has become, over time, much more extensive and wide-ranging, and has increasingly been underpinned by guidance at national level and by policies, procedures and practices set out by individual authorities at local level. Extent of compliance with requirements and assessment of quality of provision have also been subject to increased external regulation.

What has changed little over time is that children cared for away from their own homes are many times more likely to come from the poorest families in society than from better-off homes. Our understanding of the implications of this for children's well-being is, however, more informed. The period covered by the Inquiry starts at the time of the 'Great Depression' a time of high unemployment and great economic hardship, with little public provision for support of families either in terms of financial help or practical services. The impact of this worldwide economic collapse was experienced far more intensely by the poorest sections of society. This structural economic and social inequality went largely unquestioned, even by those whose lives were most adversely affected by it. There was a fatalistic acceptance that the life chances and outcomes of poorer people's children was likely to be far worse than those of the more advantaged. Children were not viewed as rights-bearing individuals – the United Nations Convention on the Rights of the Child was not adopted till 1989 – and the impact of childhood poverty, inequality and adversity was not well understood.

It is within this wider social context that systemic failures need to be examined and understood. It is certainly true that many children were harmed by the quality of care they received both within and outwith their families over this period. Through the 1950s and 1960s an increasing body of research on 'the neglected child' and 'problem families' was produced. This literature was instrumental in the emergence of social work as a professional discipline with a focus on supporting families in the community. Murphy records that a 1963 report to Parliament on 'Child Care in Scotland' in 1969 shows that over 40,000 children were the subject of social work intervention in their own homes, as opposed to around 3,000 in out of home placements.

It is clear from these figures that many children were likely to have had damaging and difficult experiences prior to entering the care system and that this was likely to affect their eventual life outcomes. What is much harder to establish is whether children were abused or ill-treated in any large-scale or systematic way in foster placements, whether the relevant authorities failed to comply with the legislation and policies in place at the time, whether unacceptable and abusive practices took place on a significant scale and whether the life experiences and outcomes for fostered children were, on the whole, worse than those children who experienced adversity and harm within their own families.

b) What is the local authority's assessment of the extent of any such systemic failures?

The limitations of the documented evidence available make it challenging to provide a robust assessment of systemic failure. The key issues to be examined here are, firstly, whether events or actions are recorded that should have generated a systemic response, but did not do so; secondly, whether children expressed distress or concern to officers charged with overseeing their welfare, and this was not acted on or acted on inappropriately; thirdly, whether national legislation, guidance and advice was demonstrably ignored or inadequately followed; fourthly, whether local policy and procedure was not sufficiently adhered to; and, finally, whether any of the foregoing occurred on a large enough scale to be described as systemic failure rather than individual malevolence or incompetence.

We have considered the records we have reviewed in the light of all of the above and our findings are set out below. It should be noted that files that covered more than one period have been included in all relevant sections.

1930 – 1934

Documents examined:

- Midlothian Register of Guardians 1911 – 1934
- Records of Midlothian County Council 1929 - 1943

Law and policy context:

- Children Act 1908
- Children and Young Persons (Scotland) Act, 1932
- Children and Young Persons (Scotland) Care and Training Regulations 1933

Concerning events not responded to:

- No such events documented

Child concerns not responded to:

- No indication of any concern expressed

Law and policy not adhered to:

- No indication that legal or policy requirements were not fulfilled

Scale, nature and incidence:

- The Register of Guardians covers only children under the age of seven, which was what was required by law at the time. We do not know the numbers, nor do we hold records for older children who may have been looked after by foster carers during this time.

1934 – 1945

Documents examined:

- No records were examined that referred to this period

Law and policy context:

- Children and Young Persons (Scotland) Act 1937

Concerning events not responded to:

- Due to the absence of relevant records, we cannot comment on whether or not any such events took place

Child concerns not responded to:

- Due to the absence of relevant records, we cannot comment on whether or not any such events took place

Law and policy not adhered to:

- Due to the absence of relevant records, we cannot comment on whether or not any such events took place

Scale, nature and incidence:

- Due to the absence of relevant records, we cannot comment on scale, nature and incidence

1945 – 1968

Documents examined:

- A sample of 5 archive case files for children in foster care
- A sample of 1 archive case file of foster carers

Law and policy context:

- Clyde Report 1946
- Children (Boarding-out) (Scotland) Rules and Regulations 1947
- Children Act 1948
- Boarding Out of Children (Scotland) Regulations 1959
- Kilbrandon Report 1964

Concerning events not responded to:

- None noted

Child concerns not responded to:

- None noted

Law and policy not adhered to:

- None noted

Scale, nature and incidence:

- Not applicable

1968 – 1985

Documents examined:

- A sample of 10 archive case files for children in foster care
- A sample of 3 archive case files of foster carers

Law and policy context:

- Social Work (Scotland) Act 1968
- UK Government Circular 'Non-accidental Injury to Children' 1975
- Scottish Office Circular 'Child Protection Register' 1982
- Lothian Regional Council policies
- Lothian Regional Council NAI guidelines
- Care in the Community policy and associated legislation

Concerning events not responded to:

- No such events documented

Child concerns not responded to:

- No indication of any concern expressed or indeed that any such information was specifically sought by the authorities.

Law and policy not adhered to:

- No indication that legal or policy requirements were not fulfilled

Scale, nature and incidence:

- Not applicable

1985 – 1996

Documents examined:

- A sample of 15 archive case files for children in foster care

- A sample of 11 archive case files of foster carers

Law and policy context:

- Social Work (Scotland) Act 1968
- Foster Children (Scotland) Act 1984
- Lothian Regional Council policies introduced in the 1980s including 'Time of Change' which closed down residential care on a substantial scale, invested the resources thus freed up in developing family placements, and effectively ended residential care of children under twelve, 'Schemes of Care' which introduced fee payments for all foster carers, and Lothian Region Youth Strategy which developed community based alternatives to residential school placement and formalised arrangements for collaborative practice and decision-making between social work and education services at all levels
- Scottish Office Circular 'Action Programme for Child Abuse' 1988
- Lothian Regional Council NAI guidelines, later Child Protection guidance
- Lothian Regional Council Children's Rights Officer post instated 1994

Concerning events not responded to:

- None recorded

Child concerns not responded to:

- None recorded

Law and policy not adhered to:

- None identified

Scale, nature and incidence:

- Not applicable

1996 – 2005

Documents examined:

- A sample of archive case files for 25 children in foster care
- A sample of 20 archive case files of foster carers

Law and policy context:

- Children (Scotland) Act 1995
- Fostering Regulations 1996
- The Children's Safeguards Review 1997
- For Scotland's Children 2001
- National review of child protection in Scotland, 'It's everyone's job to make sure I'm alright' 2002
- Edinburgh and the Lothians Inter-agency Child Protection Procedures
- Reports of inquiries into serious child protection cases such as the Edinburgh Inquiry 1999, Kennedy McFarlane 2000, Orkney Inquiry 2002

Concerning events not responded to:

- None that were not responded to according to the procedures in place at the time.

Child concerns not responded to:

- None, all that were noted were responded to.

Law and policy not adhered to:

- No indication that law and/or policy was not adhered to.

Scale, nature and incidence:

Both of the below refer to the same incident.

- Out of 25 archive case files of children in foster care examined, one incident of complaint, allegation or established abuse was identified in which action was taken. The investigation did not find the allegation to be substantiated.

- Out of 20 archive case files of foster carers examined, one incident of complaint, allegation or established abuse was identified in which action against a carer was taken. The investigation did not find the allegation to be substantiated.

2005 – 2014

Documents examined:

- A sample of 9 archive case files for children in foster care
- A sample of 12 archive case files of foster carers
- Electronic records of 9 foster carers for Midlothian Council
- Electronic records of 12 children in foster care

Law and policy context:

- Children (Scotland) Act 1995
- Getting It Right For Every Child 2004 onwards
- National Care Standards: Foster Care and Family Placement Services 2005
- National Fostering and Kinship Care Strategy 2006
- Fostering of Children (Scotland) Regulations 2006
- Protection of Vulnerable Groups Act 2007
- Looked After Children (Scotland) Regulations 2009
- Guidance on the Looked After Children (Scotland) Regulations 2009
- Scottish Government Child Protection Guidance 2010, revised 2014
- Children and Young People Act 2014
- CoramBAAF guidance on best practice in the assessment and ongoing support of foster carers
- National Guidance for Child Protection in Scotland 2010, revised 2014
- Edinburgh and the Lothians Inter-agency Child Protection Procedures
- Midlothian Council policies: Adoption and Permanency: Children Looked After Away From Home – Overnight Stays; Children with and Affected by Disabilities; Children's Champion; Chronology; Looked After Children – Education, Health, Missing from Care, Parental Responsibilities Orders, Placing Children, Secure Accommodation, Transport to School, Children Going on Holiday with Foster Carers; Recruitment and Retention of Foster Carers; Risk Assessment; Fostering – Children Travelling in Cars, Fostering Panel, Room Sharing, Allegations Against Carers, Assessment of Foster Carers, Duty/Referrals, Foster Carer Reviews, Profile on Child/Young Person, Becoming A Foster Carer, Finance and Practical Support, Post-Approval, Home Study Process Using Competency Based Assessment, Through Care and After Care; Smoking in Relation to Children Living in Foster Care; Linking Meetings; Permanency Panel; Retention of Records; Complaints; Handbook for Carers.

- Midlothian Council Child Protection Standards

Concerning events not responded to:

- We found no events that were not responded to.

Child concerns not responded to:

- We found no child concerns that were not responded to.

Law and policy not adhered to:

- No indication that legal or policy requirements were not fulfilled from the information we have considered. It is, and would have been throughout this period, the case that managers would monitor this rigorously through supervision of staff.

Scale, nature and incidence:

Some of these refer to the same incident as it is recorded in both a child's and a carer's file.

- Out of 9 archive case files of children in foster care examined, one incident of complaint, allegation or established abuse was identified in which action against a carer was taken.
 - Out of 12 archive case files of foster carers examined, two incidents of complaint, allegation or established abuse were identified in which action against a carer was taken.
 - From electronic records of foster carers 9 cases were examined, from which five incidents were identified in which action against a carer or a member of the carer household was taken.
 - From electronic records of children in foster care 12 cases were examined, from which one incident was identified in which action was taken against a carer.
- From the information above we have drawn together the information contained in the table below. We would, therefore, respectfully submit that no evidence of large-scale or systematic abuse could be inferred from our findings. This would be consistent with the findings of the Inquiry's own commissioned research (The Abuse of Children in Care in Scotland: A Research Review) which indicated that confirmed cases of abuse in foster care were in the range of 0.14 – 0.23 children per 100; that is, between 1 and 3 children per 1000. To put this in context, 331 foster placements of Midlothian children were made over the eight-year period 2012 – 2020.

PERIOD	NUMBER OF CASES	SAMPLE EXAMINED OR ALL CASES	COMPLIANCE WITH LAW & POLICY	CONCERNS NOTED	CONCERNS FOLLOWED UP	ABUSE IDENTIFIED
1930 - 1934	3	All recorded cases, but these were children under 7 only	Yes	None	None	None
1934 - 1945	No records found	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
1945 - 1968	6	Sample	Yes	0	0	0
1968 - 1996	13	Sample	Yes	0	0	0
1996 - 2005	45	Sample	Yes	1	1	0
2005 - 2014	21 files 21 electronic records	Sample	Yes	8	8	3

c) What is the basis of that assessment?

The basis of our assessment is

1. Detailed perusal of such archived material and other records of Midlothian Council and its predecessor authorities as we have access to.
2. Identification of foster care records from archived individual and/or family case files.
3. Detailed scrutiny of 52 case records of children who had been in foster care dating from 1953 and of 26 foster carer files dating from 1966.
4. Information drawn from the carer complaint log of MLC relating to carers who fostered during the Inquiry period, though the complaints arose after that time.
5. Data drawn from the MOSAIC electronic record system covering the period 2008 to 2014.
6. Information supplied by managers and officers of Midlothian Council.
7. Interviews with the Family Placement Team manager and social workers and the Fostering Panel administrator.

8. Information supplied by managers of fostering and child protection services of Lothian Regional Council and Mid and East Lothian and Peebles Joint Social Work Committee.

9. Evidence from academic research and published literature, notably

- Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes, 1845 to the Present* (John Donald, 1998)
- John Murphy, *British Social Services, the Scottish Dimension* (Scottish Academic Press, 1992)
- Andrew Lockyer and Frederick Stone, *Juvenile Justice in Scotland: Twenty-five Years of the Welfare Approach* (T & T Clark, 1998)
- Andrew Kendrick, *A History of the Legal Framework and the Implementation of Foster Care, including Private Fostering, in Scotland, 1945 to 2014* (Scottish Government, 2016)
- Independent Care Review, *Evidence Framework* (2020)
- Kenneth Norrie, *Legislative Background to the Treatment of Children and Young People Living Apart from their Parents* (Scottish Child Abuse Inquiry, 2017)
- John Triseliotis et al, *Adoption: Theory, Policy and Practice* (Bloomsbury, 1997)
- Kirstie Maclean & Barbara Hudson, *Fostering and Adoption in Scotland: 1980–2010* (Adoption & Fostering, 2010)
- Steve Rogowski, *Social work: The rise and fall of a profession?* (The Policy Press, 2010)

d) What is the local authority's explanation for any such failures?

As we have stated above, foster care and its oversight have to be understood within the context prevailing at the time. The same is true of child protection. Much greater understanding now exists of the experiences that can harm children and of the factors that can mitigate against the long-term impact of childhood adversity. The fact that physical chastisement by parents has only just become illegal (and the Inquiry must be aware that the legislation was not universally welcomed) in Scotland underlines this lack of understanding, though it would also have to be acknowledged that the research evidence that demonstrates the long-term effect of such punishment has mostly emerged in the last ten years.

Many practices that were routinely followed, or not actively avoided, just a few decades ago in schools, hospitals and care settings and families would be seen as abusive today. Some examples of such practices included not ensuring regular and frequent contact with parents and siblings, siblings not being placed together, physical punishment, punishment being dispensed by teachers when children were struggling with school work, rigid, inflexible and insensitive practice in schools and care placements, use of humiliating and pejorative language towards children, failing to consult with children or allow them to articulate their views, lack of sensitivity to the impact of challenging life circumstances on children's behaviour and presentation and lack of tolerance of difference and diversity.

When examining the role of local authorities, it should also be remembered that the RSSPCC carried statutory authority for investigating and acting on child protection matters from 1921 until the introduction of the Social Work (Scotland) Act 1968 transferred this responsibility to local authorities. This of course would have influenced

the extent to which local authorities were involved in what we would now categorise as child abuse. This may have meant that, even for children in care, local authorities saw their role as ensuring an acceptable standard rather than the specific investigation or mitigation of alleged harm.

Social work did not exist as a discrete profession with specific qualification and registration requirements until 1971. Before then, the staff tasked with the oversight of foster care may have had no specific training in child welfare or development, particularly if this was seen as an administrative duty rather than a requirement to ensure each child's optimum welfare and to provide children with a therapeutic and remedial experience rather than just a roof over their head.

When social work did become a discrete professional discipline, it drew together a number of strands of social welfare provision including child protection, criminal justice, care of adults with disabilities and illnesses, family support, services for elderly people and provision of care placements and establishments. There was much greater emphasis on the commonality of skills needed to work across these settings and the capacity to work with whole families. Generic social work teams where workers carried mixed caseloads was a standard organisational arrangement. This of course meant that social workers had broad experience across a wide range of settings rather than specific expertise in one.

While there were advantages associated with the generic approach to social work, experience and knowledge gained over time tended to suggest that better outcomes were achieved through greater specialisation. Several tragic child protection cases, as well as a major shift of emphasis to community based care for adults, were significant factors in moving towards more specialised social work teams. Particularly over the last thirty years, fostering has been increasingly dealt with by teams of specialist workers rather than being part of generic caseloads. Post qualification specialised professional learning has also become more widely available.

3.3 Acknowledgement of Failures/Deficiencies in Response

- a) Does the local authority accept that there were any failures and/or deficiencies in its response to abuse, and allegations of abuse, of children in foster care between 1930 and 17 December 2014?

We have previously drawn the Inquiry's attention to the limitations of the records available to Midlothian Council. There are five possible conclusions we could reach in respect of this question. One is that abuse took place but was not notified to the appropriate authorities. The second is that abuse took place but was not noticed by the officers of the public bodies tasked with the oversight of placements. The third is that these officers either did notice abuse, or were told by children in foster care that they were being abused, and failed both to document and to investigate it. The fourth is that they observed practices that would be categorised as unacceptable according to current law, policy and practice, but would not have been classed as such under the governance prevailing at the time. Finally, it is possible that abuse did not take place widely across the foster care system, that any incidents that did take place were appropriately documented and dealt with and that systemic failures and deficiencies

in response can therefore not be conclusively evidenced. Our conclusions are, necessarily, based on the information that was available to us.

We can only speculate on what may have been omitted from records, or what officers failed to notice or act on. We know what is recorded but cannot possibly know what might have been recorded but was not. Our perusal of case records, including more recent files where events and professional judgments are more assiduously documented, has not unearthed major incidence of systemic failure in this respect. Such concerns as are on record appear to have been responded to appropriately. Of course it is arguable that some occurrences could have been prevented, and Midlothian Council accepts that there are cases where better training and support of carers might have avoided children who were already traumatised being further harmed by, for example, placements breaking down. Several well-known studies published in the 1980s and 1990s suggest that as many as one in three foster placements ended in breakdown with consequent harm to children who were already disadvantaged. This was instrumental in the introduction of better support, training and financial recompense for foster carers. It would, nevertheless, be true to say that while practice continues to improve in terms of training, support, ongoing oversight and assessment of risk, we can never be certain that nothing will ever go wrong.

b) What is the local authority's assessment of the extent of any such failures in its response?

In line with what we have stated above, we are unable to quantify this with any degree of accuracy. Timescales have precluded the comprehensive reading of all the relevant archive files we hold, though we are certainly willing to conduct this on a more extensive scale if the Inquiry wishes us to do this and allows a realistic allocation of time to carry it out. Our findings from the data we have scrutinised are set out below.

CATEGORY	NUMBER
CHILD RECORDS HELD	9,675
ADULT CARE RECORDS HELD	22,387
ELECTRONIC RECORDS HELD	80,746
FILES CHECKED FOR FOSTER CARE PLACEMENTS	189
CHILD FILES READ IN DETAIL	52
CARER FILES READ IN DETAIL	26
ALLEGED ABUSE OR INCIDENT WHERE APPROPRIATE ACTION WAS NOT TAKEN	0
ALLEGED ABUSE OR INCIDENT REPORTED AND ACTION TAKEN	9
ABUSE ESTABLISHED TO HAVE TAKEN PLACE	3

c) What is the basis of that assessment?

1. Detailed perusal of such archived material and other records of Midlothian Council and its predecessor authorities as we have access to – Midlothian Register of Guardians, records of Midlothian County Council and its associated committees, reports of Midlothian Medical Officer of Health, Lothian Regional Council guidelines and procedures, Midlothian Council proceedings, policies and procedures.

2. Identification of foster care records from archived individual and/or family case files
 3. Detailed scrutiny of case records of 49 children who had been in foster care, covering the period 1953 to 2014 and of 31 foster carer records covering the period 1966 to 2014.
 4. Information drawn from the carer complaint log of Midlothian Council.
 5. Data drawn from the MOSAIC electronic record system covering the period 2008 to 2014.
 6. Interviews with the Family Placement Team manager and social workers.
 7. Information supplied by managers of fostering and child protection services of Lothian Regional Council and Mid and East Lothian and Peebles Joint Social Work Committee.
 8. Information supplied by managers and officers of Midlothian Council
 9. Evidence from academic research and published literature, notably
 - Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes, 1845 to the Present* (John Donald, 1998)
 - John Murphy, *British Social Services, the Scottish Dimension* (Scottish Academic Press, 1992)
 - Andrew Lockyer and Frederick Stone, *Juvenile Justice in Scotland: Twenty-five Years of the Welfare Approach* (T & T Clark, 1998)
 - Andrew Kendrick, *A History of the Legal Framework and the Implementation of Foster Care, including Private Fostering, in Scotland, 1945 to 2014* (Scottish Government, 2016)
 - Independent Care Review, *Evidence Framework* (2020)
 - Kenneth Norrie, *Legislative Background to the Treatment of Children and Young People Living Apart from their Parents* (Scottish Child Abuse Inquiry, 2017)
 - John Triseliotis et al, *Adoption: Theory, Policy and Practice* (Bloomsbury, 1997)
 - Kirstie Maclean & Barbara Hudson, *Fostering and Adoption in Scotland: 1980–2010* (Adoption & Fostering, 2010)
- Steve Rogowski, *Social work: The rise and fall of a profession?* (The Policy Press, 2010)

d) What is the local authority's explanation for any such failures/deficiencies?

For those instances of failure or deficiency, or less than effective practice, that we have identified, we would put forward the following explanations. Obviously, in some cases, the explanation is informed speculation based on professional knowledge and experience rather than hard information. As we have stated previously, what is not recorded is not recorded. It is important to acknowledge that the classification of 'abuse' has both changed over time and is also, to some degree, subjective. Midlothian Council, while accepting that the situations we have outlined below did not meet the standards of best practice, does not necessarily imply that we accept that these could all be defined as abuse.

In two cases it appears that social workers had raised concerns about quality of care provided, but that the Fostering Panel did not act quickly enough in deregistering the carers concerned. Records appear to indicate that the Panel was reluctant to lose a

scarce resource. In both cases the carers had several years of experience and children had had positive care experiences with them in the past.

In one case, a Children's Hearing returned children to a foster care placement about which there were concerns, despite social work advice to the contrary. The Council was legally obliged to give effect to the order.

Some incidents were fully investigated and the complaint of allegation not found to be substantiated. We acknowledge that this may not, of course, mean that the allegation was unfounded. When there were no independent witnesses, for example, the police may not have established that there were sufficient grounds for action.

There are several cases of unplanned endings of placements where carers did not appear to demonstrate sufficient understanding of how trauma, neglect and abuse affect children's behaviours; this may have reflected an underlying lack of empathy in practice or may have been related to a need for better preparation of foster carers. The increasing complexity of needs of the children placed, as well as better knowledge about what constituted best practice, required a level of adjustment for some carers as the service became more professionalised. Some carers, despite years of experience, were unable to develop their practice sufficiently to meet this changed pattern of child needs.

3.4 Changes

- a) To what extent has the local authority implemented changes to its policies, procedures and practices as a result of any acknowledgment in relation to 3.1 – 3.3 above?

Practice in relation to the provision of foster care in 2020 is radically different from that of 1930. This change has taken place not only in Midlothian, but across the world. Of course local events have been responded to and learned from, but Midlothian and its predecessor bodies have changed the ways it delivers its services in line with national law and policy as well as adopting the best practice approaches established by research findings within Scotland, across the UK and in other countries.

The value of functional family life to children, particularly to those who have had damaging and difficult experiences, is now unambiguously acknowledged in international research. The importance of providing good family experiences for children who have to live away from their own families is now universally accepted. Midlothian has adapted its practice throughout the Inquiry period in line with new information, better knowledge and changing legislative and policy contexts. Any information that emerged from any incidents referred to in the foregoing sections was considered in depth in respect of the lessons for practice, and change introduced accordingly.

Currently Midlothian Council's foster care service carries out an extensive range of activities designed to provide a high quality professional service that effectively meets the needs of, and improves the life outcomes for, children who have experienced harm

and adversity. A specialist Family Placement Team, with a dedicated manager and 8.5 qualified social workers is in place and undertakes the following duties.

- **Carer recruitment**

While prospective foster carers are sought at all times, specific recruitment campaigns are also periodically conducted. A range of media is used to raise public awareness of fostering and to encourage applications.

- **Carer assessment and preparation**

Midlothian Council has a number of policies and associated procedures in place for assessing the suitability of individuals and households to foster children it 'looks after' in terms of the legislation. All applicants undergo a home study involving home visits, interviews, medical examination and opinion of suitability, checks of any criminal record, social work records check, references and attendance at group preparation sessions. Medical references and record checks are also carried out for any members of the applicant household over the age of sixteen.

- **Supporting a range of placement types**

In order to meet the diverse needs of the children referred for foster placements, a range of placement types are supported. These include permanent arrangements, short recurring placements to support vulnerable families and enable them to stay together, placements intended to prepare children to move to adoptive families and crisis and emergency placements.

- **Continuing Professional Development**

Carers are provided with a range of learning opportunities, online and face to face. Some of the latter are delivered by team members, others by external specialists. Certain elements of CPD are considered mandatory and some have to be refreshed periodically. An example of CPD that is both mandatory and periodic is 'Safer Caring' which aims to ensure that foster carers always have up to date awareness of how to keep children safe and minimise risk.

- **Family support for vulnerable children and families**

Enabling children to return to their families as soon and as sustainably as possible is a core objective of the Team's work. Foster carers are encouraged and advised in methods of engagement with children's parents and carers and in helpful ways of sharing their knowledge of good and effective parenting.

- **Regular review**

The Team carries out reviews of all foster carers on at least an annual basis. Carers' practice, skills and knowledge are considered and areas for future learning and experience identified.

- **Expert panels**

Overall responsibility for carer approval and review is held by Midlothian's Fostering Panel. The Team provides support and information to the Panel in order to facilitate its effective oversight and decision-making. Panel membership comprises independent members of the community and officers of Midlothian Council and partner agencies, all chosen on the basis of their experience and expertise.

- **Carer involvement and support**

Carers hold a wealth and depth of knowledge in relation to the care and support of vulnerable children. The Team ensures that this knowledge informs the wider work of Midlothian Council's services through liaison forums, consultations on specific issues, and providing opportunities among carers for knowledge exchange and transfer. Events and awards are frequently arranged to ensure that carers understand the value Midlothian Council places on their service. Team members keep in regular and frequent contact with carers and provide them with reference material such as the carer handbook and web-based information. Midlothian Council also pays for every foster carer to become a member of the Fostering Network Scotland. Support groups staffed by members of the Family Placement Team are provided routinely to all carers.

- **Child involvement**

Achieving good outcomes for children is, of course, the fundamental and most important reason for all the Team's work. Understanding children's experiences in, and reflections on, their foster care placements is a key element of this. The Team ensures that children are routinely seen on placement visits, that they have opportunity to talk to Team members independently of their carers and that they are able to contribute fully to formal processes of carer review. Midlothian Council provides a number of mechanisms to gather children's views including group activities and electronic data capture systems.

- **Documentation and recording**

The Team assiduously documents all formal processes, and all contacts, with the foster carers it supports. The Mosaic electronic case management system underpins this and proformas for data gathering are regularly reviewed and updated. Foster carers maintain detailed records of the experience of children in placement.

- **Assessment of risk for all placements**

A risk assessment is conducted by the supervising social worker for every placement made and specifically considers the needs of the individual child against the circumstances of the carer/s. This assessment is documented and logged in both the carer's and the child's record. These assessments are regularly and frequently reviewed and updated as appropriate. Carers also complete a 'Safer Caring' form which sets out the actions they take to minimise risk.

- **Regular scrutiny of placements**

Regular and frequent visits and calls are undertaken to all placements by Team members. This allows social workers to observe interaction between carers and children and provides opportunity to raise issues and give advice.

- **Liaison with placing social workers**

Team members meet regularly and frequently with social workers who have placed children, both for informal dialogue and in formal meetings.

- **Duty system**

There is a duty system in place so that a team member is always available during office hours to provide advice to carers, to receive referrals of children needing placement and to respond timeously to emergencies and concerns. Midlothian Council participates in the Lothian-wide Emergency Social Work Service which provides out

of hours social work support. The service is available to carers for help with any out of hours emergencies and ESWS also makes emergency placements of children with Midlothian foster carers.

- Staff development

Team members have regular supervision meetings with the Team Manager as well as frequent informal contact. Internal and external opportunities for professional development are continually available and staff are encouraged to avail themselves of them. Team members also have lead roles in relation to specific aspects of practice and are supported in enhancing their knowledge in order that they can carry out these specialist roles successfully.

- Service development

Midlothian Council is a member of CoramBAAF, the specialist UK agency for researching and promoting best practice in fostering and adoption and of the Fostering Network, Scotland's specialist fostering support and advice organisation. These memberships provide the Team with up to date research knowledge, of practice improvement strategies and of good practice examples from elsewhere. The Team meets weekly both to plan placements and resources but also to consider how to respond to new guidance, regulation, law, policy and research evidence. This contributes to ensuring that national regulatory requirements are complied with to highest possible standard.

Part C - Prevention and Identification

4. Policy and Practice

4.1 National

Past

- a) Was there national policy/guidance relevant to the provision of foster care for children?

The Inquiry has had the benefit of expert testimony and written evidence provided by Professor Andrew Kendrick and Professor Kenneth Norrie. Professor Kendrick, in his 2016 report for the Scottish Government, 'A History of the Legal Framework and the Implementation of Foster Care, including Private Fostering, in Scotland, 1945 to 2014', sets out a comprehensive record of the policy, research and practice guidance that governed foster care in Scotland during the period covered by the Inquiry, as well as an extensive overview of its operation. Professor Norrie, in his paper commissioned by the Inquiry 'Legislative Background to the Treatment of Children and Young People Living Apart from their Parents', covers, in great detail, child care law in Scotland and how it has developed and changed over time. Midlothian Council, after examining both documents thoroughly, believes both to be both extensive and comprehensive and does not believe that there are any significant areas of omission in either.

We therefore concur that the key elements of national policy and guidance are as follows:

- Children Act 1908
 - Children and Young Persons (Scotland) Act, 1932
 - Children and Young Persons (Scotland) Care and Training Regulations 1933
 - Children and Young Persons (Scotland) Act 1937
 - Children (Boarding-out) (Scotland) Rules and Regulations 1947
 - Children Act 1948
 - Boarding Out of Children (Scotland) Regulations 1959
 - Social Work (Scotland) Act 1968
 - Foster Children (Scotland) Act 1984
 - Boarding Out and Fostering of Children Regulations (Scotland) 1985
 - Children (Scotland) Act 1995
 - Fostering Regulations 1996
 - National review of child protection in Scotland, 'It's everyone's job to make sure I'm alright' 2002
 - Getting It Right For Every Child 2004 onwards
 - National Care Standards: Foster Care and Family Placement Services 2005
 - Fostering of Children (Scotland) Regulations 2006
 - Looked After Children (Scotland) Regulations 2009
 - Guidance on the Looked After Children (Scotland) Regulations 2009
 - Scottish Government Child Protection Guidance 2010, revised 2014
- Children and Young People Act 2014.

b) If so, to what extent was the local authority aware of such?

Midlothian Council has been diligent and assiduous in its compliance with legislation and national policy as far as we can judge from the records available to us. As far as its predecessor authorities are concerned, we can only deduce awareness from the records that still exist and to which we have access. Some records of town councils in Midlothian are held going back to 1895 and continue until local government reorganisation in 1975. We also hold the Midlothian Register of Guardians from 1911 to 1934. Midlothian County Council records exist for the years 1929 to 1943 and 1970 to 1974.

Mid and East Lothian and Peebles Joint Children's Committee appears to have been set up in response to the requirement under the 1948 Children Act for local authorities to appoint a Children's Officer. The responsibilities of this consortium were later augmented to include all social work services, as a result of the 1968 Social Work (Scotland) Act, which required local authorities to appoint a Director of Social Work. No records of its activities appear to be still in existence. All records of Lothian Regional Council that remain are held by the City of Edinburgh Council and the current pandemic restrictions have meant that Midlothian Council has not been able to have access to them.

It is evident from this that past records are far from comprehensive. From those to which we have had access, it appears that the relevant authorities were aware of and complied with the law of the time. References to underpinning legislation can be found in Committee and Council minutes and the Register of Guardians is structured in such a way as to demonstrate compliance with the requirements of the 1908 Act. The minute of the Public Assistance Committee 11/01/1933 states that

"The meeting discussed that the Provision of the Children and Young Persons (Scotland) Act, 1932, Part V of the Act (which deals with Infant Life Protection and effects of important modifications Part I of the Children Act 1908), had come into operation. The circular required the Local Authority to appoint an Infant Protection Visitor and suggested that the Council "should, by advertisement and poster, warn foster parents of the new provisions requiring that an undertaking to receive a child under the age of nine years for reward must now be notified before reception. The Act also makes it illegal to publish an anonymous advertisement indicating that a person or society will undertake or arrange for the care of notifiable infants".

The minute of the Education Committee of 08/10/1935 refers to the receipt of eleven notifications under the Children and Young Persons Act 1932. It also noted that a letter approving the Council's rules in respect of this legislation had been received from the Scottish Education Department and sets out these rules.

Midlothian Council and its predecessor bodies would have been advised of law and policy, as were all other local authorities, by direct communication from government. Until the 1990s, all formal communication would have been in writing, possibly supplemented by face to face contact at regular meetings of formally constituted bodies or at specially convened meetings. Such communication would have included copies of Acts of Parliament, accompanying regulation and guidance, memoranda,

Home Office and Scottish Office circulars (as is evident from the committee minute quoted above), such as those from the Social Work Services Group in the Scottish Office, and government reports.

Of course in many cases, local authorities would have been consulted with and indeed invited to contribute to working groups and advisory committees. Important pieces of new legislation, major national policy changes and findings of inquiries of national significance were normally reported to the relevant Council committee. These reports would often contain recommendations for actions that the Council should pursue in respect of these new requirements and for associated budgetary provision.

With the advent of electronic communication systems e-mail and internet based media have been increasingly used. The ease of use of such methods has contributed to a substantial increase in the volume of information routinely received by local authorities. The inception of the Scottish Parliament and Government in 1999 also generated higher volumes of statute law, government policies and strategies and regulation and guidance, largely due to the much greater amount of parliamentary time available for specifically Scottish legislation and the closer connection between national and local government.

Midlothian Council has adhered consistently to legal requirements in providing its services. Elected members routinely received annual reports from the Chief Social Work Officer included in which was information on how the authority had discharged its statutory functions in relation to children with specific information on children in foster care. The Council's Children's Services Plans were also submitted to elected members and set out how the Council proposed to fulfil its statutory obligations. Major legislative change, such as the 2014 Children and Young People Act, was reported to the Council in detail.

- c) If there was national policy/guidance in respect of any of the following in relation to provision of foster care for children, to what extent was the local authority aware of such?

We have described above how Midlothian Council and its predecessors would have received information on changes to law, policy and guidance, and on how it would normally respond to them. We have no reason to believe, and have found no evidence to indicate, that there were any areas of national policy and guidance which were either not known about or ignored.

Taken as a whole, the legislation and guidance listed above governed most of the topics listed below. Midlothian Council and its predecessors, as far as we can establish, was aware of and complied with law, regulation and policy in place at the relevant time in respect of all of these matters.

- i. Child welfare (physical and emotional)

The 1948 Act introduced the concept of 'welfare' and placed a duty on local authorities to receive children into their care where this was necessary in the interests of their welfare.

The guidance in respect of the 1959 Regulations refer to the Boarding Out Officer as “supervising the child’s welfare”, This is implied to mean, as set out elsewhere in the guidance, providing the child with “all normal opportunities for a balanced development, physical, emotional and intellectual”.

The 1968 Social Work (Scotland) Act required local authorities, in respect of a child in care, 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.”

The welfare of the child being “paramount” in decision-making was enshrined in the provisions of the 1995 Act.

ii. The child’s views

Taking the child’s views into account became a requirement under the 1995 Act. Good practice would, however, have involved children in planning for their care and articulating their views long before that time.

iii. Reviewing a child’s continued residence in a foster care placement

Child in Care Reviews were required by law from 1968 and would always have considered a child’s continued residence in a foster care placement.

iv. Child protection

Cruelty to children was a social concern from the nineteenth century onwards. The predecessor body of the RSSPCC was founded in 1889 and the Society granted royal charter in 1921. Modern child protection procedures were introduced in the mid-1970s. The death of the child Maria Colwell in 1973 and the subsequent enquiry brought about a much more systematic response to abuse of children. A UK Government circular issued in 1975 required local authorities to investigate, act on and record child abuse concerns in a consistent way, for example by maintaining a Non-accidental Injury register.

v. Discipline

The 1959 Boarding Out Regulations stated that a child “should not be punished harshly or indiscriminately”. The 1985 Regulations did not explicitly refer to discipline or punishment. Corporal punishment by foster carers was not made illegal until the implementation of the 1995 Children (Scotland) Act in 1996.

vi. Complaints handling

No explicit policy or procedure for handling of complaints against foster carers in law or statutory regulation was in place before 2010 when interim guidance was drafted by the Fostering Network. Formal guidance was issued by the Scottish Government

in 2013. The statutory establishment of foster care panels as required by the 1985 Boarding Out regulations, while not referring explicitly to complaints, did require panels to be satisfied that any person approved as a foster carer was “a suitable person with whom to place children”. Implicit in this is that panels had a responsibility to act were there any reason for any such person no longer being deemed to be suitable, such as a serious complaint against them being upheld. The guidance accompanying the 1995 Act states that it would be ‘good practice’ for agencies to establish a formal complaints procedure for foster care.

The Scottish Public Service Ombudsman set out a model procedure for complaints handling in local government in 2013.

vii. Whistleblowing

The Public Interest Disclosure Act 1998 introduced protection for employees who had a genuine concern about malpractice or wrongdoing in their workplace and would apply to foster care as to any other service. In children’s social care services, particular attention was drawn to this issue by the North Wales child sexual abuse scandal in residential care in the early 1980s. A care worker who had tried to raise concerns with her employer was dismissed from her post and the issues she raised not timeously investigated.

viii. Record retention

The Public Records (Scotland) Act 2011 sets out requirements in respect of retention of local authority records generally. The Looked After Children (Scotland) Regulations 2009 specify requirements in relation to child and to foster carer records.

ix. Recruitment and training of foster carers

The 1959 Memorandum sets out a number of suggested methods for finding and selecting foster homes. These included

- Advertising in the press and church magazines
- Talks to local societies and groups
- Leaflets.

Training appears to consist of information being conveyed by the Boarding- Out Officer. The 1985 Regulations did not make specific reference to recruitment or training. Chapters on recruitment and training were included in the 2008 report ‘Moving Forward in Kinship and Foster care’. The report was commissioned by the Scottish Government and set out recommended strategic development and identified existing good practice. It was intended to progress implementation of the Scottish Government’s National Fostering Strategy.

- x. Requiring employers to divulge details of complaints etc. in relation to prospective foster carers to the local authority

Neither the 1959 nor the 1985 Regulations made specific reference to these matters.

d) If the local authority was aware of such, did they give effect to that policy/guidance?

Midlothian Council and its predecessors gave effect to all policy and guidance as legally mandated, as far as we can establish from the records to which we have access.

e) If so, how was effect given to such policy/guidance?

As outlined above, elected members of the authority would be formally informed about major new requirements and their approval sought for taking the actions and providing the finance necessary for their implementation. For less important, substantial or costly changes, such decisions would be taken at the appropriate level of management. How the policy or guidance was implemented would depend, of course, on the nature and extent of change. Methods used were likely to include one, some or all of the following.

- Dissemination of guidance, policy and procedure to managers, staff and/or people who use services in hard copy and/or, more recently, electronically
- Requiring line managers to apprise their staff of new provision and to monitor compliance through supervision and accountability arrangements
- Revising existing policy and procedure to reflect the change
- Appointing new staff, possibly with a specialist remit
- Conducting face to face briefings and information events for managers, staff and/or service users
- Providing more extensive learning opportunities for staff
- Updating any collated manual of procedures that officers of the authority were required to follow
- Providing advice on rights and entitlements to users and potential users of service
- Devising or amending paperwork.

f) If not, why not?

Not applicable.

Present

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

Legislation and policy has changed over time, as has the knowledge and experience that underpin them. The 2014 Children and Young People Act introduced a range of new duties that local authorities were required to discharge, as of course did each new piece of legislation and guidance at their times of introduction. Professor Norrie's paper sets out past and current statute law in terms of many of the topics listed. Where

topics, such as whistleblowing and record retention, apply beyond foster care services, we have set out past provisions to the best of our knowledge.

h) If so, please give details.

Midlothian Council adheres to all relevant legislation and guidance currently in force. Recent legislative and policy changes would include the following matters.

The concept of 'welfare' was largely replaced by that of 'wellbeing' by the Children and Young People Act 2014. This is underpinned by the 'Getting It Right For Every Child' approach which was intended to individualise planning for children and take a holistic approach to a child's development. It also underlined the importance of inter-agency collaboration in planning for, and delivering services to, children and their families.

The 2014 Act also gave legal recognition to children's rights and extensive guidance has been issued on how these should be recognised and implemented by public bodies. The office of the Children's and Young People's Commissioner Scotland was set up in 2004 and is accountable to the Scottish Parliament for the promotion and protection of the rights of children in Scotland. CYPCS acts as a 'prescribed person' in terms of whistleblowing under Public Interest Disclosure Act 1998. The active participation of children in matters that affect them is a key component of the Scottish Government's Child Rights Strategy.

Scottish Government guidance on child protection was issued in 2010 and revised in 2014. This informs guidance developed by local child protection committees.

Fostering has been subject to revised statutory regulation under 2009 Looked After Children (Scotland) Regulations. These were informed by the National Fostering Strategy (2007) and the report 'Moving Forward in Kinship and Foster Care' (2008) which cover many of the matters listed above.

The 2019 Equal Protection Act prohibits all forms of physical discipline of children.

4.2 Local Authority

(i) Policy

Past

- a) Was there local authority policy/guidance in relation to the provision of foster care?

The concept of 'policy' in terms of taking discrete political positions on issues is of relatively recent origin in local government. Elected members in many cases did not represent political parties, particularly outside large conurbations. Local authorities discharged statutory duties in respect of the administration of public services. Their policies would, therefore, have reflected the law and guidance in force at the time, which is summarised above and set out in detail in Professor Norrie's paper.

Midlothian records still in existence (Register of Guardians 1911 – 1934, County Council 1929 – 1943 and 1970 – 1974) show that legislation underpinned the activities of the authority. The minute of the Education Committee of Midlothian County Council of 08/10/1935 sets out requirements for the boarding out of children. These had been approved in 1935 by the Scottish Education Department as an appropriate interpretation of the Council's duties under the 1932 Act.

Lothian Regional Council records are held by the City of Edinburgh Council and we have not been able to have access to them due to the public health restrictions in place at present. As referenced in Part B 3.2 (b), Lothian Regional Council did adopt a number of significant policies in respect of fostering. It also had specific procedures in place which staff were required to follow in respect of assessment, approval and support of carers, placement of children and child protection.

b) Was there a particular policy and/or procedural aim/intention?

Lothian Regional Council certainly took policy decisions with specific operational objectives. As we have noted in response to previous questions, we have been unable to peruse its records. This means that any information we are providing here is based on the limited archive material for that period retained by Midlothian Council and on information supplied by managers and officers of relevant Lothian Regional Council services with whom we were able to make contact.

Key policies included:

'Time of Change' which had several important objectives in terms of family based care of children.

- Closure of residential care units
- Re-investment of resources in the expansion of family based care
- Avoiding placement of children under twelve in residential care
- Increasing significantly the provision of family placements for children over twelve through the inception of the 'Community Care' scheme
- Ending 'drift' of children in the care system by immediate planning for return home or for permanency
- Establishing a range of types of fostering – emergency, short-term and long-term

'Youth Strategy' which set up collaborative decision-making between social work and education and developed multi-agency partnership governance structures.

- Development of community placements, including use of family based care, as an alternative to residential schooling
- Establishment of 'School Liaison Groups' to avoid school exclusions
- Shared assessment of and planning for children between social work and education
- Coordination arrangements set up at sub-authority level involving police, health and voluntary sector as well as social work and education.

'Schemes of Care'

- Introduction of a fully fee paid fostering service
- Placing obligations on carers to attend learning and support groups
- Acknowledging the increasing complexity of children's needs and circumstances with which foster carers were expected to engage.

There are likely to be other significant policies which we are unable to reference due to not having access to the relevant records.

c) Where were such policies and/or procedures recorded?

Policies were documented in reports to the local authority in existence at the time, and their approval recorded in the minute of proceedings of the authority. We do not know how procedures were documented prior to the inception of Lothian Regional Council. A manual was in place for Lothian Regional Council which set out the procedures the authority required staff to follow in respect of compliance with law and adherence to Council policies.

Any new procedures had to be approved at senior management level within departments. Within the Social Work Department a designated officer was responsible for the deletion of out of date procedures and the insertion of new ones. Every workplace was issued with at least one copy of this Procedures Manual.

d) What did the policies and/or procedures set out in terms of the following:

i. Child welfare (physical and emotional)

Policies, procedures and guidance reflected the law in force at the time. Specific procedures were in place for the investigation of non-accidental injury/child protection matters. Emotional welfare was less well understood therefore more difficult firstly, to establish thresholds for concern conclusively and, secondly, to attribute cause. Sexual abuse became much more widely acknowledged during the 1980s, though some of the diagnostic approaches used were controversial and indeed later discredited. Research and public inquiry findings were important in influencing local authority policies in investigating and dealing with abuse.

Policies such as those of Lothian Regional Council referred to above were intended to promote welfare under powers of general welfare promotion conferred by the Social Work (Scotland) Act.

ii. The child's views

The Community Care (teenage fostering) scheme set up in Lothian Region in the early 1980s had provision for children giving written information about themselves to prospective carers and vice versa. Older children attended and participated in their Child in Care Reviews in Lothian during the 1980s. Younger children were encouraged to express their views, using methods such as artwork where appropriate to their age and stage of development. Unless they were very young or there were other compelling reasons for them not to attend, children would always be present at Children's Hearings.

The post of Children's Rights Officer was established in Lothian in 1994. All children in foster care were provided with a leaflet outlining their rights and advising how to contact the CRO in complete confidence. More detailed information about how to express their views and ensure they received their entitlements was also provided through two handbooks which were given to all children in care placements – 'That Wee Book' – a Filofax type publication for older children, and 'The Big Red Book' with more graphic content for younger children.

The 'Who Cares?' organisation was active in Lothian to varying extents over the years. It provided individual children and young people with advice and support, as well as organising regular forums in which children and young people in care could participate and express their views.

The 2014 Act defined corporate parenting responsibilities and local authorities set out how they discharged these duties. The acknowledgement of views and the implementation of rights was integral to this. Even before then, many local authorities, including Lothian Regional Council, had made provision for individual opinions to be heard and respected and for children and young people's collective voice to inform policy and planning. The requirement to produce a Children's Services Plan introduced in the 1995 Act was a precipitating factor in the meaningful involvement of children and young people in contributing to the development of services that affected them.

Lothian Children's Family Charter was based on the UNCRC and set out a number of commitments that the authority and its partner agencies made to children and young people, including children and young people in out of home care placements.

The Quality Standards for Services to Children and Families were agreed by LRC in 1995 and set out a range of expectations in respect of the quality of services that should be provided to children and their families. It included a number of criteria in respect of both care placements and the experience children should have while in care.

iii. Placement of siblings

We do not know if any policies in this respect existed prior to the 1959 Boarding Out Regulations and the accompanying Memorandum, which states that children from the same family should be boarded out in the same foster home where possible and if this were not possible for them to be placed in close proximity. The 1985 Regulations reiterated this requirement. Information from archive case records and advice from those who practised in and managed services in the Lothians as far back as 1970 suggests that families were never intentionally separated, that siblings would have been placed together wherever possible, but that, as is the case today, resource constraints sometimes made this difficult.

iv. The placement of a child in foster care

Midlothian's Register of Guardians appears to show that the children visited were 'boarded out' by their families and not by the local authority.

Lord Clyde's 1946 report endorsed the value of family based care over institutional placement and this report was the basis of the 1948 Children Act. We would expect that this informed practice, though our records show that many children including children under ten were often placed in residential settings for many decades after this legislation came into force.

Later regulation advised that as much information as possible was gathered about the child's needs and circumstances prior to placement. Our records indicate that the families of children being placed with foster carers were, in most cases, well known to services prior to the child being admitted to care. There were of course children who required to be placed due to a crisis or emergency and in those cases information about the child could be quite limited.

The policies of Lothian Regional Council referred to in 4.1 (b) above actively promoted foster care and required this to be considered in preference to residential placement. Again resource constraints meant that family placements were not always available when needed, and priority was given to younger children. The 'rule of thumb' (though the policy did not require this explicitly) in Lothian Regional Council was that children under twelve should always be placed in foster rather than residential care.

v. The particular placement of a child with foster carers

In the early days of the period in question the foster carer appears to have been generally found by the child's family. Between 1949 and 1968 the numbers of 'boarded out' children in Midlothian increased, but we have no aggregated information on this cohort of children. As a significant proportion of them came from outwith Midlothian, we can only speculate that, consistent with the national picture, children from deprived inner city areas were placed with foster families in rural areas as this was thought to be good for their health and welfare. The only other information we can provide is what we have been able to deduce from case file reading; a relatively small number of the files refer to the period 1930 – 1970. No explanation is usually provided as to selection of foster carers (though this is true of later case records as well) and it is likely that availability would have been the key factor. We can find no records that indicate any particular policy on this matter.

In the 1980s registers of available foster care placements were held at Divisional level and social workers seeking a placement would have been required to check availability there before looking more widely. For Midlothian the Divisional office in Musselburgh would hold this information for East Lothian and Midlothian. If no placement could be found in the Division, a placement could be sought in Edinburgh or West Lothian.

The establishment of specialist Resource Teams from 1990 provided a more local management of fostering resources and it would have been expected that Midlothian resources were checked in the first instance before looking more widely across the Region. Other policies in force around that time such as 'Education of Children in Care' also reinforced the importance of local placement.

vi. Contact between a child in foster care with his or her family

The minute of Midlothian County Council's Education Committee of 08/10/1935 refers to the receipt of eleven notifications under the Children and Young Persons Act 1932.

It also noted that a letter approving the Council's rules in respect of this legislation had been received from the Scottish Education Department. It contains the following in respect of family contact.

10 – VISITS AND LETTERS

(a) Unless the privilege is suspended by the Education Authority a boy or girl shall be allowed to receive visits from his or her parents (or guardians) at such intervals as the Authority may determine.

(b) A boy or girl shall be allowed to receive letters from his or her parents (or guardians) unless the privilege is suspended by the Education Authority.

It is interesting that contact with family was defined as a privilege rather than as a right.

Later the Boarding-out Officer would have had a pivotal role in determining the nature and extent of contact between a child and her/his family.

The 'Time of Change' policy of Lothian Regional Council was intended to achieve rapid return home for children in care, as an increasing body of research evidence was showing that unless children were returned home within a few months of admission, they were likely to remain in care long-term. Contact with family was therefore encouraged and families provided with fares to visit children in foster care placements. Of course placements were not necessarily easily accessible for families, particularly by public transport, so in some cases contact did not take place at an ideal level of regularity and frequency. This could compromise the likelihood of a successful return home.

The policies of Lothian Regional Council developed over time in relation to how care was used. Latterly it was aimed at keeping children in their own families where possible and to provide care for as brief a period as necessary when unavoidable. Placements in families were preferred to residential care and they should be provided in as close proximity as possible to the child's home, school and community.

vii. Contact between a child in foster care and other siblings in foster care

Siblings would generally be placed together where possible, unless there were specific reasons why this was not desirable. We can find no specific policies that state this explicitly but case records going back many decades would indicate that this was normal practice. Of course, availability of placements, in the past as at present, meant that sometimes this was not possible, particularly when a large family had to be accommodated. This has been referred to in regulation and guidance at least since 1959.

The policies of Lothian Regional Council, referred to above, implied that contact with siblings as well as with parents was seen as an important part of effecting successful rehabilitations. It was increasingly seen and treated as a right and an important part of wellbeing even when a child was to remain in care long-term, including in adoptive placements.

viii. Information sharing with the child's family

This would depend on the circumstances of the placement and the safety and welfare of the child would always take priority. In the very early period covered by the Inquiry it was generally a child's parents who 'boarded out' the child and this can be seen from the Register of Guardians. Over time and with changes in legislation placements were increasingly made by public authorities. Unless there were compelling reasons why parents should not be given details of a placement, they would be provided with some information about the carer household. There were also timescales stipulated for the provision of such information.

We are not aware of specific guidelines in respect of information to be shared, or indeed not to be shared, in predecessor authorities. This would have been seen as a practice matter. The child's family would be advised of the address of the foster care placement and generally some information about the household composition and the carers' experience and background would also be provided.

Data Protection legislation was first introduced in 1988 and has been subject to various subsequent measures, notably the General Data Protection Requirement in 2018. Lothian Regional Council adopted a policy of Open Access to Social Work Records in 1989. Guidance was issued in respect of the structure and content of case records and the procedure for individuals having sight of case records held about them. One feature of this was to ensure that separate records were kept for each individual, so that information about siblings, for example, would not be visible to a person seeing his/her own file. This of course affected the nature of the information that could be shared and the persons with whom it could be shared.

ix. Fostering panels (including constitution, remit, frequency and record keeping)

Panels were required by the 1985 Boarding-Out Regulations, though a similar arrangement – the Homefinding Panel – for approving carers was in place in Lothian Regional Council prior to this time. Panels were empowered to make decisions about the suitability of foster care applicants and the number, age and sex of children for whom they were approved to provide care. We are unable to provide information on the functioning of the Panel due to being unable to examine LRC records. We understand that the Homefinding Panel was in existence from 1975. Prior to this time we have no information as to the process of approving carers.

x. Recruitment and training of foster carers

We have no evidence of policy in foster carer recruitment and training before the establishment of the Social Work Department in 1968. Lothian Regional Council conducted foster care recruitment campaigns using local newspapers and radio as well as posters and leaflets. Open information evenings were also held.

While assessment of foster carers by qualified social work staff took place from the 1960s onwards, training came much later. The increasing 'professionalisation' of foster care through the 1980s saw Lothian Regional Council introduce pre-approval

preparation training and continuing professional development opportunities for foster carers. Lothian was seen as a leading authority in this respect and Midlothian Council built on this legacy.

- xi. Requiring employers to divulge details of complaints etc. in relation to prospective foster carers to the local authority

At some level local authorities have been empowered to apply such criteria to, and undertake such checks on, as it saw fit to persons with whom children were boarded out since the 1908 Act. No specific requirement to seek information from an employer has been contained in any of the regulations that have applied since legislation was first introduced. An employer reference has been sought in respect of all foster care applicants by Midlothian Council for some years, as is defined as good practice in the CoramBAAF guide 'Undertaking a Fostering Assessment', followed by Midlothian Council and first published in 2011.

- xii. Reviewing a child's continued residence in foster care or in a particular foster care placement

We are unable to comment on policy and procedure before the introduction of statutory reviews. Case records appear to show that placements were not reviewed as such. Children returned home if the authority deemed family circumstances to have improved sufficiently, otherwise they remained in care.

Child in Care Reviews were introduced by the Social Work (Scotland) Act 1968. Case records show that the continuation of the placement was routinely considered in plans discussed at Reviews, though we are not aware of any additional or specific local policy requirements in this respect.

- xiii. Visits to a foster care placement (including frequency, purpose, content, follow up and record keeping)

The Register of Guardians shows that visits took place in compliance with the legislation and were recorded. The purpose appears to have been to ensure that a minimum acceptable standard of care was being provided. The 1934 regulations defined a minimum requirement of an annual visit. Midlothian County Council records appear to indicate that these visits were carried out by elected members of the Council. No records of such visits still exist.

The 1948 Act gave authorities the right to visit placements but gave no indication as to frequency, purpose and content. It appears that again this was more to ensure that a minimum acceptable standard was being adhered to by the foster carer rather than to provide any therapeutic benefit to the child's welfare.

The 1959 Scottish Home Department Memorandum required children's officers to interview children in foster care while visiting and to examine their clothing and sleeping arrangements. The Boarding-Out Regulations issued in 1985 set out requirements in relation to timescales, frequency and regularity of visits. The guidance accompanying the 1995 Act further reinforced visiting requirements and set out the purposes of social work visits.

Policies of Lothian Regional Council gave high priority to the quality of support of foster carers and the children placed with them. We are not aware of any specific procedural requirement but fortnightly visits to children would have been quite usual and weekly visits not uncommon.

xiv. Transfer of a child from one foster placement to another (including preparation and support)

It would now be seen as generally undesirable to move children from one placement to another except where a child's safety required this or the current placement had irretrievably broken down. The exceptions to this would be placements made in an emergency where it is clear from the outset that a longer-term arrangement would need to be made.

We have no information as to how this was dealt in terms of authority policy until relatively recently. The 1959 Memorandum suggests a procedure for removal of a child from a foster home and placement elsewhere where the placement had been "unsuccessful" or the child "unhappy". We have not been able to review a sufficient number of case records from this period to establish how such situations were dealt with locally.

The structure of foster care in Lothian Regional Council differentiated between emergency, short-term and long-term carers. This, in quite a number of cases, meant that a placement move was inevitable and children would be aware of this from the outset. This did not stop children developing emotional attachments to carers with consequential distress when they had to move.

Social workers were expected to prepare children for planned placement moves, such as from a short-term to a long-term or adoptive placement and this would be monitored through supervision. Life Story books were often used from the 1970s onwards.

xv. Transfer of a child between foster care and residential care (including preparation and support)

It is probably true to say that this would rarely happen for a positive reason and opportunity for preparation may be limited. When it was the result of a planned placement move the expectations would be the same as for a move of foster placement. Again we have no reason to believe that national guidance was not followed. Further examination of case records from this period would provide more robust information on local policy and practice.

xvi. Child protection

As stated above, the RSSPCC rather than the local authority would have been deemed to be the primary responsible agency rather than the local authority, from the nineteenth century up until the Social Work (Scotland) Act 1968. An infant protection register relating to children in the community appears to have been held by the Medical Officer of Health for the area from the 1940s.

Child protection procedures (or NAI guidelines, as they would have then been known) existed in the Lothians from 1977 onwards. They were reviewed and changed many times over the years, often in response to events and findings as well as because of national requirements. One particularly significant change was the move towards inter-agency approaches and away from this being seen as largely a social work matter. This change in approach developed throughout the 1990s and gave the police a much more prominent role than had been the case previously. The application of child protection procedures to issues that arose in foster care placements was not consistent until much more recently.

xvii. Complaints handling

It has always been possible to complain about a Council service. Complaints could be made to officers and managers, to elected members and, since 1967, the Parliamentary Commissioner for Administration, the functions of whom were subsumed by the Scottish Public Services Ombudsman in 2002. Procedures were in place in Lothian Regional Council from the early 1990s for the handling of complaints, including a specific procedure for 'Complaints by and against Foster Carers'. Midlothian Council has also had specific policies for complaints handling, the latest version dating from 2103.

xviii. Whistleblowing

We are not aware of specific local policies on this issue until comparatively recently. The prominence given to the inquiry into the North Wales scandal mentioned above means that an organisational response was likely. Without access to LRC records, however, we cannot confirm this.

xix. Record retention

Midlothian Council's first corporate policy regarding record retention ('Retention Schedule') came into effect on 01 September 2012, as part of its obligations under the Public Records (Scotland) Act 2011. Prior to this date, record retention policies were developed ad hoc by individual departments.

Much of the documentation which survives regarding record retention policies is in draft form, without clear indication as to whether these guidelines constituted formal policy. Policies related to Social Work records were in place by 2007.

e) Who compiled the policies and/or procedures?

These were either directly drawn from guidance provided by government and its agencies (such as HMle, SWSG, SWIA and the Care Commission/Inspectorate) or drafted by Council officers and approved by senior managers or elected members.

f) When were the policies and/or procedures put in place?

We are unable to provide any greater detail than what we have stated above. The table appended sets out when relevant policies and procedures of Midlothian Council were, to the best of our knowledge, first put in place.

g) Were such policies and/or practices reviewed?

Review of policies and procedures would take place from time to time, largely on an ad hoc basis. It was probably true to say that, until comparatively recently, there would be little in the way of policy and procedure that was not directly drawn from law, statutory regulation or national guidance. The development of policy and associated procedure at local authority level gathered pace increasingly from the 1960s onwards. It is probably true to say that systematic and regular review of policy and procedure did not take place on a significant scale until the 1990s.

h) If so, what was the reason for review?

Changes in law, new knowledge or decisions of the Council may have required amendment of or addition to existing procedure. Routine review of procedures in Children's Services to ensure that current law, policy and terminology were appropriately reflected has taken place in Midlothian every two years.

i) What substantive changes, if any, were made to the policies and/or procedures over time?

We can only comment in respect of the records to which we have access. For the time before the establishment of Midlothian Council, but pre-regionalisation, we have only minutes of meetings, and these are incomplete. What we can infer is that legal requirements were complied with rather than the local authority having separate policies and procedures of its own.

Lothian Regional Council decisions would have been documented in Council and Committee minutes. The reports on which decisions were made were systematically archived and, where a previous policy or procedure was changed, this would have been referred to in the report. We cannot provide specific examples as at this point we are unable to access LRC records.

Midlothian Council has electronic records in place from 2008 onwards, but many paper records from before then were destroyed by fire some years ago. We have referred elsewhere in the report to the introduction of new policies and of significant amendments to existing ones.

j) Why were changes made?

Pre-regionalisation, this would normally have been to reflect changes in law or other national requirements. Later, for various reasons as stated in response to (h) above.

k) Were changes documented?

Generally new policies replaced old policies. Where these were generated by a Council decision this would have been recorded. Where such records still exist, it might be possible to ascertain when and why changes were made. Otherwise, until systematic review procedures were introduced, the policy and procedure in force at any particular time would have been the only version available.

l) Was there an audit trail?

Only when a change took place as a result of a formal decision of the Council, and even then, only by checking through archive minutes and reports. In Lothian Regional Council, when a new version of a procedure was adopted, it would be circulated to establishments with a request to remove the previous version from the Procedures Manual and to destroy it, to avoid confusion.

Present

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

The answers in many cases are different, as set out in response to 4.2 (n) below.

n) If so, please give details.

All Midlothian Council's relevant current policies and procedures are contained in the table appended.

In addition Midlothian Council supports the 'Champions Board' for looked after children which provides participation, learning and awareness raising activities in respect of children in care placements. A group worker is also employed who organises regular group and activity sessions for children in foster and residential care. Children are encouraged to and supported in achieving their entitlements and expressing their views. 'Mind of My Own' is available to all children in care placements in Midlothian and provides an electronic means of recording and communicating views, preferences and experiences.

Our response to Part B 3.4 sets out the ways in which the foster care service currently operates in respect of many of the above issues. We also seek an employer reference in respect of all foster care applicants.

A system is in place for regular periodic review of all Council policies and procedures, with a clear audit trail. Children's Services policies are reviewed every two years.

The Council has both general systems for whistle blowing contained in the Council policy 'Whistle Blowing Options for the Public and Members of Staff' and a specific social work procedure introduced in 2012. There is also a 'Whistle Blowing Anti-Fraud and Corruption Reporting Form'.

The Edinburgh and Lothians Inter-agency Child Protection Procedures are followed, supplemented by Midlothian Council's Child Protection Practice Standards. Any child

protection concern arising in a foster care placement would be subject to these procedures.

The Customer Service Officer of Midlothian Council is responsible for the oversight of and reporting on complaints. The current procedure was introduced in 2013 and is consistent with the requirements of the Scottish Public Services Ombudsman, to whom quarterly reports are provided as required by law. Currently there is a separate though aligned procedure for social work complaints, which would include complaints about any aspect of the foster care service. Foster care complaints are overseen by the Head of Children's Services and a log of all such complaints maintained.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures in relation to the provision of foster care?

The records to which we have access indicate that policy and procedure was generally followed. We do, however, acknowledge the limitations to the material to which we had access both in the extent of detail they contain and the fact that many records are missing and assumed to have been destroyed. Case records audited do not indicate that policy or procedure was disregarded.

- b) Did the local authority adhere in practice to its policy/procedures on the following:

So far as we can ascertain from the authority records to which we have access, and from such relevant information as is recorded in case files, policy and procedure was generally adhered to in respect of all of the below. We submit, however, that we do not have detailed enough information to answer this question with absolute certainty.

Little is contained in authority records pre-1975 that would cast any meaningful light on whether policy and procedure were adhered to. Equally, there is nothing that obviously suggests otherwise and some records indicate compliance, albeit in a fairly limited way. Lothian Regional Council records would probably be more comprehensive and informative for the purposes of providing these data, but, as we have explained, these were not available to us.

Our case file audit has not uncovered any notable breaches of policy or procedure though compliance is generally implicit rather than explicit. Managers would be expected to ensure adherence to policy through supervision, rather than staff recording it per se in any log or in individual case records. Supervision sessions were not required to be recorded in writing until the 1990s.

- i. Child welfare (physical and emotional)

Child welfare would always have been the motivating factor in any practice activities that took place. Two things should, however, be borne in mind. One is that the

understanding of what constitutes child welfare has changed considerably over time. The other is that the degree of scrutiny thought to be needed to monitor it adequately has also changed substantially.

It is probably also true to say that, prior to the development of professional social work education, emotional welfare would be understood in quite a limited way. The application of psychological and indeed psychoanalytic theory to social casework from the 1960s onwards gave greater weight to emotional aspects of child welfare, though these were often understood as functions of individual pathology rather than of wider socio-economic processes.

Our case file audit indicates that practice in the early days was largely concerned with addressing deficits in physical welfare, such as hygiene and nutrition. Foster care was used when parents repeatedly failed to demonstrate competence or improvement in these respects.

Over time, particularly from the 1970s onwards, case records show an increasing focus on emotional aspects of welfare and document family functioning and parent-child interactions more extensively. Social work practice, particularly with children in out of home care, was very much focused on children's emotional welfare, with foster carers expected to provide the consistent physical care and stability of environment in which therapeutic social work could effectively take place. Child and adolescent mental health services were also often involved in helping children in care overcome the effects of trauma and distress.

ii. The child's views

We do not know what practices were in place before the 1968 Act and the inception of local authority Social Work Departments. After the introduction of the Act, it would have been usual practice for social workers in Lothian to see children in foster care independently of their carers. As soon as children were old enough, it would have been expected that social workers take children on outings and do activities with them. Children would be encouraged during these contacts to voice their feelings and opinions to the social worker. Even with younger children, seeing them privately within the foster home would have been normal and play and art would often have been used to help children express views and feelings.

Our answer to 4.2 (i) (d) (ii) above outlines some of the formal mechanisms later put in place to support children in articulating their views.

An explicit requirement to listen to and take into account children's views was not set out in law till the 1995 Act. This was expanded on by the National Care Standards in 2002. Practice was probably ahead of legislation in respect of this issue.

iii. Placement of siblings

As we have indicated above, it would generally have been seen as desirable for siblings to be placed together from the earliest days of statutory requirements. In

practice, now as in the past, availability and suitability of foster care placements are key factors. Other factors may come into play too, such as proximity to home. It may, for instance, be seen as more desirable to place four siblings in two separate placements close to home than in one placement at some considerable distance, particularly when it is important to have frequent contact with parents and other family members.

iv. The placement of a child in foster care

We do not know the process of decision-making, prior to 1968, which brought children into out of home care. Obviously this was governed by legislation and national policy, but we do not know how thresholds for intervention were defined, nor who was responsible for making this decision. The 1959 guidance advises that the Boarding Out Officer should be in possession of "the fullest information available about a child" before making a placement, though this appears to have been on the basis of children being admitted to a 'reception centre' for assessment prior to a longer-term plan being formulated.

After 1968 a placement would be made on the advice of a social worker and approved by a manager. This remains the practice in force. The 1995 Act guidance on this matter would have informed practice.

v. The particular placement of a child with foster carers

Our case file audit has examined files as far back as the 1950s. We have not come across any information that suggests this would have been done in any systematic way. It is likely that people who accepted 'boarded out' children would have notified the authority if they had space to take a child. Proximity and prior knowledge are likely to have been the dominating factors. In an emergency there would likely have been little choice in terms of placement. The 1959 Memorandum would appear to support this hypothesis as the Boarding-out Officer's knowledge of carers is seen as a critical factor in choice of placement.

For planned placements practice changed over time. Latterly a discussion would usually take place between the child's social worker and the social worker for the foster carers. If both were in agreement, information on the child would be shared with the foster carer. The foster carer would then decide whether or not they were willing to take the child. If they agreed, the child would be told about the carer family and prepared for the move by his/her social worker.

The Community Care scheme was set up in Lothian in the early 1980s and was the first fully fee paid fostering scheme. Carers were paid a reasonable recompense for their time and were required to attend a group preparation programme as well as undergoing a home study assessment. Children and carers were linked at a region-wide weekly meeting following which papers were exchanged, including an extensive statement by the child concerned. If both parties were in agreement the local Community Care panel would proceed to a matching which involved extensive discussion of the child's needs and the carers' capacity. If agreed a programme of introduction would be planned.

This model was later applied to all non-emergency foster care placements in Lothian and indeed forms the basis of current practice in Midlothian.

vi. Contact between a child in foster care with his or her family

The 1935 minute of Midlothian County Council Education Committee indicates that some level of face to face contact and written communication between children in foster care and their families was usual. It is however referred to as a 'privilege' which could be suspended by the authority. The implication seems to be that the onus was on the family to maintain contact.

Practice changed around the 1970s and 80s when evidence made it clear not only that children were not being returned home quickly enough but that chances of a successful return home reduced with each month spent in care. Parents were encouraged to visit and were provided with fares to do so. Social workers were tasked with facilitating contact and foster carers were also encouraged to engage with parents in a non-judgmental way.

More recently practice has shifted towards keeping families together in the community and short-break fostering can be a component of this approach.

vii. Contact between a child in foster care and other siblings in foster care

As mentioned above in respect of other matters, we have little information about what happened prior to the existence of Midlothian Council. We have no formal records of any predecessor authorities that refer to this matter and as we have already explained, we cannot access Lothian Regional Council records. We have noted above the statutory and regulatory requirements and have no reason to believe these were not adhered to.

Practice in Midlothian Council would appear to have been consistent with statutory requirements. Case records appear to show that, in recent years, specific arrangements have been made to ensure that siblings, when not placed together, had regular contact with one another. In most cases, files show that siblings were placed with the same carers.

viii. Information sharing with the child's family

For the reasons referred to above, other than what we can infer from case records, we cannot provide any information for the period prior to the existence of Midlothian Council. Practice in Midlothian Council, while following Data Protection legislation, would have been in line with plans for each child. GIRFEC introduced much greater personalisation of planning for children and practice for each child would depend on their individual circumstances. Information would have been shared as was appropriate to each child.

Statutory requirements in terms of notifications would have been followed when children were admitted to out of home care. There may have been occasions where

this was not always immediately possible, for example if a child's parents did not live together and the child was admitted from the custodial parent's care. The whereabouts of the non-custodial parent may not have been on record at the point of admission and indeed the non-custodial parent may have had little or no active involvement in the child's upbringing.

- ix. Fostering panels (including constitution, remit, frequency and record keeping)

Fostering panels became a legal requirement under the 1985 Regulations. Lothian Regional Council had set up panels in each of its geographic divisions prior to this. We have been unable to access the records in which the Council agreed their constitution and remit, though this would have been the subject of a report to the Council's Social Work Committee.

The 1995 Act guidance and the 2009 Regulations and their accompanying guidance provided further specifications as to the role, function and membership of the Panel. Midlothian Council's Fostering Panel is constituted as required by these regulations. It has generally met on a monthly basis and is supported by a dedicated administrative officer who circulates papers to panel members, maintains a record of proceedings, and communicates panel decisions. Its remit is set out in the Foster Care Handbook – "to consider all applications to foster that are presented, to make recommendations to the Agency Decision Maker (a senior manager in Midlothian Council) on the approval and remit of foster carers and to undertake foster carer reviews".

- x. Recruitment and training of foster carers

Advertising campaigns to recruit foster carers were regularly mounted by Lothian Regional Council. Records prior to that time do not contain any references to specific recruitment activity. Practice in LRC included advertising in local press and local radio, feature articles often involving experienced foster carers in local newspapers and interviews with staff and carers on local radio, open information evenings, poster and leaflet campaigns and asking existing carers to encourage people in their local communities to consider fostering. Targeted recruitment campaigns were also held for sibling groups, disabled children and in specific communities.

Training of foster carers prior to approval generally took the form of information provided by the assessing social worker during the home study process. Group preparation was introduced in the early 1980s, initially for prospective adopters and for the Community Care scheme. It was extended to all foster carers by the mid-1980s.

The Community Care scheme also introduced the concept of continuing training through regular carer support groups. Again this was later extended to all foster carers.

- xi. Requiring employers to divulge details of complaints etc. in relation to prospective foster carers to the local authority

Making contact with a foster carer's or foster care applicant's employer would not have become standard practice till relatively recently. It is recommended in both the Scottish Government guidance on the 2009 Looked After Children Regulations and the

CoramBAAF guidance on assessing foster care applicants. Both documents were first published in 2011. There was, and is, no requirement for employers to provide any information after the application stage, though Midlothian Council may request information at any time if this were seen as relevant to their role as foster carers.

xii. Reviewing a child's continued residence in foster care or in a particular foster care placement

We do not know the extent to which this happened in practice prior to the introduction of formal child in care reviews. Our reading of older files does not provide any meaningful information in this respect. Generally it appears that children remained in the placement until their parents chose to remove them (in the case of children boarded out in the early days) or the public authorities deemed that home circumstances had improved (through the 1950s and 1960s).

In the early days of LRC many children had remained in foster care by default with little active planning either for returning to their families or permanent placement. The 'Time of Change' report referred to above was aimed at ending this kind of 'drift' and many children were moved to adoptive families. Some were adopted by their long-term foster carers with financial support from the authority as the loss of foster care allowances had sometimes been the main reason why they had not done this previously. Some were returned to their own families and some children were adopted by new parents. Not all of these arrangements worked out well. Emerging research showed that after six months of being apart from families, the chances of a successful return home reduced significantly.

Placing children with adoptive families was also not always successful. Most adopters at this point were childless couples and often took an older child who had been in care due to the lack of availability of new babies voluntarily given up for adoption. Up until the 1970s most adoptions had been of such babies. Some of the children had had disrupted and traumatic early lives and needed levels of support beyond what some adoptive families were able to offer.

These experiences and a greater body of research knowledge informed practice improvement and by the time Midlothian Council came into being much more extensive preparation and support were given to adoptive families. Foster care became much more focused in its role and foster carers were increasingly seen as part of the professional workforce and were trained and paid. Review of children's placements was systematic and structured and much clearer expectations conveyed to foster carers as to the tasks they were expected to carry out.

A performance inspection of Midlothian's social work service by the Social Work Inspection Agency was carried out in 2008. While foster carers felt well supported, the inspectors did recommend that planning for children could be more effectively reviewed. Action plans were put in place to address the recommendations of the inspection report.

xiii. Visits to a foster care placement (including frequency, purpose, content, follow up and record keeping)

The Register of Guardians up until 1934 shows that visits took place at around six-weekly intervals. Midlothian County Council's 1935 Rules indicated that all foster carers were provided with a 'Visiting Book' in which all official visits were recorded, and which was to be produced on the request of the appropriate authorities.

The earliest case records we have sampled date from the 1950s though few of the files to which we had access pre-date LRC days. In many cases the frequency and regularity of visiting is not clear from the file. We do not know whether this is because visiting was infrequent or because it was not always documented. Even when visits were noted information is often sketchy with little in the way of social workers' observations or actions arising from visits.

Records from the 1970s onwards are more comprehensive in terms of recording visits and other contacts though even then the quality of recording is variable. It is hard to draw conclusions about what actually went on during visits in many cases from what is noted in files. Practice during visits, as opposed to practice in recording visits, is therefore not always easy to describe. The purpose of intervention, including placement visits, is usually contained in the formal records of meetings where planning for, and decisions about, children were made, such as Looked After Children Reviews, Children's Hearings and Child Protection Case Conferences. The process of interaction in visits and its consistency with overarching child's plans would be routinely examined by managers in the course of supervising staff.

The 2008 SWIA Inspection noted that foster carers had raised concerns about the frequency of changes of social worker experienced by many children. This is likely to have affected the regularity of visits and the consistency of approach.

- xiv. Transfer of a child from one foster placement to another (including preparation and support)

In LRC days, where this move was planned, the social worker and foster carers would prepare the child for the move by providing information about the new carers and conducting introductory meetings. Providing reassurance and recognising that the child may have developed attachment to the previous carers would have been an important feature of the work. The designation of carers as 'emergency' or 'contract' carers meant a move was inevitable for children who had not returned home within six weeks of admission. Latterly this was changed as the impact on children who were likely already to be traumatised, unsettled and disrupted became increasingly apparent.

Of course some placements ended in an unplanned way and this meant that appropriate and advisable preparation and support could not take place.

We do not have a meaningful body of information about what happened in earlier times.

- xv. Transfer of a child between foster care and residential care (including preparation and support)

We have no real indication as to how that took place. Early case records seem to show that transfer to residential care took place when a foster care placement ended (usually in an unplanned way, and at the instigation of the carer) and either no other foster placement was available or the child's needs would not be able to be met by a foster carer.

Children's Hearings would also make decisions about placing children in residential settings, often in residential schools. This would normally be done on the recommendation of professionals involved with the child and the reasons for the recommendation would generally be fully discussed with the child in advance. Foster carers often continued to provide a home for the child at weekends and during holidays if the child was placed in residential school.

xvi. Child protection

Child protection concerns would have been investigated at some level throughout the period covered by the Inquiry. Before the 1968 Act this would have been largely carried out by the RSSPCC who carried statutory functions in this respect. Its intervention would have been triggered mainly by members of the community advising it of concerns rather than any structured or systematic referral process. RSSPCC inspectors had the power to remove children that they believed were at risk of serious harm.

Physical abuse and severe neglect were the main child protection concerns. Sexual and emotional abuse were much later concepts in child protection. When local authorities took over this responsibility in 1968 'battered babies' – i.e. excessive physical punishment or deliberate cruelty – was the key focus. Referral of a concern would result in a social work visit and assessment. The death of Maria Colwell, aged seven, in Brighton in 1973 brought about major changes in practice. Maria had been known to social workers but the degree of harm and risk to which she was exposed had been inadequately assessed.

Following the inquiry into this case local authorities were required to put in place clear practice guidelines and to keep a register of children 'at risk of non-accidental injury'. Lothian Regional Council guidelines were first put in place in 1977 and were regularly updated. They provided information about identifying NAI and actions to be taken where it was suspected. In the 1980s and 1990s they were supplemented by Practice Papers on specific aspects of child abuse such as sexual and emotional abuse.

Over time, and, sadly, often as the result of an inquiry into a tragic failure of the child protection system, guidance has been revised and extended. It now involves an inter-agency approach and a strong collaborative partnership between police and social work.

Practice in child protection work has changed over time. Normally in Lothian Regional Council a social worker and senior social worker would conduct the initial investigation which would involve checking whether the child was on the NAI register, examining the child, interviewing the child (depending on age and level of understanding), interviewing parents and any other parties thought to be involved, gathering information from professional agencies involved with the family and making a

judgment as to whether a case conference needed to be convened. The investigation would not necessarily have at this stage involved the police though a case conference could decide to refer the case for police investigation.

xvii. Complaints handling

As mentioned previously, mechanisms for raising a complaint have always existed in local government. Until the establishment of a formal complaints procedure, complaints would have been dealt with through line management arrangements and escalated where necessary. The nature of the investigation and action on a complaint would depend on the nature and seriousness of the issue raised. Formal complaints procedures have been in place since the early 1990s.

xviii. Whistleblowing

We are aware that Midlothian Council instituted a policy on whistleblowing in 2007 but do not know what policies previously existed on this matter. The specific social work policy was issued in 2012.

xix. Record retention

Midlothian Council's first corporate policy regarding record retention ('Retention Schedule') came into effect on 01/09/2012, as part of its obligations under the Public Records (Scotland) Act 2011. Prior to this date, record retention policies were developed ad hoc by individual departments.

Much of the documentation which survives regarding record retention policies is in draft form, without clear indication as to whether these guidelines constituted formal policy. It appears that policies in respect of social work records were in place by 2007.

c) How was adherence demonstrated?

We have indicated above that adherence to policy/procedure in social work for many of the above would have been assured primarily through supervision. From the 1990s supervision sessions were recorded in writing and required to be signed by the supervisor and the member of staff supervised.

The Child Protection (previously NAI) Register was maintained by a designated officer of the authority who ensured that procedures were followed consistently and timeously and routinely documented.

The introduction of a structured complaints procedure also established a log of complaints and how they were dealt with.

For several areas of service, reports were regularly provided to senior managers and elected members.

d) How can such adherence be demonstrated to the Inquiry?

By examination of case files, records of staff supervision, the Child Protection Register and reports to the authority, where such records still exist and are available. External inspection reports where available.

e) Were relevant records kept demonstrating adherence?

For certain activities, as stated above, records were kept. Case files also provide some sense of how policy and procedure were adhered to.

f) Have such records been retained?

The extent to which the records referred to in (c) above have been retained and systematically stored is not known, as we do not have access to all the records known to exist. We also do not know of records that may have previously existed but have been destroyed, as a comprehensive log of such records was not maintained.

We do know that many of the records of the authorities that preceded Lothian Regional Council no longer exist and that records from the early days of Midlothian Council were destroyed by fire. We cannot access Lothian Regional Council records to confirm what had or has not been retained.

Case records have been retained though we cannot be sure that no relevant records have never been destroyed nor gone astray.

g) If policy/procedure was not adhered to in practice, why not?

To the best of our knowledge, policy and procedure was by and large adhered to. This would be monitored routinely through by line managers through supervision. Reports would be provided to senior managers on performance in respect of specific areas of service. High level reports would also be provided to elected members.

h) If policy/procedure was not adhered to in practice, what was the practice?

Not applicable.

Present

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

Yes. We believe current practice differs substantially and significantly from what has existed in the past and that it has evolved and improved over time.

j) If so, please give details.

We have set out below our current practice in respect of the above matters.

i. Child welfare (physical and emotional)

The GIRFEC model of holistic and integrated assessment of child wellbeing is followed, using the associated guidance for children in foster care.

ii. The child's views

Children's views are always sought, recorded and reported on. Views can be obtained through routine social work visits but also through written contributions, electronic mechanisms such as 'Mind of My Own', group work and age-appropriate methods for younger children.

iii. Placement of siblings

The Family Placement Team would endeavour to identify placements that would enable siblings to be placed together unless this were undesirable.

iv. The placement of a child in foster care

The decision to place a child in foster care would be made on the advice of a social worker, after thorough assessment, and approved by a manager. The advice of the Family Placement Team would be sought if time permitted.

v. The particular placement of a child with foster carers

Children in need of a foster placement are referred by their social worker to the Family Placement Team Duty service. If the placement is needed immediately the FPT social worker will look for an available placement. A placement with Midlothian foster parents would be sought in the first instance and with neighbouring local authorities if no Midlothian place were available. If no local authority place was available an external agency placement may be purchased, if sanctioned by management.

Placements that can be planned are generally discussed at the FPT weekly meeting and decisions reached on placement in appropriate vacancies.

vi. Contact between a child in foster care with his or her family

Contact of this type would be specified in the Child's Plan and this would be monitored by the Independent Reviewing Officer. Practical support would be provided by social work staff. In some cases contact takes place in neutral settings and is supervised by social work staff.

vii. Contact between a child in foster care and other siblings in foster care

Contact of this type would be specified in the Child's Plan and this would be monitored by the Independent Reviewing Officer. Social workers and foster carers frequently facilitate and support such contact.

viii. Information sharing with the child's family

This would be specified in the Child's Plan. Unless it was not in the child's interests, the family would be provided with information about the foster carers. While they are likely to be given contact information in written form, more general information would be communicated verbally. Midlothian Council's Practice Standards provides direction to staff on this matter.

ix. Fostering panels (including constitution, remit, frequency and record keeping)

The Fostering Panel continues to operate in line with the 2009 Regulations, as described above.

x. Recruitment and training of foster carers

Rolling programmes of carer recruitment take place along with more intensive periodic campaigns. Posters in public places, leaflets in public buildings such as Council and NHS premises, stalls in public areas, information sessions and press and media coverage are all part of the process. The Family Placement Duty service receives application enquiries at all times and has a systematic procedure for information provision and follow up. Midlothian Council website also has an online enquiry process.

Applicants who wish to proceed attend group preparation sessions which cover numerous aspects of the fostering task. After approval foster carers are required to undertake ongoing training.

xi. Requiring employers to divulge details of complaints etc. in relation to prospective foster carers to the local authority

An employer's reference is obtained in respect of every fostering applicant. A number of questions are asked in relation to employment history including the applicant's sickness and disciplinary record. The employer is invited to comment on the applicant's suitability to foster and to provide any other information they think may be relevant.

xii. Reviewing a child's continued residence in foster care or in a particular foster care placement

This is considered at every Looked After Child Review, which is overseen by an Independent Reviewing Officer and at any other planning meetings for the child.

xiii. Visits to a foster care placement (including frequency, purpose, content, follow up and record keeping)

It is expected that the child's social worker will visit the placement regularly and frequently and that they will see the child independently of the carer. The detail of this will be agreed at Looked After Children Reviews and monitored through supervision. They may see the child outwith the foster home or use private space within it.

The carers' supervising social worker is expected to visit regularly. The frequency will depend on the individual circumstances of each carer and the children they have in placement. The pattern of visiting would be the subject of discussion and agreement between the supervising social worker and the FPT manager and would be routinely reviewed in supervision. At least two unannounced visits are made each year. Both the placing and the supervising social worker would be expected to increase frequency of visiting if the child's circumstances and needs made this advisable. A form is provided for social workers to log observations on a number of aspects of the child's wellbeing and this would be uploaded to the child's and carer's file. Every visit is noted on the Mosaic social work database.

xiv. Transfer of a child from one foster placement to another (including preparation and support)

Practice is broadly similar to what is described above, but better training for carers and better support to placements mean that there are fewer unplanned endings or disruptions. More rigorous child planning also means that placement durations are clearer from the outset so it is expected that carers will be able to fulfil the intentions of the plan. Some children have regular short breaks with other foster carers to limit stress on carers and reduce the risk of placement breakdown.

xv. Transfer of a child between foster care and residential care (including preparation and support)

Again practice is broadly similar to what has been described, though residential care and residential education are much more rarely used than in the past.

xvi. Child protection

Midlothian Council adheres to Scottish Government guidance, to the Edinburgh and Lothians Inter-Agency Child Protection Procedures and to its own quality standards for child protection work. Any child protection matter involving a foster carer is dealt with under these procedures.

xvii. Complaints handling

Midlothian Council has a complaints procedure as required by law and consistent with the guidance issued by the office of the Scottish Public Services Ombudsman in 2013. At present foster carer complaints would be dealt with under a separate but aligned Social Work Complaints procedure.

xviii. Whistleblowing

Midlothian Council has whistleblowing policies and procedures in place covering all aspects of Council service. It is open to both staff and members of the public.

xix. Record retention

Midlothian Council follows the relevant legislation in relation to record keeping in foster care, as described in other parts of this response.

4.3 Children

(i) Policy

Past

- a) What policies and/or procedures did the local authority have in place in relation to the care of children in foster care?

The Rules approved in 1935 are the only documented indication of policies and procedures we are aware of prior to 1995. They set out the following key requirements in respect of the care of children.

- Provision of regular, wholesome meals
- Clothing that was clean and in good repair
- Adequate, comfortable bedding
- Sleeping arrangements as determined by the Education Authority, but not more than two children in one bed
- Regular school attendance
- Training in punctuality and thrift, good manners and language, cleanliness and neatness, respect and consideration, honour and truthfulness
- Opportunity for play and recreation
- Medical treatment when necessary

We do not have access to Lothian Regional Council records so cannot comment on the policies and procedures that were in place at that time. We are aware that there was a range of policies, procedures and practice guidance notes in relation to the care of children in foster placements that existed in Lothian Regional Council and which augmented statutory regulations. Due to our being unable to access these records we cannot set out what they contained in any detail. Practice notes covered topics such as holidays, keeping of pets and safe participation in outdoor pursuits. Procedures generally advised on administrative actions to be taken in particular circumstances such as notifications, paperwork, and timescales. Policies reflected major political decisions such as moving away from residential care and expanding family placements.

Many of Midlothian Council's records prior to electronic record keeping which commenced in 2008 were destroyed by fire but we understand that many of the current policies and procedures were initially developed before then and have been subsequently reviewed and updated.

- b) Was there a particular policy and/or procedural aim/intention?

The intention would have been, first and foremost, to keep children safe and optimise their life chances. Underlying this were policies aimed at ensuring that out of home care was of the quality necessary to meet this primary objective.

c) Where were such policies and/or procedures recorded?

Prior to the existence of Lothian Regional Council we have no records that set this out clearly. The records we have for predecessor authorities do not refer to policy other than what was legally required. Lothian Regional Council policies were presented to the elected members of the Council in report form and if approved were recorded in the minute as decisions of the Council. Procedures were included in the Procedures Manual.

d) What did the policies and/or procedures set out in terms of the following?

Where we are aware of discrete policies of the predecessor authorities, we have referred to them, otherwise we have noted the national policies to which the authority was expected to adhere.

i. Safeguarding

See below in respect of child protection. Safeguarding is a term used in England to describe what in Scotland would generally be referred to as child protection.

ii. Child Protection

Up until the establishment of LRC, we are not aware of policies other than what was set out in law and statutory guidance. As we outlined above, LRC introduced NAI guidelines in 1977 as required by the Scottish Office Home Department. These were updated every few years throughout the period of LRC's existence. The 1983 version provides a guide to diagnosis and sets out recommended action to be taken by practitioners.

Practice papers on specific topics such as sexual abuse and emotional abuse were also developed and provided to staff. The practice paper on child sexual abuse issued in 1987 provides information on identification, therapeutic intervention and the relevant legal framework. A similar practice paper on emotional abuse was issued in 1992 and includes descriptions of emotional abuse, its assessment and treatment and the role of the courts and Children's Hearings in this matter.

Inter-agency guidelines were first introduced in the 1990s for Edinburgh and the Lothians. Midlothian Council follows these procedures and has its own internal standards for good practice in child protection work. Clear guidance for foster carers is included in the Handbook.

iii. Medical care

Midlothian County Council's 1935 Rules governing boarded out children required foster carers to "send immediately for the doctor" in the event of serious accident or illness. They were also required to notify the Education Authority's medical officer should a child have any chronic health conditions.

The 1959 Scottish Home Department Memorandum required children to be registered with a GP and to be medically examined annually. It was recommended that infants

attend the local child welfare clinic and receive appropriate inoculations. All children were to receive appropriate medical attention in the event of illness.

The 1985 Regulations do not specifically refer to this matter. The extensive guidance that accompanied the 1995 Act, however, outlines in some detail how children's health needs should be addressed.

iv. Children's physical wellbeing

Midlothian County Council's 1935 Rules refer to provision of a wholesome diet and opportunity for play and recreation. The 1959 Memorandum refers to fresh air, exercise and sleep as important, as well as good food and clothing.

Subsequent guidance reiterates and reinforces the importance of this and requires social workers and foster carers to address any areas of deficit, for example where a child has not received advised immunisations nor appropriate treatment for ongoing conditions.

v. Children's emotional and mental wellbeing

Before 1959 this does not appear to have been given much attention. The 1935 Rules suggest that boarded out children be "encouraged to join some approved juvenile organisation". Greater awareness of the factors that influence emotional wellbeing is apparent in the 1959 Memorandum. Subsequent guidance places much greater emphasis on this and reflects both greater awareness of the long-term impact of adverse experiences in childhood on long-term mental wellbeing, and the increasingly complex needs of many children who came into the care system.

vi. Schooling/education

Regular school attendance is required in the 1935 Rules and reiterated in the 1959 Memorandum. The importance of supporting a child's learning at all ages and stages has been the subject of an increasing volume of guidance over the years. As well as the laws and regulations governing foster care, successive governments have issued policies and provided additional resources specifically to improve educational engagement and outcomes for children in out of home care.

vii. Discipline

The 1935 Rules advise that "no foster parent shall administer indiscriminate or harsh punishment", though does not specify what would constitute such. This phrase also appears in the 1959 Memorandum, which also highlights the importance of 'comfort and affection' rather than 'scolding and punishment' in relation to behavioural problems. The 1997 guidance explicitly forbids physical discipline of foster children.

viii. Activities and holidays for children

No reference to holidays appears to exist prior to the 1959 Memorandum, which advises that local authorities should provide financial support to foster carers to include

foster children in family holidays. It does suggest that some other form of holiday, including camps run by Boarding-out Officers, should be provided as an alternative if the child cannot go on holiday with their foster carers.

ix. Sharing a bedroom

The 1935 Rules indicate that the number of persons sharing a room should not exceed what was specified by the Education Authority. No boarded out child should share a room with “an invalid or old and infirm person” and boys and girls over the age of eight should not occupy the same bedroom. The assessing social worker should consider “the suitability of the accommodation” according to the 1997 guidance. There does not appear to be any specific prohibition or restriction on sharing a bedroom in place. Midlothian Council has had a policy in place on room sharing since 2011. The presumption is that room sharing is the exception rather than the norm and is only permitted under specific circumstances.

x. Contact with family members

Visits and letters from parents are ‘allowed’ in the 1935 rules. The 1959 Memorandum goes into some detail about family contact and how it should be supported. Subsequent regulation reiterates this and the 1995 Act guidance sets this out in detail.

xi. Contact with siblings

The 1959 Memorandum indicates that “children’s officers should do all they can to strengthen family ties by arranging frequent reunions between brothers and sisters”. All subsequent guidance reinforces this.

xii. Celebration of birthdays and other special occasions

Prior to LRC we have little information on this. A case record dating from 1971 has correspondence on file that refers to Midlothian, East Lothian and Peebles Joint Committee giving foster carers £1.00 for a Christmas gift ‘in cash or in kind’ for each child in placement. Lothian Regional Council provided supplementary finance to carers for celebrations and holidays.

xiii. Information sharing by the foster carer with family members

This issue is not explicitly covered in earlier guidance, but Schedule 2 of the 1995 Act guidance sets out the content of fostering agreements. Included in this is the nature of contact between the child and her/his family and this may have included specific requirements about information sharing. Placing and supervising social workers are likely to have given advice in respect of particular children. The confidential nature of social work information would have been covered in the assessment process for many decades.

e) Who compiled the policies and/or procedures?

As set out in 4.2 (i) (e) above, these were either directly drawn from guidance provided by government and its agencies (such as HMIE, SWSG, SWIA and the Care

Commission/Inspectorate) or drafted by Council officers and approved by senior managers or elected members.

f) When were the policies and/or procedures put in place?

We do not know the inception dates of policies other than those we have referred to elsewhere in our response. The table appended sets out the current and past policies of Midlothian Council and the dates they were introduced, as far as we can establish from our existing records.

g) Were such policies and/or practices reviewed?

Midlothian Council has a system for regular review of policies and this process is overseen by a designated performance officer. As far as we are aware this system has existed since at least 2007. Before then policies were reviewed when circumstances made this necessary or desirable.

h) If so, what was the reason for review?

Changes in law, new knowledge or decisions of the Council may have required amendment of or addition to existing procedure. Later, a system was introduced where the configuration of policies was managed and every policy periodically considered and revised if appropriate.

i) What substantive changes, if any, were made to the policies and/or procedures over time?

We can only advise as to changes that were made in recent years and to the answers we have given in above sections of the report. The table referred to above indicates the dates that policies were introduced.

j) Why were changes made?

As above, in response to new law or guidance, or to improve practice and outcomes because of new knowledge or the findings of external regulators.

k) Were changes documented?

This would vary. Where a report had been considered by the elected members of the authority, this would be documented. Midlothian Council policies generally indicate when they were last reviewed and when the next review should take place.

l) Was there an audit trail?

The officer or manager responsible for reviewing each policy of Midlothian Council is designated at the front of each document. The Performance Support Analyst instigates the review and monitors its progress. We are not aware of such a system having existed in predecessor authorities.

Present

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

In some cases, yes.

n) If so, please give details.

Child Protection is given a high degree of prominence in foster carer preparation and ongoing training and support. Given the incidence of abuse experienced by children prior to their entry to the care system and the ongoing effect of this on children's wellbeing and possible impact on their behaviour this is seen as critically important. Safe caring procedures are reviewed regularly and frequently with carers. They are also trained in awareness of signs of abuse and of dealing with a child disclosing abuse. The foster care handbook has a chapter specifically child protection matters.

Any child protection concern that involves a foster carer is dealt with as it would be had it involved any other individual.

The GIRFEC approach requires each child's wellbeing needs to be considered at every Looked After Child Review and in any other formal decision-making setting. This would cover all the wellbeing dimensions – Safe, Healthy, Achieving, Nurtured, Active, Respected, Responsible and Included – so would therefore consider all the matters below. Actions to be taken in respect of these are documented in the Child's Plan. The Placement Agreement with the foster carer would reflect the content of the Child's Plan.

- Medical care
- Children's physical wellbeing
- Children's emotional and mental wellbeing
- Schooling/education
- Discipline
- Activities and holidays for children
- Sharing a bedroom
- Contact with family members
- Contact with siblings
- Celebration of birthdays and other special occasions
- Information sharing by the foster carer with family members

The foster carer handbook sets out how all these matters are expected to be dealt with. Some, such as sharing bedrooms, are also the subject of Council policies.

The Council allocates funds to foster carers for birthday and Christmas gifts and for holidays.

Confidentiality is stressed and carers are provided with a lockfast box for storage of papers. Papers are returned to social workers for destruction at the end of each placement.

Promotion of positive behaviour is encouraged and advice given about appropriate sanctions. The handbook underlines the prohibition of corporal punishment.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures relating to the care of children in foster care?

To the best of our knowledge, these were generally adhered to. We have found some instances in archive case files where not all paperwork was fully completed. We have found one case where a required SCRO check was not carried out timeously.

Not all paperwork has been retained in all archive files so in some cases it is not possible to be certain, for example, that a child had always been medically examined at the point of admission.

- b) Did the local authority adhere in practice to its policy/procedures in terms of the following?

i. Safeguarding

Please see below.

ii. Child Protection

As far as we can establish. It would not always have been the case, however, that a concern about a foster carer would have necessarily instigated child protection procedures. Instead a placement might have been ended and a carer deregistered.

iii. Medical care

We have not found evidence that would indicate otherwise.

iv. Children's physical wellbeing

As far as we are aware.

v. Children's emotional and mental wellbeing

We have indicated previously that this was less well understood than would be expected nowadays. Nonetheless we have found some evidence in fairly recent files of lack of empathy and understanding among foster carers in a few cases. Distressed behaviour was sometimes perceived as malicious or wilful.

Support for some children was provided by psychiatric services but it appears that some placements ended in an unanticipated way due to carers not being able to meet children's needs in this respect.

vi. Schooling/education

It is probably true to say that expectations of educational outcomes for children in any out of home care setting were not high. Up until 1985 guidance refers to their finding employment on leaving school and how foster carers could support that. Research in the late 1980s highlighted the huge discrepancy in educational outcomes between care-experienced children and the rest of the population, though this was not as great for children in foster care as for those in residential settings.

This generated action at local and national level. Lothian Regional Council put specific measures in place in the early 1990s. Schools, however, did not always prioritise the interests of children in care placements; exclusion levels continued to be significantly higher and attainment significantly lower than for children in the community. There was a high correlation between school exclusion and the breakdown of foster placements and we have noted some evidence of this in case records.

vii. Discipline

We have found no meaningful evidence that guidance in force at the time was not followed. Action appears to have been taken when carers used inappropriate measures of punishment.

viii. Activities and holidays for children

We have no reason to believe policy and procedure was not followed. This is certainly evidence on record of children attending clubs and groups, being involved in sports and being taken on holiday.

ix. Sharing a bedroom

Policy on this has changed substantially over time. The 1935 rules prohibited more than two people sharing a bed. As late as the 1980s there were foster placements where three children shared a room. Two unrelated foster children sharing, or a foster child sharing with one of the foster carers' own children was not uncommon into the 2000s. A memo from the Resource Team Manager to the Client Services Manager in 2001 states that "It is accepted practice in Midlothian for foster children (unrelated) to share bedrooms".

Midlothian Council's current policy requires each child to have his/her own room, with appropriate age and sibling exceptions. We have not found evidence that suggests that contemporary guidance was disregarded.

x. Contact with family members

Again, we have not found evidence to suggest that prevailing policies or individual plans were ignored. It should be noted, however, that the degree of importance given to family contact in guidance before 1985 does not imply that this was always seen as high priority.

xi. Contact with siblings

As we have referred to, this was given specific attention in the 1959 Memorandum. It is hard to tell from case records whether or not this was actively adhered to. Case records are not always comprehensive and not everything is documented in the way that would be expected now.

xii. Celebration of birthdays and other special occasions

We have no meaningful information about this. Such events were rarely recorded in case files. Lothian Regional Council did make financial provision for this so it is expected that foster carers would have acted accordingly.

xiii. Information sharing by the foster carer with family members

In terms of confidential information, there is little formal guidance in respect of foster care specifically. There were certainly general confidentiality procedures in place in Lothian Regional Council. Social work staff would have been expected to make this clear to foster carers both in a general sense and in respect of specific information about individual children.

In terms of information about the child's progress in placement and effective parenting approaches, it would have been seen as good practice for foster carers to impart this kind of knowledge.

c) How was adherence demonstrated?

Recording in case files, through staff supervision and in formal reports.

d) How can such adherence be demonstrated to the Inquiry?

We can provide a sample of case files from different time periods but would need to examine a much larger sample to be confident in any assertion of adherence. We can only report on what we have found so far.

e) Were relevant records kept demonstrating adherence?

Records were kept in case files and formal reports. Staff supervision was not required to be documented till relatively recently. The introduction of electronic records should give comprehensive and reliable data for the period they cover. As far as the earlier records are concerned what is included in files is quite inconsistent and a much greater sample would be needed to draw any meaningful conclusion.

f) Have such records been retained?

There are over 9,000 children's case records which have been archived. We have no way of knowing how many may have been destroyed or misallocated at various local government reorganisations.

g) If policy/procedure was not adhered to in practice, why not?

We have found no evidence of disregard of any particular policy being widespread.

- h) If policy/procedure was not adhered to in practice, what was the practice?

We are unable to give a definitive answer. There are some policies and procedures where records do not reflect adherence but equally do not reflect non-adherence, nor what other practice might have been followed. There are likely to be certain periods where the available documentation will not permit a reliable response. With more recent records further examination may give a reasonable picture.

Present

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

Yes, there are a number of important differences.

- j) If so, please give details.

Staff supervision is now recorded. Electronic case records are more comprehensive and allow for analysis of aggregated information much more readily. There is a much greater volume of policy and practice guidance at national and local level. Training for staff and carers is more extensive.

Carers are subject to a confidentiality agreement in respect of any information relating to children and their families.

4.4 Foster carers

(i) Policy

Past

- a) What policies and/or procedures did the local authority have in relation to foster carers?

For the authorities that preceded Lothian Regional Council, as indicated in response to other questions, there appears to be little in the way of local policy that augmented or refined national law.

Midlothian County Council adopted a set of rules in 1935 with which foster carers were expected to comply. It appears that local authorities were required to submit such rules for approval by the Scottish Education Department following the Children Act 1932. There were a number of specific requirements, but the over-arching principle was that "the foster-parent shall bring up the boy or girl as one of his or her own children, and shall co-operate with the Education Authority and their officials for the boy's or girl's welfare".

Lothian Regional Council had several important policies, procedures and practice guides in respect of foster carers. We have referred to a number of them above but cannot be more comprehensive in our response as we have not had access to its records.

Midlothian Council has had a number of policies but we are only certain of those referred to in the current electronic list. We do not know about policies which were completely deleted, only those of which there is a current version. Many non-electronic records were destroyed by fire several years ago. We have a record of the titles of some of these, but not the actual documents. None of the titles on this list specifically refer to foster carers.

The appendix lists all relevant current policies in force in Midlothian Council. Some of them have been in existence in some version since 2007. There are a number of these that refer to foster carers.

b) Was there a particular policy and/or procedural aim/intention?

There have been a number of policies concerned with various aspects of the foster carer role over the years. The over-arching intention would always have been to provide a safe and caring placement for children unable to live with their families and to provide care in ways that optimised their future life chances. To underpin this the intention would have been to recruit appropriate people as foster carers and to ensure that they were provided with training, equipment, information and support to enable them to provide a high quality service.

c) Where were such policies and/or procedures recorded?

Pre-1975, some limited information is contained in Midlothian County Council records. In Lothian Regional Council these would have been recorded in the formal record of proceedings of the Council and its Committees and in the Procedures Manual.

d) What did the policies and/or procedures set out in terms of the following?

We hold a record of the 1935 Rules of Midlothian County Council. Other than that we have no access to documents in respect of any of the topics below prior to the existence of Midlothian Council in 1996. We have referred to the national guidance in place at various times throughout our response and our examination of records indicates that this was generally followed.

i. Recruitment

We have been unable to find any documents that set out local policies prior to Midlothian Council's 'Recruitment and Retention of Foster Carers', the original version of which was issued in 2008. We do not have a copy of this document and the policy was deleted in 2012. It appears that this was superseded by a Recruitment Strategy document which sets out a three-year plan and is reviewed annually.

ii. Standard and size of accommodation

We do not know what existed previously but do know from case records and from predecessor authority minutes that this has changed substantially over time.

iii. Number, age and gender of children accommodated/in the household

We do not know what policies existed other than what was contained in statutory regulation and accompanying guidance.

iv. Pre-approval/registration checks

Predecessor bodies complied with national legislation, regulation and guidance in this matter, as far as we are aware. It is clear from some case records that these were fairly superficial at some times in the past. A foster care application from 1966, for example, has medical and social work references on file. Each of these consists of a single sentence stating that the writer knew of no reason why the applicant would be unsuitable. Lothian Regional Council required full medical examination and a search of social work records as well as a SCRO check.

v. References

Again, we have no reason to believe that prevailing requirements were not complied with. As above, these were, in earlier times, not greatly informative. Case records of foster carers from Lothian Regional Council days indicate that comments from referees were sought and letters on file indicate that referees explained how well and in what capacity they knew the applicant as well as some comment on how they might be able to discharge fostering responsibilities.

vi. Foster care agreements

These were required under the 1985 Regulations and a consistent format for these was adopted by Lothian Regional Council. We have found completed agreements in a number of children's case records.

There is evidence from case records that some form of signed agreement was, however, in place before this statutory provision. Midlothian, East Lothian and Peebles Department of Social Work had in place an 'Explanatory Memorandum and Certificate' which was signed by the foster carer and the social worker. It sets out, albeit in quite a limited way, the obligations placed on the carer and the statutory duties of the authority.

Midlothian Council has a general fostering contract and placement agreements for each child as set out below. Correspondence in a carer file advises of the imminent introduction of placement agreements in 1999.

vii. Induction

Midlothian Council has had a policy in place in relation to newly approved carers since 2008. A visit is to be made within a week of approval and a number of administrative tasks are to be completed.

Lothian Regional Council had administrative procedures associated with the appointment of carers and managers would have covered effective practice while supervising staff. We have not been able to check whether there was documented specific practice advice.

Prior to LRC, we have no documentation that refers to this.

viii. Transfer of foster carers to or from other organisations or local authorities

This was not a significant issue prior to 1996. The overwhelming majority of foster carers were associated with the local authority in which they lived. The number of authorities was relatively small – eight large regional councils and three unitary island authorities – so if carers moved home, they were likely to remain within the authority area.

There were no private sector providers of any significance and only a limited number of voluntary agencies who provided foster care. The latter was almost entirely concerned with providing placements for children whose needs were complex and would be deemed to be beyond what a local authority foster carer was able to manage. It should be noted that, up until the 1980s, foster carers offered their services on a voluntary basis. They received allowances for the care of any children placed but did not receive a fee for their own services.

Such information as we have been able to glean from file reading of older records are not conclusive. In one record from the 1960s a carer moved from England with a child already in long-term placement. The carer appears to have been transferred to Midlothian in the way that any other case would be transferred while the child remained the responsibility of the authority who originally placed him. There is also a record from the 1960s of carers who had previously fostered for a charitable organisation but had ceased fostering, having adopted a child, later applying to become foster carers in Midlothian. A full re-assessment appears to have been conducted though in this case service was not continuous. Of course the process of assessment was not nearly as extensive as it is today.

ix. Review/supervision

Foster carer reviews were conducted routinely by the Fostering Panel in line with the 1985 regulations. We have found no information on what happened prior to this. Case records of foster carers indicate that the review process was complied with in a consistent way.

Support visits to carers appear to have taken place with reasonable frequency and consistency since the 1960s. The degree of formality and the supervisory nature of the relationship is of more recent introduction, largely since the advent of fee-paid fostering.

x. Training

Since assessment was introduced (as opposed to persons with whom children were boarded out having to notify the authority that they were doing so), the process would always have included the provision of information as to the nature of the fostering task and the expectations of carers. The 1935 Midlothian County Council Rules set out clear requirements of anyone providing a foster care service.

Up until the 1980s foster carer education would have been provided by the assessing/supervising social worker. Formal learning sessions prior to approval were introduced in the early 1980s for some carers (in LRC, notably the new, fee-paid 'Community Care' scheme for teenage children, many of whom had previously been in residential care) as were ongoing support and continuing learning groups. This was extended to all carers in the late 1980s when a fully fee-paid fostering service was set up.

This approach has been built on and developed by Midlothian Council.

xi. Personal development

It is probably true to say that this did not feature prominently in carer support till relatively recently. Learning 'on the job' was probably the main methodology until the 1980s. As referred to previously, ongoing learning and support became an expectation, and, in some cases, a requirement, from around this time. The National Care Standards reinforced the importance of personal learning and development for foster carers.

xii. Disciplinary actions

Carers were not and are not employees of the local authority and therefore have never been subject to disciplinary action as such. Unacceptable practice would have been dealt with in a number of ways, depending on the severity of the concern. The carer may have been advised of the unacceptability of practice and instructed not to repeat it, their approval status in terms of numbers/ages of children may have been adjusted, they may have been offered further training, or, in the case of very serious matters, their approval would have been withdrawn.

xiii. Removal of approval/registration

We have not come across either a procedure for this, or any individual record where this occurred, prior to 1975. Lothian Regional Council would have, initially, required a report from the investigating officers which would be considered by senior management and a decision made. This would be communicated in writing to the carer concerned. Once panels were established, they would be the body which made recommendations on such matters.

e) Who compiled the policies and/or procedures?

As above, policies and procedures were either drawn directly from national requirements and/or were compiled by officers and managers of the authority who had particular knowledge of the relevant area of work.

f) When were the policies and/or procedures put in place?

For predecessor authorities, other than what applied nationally, the only local policy we know of prior to 1975 are the 1935 Rules. Between 1975 and 1996 we have been unable to peruse relevant records. The appendix sets out when Midlothian Council policies were introduced.

g) Were such policies and/or practices reviewed?

Yes, periodically.

h) If so, what was the reason for review?

As we have said above, in earlier days largely because of changed national requirements. Later, because of new knowledge that had emerged from research, findings of major enquiries and recommendations of external regulatory bodies.

i) What substantive changes, if any, were made to the policies and/or procedures over time?

Above we have set out what we know about how past policies were implemented. Below we have described the current position. As we do not have access to most of the actual documents we cannot specify the specific changes that were made.

j) Why were changes made?

Fundamentally to ensure that the service was of the highest possible quality and achieved positive and sustainable change for children. Any national guidance or new knowledge that contributed to this would be reflected in the latest version of the policy or procedure.

k) Were changes documented?

Each change would have been documented at the time, but no cumulative record of all changes was kept.

l) Was there an audit trail?

Probably not till recent years. In LRC days a designated officer oversaw the Procedures Manual so it is likely that they would have had a record of when policies were compiled and who the responsible manager was. Senior management approval was always required for changes to existing procedures and for the approval of new ones. The Committee Division of the Council maintained an oversight of all reports provided to, and records of decisions of, the elected members.

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.

Extensive information is sought prior to approval and is updated regularly in terms of health, police and social work records. Personal and employer references are sought during the assessment process with proformas outlining the range of information required.

A strategy is in place for recruitment of foster carers.

Every carer has a learning passport which has to be maintained and is reviewed by supervising social workers. There is a clear expectation that carers actively participate in enhancing their knowledge and skill base.

Foster carer reviews are conducted annually, with full panel reviews in alternate years.

A note is kept of when policies were first introduced, the dates on which it has been reviewed, and the number of previous versions there have been. We do not, however, retain prior versions.

There are a number of agreement and contractual documents required both in terms of the foster carers' responsibilities to the Council and vice versa, and in respect of the placement of each child.

Midlothian Council pays for all its foster carers to be members of the Fostering Network Scotland. A range of personal development opportunities are available through FNS.

(ii) Practice

Past

a) Did the local authority adhere in practice to its policy/procedures in relation to foster care?

The formal records we have and the information we have gathered from case files would indicate that policies and procedures were adhered to. We cannot give a definitive answer, however, without a much wider sampling of case records and access to policy information which we currently cannot examine. We acknowledge that external inspectors have in the past identified areas for improvement in the fostering service and action has been taken accordingly.

b) Did the local authority adhere in practice to its policy/procedures in terms of the following?

i. Recruitment

As far as we can judge from the information available to us.

ii. Standard and size of accommodation

Yes, though policy and practice in this respect have changed significantly over time.

iii. Number, age and gender of children accommodated/in the household

There is some evidence that indicates this was varied from time to time, generally because of an urgent need for a placement and/or because of the importance of keeping siblings together. Such variation, as far as we know, would have required the sanction of a manager.

iv. Pre-approval/registration checks

Again, as far as we can tell. Not all documents have been retained in all files, however, so we cannot state this categorically. We would expect that whatever agency approval mechanisms in place at the time would have monitored this.

v. References

Such limited documentation as we have had access to indicate that medical and personal references were requested, as well as a check with the Children's Officer of the authority in which the applicant was resident. As we have said, the information contained in the references was not extensive. A medical reference from 1966 consists of a single sentence written at the bottom of the request letter stating that in the GP's opinion the applicants were "quite adequate to care for and bring up children". The personal reference for the same application is couched in similar terms and is equally brief.

In LRC days the letter sent to referees asked respondents to comment more fully on the applicants' capacity and competence in relation to the fostering task.

vi. Foster care agreements

Our findings from case files indicate that these were completed but as quite a significant proportion of files have parts missing, we cannot be sure this happened without exception. As mentioned above, some form of agreement appears to have been in place in the 1970s.

vii. Induction

We do not know what happened prior to Midlothian Council. Lothian Regional Council did expect a high standard of practice in the effective support of carers. Midlothian Council has clear and specific post-approval procedures.

viii. Transfer of foster carers to or from other organisations or local authorities

This did not happen with any degree of frequency. It should be borne in mind that the regional councils covered large geographic areas so people could move quite sizeable distances without moving out of the authority area. Each local authority is likely to have had its own requirements in respect of transfers but we have not found any documentation on this matter.

The guidance accompanying the 2009 Act allows for derivative or dual approval of carers registered by another organisation under certain circumstances. It is expected that at some point a full assessment process is carried out. On an interim basis, for example if there is a child already in placement, additional requirements may be put in place by local fostering panel in respect of any checks, references or assessments they may wish to be conducted.

ix. Review/supervision

Reviews of all foster carers were undertaken annually after the introduction of the 1985 Boarding Out Regulations. Though not formally required prior to this, Lothian Regional Council carried out annual reviews of Community Carers from the early 1980s. We are not aware of any review arrangements prior to this time. It is probably true to say that the social work role in relation to foster carers was seen as a liaison or support role rather than a supervisory one until relatively recently.

x. Training

We are not aware of any training being provided to foster carers in a systematic way prior to the early 1980s. Training prior to approval as foster carers was generally confined to the provision of information by the assessing social worker, though this could be both detailed and extensive. Pre-approval training was introduced for the Community Care scheme in the early 1980s, which also introduced continuing learning through monthly support groups. Attendance at such groups was a requirement for Community Carers.

The introduction of a fully fee-paid fostering service in the mid-1980s brought in pre-approval training and post-approval learning and support for all foster carers.

xi. Personal development

From the 1980s onwards, carers have been encouraged to partake of learning and development outwith what was required in their role as carers. We have noted from foster carers' case records that several foster carers also contributed to recruitment and pre-approval training and in some cases co-delivered training alongside social workers.

xii. Disciplinary actions

We have found no evidence of disciplinary proceedings applying to carers in the same way, for example, as would be the case with staff. Carers may have their approval suspended pending investigation.

xiii. Removal of approval/registration

We are not clear how this happened prior to the existence of the panel system. So far we have found no records dating from before 1985 where a carer's approval was ended by the authority. After the establishment of panels reports would be submitted to the relevant panel who would arrive at a recommendation. This would be passed to the appropriate senior manager for endorsement and the final decision communicated in writing to the carers. The approval process is set out clearly in the 1985 Regulations but that for the removal of approval is implicit rather than explicit.

c) How was adherence demonstrated?

Case records of social work visits, completion of appropriate paperwork such as Form F, minutes of panel decisions.

d) How can such adherence be demonstrated to the Inquiry?

We can provide evidence as described above for recent years and can show examples from archive case records.

e) Were relevant records kept demonstrating adherence?

Relevant records were kept at the time but many are unlikely still to exist. Some documents in case files indicate that the procedures were adhered to.

f) Have such records been retained?

At authority level, probably not to any great extent. Many case records do, however, hold relevant documentation.

g) If policy/procedure was not adhered to in practice, why not?

We have found no evidence to suggest that the prevailing policies and procedures were not, by and large, adhered to.

Present

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

Yes, we have effected changes to deliver a more effective service to foster carers.

i) If so, please give details.

Midlothian Council offers a number of learning opportunities on topics of interest each year. All Midlothian carers are members of the Fostering Network Scotland, paid for by the Council. The Network offers a range of personal development options.

There are clear expectations in respect of the frequency and nature of contact with supervising social workers. There are a number of contractual documents that are required that set out foster carers' general responsibilities as well as expectations in respect of particular children in placement.

Carers frequently assist with recruitment, with pre-approval training and with ongoing CPD.

4.5 Other members of the foster carer's household

(i) Policy

We are not aware of any policies in respect of other members of the foster carer's household over and above what was required by law, statutory guidance and regulation. Schedule 1 of the 1985 Boarding Out Regulations requires details of all household members to be included in the assessment on which the Fostering Panel would arrive at its decision and the 1997 guidance associated with the 1995 Act underlines the importance of their being a full part of a fostering home study. The 2011 guidance underlines the importance of their active involvement in the application and assessment process.

Past

- a) What policies and/or procedures did the local authority have in place in relation to other members of the foster carer's household?

Midlothian Council and its predecessors do not appear to have had policies over and above national guidance until its present policies and practices were first developed. The Assessment of Foster Carers policy was first introduced in 2008. National guidance associated with the 2009 Regulations was produced in 2011 when the first version of the CoramBAAF guide to assessment was also issued. Midlothian Council followed the guidance in these documents. Adult sons and daughters are, however, given little explicit mention in any of the material or indeed any other adult household members such as, for example, elderly parents of the applicants/carers. Midlothian Council carries out checks (police, medical and social work) on all adults in carer households. We have records of police checks being conducted of family members in the 1990s.

- b) Was there a particular policy and/or procedural aim/intention?

The policy intention was to ensure the safety and positive welfare of children in local authority care. It was therefore important to acknowledge the role of other household members in the day to day provision of a fostering service.

- c) Where were such policies and/or procedures recorded?

Copies of national guidance were provided to all social work establishments and were latterly available online. Fostering applicants would have been apprised by social work staff of requirements relating to household members.

d) Who compiled the policies and/or procedures?

National guidance was compiled by the Scottish Office, latterly the Scottish Government. The National Standards for Foster Care were produced by the Care Commission in 2005. Relevant officers and managers of the Council compiled any supplementary guidance applied locally.

e) When were the policies and/or procedures put in place?

National requirements followed in Midlothian are set out above. Midlothian Council's policy was put in place in 2008 and updated in 2014.

f) Were such policies and/or practices reviewed?

They were changed in line with changes in national guidance or as a result of decisions of managers and elected members of the Council. There is now a system of periodic review, and update where necessary.

g) If so, what was the reason for review?

To ensure that local policies and procedures reflected current legislation, regulation and guidance. To reflect any local decisions and any recent intelligence and evidence on best practice.

h) What substantive changes, if any, were made to the policies and/or procedures over time?

The inclusion of other household members, while case records indicate that social workers may well have involved them in the process of assessment and ongoing contact before then, was not explicitly acknowledged in guidance till 1985. Since then checks for all household members over the age of 16 have been introduced.

i) Why were changes made?

To maintain consistency with national guidance and to reflect best practice in relation to the safety and welfare of children placed.

j) Were changes documented?

They would have been documented at the time by management or Council approval but the records of this, and the previous versions of policies and procedures are unlikely still to be available. As explained previously, practice may have required the deletion and destruction of old procedures when new ones were introduced to avoid confusion.

k) Was there an audit trail?

Before electronic records it is possible that the responsible officer of the Council kept a record of changes but such records are unlikely still to exist. An officer of Midlothian

Council currently maintains a spreadsheet listing all policies, the date of introduction, the date review is due, the manager responsible for undertaking the review, the version number and the date the last review took place.

Present

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

The foregoing describes Midlothian Council's position. It adheres to the law, regulation and guidance referred to above. Our Handbook for Foster Carers is intended to be informative for all members of the carer household.

- m) If so, please give details.

Not applicable.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures in relation to other members of the foster carer's household?

As far as we can judge from the data we have available, policy and procedure was generally adhered to. There are some foster care records where not all documents remain on file, so it is not possible to state categorically that all checks, for example, were carried out at the appropriate time. We did find one carer record where it was noted that police checks were not carried out on adult sons of the carers at the time of their application and this was only rectified several years later.

- b) How was adherence demonstrated?

By, in most cases, the documents being retained in the carer file or uploaded to the electronic record, and from case notes.

- c) How can such adherence be demonstrated to the Inquiry?

We can only demonstrate what is available as described above.

- d) Were relevant records kept demonstrating adherence?

As advised above, hard copy documents would normally have been filed or, latterly, uploaded. Managers would have been expected to maintain an overview of practice and conduct periodic case file audits.

- e) Have such records been retained?

Our sample of files examined would indicate that generally such records were retained. In some cases we have found that this information is missing. Whether this

is because it has been lost or because the work was not carried out we are unable to tell. Electronic records have been retained for all carers and children from 2008 onwards.

f) If policy/procedure was not adhered to in practice, why not?

We have not found evidence that suggests that it was not normally adhered to in practice.

Present

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

Yes, please see below.

h) If so, please give details.

The electronic record system generates automatic reminders in respect of the checks that need to be carried out on household members. The CoramBAAF guidance on assessment is followed and emphasises the importance of including household members in the process of assessment and ongoing caring. The FPT administrator will request any updated checks from the relevant agencies and follow up where necessary. Appropriate ongoing inclusion of household members in the day to day delivery of fostering would be the responsibility of the supervising social worker. This is monitored through supervision.

4.6 Placement of children by the local authority with foster carers approved/registered by other local authorities or organisations

(i) Policy

Past

a) What policies and/or procedures did the local authority have in place in relation to placement of children with foster carers approved/registered by other local authorities or organisations?

We can find no evidence of any policy existing prior to the inception of Lothian Regional Council, whose records we cannot at this point access. A case record dating from 1966 refers to a family having previously fostered for a charitable organisation, then applying to the local authority. It appears that the family underwent the assessment process in place at the time.

During Lothian Regional Council's time, children were, in almost all cases, placed with LRC carers, though this could still mean being placed a long way from home. The distance from one end of Lothian to the other was over 50 miles. Very few external agencies provided foster care at the time and those that did often provided a

specialised service. Barnardos Special Families scheme, for example, provided placements for children with complex social, emotional and behavioural needs. Authorisation was needed by a senior manager for the finance needed to place a child in the scheme.

Local government reorganisation in 1996 left many local authorities with an insufficient supply of foster carers within their own boundaries. This fuelled an expansion of fostering services in the voluntary and independent sectors for which local authorities were charged. The approach in Midlothian has been to use its own foster carers in the first instance and neighbouring local authorities where no Midlothian carer is available. If none of these local authorities can provide a placement, senior management authority is required to purchase a placement from a voluntary or independent sector agency.

A policy setting out expected practice in respect of children who are placed for any reason outwith Midlothian boundaries has been in place since 2012.

b) Was there a particular policy and/or procedural aim/intention?

To keep children in as close proximity as possible to their own families, schools and communities. To provide specialised care for children with complex needs. To ensure that authorities in which Midlothian children are placed are aware of this. To minimise costs to the authority by using its own resources.

c) Where were such policies and/or procedures recorded?

We have not been able to find any documented record of past policy on this matter. A report by the Director of Social Work was agreed by the elected members of Midlothian Council on 27/04/2010 which proposed the implementation of a 'Skills Based Fostering Scheme'. The Social Work Inspection Agency had carried out an inspection of Midlothian Council's entire social work service in 2008 and had noted with concern the number of Midlothian children in foster care placements outwith the Council boundaries.

This report was a response to this issue and to the financial burden on the Council of externally purchasing foster placements. It was also intended to improve children's outcomes by ensuring better contact with home, school and community. Additional staffing was to be provided to recruit and support local carers thus reducing the dependency on external placements.

d) Who compiled the policies and/or procedures?

Relevant officers and managers of the local authority, taking account of national legislation, regulation and guidance.

e) When were the policies and/or procedures put in place?

Please see table of relevant policies with their introduction date in the appendix. We are unable to provide further information on previous policies that were in force on this matter.

f) Were such policies and/or practices reviewed?

As we have stated above, prior to the introduction of a routine and regular process for review of policies and procedures, changes were driven either by external requirements, by decisions of the elected members or on the advice of senior managers.

g) If so, what was the reason for review?

Changes in law or other external requirement, or changes decided by the elected members of the council or advised by senior managers.

h) What substantive changes, if any, were made to the policies and/or procedures over time?

As we do not have access to prior policies and procedures, we are unable to answer this.

i) Why were changes made?

To be compliant with legislation, to reflect political decisions of the authority, to improve service and outcomes.

j) Were changes documented?

They would have been documented at the time, but it is unlikely that any record of changes over time still exists.

k) Was there an audit trail?

Again, there would have been a designated responsible manager at the time, but it would be very unlikely that this information is still in existence.

Present

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

The current position of Midlothian Council is largely similar to what is described in 4.6 (i) (a) above.

m) If so, please give details.

There is a practice note within the Family Placement Team's internal guidance that clearly sets out the process for an external placement to be authorised.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures in relation to placement of children with foster carers approved/registered by other local authorities or organisations?

Up until 1996, numbers of children from Midlothian requiring foster care generally did not exceed the supply of placements. From then on the expansion of independent sector care, often with more attractive rates of recompense, drew foster carers out of local authority service. In addition, the numbers of overall numbers of children in care rose from the mid-1990s and a higher proportion of them were placed in foster care. The number of Midlothian children in foster care placements rose by 58% between 2000 and 2010.

Midlothian Council had rigorous procedures in force to minimise the number of children placed elsewhere, but extent to which demand exceeded supply meant that the policy of placing children locally could not always be adhered to effectively.

Of course this did not preclude the external purchase of specialised placements for children with highly complex and profound needs.

- b) How was adherence demonstrated?

From case records and, more recently, from aggregated performance data.

- c) How can such adherence be demonstrated to the Inquiry?

Case records, performance information, reports to the Council.

- d) Were relevant records kept demonstrating adherence?

Prior to LRC, we are unable to say. Case records generally seem to indicate that few children were placed with non-LRC carers. Such matters were periodically reported to the Council and it may be the case that some relevant data is contained in LRC records.

- e) Have such records been retained?

We understand that many LRC records have been archived by the City of Edinburgh Council, but have no way of knowing what records have been retained and what have not.

- f) If policy/procedure was not adhered to in practice, why not?

As far as we can establish, the policies were generally adhered to.

Present

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

Not in essence, though procedures in terms of authorisation may have varied. The principle of using local placements with foster carers supervised by the authority itself remains in force.

h) If so, please give details.

There are times when resource constraints and urgent child needs means that children are placed in other authority areas or with independent agency carers.

4.7 Complaints and Reporting

(i) Policy

Past

a) What policies and/or procedures did the local authority have in place in relation to complaints and reporting about foster care?

We are not aware of any specific policy on this matter prior to the early 1990s. As we have mentioned elsewhere, a complaint about a foster carer could have been raised in the same way as a complaint about any other local authority service.

The introduction of a specific social work complaints system with protocols to be adhered to dates from the early 1990s and would have covered foster care services. There was a specific procedure relating to foster care complaints. The Fostering Panel would have had a role in any action needed due to its legal role in relation to carer approval and review.

In LRC, complaints would always have been followed up and investigated appropriately and proportionately. This would involve senior managers who did not hold direct line management responsibility in many cases. This preceded national guidance on this matter.

b) Was there a particular policy and/or procedural aim/intention?

The intention would have been to ensure optimum care for children and to take seriously any issue that might compromise that. Latterly the establishment of more formalised complaints procedures and the raising of public awareness in respect of how to raise complaints was to ensure that any concern was, firstly, notified to the authority, and, secondly, consistently and systematically investigated.

c) Where were such policies and/or procedures recorded?

We are not aware of the existence of any formal complaints procedure prior to the existence of LRC. LRC procedure would have been included in the Procedures Manual. Midlothian Council policies are now documented on the Council intranet.

d) What did the policies and/or procedures set out on the following:

We have been unable to access any documents that sets out any of the below in detail prior to the current Midlothian Council policies. We know that the current version was originally compiled in 2007. It is likely that some form of complaints procedure was in existence from the inception of Midlothian Council. It would have followed LRC procedures until such time as it developed its own.

- i. Complaints by children
- ii. Complaints by foster carers
- iii. Complaints by family members of children
- iv. Complaints by third persons
- v. Whistleblowing
- vi. Support, including external support, for those who made the complaint or those who were the subject of complaint
- vii. Response to complaints (including response by the local authority)
- viii. External reporting of complaints

e) Who compiled the policies and/or procedures?

Relevant officers and managers of the local authority, taking account of national legislation, regulation and guidance.

f) When were the policies and/or procedures put in place?

Lothian Regional Council procedures were put in place in the early 1990s. Midlothian Council had its own policy from at least 2007.

g) Were such policies and/or practices reviewed?

Midlothian Council policies have been systematically reviewed since at least 2007. Before then reviews took place but not at specified times by designated officers, as is the case now.

h) If so, what was the reason for review?

We assume the 2007 policy was put in place because the previous policy was no longer appropriate or was not sufficiently comprehensive. The latest version was developed to be consistent with the SPSO guidance.

i) What substantive changes, if any, were made to the policies and/or procedures over time?

We do not have previous versions of the policy for comparison.

j) Why were changes made?

In general, as (h) above. Since we do not have the relevant documents, we cannot explain specific amendments or additions.

k) Were changes documented?

At the time, yes, but previous versions were neither routinely retained nor systematically archived.

l) Was there an audit trail?

At the time, there was clear designation of responsibility and decision-making.

Present

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

Yes, there have been changes over time.

n) If so, please give details.

Midlothian Council has a complaints procedure for the authority generally and a specific social work procedure which aligns with the over-arching policy. There is also a procedure 'Allegations Against Carers'.

(ii) Practice

Past

a) Did the local authority adhere in practice to its policy/procedures in relation to complaints and reporting about foster care?

We cannot answer this with any certainty. Any incidents we have found in file reading where a concern was expressed by a child in placement or by any other third party appears to have been followed up according to the systems in place at the time.

b) Did the local authority adhere in practice to its policy/procedures on the following:

Again we cannot respond with any certainty in respect of any of these. We have been able to read only a proportion of the archive files in storage, and were focusing particularly on instances of alleged abuse rather than adherence to policy. Most of those we have read have not involved any complaints, allegations, concerns or incidents. A much greater number and proportion would need to be reviewed in order to provide any kind of reliable picture.

- i. Complaints by children
- ii. Complaints by staff
- iii. Complaints by family members of children
- iv. Complaints by third persons

- v. Whistleblowing
- vi. Support, including external support, for those who made the complaint or those who were the subject of complaint
- vii. Response to complaints (including response by the local authority)
- viii. External reporting of complaints

c) How was adherence demonstrated?

In individual case records, reports to the Fostering Panel, through line management accountability, reports to external regulators.

d) How can such adherence be demonstrated to the Inquiry?

We can show case records and reports, though not necessarily for the whole of the period covered by the Inquiry. The self-evaluation submitted by Midlothian Council to the Social Work Inspection Agency prior to the 2008 inspection refers to the existence of a complaints procedure and to how public awareness of this was being raised.

e) Were relevant records kept demonstrating adherence?

In Lothian Regional Council a log was kept of all complaints. Midlothian Council also maintains such a log.

f) Have such records been retained?

Prior to LRC we are not aware of any system of collating complaints. We do not know if LRC complaints records still exist. Midlothian Council has records of complaints logged since 2013.

g) If policy/procedure was not adhered to in practice, why not?

We are not aware that the policy was disregarded and our examination of the evidence we have does not suggest this.

Present

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

Yes.

i) If so, please give details.

Midlothian Council has a formal complaints procedure which has been in force since 2007. As required by guidance, it is fully consistent with the template procedure issued by the Scottish Public Service Ombudsman, to whom quarterly reports must be provided. The social work procedure complements the overall authority procedure and is about to be combined with it. A log of all complaints against foster carers is held by the Head of Children's Services. It lists all complaints and outcomes thereof.

4.8 Internal Investigations

(i) Policy

Neither Midlothian Council, nor its predecessor authorities, appears to have had any specific policies in place in relation to internal investigations, other than in relation to individual complaints, allegations or concerns. Very few large-scale or systemic investigations are conducted or even commissioned by the authority concerned itself. A notable relatively recent exception was the Edinburgh Inquiry into abuse in residential care in 1999. In most cases such investigations, for example the 1992 Orkney and Fife Inquiries, are carried out at the behest of an external agency, often the national government.

There has been a procedure for investigating individual complaints since the early 1990s.

Past

- a) What policies and/or procedures did the local authority have in place in respect of internal investigations relating to abuse or alleged abuse of children in foster care?

Lothian Regional Council had a complaints policy and procedure in place from the early 1990s, with a specific procedure in respect of investigating complaints by or against foster carers. We are not aware of any policy prior to this.

- b) Was there a particular policy and/or procedural aim/intention?

There was a particular policy as stated above. The intention of the overall policy was to ensure that users of social work services had a clear and accessible procedure for raising complaints about the service provided, that there were transparent and comprehensive processes in place for investigation of such complaints, that complainants were given information as to the outcome of the complaint and that lessons for service improvement were learned.

- c) Where were such policies and/or procedures recorded?

The adoption of the LRC policy would have been recorded in the minute of the relevant Council committee. The procedure would have been included in the LRC Procedures Manual.

- d) What did the policies and/or procedures set out on the following:

We do not have a copy of any relevant documents so cannot provide this information. If they remain in existence they will be held by the City of Edinburgh Council.

i. Approach to/process of internal investigations

- ii. Identifying lessons/changes following internal investigations
- iii. Implementation of lessons/changes following internal investigations
- iv. Compliance
- v. Response (to child and abuser)
- vi. Response to complaints (including response by local authority)
- vii. External reporting following internal investigations

e) Who compiled the policies and/or procedures?

Managers and officers of the Council with the appropriate specialist knowledge and experience. A Complaints Officer was appointed at the same time as the procedure was put in place. The post holder would have had responsibility for advising on any subsequent change to the procedure.

f) When were the policies and/or procedures put in place?

In the early 1990s, though we cannot say exactly when. A case record from 1992 refers to the procedure.

g) Were such policies and/or practices reviewed?

There was no routine and systematic review of procedures, but the Complaints Officer would have been expected to notify managers if any changes were advisable.

h) If so, what was the reason for review?

Changes in law or national policy, lessons learned from the operation of the procedure, feedback from those using the service.

i) What substantive changes, if any, were made to the policies and/or procedures over time?

Midlothian Council's policy originates from 2007. We do not know whether the LRC policy remained in force until then or not. We have no record of any other investigation process that existed between 1996 and 2007.

j) Why were changes made?

The 2007 policy was introduced to be compliant with national policy.

k) Were changes documented?

We assume they were documented at the time but have no records that can confirm this.

l) Was there an audit trail?

There has been an audit trail since 2007, with clear indication when reviews took place, and who carried them out.

Present

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

The process of investigation probably differs little. The LRC procedure was thorough and detailed.

- n) If so, please give details.

Not applicable.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures in respect of internal investigations relating to the abuse or alleged abuse of children in foster care?

As far as we can establish from case records, policy and procedure were adhered to. We have found some examples on record.

- b) Did the local authority adhere in practice to its policy/procedures on the following:

We cannot give an unequivocal answer. From what is documented in case files, it appears that procedure was faithfully complied with. Without the actual procedure document, however, we cannot confirm this. Of course we have only been able to examine a limited sample of files to draw conclusions from.

- i. Approach to/process of internal investigations
- ii. Identifying lessons/changes following internal investigations
- iii. Implementation of lessons/changes following internal investigations
- iv. Compliance
- v. Response (to child and abuser)
- vi. Response to complaints (including response by local authority)
- vii. External reporting following internal investigations

- c) How was adherence demonstrated?

In case records and in the log of complaints held at departmental or authority level.

- d) How can such adherence be demonstrated to the Inquiry?

We can show case records where an investigation took place.

- e) Were relevant records kept demonstrating adherence?

Yes, in individual case files. Prior to 2007 it is likely that a log was kept but, in the case of LRC, we cannot access any records and, in the case of Midlothian Council, many records were destroyed by fire.

f) Have such records been retained?

Not as far as we are aware.

g) If policy/procedure was not adhered to in practice, why not?

Such records as we do have indicate that policy and procedure were adhered to.

Present

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

The overall procedure has been changed several times, most recently in 2013 to be consistent with the template provided by the SPSO, with which all local authorities have to comply. The current social work procedure was put in place in 2017.

i) If so, please give details.

The social work complaints handling procedure sets out clear timescales and investigation actions.

4.9 Record keeping

(i) Policy

Past

a) What policies and/or procedures did the local authority have on record keeping in relation to foster care?

Other than what was required by law, we have been unable to identify any such policies and procedures prior to the existence of Midlothian Council. A policy on this matter is listed as having been in place in 2009, but we no longer hold a copy of this. In compliance its duties under the Public Records (Scotland) Act 2011, Midlothian Council introduced its corporate policy regarding record retention – the Retention Schedule – in 2012. Individual departments of the Council did have internal policies prior to this date, with social work services having such an arrangement in place by 2007.

b) What policies and/or procedures did the local authority have on record keeping by foster carers?

We do not know of the procedures in place until relatively recently. Case records show examples of reports provided by carers for Child in Care Reviews from the 1980s.

Since at least 2009 all foster carers have been provided with a log book for each placement. At the end of the placement the log book is returned to the supervising social worker and uploaded to the child's and the carer's electronic record.

The Handbook for Foster Carers sets out clear expectations about what should be recorded and how recording should be undertaken. Below are listed examples of what should be included

- Accidents or illnesses and medical or dental appointments.
- Important events or changes in the child's circumstances including notable progress, achievements and celebrations.
- Requests for help made to any agency.
- Contact arrangements with the child's family, missed contact and the child's reaction to contact.
- Specific care arrangements if child is staying elsewhere.
- Arrangements for visits, meeting and reviews with social workers.
- Things the child has said which give cause concern and when and whom this was then passed this on to.
- Details of challenging behaviour, including what happened before and after, including when the child has gone missing, police involvement.

Carers are also provided with a diary which is for the sole purpose of recording appointments in respect of children in placement and are requested to retain possession of these diaries for five years. Carer diaries have, in the past been retained by the Council as some are held in archive storage.

Carers routinely contribute written information on children for Looked After Child Reviews and other formal decision-making settings.

- c) In relation to (a) and (b) above, was there a particular policy and/or procedural aim/intention? Where were such policies and/or procedures recorded?

Apart from the intention to comply with legal requirements the aim was to ensure the Council could demonstrate accountability in the discharge of its duties. Since Open Access to personal files was introduced in 1989 the intention was to present information as fully and accurately as possible to people who were the subjects of these records. The specific intentions were set out as

- To enable consistent and effective assessment
- To assist the Department to monitor and develop its services
- To fulfil statutory obligations
- To aid supervision and professional development
- To enable clients to achieve greater independence and control.

Policies were also intended to ensure that records were maintained in such a way as to be able to provide robust evidence in legal proceedings.

Midlothian Council's policies are held as described in (a) above. We have a copy of Lothian Regional Council's 1989 Recording Guidelines and Open Access policy, introduced as a result of a decision of the Council in January 1988. Though LRC policy went beyond what was legally required, the Access to Personal Files Act 1987 underpinned the policy and guidance.

d) What did the policies and/or procedures set out in relation to record keeping on the following:

i.Children in foster care

There is a requirement under the 2009 Regulations to retain records of children who have been in care until 100 years after their date of birth. We do not know what happened prior to this requirement.

Lothian Regional Council's 1989 guidance does not refer specifically to child records.

ii.Foster carers

The 1989 LRC guidance makes no specific mention of foster carer records.

Midlothian Council retains foster carer records for 75 years following de-registration or death of carer. This exceeds the standard specified in the Looked After Children (Scotland) Regulations 2009 of 25 years.

iii.Visits to children and foster carers

The 1989 guidance indicates that "chronological records of contacts with, or on behalf of, clients" should be recorded. Case files from then onwards include a recording form where all calls, visits and meetings appear to be recorded. We have not found any earlier documents about recording activities.

All visits have been required to be logged since the introduction of electronic records.

iv.Complaints

We are not aware of any policy or procedure prior to the Lothian Regional Council complaints procedure in the early 1990s. As far as we can establish, a log was kept of all complaints. There was a specific part of the procedure relating to complaints by and against foster carers. Since we cannot access LRC records we do not know whether, or to what extent, this log has been retained. A copy of any papers relating to the investigation of a complaint appears to be held in the relevant case file.

Midlothian Council has had its own procedures in place since at least 2009. A log is maintained of all complaints which dates back to the introduction of the SPSO compliant process in 2013. The foster care complaints log contains records dating from 2010.

v. Investigations (both internal and external)

Midlothian Council has not been the subject of any external investigations. Internal investigations, as stated above, appear to be held in the relevant case record. The Head of Children's Services maintains a log of all investigations of foster care complaints.

vi. Discipline

Any action taken against foster carers is documented in the carer file. It is not clear whether this has ever been underpinned by a specific policy. The introduction of Fostering Panels in 1985 and subsequent guidance requires the Panel to note and retain information about de-registrations or changes to approval status as a consequence of an allegation, complaint or concern.

vii. Responding to requests from former children in foster care for information/records

The 1989 LRC guidance does not mention how this should be dealt with, although the document is written with the presumption that all case records may be accessed by the subject thereof. We understand that a protocol was in place for this and files were accessed under the supervision of a social worker.

Midlothian Council would have followed this protocol until it developed one of its own. Its current procedure follows the guidance issued by the Information Commissioner's Office.

viii. Other issues relevant to foster care

The Midlothian Handbook for Foster Carers sets out expectations in respect of record keeping.

e) Who compiled the policies and/or procedures?

A designated officer of the Social Work Department developed the LRC guidance. Since then, officers and managers of Midlothian Council.

f) When were the policies and/or procedures put in place?

The LRC procedure was introduced in 1989, following a policy decision of the Council in 1988.

Midlothian Council would have followed this until it introduced its own procedures in 2007.

g) Do such policies and/or procedures remain in place?

A policy remains in place but has been substantially amended over time.

h) Were such policies and/or practices reviewed?

Yes, Midlothian Council reviews all policies and procedures systematically. The LRC procedure remained in force from its introduction in 1989 till LRC ceased to exist in 1996. It was followed by successor authorities until they adopted their own policies and procedures.

i) If so, what was the reason for review?

Changes in legislation, policy decisions by elected members of the authority and routine periodic review.

j) What substantive changes, if any, were made to the policies and/or procedures over time?

Other than what was required by law, such as for adoption records, there were no policies or procedures that governed this. Records were considered to be highly confidential and were not accessed by anyone other than appropriate staff and managers.

The Access to Personal Files Act 1987 required local authorities to put in place protocols for subject access and this had implications for the structure and content of social work records. The Lothian Regional Council 1989 guidance reflected this and indeed went beyond what was legally required. Midlothian Council would have followed this until it put in place its own procedures. Its procedure now follows national guidance issued by the Information Commissioner.

The Freedom of Information Act 2000 required public bodies to provide information in response to requests from the public, the media and researchers. Any information where individuals were identifiable was specifically excluded from this legislation but aggregated information on services, such as numbers of children in foster care, had to be provided.

k) Why were changes made?

To ensure compliance with legislation, to promote the rights of individuals and to assist people who had used services such as social work to understand better their life experiences.

l) Were changes documented?

As in previous sections, changes would have been recorded at the time, but the extent to which previous versions were retained, either in hard copy or electronic form, is variable.

m) Was there an audit trail?

We do not know how this was carried out prior to Lothian Regional Council. As far as we are aware, LRC records would have documented the officers responsible for the drafting of new or amended procedures and senior management approval of these would have been minuted. We do not know if any of these records still exist. The political decisions that initiated policy change would have been recorded in the minutes

of the Council or its Committees and would generally have been based on a report presented by the director of the appropriate department.

Present

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

Yes

- o) If so, please give details.

The current version of Midlothian Council's Records Management policy was adopted in 2012. In 2018, the policy was updated to reference the General Data Protection Regulation and the Data Protection Act 2018. No further policy changes were necessary.

(ii) Practice

Past

- a) Did the local authority adhere in practice to its policy/procedures in relation to record keeping?

Our perusal of archive files and electronic records indicate that these were adhered to.

- b) Did the local authority check adherence in practice to its policies and/or procedures in relation to record keeping by foster carers?

As far back as the 1930s, there was a requirement for foster carers to keep a 'Visiting Book' and to present this for inspection on request. Thereafter, the Boarding-Out Officer, Children's Officer or supervising social worker would have been expected to monitor that foster carers maintained any records required by the authority.

- c) Did the local authority adhere in practice/check adherence in practice to its policy/procedures in relation to record keeping on the following:

As far as we are aware, the local authority adhered to and checked adherence to its policies and procedures in respect of the categories listed below.

- i.Children in foster care
- ii.Foster carers
- iii.Visits to children and foster carers
- iv.Complaints
- v.Investigations (both internal and external)
- vi.Discipline
- vii.Responding to requests from former children in foster care for information/records
- viii.Other issues relevant to foster care

d) How was adherence demonstrated?

Monitoring and recording by the relevant officers, case files of children and of foster carers, supervision of staff, reports to management and to elected members.

e) Were relevant records kept demonstrating adherence?

The records to which we have had access demonstrate adherence.

f) Have such records been retained?

The records we have examined have been retained but we do not know what may or may not be contained in records in archive storage or records, such as Lothian Regional Council records, to which we have not had access.

g) If policy/procedure was not adhered to in practice, why not?

We have found no evidence to suggest that policy and procedure was ignored. It should, however, be acknowledged that expectations in relation to case recording were less explicit than what exists now, and the level of detail noted in records was variable.

h) Did the local authority undertake any review or analysis of its records to establish what abuse or alleged abuse of children cared for in foster care may have taken place?

Around 1,700 files were examined by Records Officers as part of a cataloguing project of records related to children's services in Midlothian held in archive storage. This project was not concluded and will be ongoing in the longer term. Case records and administrative records were differentiated and a record made of the nature of each file. Where there was clear evidence that a child had been abused this was noted, though in almost all cases the abuse had not taken place in a care setting. Through this we have identified some instances of alleged abuse in care placements and have been able to look into these in greater detail.

i) If so, when did the reviews take place, what documentation is available, and what were the findings?

A spreadsheet was compiled that sets out findings. Of the files examined some were financial and administrative records. Others were establishment records such as daily logs from residential units. Any child case files where the Records Officer noted that abuse was mentioned was highlighted and a summary of findings entered in the spreadsheet. This work was carried out between 2016 and 2019.

j) How have the outcomes of investigations been used to improve systems, learn lessons?

The above exercise was not an investigation of social work practice but was intended to improve the quality of documentation about archived records. We have conducted in depth reading of the few cases where the records staff had noted a possible issue

of abuse in foster care. We have not so far found any situation that was not acted on. It appears that any advisable actions in terms of the children and carers concerned were taken. We are unable to connect these occurrences directly to any system or practice change but other information suggests that Midlothian Council has taken on board any implications for practice that have arisen.

k) What changes have been made?

Expectations are explicit about recording all contacts, documents and proceedings. The level of detail required is again much clearer. The electronic case management system enables lines managers to check case records at any time. Documentation is routinely reviewed and revised to reflect emerging knowledge and examples from elsewhere of best practice.

l) How are these monitored?

Periodic audits of electronic files.

m) Did the local authority afford former children in care access to records relating to their time in foster care?

We are not aware of this taking place prior to the Access to Personal Files Act in 1987 and the consequent introduction of policy and procedure in Lothian Regional Council.

n) If so, how was that facilitated?

Not applicable.

o) If not, why not?

It was not required by law. This was the case with all personal information such as medical records. We are not aware of the extent to which such requests were made.

Present

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

Yes.

q) If so, please give details.

There is now an electronic record system in place which is complemented by a range of templates, proformas and procedures for hard copy recording. All such hard copy documents are uploaded where possible to the electronic system and stored systematically in secure archives where not possible. Some documents are required to be retained in situ such as foster carer appointment diaries which carers are required to keep in their possession for five years.

r) Please provide details of the types of any records currently held relating to the children in foster care in respect of the following:

i.Children in foster care

An electronic case record is maintained on the Mosaic system for each child. This documents all activities carried out in respect of the child, all correspondence, all reports, and records of all proceedings.

ii.Staff with responsibilities for foster care

Supervising social workers and other Family Placement staff will record relevant information on a child in the carer's electronic record and will copy this to the child's record. The system also can send an alert to the placing social worker or any other relevant member of staff.

iii.Foster carers

Foster carers keep a log of any events or relevant matters for each child in placement which is returned to the supervising social worker when the placement ends.

Risk assessments, placement agreements and other forms have to be completed.

Hard copy documents are uploaded to the electronic case management system and the originals destroyed.

iv.Complaints

All fostering complaints are logged with the Head of Children's Services.

v.Investigations (both internal and external)

Internal investigations are retained in the log referred to above by the Head of Children's Services. Midlothian Council has not been the subject of external investigation.

vi.Responding to requests from former children in foster care for information/records

Subject access requests are made to the Performance Manager of the Education, Communities and Economy Department of the Council, of which Children's Services are a part. ICO guidelines are followed and Midlothian Council has a procedure in place.

Part D – Abuse and Response

The questions in Part D should be answered in respect of abuse or alleged abuse relating to the time frame 1930 to 17 December 2014 only.

It should be noted that the information supplied below refers only to the files we have scrutinised. There are several thousand children's records in archive storage which we have not reviewed. As we have indicated in our response to previous sections, we have attempted to retrieve and examine any files where we were aware of any possible incident, complaint, allegation or concern.

5. Abuse

5.1 Nature

- a) What was the nature of abuse and/or alleged abuse of children in foster care, for example, sexual abuse, physical abuse, emotional abuse?

Allegations were made of sexual abuse, emotional abuse and physical abuse.

5.2 Extent

- a) What is the local authority's assessment of the scale and extent of abuse of children in foster care?

As we have responded in previous sections of this report, without a comprehensive examination of all the records we hold in archive storage and in electronic form we cannot respond with any reliable figures on scale and extent. We have outlined the information we have found from the records we have examined in previous sections.

Given that we followed up any issue or concern specifically, we would have expected to find evidence in the files we requested. Our sample is therefore neither random nor representative. All we can say is that we did not find abuse, or unacceptable practice, to have taken place on a large scale, when considering the number of children, the number of carers and the duration of care placements that must have taken place over the 84 years covered by the Inquiry.

- b) What is the basis of that assessment?

The basis of our assessment is

1. Detailed perusal of such archived material and other records of Midlothian Council and its predecessor authorities as we have access to.
2. Identification of foster care records from archived individual and/or family case files.
3. Detailed scrutiny of 52 case records of children who had been in foster care dating from 1953 and of 26 foster carer files dating from 1966.
4. Information drawn from the carer complaint log of MLC relating to carers who fostered during the Inquiry period, though the complaints arose after that time.

5. Data drawn from the MOSAIC electronic record system covering the period 2008 to 2014.
6. Interviews with the Family Placement Team manager and social workers and the Fostering Panel administrator.
7. Information supplied by managers of fostering and child protection services of Lothian Regional Council and Mid and East Lothian and Peebles Joint Social Work Committee.
8. Information supplied by managers and staff of Midlothian Council.
9. Evidence from academic research and published literature, notably
 - Lynn Abrams, *The Orphan Country: Children of Scotland's Broken Homes, 1845 to the Present* (John Donald, 1998)
 - John Murphy, *British Social Services, the Scottish Dimension* (Scottish Academic Press, 1992)
 - Andrew Lockyer and Frederick Stone, *Juvenile Justice in Scotland: Twenty-five Years of the Welfare Approach* (T & T Clark, 1998)
 - Andrew Kendrick, *A History of the Legal Framework and the Implementation of Foster Care, including Private Fostering, in Scotland, 1945 to 2014* (Scottish Government, 2016)
 - Independent Care Review, *Evidence Framework* (2020)
 - Kenneth Norrie, *Legislative Background to the Treatment of Children and Young People Living Apart from their Parents* (Scottish Child Abuse Inquiry, 2017)
 - John Triseliotis et al, *Adoption: Theory, Policy and Practice* (Bloomsbury, 1997)
 - Kirstie Maclean & Barbara Hudson, *Fostering and Adoption in Scotland: 1980–2010* (Adoption & Fostering, 2010)
 - Steve Rogowski, *Social work: The rise and fall of a profession?* (The Policy Press, 2010)

- c) How many complaints have been made in relation to alleged abuse of children in foster care?

In total 23 complaints or concerns were raised, though not all of these would necessarily have been classed as abuse. Most were also not found to be substantiated.

- d) Against how many foster carers have the complaints referred to at (c) above been made?

Concerns, complaints or allegations were made against nine carer households.

- e) How many foster carers have been convicted of, or admitted to, abuse of children?

No foster carer has been convicted of abuse of children. Though one carer was apparently charged, there is no record of criminal proceedings having been taken forward, nor any conviction recorded.

- f) How many foster carers have been found by the local authority to have abused children?

Midlothian Council deregistered six carers who had fostered in the period concerned because of unsatisfactory practice. To what extent these could all be definitively categorised as abuse is debateable. These consisted of

- Report to out of hours social work service that a carer was intoxicated, behaving aggressively towards the child in placement and making inappropriate remarks that were audible to neighbours. The placement was immediately terminated and the carers deregistered (1990).
- Another carer was deregistered after investigation following complaints by a child of disproportionate punishment and inappropriately harsh treatment. This was substantiated by a child placed subsequently (2012).
- One carer was deregistered because of persistent lack of domestic hygiene (2014).
- A serious breach of confidentiality resulted in deregistration for one carer household (2013).
- A carer failed to notify the Council that their adult son had returned to reside in the household and had been charged with several serious offences (2007).
- Carers fostered for 17 years and were deregistered eventually in 2015 after an accumulation of unsatisfactory practice issues.

We have found one child record where a carer was apparently charged with assaulting a child. There is no record either of a conviction or of court proceedings having taken place. All other incidents investigated were assessed as unfounded or unsubstantiated.

No other charges, prosecutions or civil actions have been brought against any foster carers for Midlothian Council or its predecessors of which we are aware.

- g) Against how many family members of foster carers have complaints been made in relation to alleged abuse of children?

Two, one that teenage son of carer had touched girl in placement inappropriately and one that adult son of carer had slapped boy in placement. In both cases investigations were carried out by the Council and the police. No further action was taken in either case.

- h) How many family members of foster carers have been convicted of, or admitted to abuse of children?

None of which we are aware.

- i) How many family members of foster carers have been found by the local authority to have abused children?

None of which we are aware.

- j) Against how many other children placed in foster care in the same placement have complaints been made in relation to the alleged abuse of children?

None of which we are aware.

- k) How many other children placed in foster care in the same placement have been convicted of, or admitted to abuse of children?

None of which we are aware.

- l) How many other children placed in foster care in the same placement have been found by the local authority to have abused children?

None of which we are aware.

5.3 Timing of Disclosure/Complaint

- a) When were disclosures and complaints of abuse and/or alleged abuse of children in foster care made to the local authority?

Almost all the complaints or allegations made were contemporaneous with the incident. We have recently been made aware of allegations about a carer made some years after the alleged occurrences but have not been further informed about any investigations or outcomes.

- b) To what extent were complaints and disclosures made while the abuse or alleged abuse was on-going or recent?

In all but one case we have referred to the complaint was concurrent with, or made shortly after the end of, the placement.

- c) To what extent were/are complaints made many years after the alleged abuse i.e. about non-recent abuse?

We are not aware of any such complaints from the records we have examined nor from the Council's record of complaints received, other than the case mentioned above.

- d) Are there any patterns of note in terms of the timing/disclosure of abuse and/or alleged abuse?

It is noted that almost all the complaints were made at the time or soon afterwards.

5.4. External Inspections

- a) What external inspections have been conducted relating to children in foster care which considered issues relating to abuse and/or alleged abuse of children?

No external inspections have been conducted.

For each such external inspection please answer the following:

- b) Who conducted the inspection?
- c) Why was the inspection conducted?
- d) When was the inspection conducted?
- e) What was the outcome of the inspection in respect of any issues relating to abuse or alleged abuse of children in foster care?
- f) What was the local authority's response to the inspection and its outcome?
- g) Were recommendations made following the inspection?
- h) If so, what were the recommendations and were they implemented?
- i) If recommendations were not implemented, why not?

5.5 External Investigations

- a) What external investigations have been conducted relating to children in foster care which have considered issues relating to abuse and/or alleged abuse of children?

No external investigations have been conducted.

For each such external investigation please answer the following:

- b) Who conducted the investigation?
- c) Why was the investigation conducted?
- d) When was the investigation conducted?
- e) What was the outcome of the investigation in respect of any issues relating to abuse or alleged abuse of children in foster care?
- f) What was the local authority's response to the investigation and its outcome?
- g) Were recommendations made following the investigation?
- h) If so, what were the recommendations and were they implemented?
- i) If recommendations were not implemented, why not?

5.6 Response to External Inspections/Investigations

Not applicable.

- a) What was the local authority's procedure/process for dealing with external inspections and/or investigations relating to abuse, and/or alleged abuse of children in foster care?
- b) What was the local authority's procedure/process for responding to the outcomes of such external inspections and/or investigations?
- c) What was the local authority's procedure/process for implementing recommendations which followed from such external inspections and/or investigations?

5.7 Impact

- a) What is known about the impact of abuse on those children in foster care who were abused, or alleged to have been abused?

We are profoundly aware, from both experience and research, of the serious and sustained impact of abuse in childhood, whoever was the perpetrator. We are also aware of the extent to which children who enter foster care have already experienced adversity. Though there is no significant body of evidence on the long-term impact of abuse in foster care specifically, it is likely that the impact of being abused in a setting where children have been placed for their safety and protection will be severe and enduring.

- b) Where does the local authority's knowledge/assessment of that impact come from?

As stated above, there is no meaningful research evidence on this specific topic. The number of cases we have identified from our own records is not of sufficient size nor adequate stratification to provide a reliable sample. We have checked later records in respect of any child who raised any issue of concern. Some had significant social work involvement in later life, though it would need to be borne in mind that they would have almost certainly suffered serious abuse, harm or neglect prior to entering the care system. We have no record of later involvement with a number of the children concerned which may mean they had no later involvement with social care services or may be because they no longer resided in Midlothian. Our assessment of impact is based on the application of our professional knowledge and our operational experience.

- c) What is known about the impact of abuse on the families of those children in foster care who were abused, or alleged to have been abused?

Again there is no robust objective evidence on this matter and such later records as we have been able to examine do not provide this information. It is unlikely that the effect was anything but negative.

- d) Where does the local authority's knowledge/assessment of that impact come from?

We do not know this information in a reliable way and our view is informed speculation based on professional knowledge and experience.

5.8 Known Abusers and Alleged Abusers

Please see Appendix 2.

5.9 Specific Complaints

Please see Appendix 2.

5.10 Civil Actions

Please see Appendix 2.

5.11 Criminal Injuries Compensation Awards

- a) Has any criminal injuries compensation been awarded in respect of abuse, or alleged abuse, of children cared for in foster care?

Not as far as we are aware.

- b) If so, please provide details if known.

Not applicable.

5.12 Police

Please see Appendix 3.

5.13 Crown

Please see Appendix 3.