

Response to the Scottish Child Abuse Inquiry on behalf of Orkney Island Council to Section 21 Notice issued 25 November 2022

Phase 7

Foster care

Your Ref: INQ.Notices 000586
Our Ref: JM/JL/GM/GH/AM
Date: 13 January 2023
Instructions: Jim Lyon, Chief Social Work Officer (Interim)
Prepared by: Georgette Herd, Solicitor
Subject: **Scottish Child Abuse Inquiry Section 21 Notice 25 November 2022.**

Background

On 25 November 2022 Orkney Islands Council received a further Section 21 Notice from the Inquiry. Appendix 3 of the Inquiry contains the requirements for the further notice. It asks the following questions: -

1. *"In light of the evidence, what reflections do you have on your part B response to the Inquiry Section 21 Notice, dated 27 August 2019? Do you wish to submit a revised version of Part B of your response? If so, please do so in a separate addendum."*

Response

The Council appointed an experienced Interim Chief Social Work Officer in June 2020, Jim Lyon, who instructed a review of the Council's response to the Inquiry's section 21 Notice lodged on 27 August 2019.

Since his appointment Mr Lyon has instructed a deep and wide-ranging review of Council policy, practices, and procedures. Of relevance to this response, are the development of processes to promote placing the voice of the child at the centre of the Council's processes; to encourage scrutiny, reflection and training and development of all professionals; and to encourage multi-agency working to create the "Team around the Child". In placing the voice of the child at the centre of the process the child's voice should not only be heard through relevant professionals but consideration should be attached to the views and experience of any members of the child's community who may have relevant information and input which may benefit the child.

In light of the opportunity offered by the Inquiry's Notice on 25 November 2022 he has instructed the preparation of a Revised Part B (originally to 27 August 2019 and

now revised to 13 January 2023), a copy of which is attached. This document is the Addendum sought in question 1. Also lodged is the Appendix referred to therein listing the Council's Policies and procedures which were omitted from the previous Section 21 Response.

2. Question 2 of the new appendix 3 provides: -

“What lessons do you suggest should be learned from the evidence?”

Response

The Council is grateful for the opportunity to participate in this part of phase 7 of the Inquiry. In preparation of this Addendum the Council has carried out a review of the wider evidence led before the Inquiry from other local authorities; from care experienced witnesses and their witness statements; from the expert witnesses speaking to broader themes, such as Professor Norrie and Professor Abrams. The Council has also had the benefit of the assistance of Scott Blair, advocate.

The Council has identified points for general comment both from the wider Inquiry process and the experience of this Council: -

- 2.1 A recognition from as early as the Clyde Report (1946) and the Children's Act (1947) that abuse existed both in and outside of care settings. Abuse was not in fact unknown.
- 2.2 The Inquiry uncovered in the survivors' evidence abuse in many forms including sexual abuse; physical chastisement and cruelty; psychological abuse; abuse of children in terms of labour practices and financial abuse.
- 2.3 The distinction between the understanding of “systematic abuse” and “systemic failure” - the failure by a local authority to systematically deal with allegations due to a lack of systems; an inadequate system or a system not operated properly.
- 2.3 The true extent of abuse given the unknowns. Orkney has the benefit of having retained paper copies of files for children in foster carer. The methods of recording information lack continuity, particularly when social workers move on. Orkney did not identify instances of child

labour abuse or systemic separation of children from their geographical homes. Historically Orkney has sought to accommodate its fostered children within Orkney. It is accepted that due to recording failures and lack of cross referencing there may be instances of abuse that are unknown to the Council.

- 2.4 Robustness or lack thereof of records review in preparing the Section 21 response and addenda. The Inquiry has provided an opportunity to address this in the current Section Notice.
- 2.5 There is a clear understanding of the impact of abuse on the survivors, mentally, emotionally, physically, socially (including loss of or damage to educational or employment opportunities) and, related to that, the local authority's ongoing duties to survivors.
- 2.8 Whether kinship care and fostering care should have the same levels of assessment and supervision of carers. Kinship care is distinguishable from foster care in that motivation of kinship should be based on a willingness to assist; pre-existing family or friend relationships and a pre-existing bond. In a kinship situation, parental rights and responsibilities might be seen as a matter with, in relative terms, little state involvement as compared with foster care. Foster caring has very clear and material elements of state involvement. That may interfere with the children's Convention rights to family life and the placing of children with no connection with their carers. Foster carers are discharging duties on behalf of the State through the local authority (consistency re capital letters). The Council considers it is appropriate for there to be higher standards of scrutiny and accountability in fostering than in kinship care. This recognises that fostering places children with a manufactured family rather than maintaining existing family bonds.
- 2.9 The question of possible need for greater inter-agency sharing of information on foster carers who de-register, or who have abused, or who are suspected of abuse. In addressing this question, the Council would argue that focussing on the child should inform this process. For example, there is no exit interview on de-registration, although foster carers can submit their own report or a letter, and so little in terms of any exploration or potential for accountability in relation to the circumstances of de-registration.
- 2.10 It is observed from the evidence that there is no national notification service or statutory duty to share information between local authority areas for foster carers moving between Local Authorities (also interchangeable Councils/LAs). There are loopholes in identifying the

previous areas of residence which can lead to systemic failure. Addressing this at national level, including guidance on details of deregistration held, would assist.

Question 3

3. In the light of the evidence, what changes do you suggest should be made to protect children from abuse in foster care?

The voice of the child

3.1 A proper understanding of the voice of the child, observance of behaviour, actual words, avoidance of child blaming is key. Although following the Children (Scotland) Act 1995, there has been a legal requirement for children's views to be sought in respect of formal proceedings that affect them, the Council is mindful that the views or voice of the child should not be approached in an uncritical way. The Council involves children in their care planning in setting and developing policies and procedures, and seeks their views at an authority level, and at an individual level. Further the Council would suggest: -

3.1.1 The voice may be non -verbal. The true voice of the child may be listened to through not just verbal, but non - verbal means. For example, poor school behaviour may be as eloquent of problems in the foster home more so than the child reporting that "everything is fine."

Behaviour which demonstrates children's distress, such as bedwetting, can be misconstrued or mistakenly considered to be related to past experiences when it can be a clear sign of unhappiness or emotional pain. These may also be indicators of abuse, a lack of emotional connection and need to be considered very carefully.

Nor should the voice be limited to the voice of the child in immediate focus. The voice in the widest sense should include listening to the voice of all other children in a given setting and to consider not just at the child in the instant matter but children in the same care setting. There needs to be a sufficient degree of professional curiosity. The child's voice needs to be heard and evaluated consistently over time as circumstances change and views may change.

That the evidence has confirmed the evolution of policy has identified that at the centre of assessment, plans and decision making, the voice of the child is paramount in informing these processes. Therefore, it is important practitioners continue to focus on what the child is expressing both verbally and non-verbally, sometimes through their behaviour and actions, how they feel about the situation in which they find themselves. Accordingly, interactions with their carers and the extent to which they thrive physically, mentally, educationally, can enjoy friendships, learn, and take part in social and sporting experiences, are important indicators of the “voice” in the widest possible sense.

3.2 Building on this is the need for the “Team Around the Child” has a clear responsibility to advocate on behalf of the child and in terms of decision making. One body or profession should not hold the franchise or majority in determining that decision. This should be shared equally among all partners. For example, a child may be more willing to disclose a concern to a teaching assistant than with their dedicated social worker and that concerns emanating from any source must be given appropriate weight and consideration.

3.2.1 Separation of roles of social worker for foster carer and for child and the need for the latter to speak to the child out with the presence of the foster carers to avoid any opportunity for confusion or an inappropriate emphasis on the carer and their needs.

3.2.2 Ensuring that the local authority adopts trauma informed practice, recognising, in particular (i) many fostered children are likely to have been abused pre-placement and that this might inform their “voice” in terms of how they express their views, including any concerns about their care placement; (ii) that foster carers need to have a sufficient understanding of the impact of trauma on the children they care for and how that might affect the overall care experience (iii) that children in foster care may require support for pre-foster care trauma. The Task of the foster carer, therefore, is more skilled to promote a greater chance of recovery. A considerable body of research supports this approach.
¹The adversity and vulnerability children will have experienced, will

1. ¹ [APA PsycArticles: Journal Article, Empirically-guided assessment of complex trauma for children in foster care: A focus on appropriate diagnosis of attachment concerns.](#) © Request Permissions John, S. G., Brandt, T. W., Secrist, M. E., Mesman, G. R., Sigel, B. A., & Kramer, T. L. (2019). Empirically-guided assessment of complex trauma for children in foster care: A focus on appropriate diagnosis of attachment concerns. *Psychological Services, 16*(1), 120–133. <https://doi.org/10.1037/ser0000263>

developmentally and emotionally, require greater support and an unconditional understanding of their uniqueness. It is important that the Council acknowledges trauma informed approaches and also knowledge of attachment and nurture especially around the need for each child to have a secure base, unconditional love and regard and nurture. The new Scottish Child Interview Model (SCIM) for children being interviewed as per the child protection process, requires the identification of trauma and therapeutic support to be implemented at the time of identification to address trauma related needs. However, this depends on the correct resources being available at the time of need to provide such input. This is not guaranteed across all areas or services given resource limitations and staffing shortages, amongst other things, particularly in island and rural communities where there are specific challenges related to the nature of island and rural life.

3.2.3 Child had access to appropriate independent advocacy;

3.2.4 That the child's views are revisited; for example, where an allegation is made and subsequently withdrawn to understand the context of withdrawal; to include co-ordinating the voices and analysis of behaviour of other children in the foster family. In one of Orkney's case reviews, at the time of the alleged abuse another child in the household was demonstrating concerning behaviour of multiple instances of running away. This was subsequently considered to have been a potential indicator of their distress at the foster carer's behaviour towards their sibling.

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2. **TRAUMA & CHILDREN IN FOSTER CARE: A COMPREHENSIVE OVERVIEW, JULY 10, 2011**, By Caitlin Papovich, M.A., Forensic Scholars Today.
This reference says child abuse is a global epidemic, distressing millions of children across all countries and within all cultures (Hayes & O'Neil, 2018). Although there are child protective laws in place, child abuse continues to remain a major problem in the United States and other countries (Bell & Higgins, 2015). In the year 2015, 3.4 million children were affected by some form of child abuse and/or neglect as indicated by Child Protective Services' reports (Bartlett & Rushovich, 2018). More than 250,000 children and adolescence enter the foster care system nationwide (USA) annually (Mitchell, 2018). Most of these children are removed from their biological homes due to cases of abuse and/or neglect, and thus victims are placed into foster care with minimal to zero notice.
 3. **JOURNAL ARTICLE. Need for Trauma-Informed Care Within the Foster Care System.** Brittany A. Beyerlein and Ellin Bloch. *Child Welfare*. Vol. 93, No. 3 (2014), pp. 7-22 (16 pages). Published By: Child Welfare League of America.
This article says the majority of children entering foster care have experienced multiple traumas, making this a vulnerable population with an increased risk of emotional and behavioural problems. A lack of trauma-informed care within the care system tends to create additional traumatic experiences that cannot go unaddressed.

3.2.5 That the child's story travels with them; for example, a child, having become 16 years old and who had moved to another local authority area, made an allegation of sexual abuse whilst in foster care in Orkney to an advocacy worker in their new local authority area. The Advocacy worker reported the allegation to Orkney Islands Council. The child had changed gender identity since leaving Orkney. The correlation between the Orkney based behaviour and their subsequent allegation was not identified until the review carried out as part of this Inquiry; which, amongst other things, is related to the level of experience and training in child protection for some of the managers who were responsible for the service at the time.

3.3 Should there be a National Register of Foster Carers?

3.3.1 The Fostering system is presently operated with National Guidance and Local Implementation. Taking a child focussed view, the challenges are different in each Local Authority area. Where the Fostering Panel is properly resourced, operated, and scrutinised, this should provide protection for children from abuse. This is in conjunction with appropriate sharing of information between agencies where cares might move around Scotland or the wider UK. Further providing a National Register of itself is unlikely to ensure that adequate resources that are available to fully support the child and the foster family are made available. The Council sees resources as key issue in implementing The Promise as opposed to formal administrative measures such as a Register.

3.4 Should foster carers be SSSC registered?

3.4.1 The Council believes this is unnecessary. SSSC is the regulatory body for Social Workers. It concerns legal processes that are regulatory or disciplinary. This does not provide the approach required to safeguard the child pending a disciplinary investigation. Current fostering processes, if properly resourced and operated effectively, should provide adequate scrutiny. Training and resources need to be made available to ensure robust systems and decisions challenged in the context of approval for fostering; review; complaints and agency decision making.

3.5 Should there be disclosure for family members of foster carers in the same household?

3.5.1 This is currently practised although not for other children in the household. The Council would welcome any recommendation from the Inquiry on whether that should be the case.

3.6 The role of the fostering panel as an important safeguard.

3.6.1 It has been this Local Authority's experience that a professional, experienced, independent chair is essential. Following upon a period with a voluntary chair; little change in the take up of the Panel and poor training it has been observed that the elements of independent scrutiny that one would hope to see through the Panel process have drifted. The Council has had for some time an excellent independent chair which has brought about significant improvements. As a result of the work of Mr Lyon's team, a programme of training and development with the Council's Fostering Panel has commenced to embed scrutiny of evidence, effective decision making and the appointment of a suitably qualified Agency Decision Maker ensures similar scrutiny of the Panel's decisions.

3.7 Should there be a written contract between the Council and carers?

3.7.1 This Council's view is that by adopting a child focussed view, it is more important that the local authority and Foster Carers have a good and continuous understanding of their respective expectations of the process and their duties. This should be informed by the initial assessment process; the role of the foster carer; development of the foster carer's handbook; embedding experience in the process and foster carers regular reviews at Panel. This is linked to the separation of the roles addressed at 3.1.1. A contract would add little in terms of delivery of substantive protection. Of more significance is ensuring the involvement and understanding of the Foster Carers in the child's plan and in parallel planning for the child's future.

3.8 Should there be National Guidance?

3.8.1 The Council adopts and follows current National Guidance in the areas of foster care and child protection. There does though remain the need for local implementation for foster carer's guidance.

3.9 Should there be statutory guidance to tie allegations against foster carers into child protection multi agency procedures?

3.9.1 Current Child Protection multi-agency procedures are not yet viewed as sufficiently standardised to be tied to statutory guidance. There is an opportunity as a result of this Inquiry for both improvement and greater understanding in the multi-agency process for information sharing; the ownership of information; information sharing agreements and sharing with

Panels and foster carers linked to the National Guidance on Child Protection 2022 and applicable regulations. Attempting to tie this process to a statutory process at this stage could be considered premature whilst the role of the multi-agency protection process is still developing.

Orkney Islands Council Specific Considerations

3.10 Does the Council wish to make a general apology?

The Chief Social Work Officer (Interim) is desirous that the Council considers issuing an apology. Legal services have been instructed to explore this further. At the date of submission hereof external specialist advice has been sought but is not currently available.

3.11 Does the Council accept poor practices and procedures?

3.11.1 The Council does accept that the practices and procedures were not fit for purpose. The Council is currently engaged in a significant improvement programme to address these points and others.

3.12. Information Governance and in particular Subject Access Request information handling.

3.11.1 The Council would suggest that requests for information should not be dealt with strictly by way of information governance. It would be better practice for there to be engagement with the requester; staff trained to engage with requesters and how requests for information are managed. Requests for information should be dealt with helpfully and by trained and trauma informed employees wherever possible.

3.13 Areas identified for Improvement

3.13.1 Essential elements of robust and challenging processes: -

- Training
- Records of training
- Foster carers support
- Professional curiosity as opposed to professional optimism
- The need to “think the unthinkable”
- Use of chronologies to identify relevant patterns
- Cross referencing complaints
- De-registration process

Qualitative evaluation of any processes in themselves, has far more value than quantitative evaluation. Having policies and procedures only goes so far if they are not themselves monitored and evaluated as to their effectiveness.

3.14 Further reflection - Impact of complaints/ investigations

- 3.14.1 Recognising the impact on the children who have made allegations and adopting a trauma informed approach to communicating the outcomes of Police and Council investigations.
- 3.14.2 Consideration of impact of investigation and outcomes on children in foster care on their relationships with their foster carers and other children in their care family;
- 3.14.3 How allegations post and end of care placement/de-registration of foster carers are dealt with;
- 3.14.4 Signposting foster carers to support, including independent support, and guidance;
- 3.14.5 Consideration of duties to children and follow up as part of the through care after care process;
- 3.14.6 Handling of significant case reviews, learning reviews and other learning and development activities such as case file audits, practice reviews, and external audits and reviews. As a result of the work of Mr Lyon, these are now routinely entered into and shared with our Chief Officers Group (COG) Public Protection and disseminated within our children's services staff groups and Orkney Public Protection Committee, for implementation of recommendations, learning, and embedding of required practice developments and improvement activity.
- 3.14.7 Orkney Chief Officers Group (COG) Public Protection meets regularly and is well sighted on improvement work including "corporate parenting" and our Good Parenting (Corporate Parenting) Plan.
- 3.14.8 Led by Mr Lyon, work has been undertaken with elected members including seminars and presentations from officers with further work planned in 2023 involving Who Cares? Scotland a leading national advocacy and voluntary organisation representing the views of care experienced children and young people. The first joint address to elected members took place in December 2022 resulting in significant engagement by elected members and better understanding of some of the challenges facing this sector at present.
- 3.14.9 It remains important to work towards a national understanding of the challenges facing children and people who have survived abuse in foster care. Implementation of the findings of the Inquiry timeously on completion of the Inquiry process will ensure the most effective use of national resources. There will be need for a comprehensive overview of the findings of the Inquiry with a detailed implementation plan to ensure all

required improvements are identified and embedded in policy, procedure, and practice in the authorities. This will require each local authority's COG to be fully sighted and take an overarching leadership role across all children's services and public protection committee structures with regular reporting back on progress.

Respectfully Submitted on behalf of Orkney Islands Council by

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