Tuesday, 29 November 2022

(10.00 am)

LADY SMITH: Good morning and welcome back to our case study hearings in relation to foster care and boarding-out.

This week we turn to closing submissions, of which there'll be quite a few, and we'll begin by my inviting Senior Counsel to the Inquiry, Ms Innes, to address me, and after that I will start moving through the long list.

I think you've all been notified of where you are on the list. If I call the wrong person at the wrong time, don't hesitate to tell me. I'll try and keep to the order I've been given.

But unless anybody has anything they wish to raise at this stage, I'll just move straight to inviting Ms Innes to address me. Is that okay?

Right. Ms Innes, good morning.

Closing submissions by Ms Innes for the Inquiry

MS INNES: Since 2 May of this year we've had 67 days of evidence in relation to foster care and boarding-out. During that time we've heard from over 250 witnesses, whether by way of oral or read-in evidence. In addition, other statements and documents have been reviewed, including statements which have been released into the bundle.

This case study covers the evidence of 228 applicants in relation to their experiences in foster care and boarding-out.

There has also been evidence from experts, Local Authorities, independent fostering agencies, foster carers, family members and social workers.

The material in this case study has been extensive. Over 40,000 documents recovered by the Inquiry have been identified as relevant.

Foster care and boarding-out has of course been included in the Terms of Reference in this Inquiry, whereas it was not in the Time to be Heard pilot nor the National Confidential Forum other than it might be said tangentially. Accordingly, for many applicants this is the first opportunity that they have had to share their experiences in a forum like this and many have spoken of the importance to them of having been able to do so.

In the past, it appears that the focus was very much on institutional care. That was highlighted by Professor Kendrick. Your Ladyship will also recall that it was identified by Professor Biehal and Dr Grant where they described an enduring lack of focus on foster care.

Professor Kendrick discussed the fact that there can be assumptions that institutional care is unsafe, whereas family-based care, including foster care, is

safe.

LADY SMITH: Yes.

MS INNES: And of course many children have positive experiences in foster care and we've heard about some of those from applicants.

LADY SMITH: We're learning continually in this Inquiry about the danger of any assumptions, irrespective of the nature of them, and this is a very interesting case study to demonstrate that, you're absolutely right. Before now we've seen the assumptions about institutions being proved to be wrong, so get children out of institutions and into a family setting, that'll be perfect. For some children it worked, but for others it was very far from perfect. I think that's very clear.

MS INNES: Yes, my Lady.

The foster care setting has inherent risk and I think we've seen that during the course of the case study.

LADY SMITH: Yes.

MS INNES: The child is in a family home which cannot be monitored --

LADY SMITH: Hang on one minute, Ms Innes. We're getting some quite distracting feedback. Can we cut that out? (Pause).

Right, try now. Thank you.

MS INNES: Yes, my Lady, I was saying that the child -- there is inherent risk in foster care and that is of course because the child is in a family home, which cannot be monitored by a variety of different adults around the clock.

LADY SMITH: Yes.

MS INNES: The fact that foster care is not a safe place for some children has been known throughout the period of the Terms of Reference. In particular it was highlighted publicly in 1945. In that year, the death of Dennis O'Neill in foster care in Shropshire led to the Monckton Report and in Scotland foster parents from Fife were convicted of offences in relation to excessive physical punishment and both cases generated significant press coverage at the time.

The Clyde Report published the following year recognised that there had been what it called isolated terms of cruelty to boarded-out children. Clyde recognised that the physical and mental wellbeing of the child would be under more direct supervision in an institution than it would be in foster care, but the issue with such institutional care was the lack of parental affection, and then, as we saw, the preference for boarding-out over institutional care went into legislation.

The evidence which has been gathered and heard in this case study has sadly demonstrated that over the period from 1930 to 2014 children have suffered abuse in boarding-out and foster care. That is not restricted in geographical scope. No area of Scotland is immune. We heard of physical, sexual, psychological and emotional abuse, neglect and exploitation.

In relation to corporal punishment, it generally appeared to be accepted for a long time that foster carers were in the same position as parents and as long as it wasn't excessive, harsh or indiscriminate, it was condoned and in some cases even encouraged. Children were separated from their families and siblings, but in some cases, even when siblings were placed together, we heard evidence that they were set against one another by the foster carers and that obviously impacted on their relationship.

Another significant element of emotional abuse spoken to was difference in treatment. Usually that was difference in treatment from the foster carers' own children but sometimes it extended to other children in placement who had perhaps been there for longer and were perceived to have a different bond with the carers. This perpetuated feelings of rejection and isolation.

For children who were still with their guardians or

carers when they left home for work, college or university, the approach of the carers at that point was often demonstrative of their attitude towards the child. For example, we heard evidence that some essentially threw the child out and did not speak to them again.

Many applicants had the impression that their carers' motivation was financial. That was either an impression formed at the time or one which was formed on the basis of consideration of their records.

There is also evidence of children being deprived, whilst money appears to have been diverted to the foster carers' own purposes, whether for their own benefit or that of their family, or on occasion to fund an alcohol problem.

Whatever the circumstances in relation to financial matters, it is certainly clear that many applicants were very conscious of the financial reward that their carers obtained in this context.

The perpetrators and alleged perpetrators were primarily foster carers, but we also heard of abuse by other children and young people in the fostering household, whether children of the foster carers, we heard of some convictions in that context, or other children in placement.

We have also heard about those who faced additional

abuse because of gender, race, ethnicity, for example gypsy travellers, or sexual orientation, or people for whom discriminatory attitudes were barriers to reporting and response.

In terms of convictions, as highlighted in the Crown's opening submissions, it is difficult to identify those relating to children in foster care in the same way as where an offence took place at an institution. Drawing on a number of sources, the Inquiry has been able to confirm over 50 convictions in respect of offences against children in foster care, but that has to be said to be an incomplete record.

I also want to move on and say something about deaths of children in foster care, because we did hear evidence of some deaths of children which had occurred.

Issues were raised in relation to the investigations of those deaths and certainly in some it appeared that there was swift acceptance that the deaths were accidents.

In Professor Abrams's evidence, she discussed a case involving the deaths of two children who were boarded-out by Glasgow in the late 1960s. In relation to the death of the first child, a postmortem took place but there was no record of the outcome on the file. Thereafter another child was placed who also died as

a result of a blow to the head. There were serious concerns in the Scottish Office at the time about the Local Authority's response to both of these incidents. Disturbingly, Professor Abrams noted that the fact that the children were mixed-race likely had some bearing on decisions which were taken and the response.

In July we heard evidence from Peter Kelbie who told the Inquiry about the death of his sister Alexina in foster care in Dundee in November 1957 where it was much later that the findings of the post-mortem were reviewed and the view expressed, and I quote, that it was difficult, if not impossible, to conceive of an explanation for the injury pattern and the death of Alexina other than an assault.

The result of that 2006 review was only communicated to Peter last year.

LADY SMITH: That is staggering. 64 years on.

MS INNES: Yes.

LADY SMITH: When he learns.

MS INNES: We also heard evidence on the first day of applicant evidence in fact from a witness, 'Anne', whose sister had died in foster care in Fife in [redacted]1959. It appeared that there was no police investigation and the Local Authority had been satisfied with the explanation provided by the foster carer. Even when

'Anne's' father asked questions, the Local Authority swiftly rebuffed him and continued to insist on a contribution from him for the upkeep of the children whilst they had been in foster care.

In September we heard evidence from 'Claire', one of whose brothers died in foster care in May 2001. As explained by her social worker, Ian Henderson, who gave evidence in October, this was initially described as an accident. However, it appears that 'Claire' was later told that her brother had committed suicide and that whilst in the care of someone who was later convicted of abusing 'Claire' and her brothers.

While systems have developed in relation to the deaths of children in care as well as of course progress in forensic science, the common threads are, I would suggest, the absence or dismissal of challenge from the vulnerable families of these children and the way in which a line was quickly drawn, perhaps with an unwillingness to think the unthinkable.

LADY SMITH: Yes.

MS INNES: Applicants spoke about the ongoing impact of abuse on their own health but also on their ability to form relationships, to parent, to obtain qualifications and to work. Many spoke of the wider ramifications for others, for example partners, children, grandchildren.

I'm going to move on to talk now about some of the failures which have been identified in the evidence, and before I do that I want to say a word about systemic failures.

LADY SMITH: Thank you.

MS INNES: The Terms of Reference require consideration of the extent to which institutions and bodies with legal responsibility for the care of children failed in their duty to protect children in care from abuse, and in particular, to identify any systemic failures in fulfilling that duty.

There is perhaps a danger in focusing on systemic failures interpreted as the failure of the system as a whole, or most of it, as opposed to the broader point, ie whether those with legal responsibility failed in their duty to protect children in their care.

Most Local Authorities and organisations who have taken part in the case study have now accepted that there were such failures and have identified some of those. The extent of the failures is of course a matter for the Inquiry to assess.

The first matter that I want to look at in a bit more detail is the subject of boarding-out, and Your Ladyship will recall that we've heard evidence from a number of applicants who had this specific experience

and they explained that they would not see the care setting as being foster care. They were very clear that it was boarding-out and they were boarded-out with guardians.

Clyde said that radical change was necessary to the practice of boarding-out children from cities to crofts. It was noted that children were boarded-out in remote areas and to poor living conditions. It was also observed that boarding-out seemed to be regarded as an industry, with the labour provided allowing the guardians to maintain their crofts.

However, rather than recommending that the practice should cease, Clyde said that if it had to be done, then greater care should be taken in selection and inspection. That allowed the practice to continue.

In addition, the Children Act 1948, as I've already said, gave legislative preference to boarding-out, which might be said to have provided further support for its continuation.

Professor Abrams's evidence obviously dealt with this subject. The focus of her report was on Glasgow, however we did hear evidence that Edinburgh and Aberdeen also boarded children out to crofts and farms.

In the report of the Boarding-out Committee in 1950, the view was that Local Authorities should reduce

reliance on boarding-out to rural areas and that the Secretary of State should intervene if they failed to comply with that advice. However, that report perhaps failed to recognise the reality of living conditions, particularly in Glasgow, whereas Professor Abrams noted it wasn't until the 1960s that real progress was made in relation to rehousing.

However, in 1959 there were new regulations and a memorandum on the boarding-out of children was published by the Scottish Home Department. Amongst other things, the memorandum underlined the importance of maintaining family relationships and said that administrative convenience should not take precedence over the child's welfare, so boarding-out to rural areas seemed to have been seen as administrative convenience.

The report went on that both administrative convenience and the child's welfare would be best served if the child was boarded-out in or as near as possible to the area of the Local Authority receiving the child into care. However, we know that particularly in Glasgow the practice continued throughout the 1960s and the 1970s.

LADY SMITH: And that still shows they weren't really thinking about the profound change in culture that a child would be subjected to in being taken from the

centre of the city onto a farm or a croft.

MS INNES: Yes, and that's one of the most notable features of this practice, the removal of children from their home area into what was described as a completely different world and in some cases with a different language.

LADY SMITH: Yes, indeed.

MS INNES: Another issue with boarding-out was the severance of family ties. Of course that happened in other settings as well. However, we heard very stark evidence from applicants who had experienced boarding-out not only being separated from their family in the city but even where children were placed on Tiree, we know that there were examples of siblings being separated and having no contact with one another while they were there.

There was very limited visiting with no opportunity to form any sort of relationship with the Children's Officer.

We also saw that poor and unsanitary household conditions were tolerated. No electricity, outdoor toilet facilities, little or no privacy for bathing, and in some cases reports in records of water ingress and modernisations of dilapidated houses taking several years to complete, but children weren't moved. They

remained in these circumstances.

One of the most notable aspects of boarding-out is the heavy farming work which was undertaken by children, which was clearly contrary to government guidance and local rules at the time.

In many of the cases we heard about it must have been clear to the Local Authority that the children were undertaking extensive work, not least because they were placed with guardians who were, either by reason of age or infirmity, unable to undertake the work themselves.

Some of these issues are perhaps reminiscent of evidence heard in relation to child migration and I think one of the applicants at least drew that comparison.

In the immediate post-war period there might have been some justification for the maintenance of the practice of boarding-out to rural areas subject to better assessment and oversight and perhaps trying to maintain family ties. However, what is clear is that the system continued long after any possible justification for it was gone.

LADY SMITH: And to repeat what I said earlier, there seems to be no initial thinking about what it would mean for the child to be removed from the centre of the city to these areas in the countryside and planning as to how

they were going to keep in touch, find out, try to ensure that the child was being looked after properly, was not being exploited, was not being abused. It just wasn't there.

One can understand that, if you take Glasgow, for instance, immediately after the war, there was a profound lack of housing. Houses had been destroyed in not just their hundreds but thousands, with children on the streets. Easy to think that the best thing you could do for the child was get it out of those circumstances. Well, it may be, but that doesn't mean you don't have to think very carefully about where exactly you're putting the child and how you're going to attend to their welfare and secure that they're not being abused.

MS INNES: Absolutely.

Now I'm going to move on and look at some other areas which relate to foster care and boarding-out. First of all, in relation to the recruitment and assessment of foster carers.

It's crucial that those who have the potential to abuse children in care are prevented from becoming foster carers in the first place and clearly this is an area which has developed over time. For example, in the early part of the Inquiry's time frame, brief

application forms and references appeared to suffice, whereas now detailed competence-based assessments are required. Cursory assessments which appeared to be based primarily on the person's willingness to foster were clearly inadequate and we saw examples of people simply having answered an advert in a newspaper and filling in a short application form.

However, although matters have developed, even in more recent times room for improvement in the assessment process can still be identified, and for example we heard evidence of an independent review commissioned in 2021 by the National Fostering Association following the conviction of a foster carer. Recommendations were made in that, including the need for a more investigative approach to previous partner checks and references.

However, even simply passing the initial assessment is not sufficient. Carers must be subject to ongoing monitoring and review. We heard evidence of failures to review placements and changes in personal circumstances, for example following the death of a spouse. An example of that was explored with Aberdeen in the case of William Watson, who was later convicted.

Another example is to be found in Professor Kendrick's Predictors of Abuse Report for Tayside in 1995 where allegations were made following

significant changes in the circumstances of foster carers. However, there had been no comprehensive reviews as to whether the carers should continue to have children placed with them.

Professor Kendrick recommended that that should always take place where there were significant changes.

More recently, the Clackmannanshire July 2019 Review Report referred to the carers having had various health issues over their time as carers, which began in 1996, and did not result in a full assessment of their impact on the children in their care.

In the East Lothian significant case review from 2008, one recommendation was that a full re-assessment of the fostering household should take place 10 years from approval, with this being done by another worker to ensure objectivity, and the witnesses from East Lothian told us that they had recently recommenced that practice. So even although there hadn't been any changes, every 10 years they would carry out a full re-assessment of the household.

There were examples of children being placed contrary to the carers' original approval criteria. That related not only to numbers in placement but also to age and gender of children. There were some notable examples of overcrowding, not only from the evidence of

applicants and foster carers but from more recent reviews. For example, Wendy McKitterick from Stirling Council spoke of the need to ensure that there weren't high numbers of children in placement in the aftermath of the report by Sandy Jamieson in about 1999. That report had followed a case in which there had been allegations of abuse.

The South Ayrshire Independent Review in 2012 also highlighted overcrowding in a fostering household and that was between 2001 and 2007, and the Clackmannanshire July 2019 Review also raised this issue in relation to carers who were approved, as I said, from 1996 up to 2018.

This may well indicate pressure on resources, and we do know that there has been some additional regulation of placement numbers since then, albeit of course there are still exceptions provided for.

During the course of a fostering placement, visits should of course take place and Clyde suggested that visits should take place within a month of boarding-out and then six-monthly. All of the visits were to be without prior warning. However, visits became predictable, particularly in a rural area, as we heard from some of the applicants who were boarded out.

Many applicants spoke about being prepared for what

they understood to be pre-arranged visits and it does appear that over time, despite what Clyde said, visits did become more predictable and were pre-arranged, and then in most recent practice the idea of the unannounced visit has come back into play.

The frequency of the visits have certainly increased over time, albeit that wasn't without initial resistance, as we saw, I think, from Professor Abrams's researchers. However, even when visits were recorded, it was not always clear that the child was seen. So sometimes the carers were visited when the child was at school and sometimes the focus of the visit was on speaking to the carer rather than seeing the child.

Regular visiting as well as unannounced visits are important and in relation to unannounced visits there were suggestions from some in relation to more recent practice that even now they are too infrequent or they were predictable in terms of happening during working hours rather than being in evenings and weekends.

LADY SMITH: You can see a number of factors at play there. Social workers are not on duty 24/7 and they may naturally want to fit their visits into their normal working hours. Equally, if you're talking about frequency of visits, I suppose a balance has got to be struck between having enough visits to do your best to

ensure a child is not being abused, but not be visiting so often that you never let the foster household settle down and tick over, and I can see from the fosterers' perspective they don't want to feel that: every day I've got the social worker at the door and I can never quietly get on with the family life I'm trying to maintain.

MS INNES: And that's always been the tension, even since Clyde, the tension between creating as natural an atmosphere in the household as possible as well as ensuring the safety of the child.

LADY SMITH: Yes.

MS INNES: Even where regular visiting is undertaken, there are risks in terms of lack of continuity and staff, including social workers and team leaders, so somebody supervising a social worker. Coupled with poor or inadequate record-keeping, which I'll come back to, that could result in an inability to see any incidents as anything other than isolated. So to see patterns of behaviour.

An issue which was highlighted in some cases was the lack of challenge, particularly of established foster carers. There may also have been an overly-positive or optimistic view of some carers, perhaps simply by virtue of them seen as undertaking a worthy role.

For example, in relation to a particular case involving the conviction of a member of the fostering family, Lillian Cringles of Dumfries and Galloway Council reflected that it appeared that the carers were held in high regard in the local community.

In the case of Paul Martin, Jacqueline Pepper of Perth and Kinross noted that the focus was on supporting him, as he appeared to be struggling, rather than considering what was going on with the children.

Looking back even to the newspaper headlines at the time of the Monckton Report in 1945, one read that there was too great a readiness to assume that all was well, and I would suggest that certainly resonates with evidence that we have heard.

In the earlier years, it appears that there was little or no training for foster carers. In Clyde there was reference to training, but of social workers rather than foster carers. Some of the documents read as if the expectation was simply that if a child was placed in a family home, all would be well. However, Clyde did recognise that children in care could suffer from psychological difficulties and that foster carers might require support from the Child Guidance Clinic. He noted that this aspect was liable to be neglected.

The importance attached to training of foster carers

has certainly increased over time, and training is a matter which we understand is addressed at foster carer reviews, but it appears that dealing with non-attendance remains problematic, with no sanctions for not attending training.

For example, in the Clackmannanshire Review Report from 2019, that referred to non-attendance at training by one of the carers where there was no sanction, review or perhaps an alternative approach being taken. We heard examples from some witnesses of attempting one-to-one training if a carer wasn't attending group training sessions.

There is potential for inconsistency in availability, content and standards of training. The development of a national learning and development framework for foster care with opportunities to obtain qualifications and underpinning regulations being put in place was a recommendation of the Foster Care Review, which it is understood was accepted by the Scottish Government in about 2014. The Standard for Foster Care was published in 2017 and we heard evidence from the SSSC about that. However, it is less clear how that has been used in practice, for example it appears that no review of the terms of that standard has been undertaken.

Fostering panels were introduced by the 1985 regulations, although I think, for example, Strathclyde and Barnardo's had such panels before then but they came into legislation in 1985.

The way in which they have operated has also developed over time but again there is variation in approach.

So one of the issues that was discussed in the evidence that we heard most recently was an independent chair. For example, East Renfrewshire introduced an independent chair in about 2014, 2015. West Dunbartonshire has recently, this year I think, introduced an independent chair. Edinburgh has three independent chairs and three in-house, and Glasgow's chairs are all in-house. So there are variations in approach. And those who had introduced independent chairs suggested they had done so because it provided an extra safeguard.

LADY SMITH: And yet those who don't have it, Glasgow's an obvious example, are clear that it's not needed.

MS INNES: Yes. So there were conflicting views about that issue.

LADY SMITH: Yes.

MS INNES: Now I'm going to move on to look at some aspects of reporting of abuse or response to abuse, and one

theme which has emerged very strongly from the evidence is that the voice of the child was either not heard or that it was heard and discounted or not believed.

Professor Abrams noted that in the early file she reviewed, children's voices didn't appear at all and there was no evidence of their experiences or opinions being taken on board. And there are a number of aspects to this theme of the voice of the child. So the child not being seen regularly, as I've already mentioned. The child not being spoken to outwith the presence of the carer or outwith the home. Even where the child was seen outwith the presence of the carer, there were examples of the child not being seen individually, so perhaps seen with other children in the household or even with their siblings. Not enough time being spent with the child. Professor Abrams referred to a Scottish Home Department commissioned study published in 1963 which found that the time spent with children and their carers was extremely short, often a matter of minutes is her evidence.

Again, from the child's perspective, a lack of continuity in workers was an issue, meaning that a trusting relationship is more difficult to establish with the child. And obviously some applicants recognised that social workers move job and they retire.

However, some spoke about having multiple social workers during the course of their time in foster care and how difficult it was to build any sort of relationship with that person.

Some applicants talked about the type of questions posed, so leading questions along the lines of, "You are happy here, aren't you?" and they felt that they couldn't speak out about what was really happening.

There were issues about the same social worker being responsible for the child and for supervising the foster carers, and that was particularly prevalent in the earlier years. In modern practice it does appear that these roles have been separated, but we did hear evidence in the more recent case of the conviction of Chris Thomson, which is a case from Scottish Borders, that on occasion one social worker would cover both aspects at reviews of the placement and they thought, having reviewed the circumstances of that case, that that was something that they had to stop.

LADY SMITH: There seemed to be a general view across the Local Authorities and other providers that you need two separate social workers.

MS INNES: Yes. And there was a lot of discussion about the communication as well that's required.

LADY SMITH: Yes.

MS INNES: Because I think more generally we heard some evidence about how the teams have been separated, the Fostering Team and the Children and Families Team. However, that in itself can give rise to risks of, I think in one example, I think from West Dunbartonshire, where the Fostering Team were not recognising risks in the same way as they would if they had had greater interaction with the Children and Families team. So work was required in order to ensure that they were doing training together and that sort of thing to improve communication.

LADY SMITH: Yes, absolutely.

MS INNES: Another issue in respect of the voice of the child was the child having no clarity as to the role of the social worker, and we saw this in a number of different ways. For example, the social worker being a friend of the foster carer's. Other examples were the child being told that the social worker was a friend. And then in other examples the focus of the worker being on the carer to the extent that the child did not regard them as being a person who was there for them.

Another matter that's come out in the evidence is the isolation of the foster care setting, and obviously the child is separated from siblings and family to a greater or lesser degree, but we certainly, I think,

got the sense that applicants felt that there was perhaps nobody on their side to speak for them.

Over time and perhaps particularly with the advent of the Children (Scotland) Act 1995, the importance of hearing the voice of the child has been emphasised. It was a key issue in the appropriately named Listen - Take Seriously What They Say Report in Lothian in 1993, and that was followed by the Edinburgh's Children's Report in 1999 which noted that children in foster care had the greatest potential for isolation from outside sources of help, so indicating that this was a matter which required specific attention.

Despite these developments, it cannot be said to have been fully resolved within the Inquiry's time frame. For example, one of the findings of the Clackmannanshire significant case review from April 2014 in respect of -- and this is a pseudonym -- 'Lucy', was that the child was not seen and heard, so I would suggest that there can be no complacency in relation to this area despite the changes.

LADY SMITH: I think you're right, absolutely right about that.

MS INNES: Another matter was about recognition of behaviour, so we heard evidence of bed-wetting, self-harm, sexualised behaviour, running away and theft.

However, the issue is how that behaviour is interpreted, and this is not an easy matter. I think that was highlighted in the evidence of Professor Biehal and Dr Grant at the outset.

From her research, Professor Abrams noted that such behaviours were often seen as a problem for an adult rather than the issue for the child and they were sometimes treated with punishment rather than with care.

It may also be too readily attributed to pre-care experience and it's an issue for all around the child, so teachers, health professionals as well.

LADY SMITH: One has to approach it not by saying, "This must be because the child is being abused", but that has to be one of the possible explanations along with the child is just being naughty or the child was previously abused and this is the impact of that or there's something else going wrong in the child's life at school or some club that you take them to or whatever. But you don't rule out the possibility that something abusive is happening in the foster home.

MS INNES: Yes. And I think the danger is ruling it out and an example of that was in the Clackmannanshire Significant Case Review where behaviour was interpreted by the carer and there doesn't seem to have been any interrogation as to, you know, was it possible that the

child was behaving in this way because she was being abused in the foster home, which she was.

LADY SMITH: Indeed.

MS INNES: As I've already mentioned, there are issues about record-keeping and we heard a great deal of evidence in relation to this and I would suggest we heard evidence of widespread failures in this regard.

First of all, an inability to find files, which ought to have been retained. That was particularly clear in the case of applicants who had lived on Tiree, and often they seemed to be unable to even be able to prove they had been on the island and had resorted to essentially undertaking local research in order to establish that they had been there.

Even when there were records, there were gaps in what was recorded, in respect of visits, outcomes of investigations, responses to complaints and allegations, and files even sometimes lacked full names and dates of birth of children who were placed with carers so it wasn't possible to identify which child had been with which carer at any given time, and that's not to mention those applicants who told us that their names and dates of birth were wrong, either in their files or they were given the wrong information.

LADY SMITH: Yes. Sadly this isn't the first case study in

which I've heard that. And people may have grown up thinking their birthday was on a different date and they're a different age than in fact they are.

MS INNES: Yes.

We heard evidence of disorganisation of the files to the extent of part of them being incomprehensible.

We heard in the past about the use of family files rather than files for the individual child, so that made it difficult to actually work out which part related to the individual.

In the past it appears that there weren't separate foster carer files. Obviously the retention periods are different, so that may be why they've not been found. But it appeared that there was a period when there were no separate files for foster carers and information was then contained perhaps in the children's files or perhaps in a book that the foster carer kept in their house.

Failures in this regard must expose children to risk of abuse as there is no ability to trace patterns of behaviour, whether in the child or in the foster carer. This was highlighted in Professor Kendrick's 1995 report for Tayside where he noted an example where two allegations of inappropriate touching of a sexual nature were made but nonetheless a 12-year-old girl who had

suffered sexual abuse already was placed and shortly thereafter an allegation was made and substantiated.

One of his recommendations at that time was that information needed to be drawn together in a coherent way, perhaps in the carer's file for presentation to reviews.

A more recent example of this was in relation to the conviction of Ruth Johnstone where Renfrewshire Council provided a chronology of the concerns and complaints from 1992 until the children were ultimately removed in 2001. The need for chronologies in carers' files was widely recognised, although the time at which that had been identified varied between different Local Authorities and providers.

We heard from some Local Authorities that they considered that this was an area for further improvement, not only in relation to keeping a chronology but of course the content of a chronology.

Failure to keep proper records also creates very significant issues for people who are accessing their records later in life in terms of their identity and in order to make sense of what has happened to them. We heard about issues in relation to redaction and the way in which the records themselves are framed, for example derogatory language being used about the child or the

child being blamed for exhibiting particular behaviours which were in fact a consequence of abuse.

Another matter is how the issue of complaints or allegations were dealt with. It was noted by a number of providers that some complaints were dealt with informally rather than in accordance with the appropriate procedures at the time or because they weren't recognised as concerns which ought to have given rise to a review or perhaps a risk assessment. We heard a number of examples of this.

Professor Kendrick noted in his 1995 report for Tayside that there was a lack of consistency in response, and again this was borne out in the evidence that we heard.

Even where we heard evidence of a review, there were some examples that these concerns, complaints or allegations didn't make its way into the papers for the panel, and obviously it's important that the panel receives that information so that it can take it into account.

There were other examples where abuse was reported but no action was taken and the child remained in the foster placement. In other cases an investigation commenced but the child remained in the placement meantime, and that was in some instances where very

serious allegations had been made and a police investigation had commenced.

There were also examples of children being told that they had not been believed and that might be in relation to the allegation of abuse itself or it might have been in relation to more minor matters. So, for example, theft of food in the house was an example, where the child was told that they were not believed and the applicant gave evidence that that then impacted on their ability, understandably, to speak up when they suffered abuse because they felt they wouldn't be believed.

On occasion, retraction of allegations was considered to be the end of the matter.

Even where there were investigations, there were examples of the process being flawed, so, for example, the child being spoken to in front of the carers, so not a proper process.

LADY SMITH: That is so hard to fathom as to how anybody could think that's the right way to investigate a complaint.

MS INNES: Yes. I think we saw some examples of the carers having been spoken to separately and then the child being spoken to but in the presence of the carers.

LADY SMITH: Yes.

MS INNES: We also saw examples of the carer being

exonerated rather than carer being taken to note the different outcomes where there is insufficient evidence, and we heard from Alison Gordon from North Lanarkshire Council about the policy that they are currently working on in relation to concerns, complaints and allegations and making sure that these are properly noted and dealt with.

Of course it's not sufficient for regulations, policies, procedures and guidance to provide that certain things should be done. It has to be applied in practice and compliance has to be checked.

Fostering services are now inspected by the Care Inspectorate but it is the service which is subject to the inspection, not the foster placements themselves and whilst these inspections are done at short notice, they are announced, so within Local Authorities and organisations, compliance has to be monitored within the authority or organisation, and again there appeared to be varying approaches to this in terms of quality assurance and how often files were reviewed.

Another matter which was highlighted in the evidence was the possibility of a national register for foster carers.

Again going back to Clyde, Clyde recommended that cases of unsatisfactory foster parents should be

notified to the government department who was going to take responsibility for this area of work. Abrams found no evidence of this so didn't know whether the system had been put into operation at all.

There is no national register now, but as I've said, a number of witnesses did suggest that one should be set up as it would provide an additional safeguard. Others were of a different view.

It is noted from the Scottish Government's written submissions that this would involve a duplication of work which is already done under the PVG scheme and involve additional cost that may result in no material benefit. That said, as I've indicated, there appears to have been a contrary view from some witnesses, and of course not all de-registrations result in a carer being put on the barred list and the Inquiry did hear an example of this in relation to a carer who was de-registered by the City of Edinburgh Council on the basis of a risk assessment following serious allegations of abuse. These were reported by the City of Edinburgh to Disclosure Scotland, but following consideration it was determined that that person should not go onto the barred list.

So it appears that there's a difference between being de-registered following serious allegations of

abuse and what will show in terms of being on the barred list.

LADY SMITH: Is there not likely to be some benefit also in simply having a national register that makes it clear where foster carers are, where they're available, what they have been registered for, whether it's short-term, emergency placement, long-term, or whatever, both from the perspective of those who have a duty to place a child being able to consult it to see where, if they don't have people in their Local Authority, where they might go to look for them, for government just to keep track of trends in available foster carers in different areas, if there's a change then they can look at why that change is occurring? I'd have thought it could be helpful in many ways and track through to a better system that hopefully helps to protect children from being abused?

MS INNES: Certainly some of these issues I think were looked at in the Foster Care Review, the outcome of which was it didn't recommend that a register should be put in place at that time.

That said, we did hear evidence from a number of chief social work officers saying that they thought that this would be a good thing, so it's certainly a matter for discussion.

LADY SMITH: Certainly. Thank you.

MS INNES: There was some evidence of concerns about sharing of information, again, or lack thereof, raised by chief social work officers, and that was particularly between the police and Crown and social work, so knowing, for example, if somebody had been arrested in respect of an offence that wasn't directly related to the foster placement, so, for example, it wasn't an offence in respect of sexual abuse of a child, say, but was perhaps an assault in the community, and some Local Authorities gave evidence that those were things that they would want to know about because it could impact on the foster placement, but they felt that they didn't get that information any more.

Obviously, there are issues about sharing of information, but it was highlighted.

LADY SMITH: I can see that, whilst the next time enhanced disclosure is applied for, that kind of thing, even if there's been no conviction, ought to show up on the advanced disclosure, but that may be months down the line. In the meantime, everybody's in the dark; and in the modern world we can have data sharing agreements that are in line with data protection requirements.

MS INNES: I think that was the issue that was being raised by the witnesses who spoke about that particular

concern.

LADY SMITH: Thank you.

MS INNES: It does appear that in some instances where there was serious harm and even where convictions resulted, significant case reviews or learning reviews were not carried out and the reasons for that are unknown.

We heard from various Local Authorities, particularly in the most recent weeks of evidence, about reviews which had taken place, internal reviews, independent learning reviews and a couple of significant case reviews.

In some cases, Local Authorities or providers were unaware of the progress and conclusion of a police investigation or prosecution, particularly where that had taken place after the carer had been de-registered, so they may have de-registered the carer on the basis of a risk assessment or the carer may have retired, and then allegations were perhaps made at a later stage where there was police and Crown involvement at a later stage.

However, I think we saw from the evidence of Jacqueline Pepper in particular in relation to the conviction of Paul Martin that it is important for those responsible for the provision of foster care to be able to review such cases and I would suggest that valuable

learning can be obtained even if the placement was some time ago, and I think that was the evidence that we heard from Jacqueline Pepper.

Where reviews have taken place, there has been some evidence that the learning from those has not been shared, particularly obviously if it's an internal review, but even in some cases this applied within an organisation.

For example, we heard about the initial report from South Ayrshire in 2008 which didn't seem to have been widely shared before 2012. Clackmannanshire's Significant Case Review was kept confidential, I think after a discussion and discussion with the Care Inspectorate. Obviously there are good reasons for confidentiality to protect the child. However, the learning points from that review didn't really seem to have been shared internally or externally.

So whilst the Care Inspectorate now collate and publish Learning from Significant Case Reviews or Learning Reviews, first of all you need to have a review, and the information from that has to be shared.

Again I would say it's important that learning is shared and we heard from, for example, Professor Kendrick from his 1995 report, he was

suggesting essentially chronologies are an important thing, but that wasn't shared more widely at the time because obviously it was confidential. There was then disaggregation, the 1995 Act came in, and nobody really knew what had happened with Professor Kendrick's recommendations.

It also came out in the evidence from South Ayrshire, I've mentioned the 2008 report, and then further work in 2012 with a lack of clarity as to whether the recommendations had actually been implemented, and obviously South Ayrshire have done work to check that.

LADY SMITH: The chronology point is a very good example. There you are, 27 years have passed before a learned professor recognised their value and only now are we having a series of chief social work officers and those in similar positions of responsibility saying: In the future we really all need to be recording chronologies because they're so valuable. More than a quarter of a century since the idea was first formulated but wasn't shared at the time.

MS INNES: Yes, my Lady. I think that there is a danger in there being reviews, even publicly available reports -- I think Jackie Irvine spoke about this in her evidence back in May -- that with turnover of staff there's not

necessarily continuity of information and learning, so people don't remember what recommendations were made; and if one goes back to the Listen - Take Seriously What They Say Report, the Kent Report, the Edinburgh Children's Report, the Fife Report, all of these contain valuable recommendations that people are still talking about but they were spoken about publicly some time ago.

LADY SMITH: Yes. What in other fields is referred to loosely as corporate knowledge gets lost.

MS INNES: Yes.

LADY SMITH: Yes.

MS INNES: Now I want to say a word about apology. I note this is raised in the submissions that INCAS have submitted.

Many Local Authorities and organisations have made general apologies in the course of this case study and that is of course, I'm sure, welcomed by applicants.

However, we did hear evidence from some applicants that they felt that a generic apology wasn't sufficient. It needed to be specific to their experiences.

This perhaps emerged more in foster care because applicants are not part of a group who attended an institution and therefore the individual home that they were living in is a setting which is almost unique to them.

When asked about a personal apology in relation to the evidence of Shirley Caffell, Amanda Hatton from City of Edinburgh said that she was sadly not able to offer a personal apology because of insurance. Now of course there may be particular reasons in a given case why a personal apology can't be given, but it appeared to be that this was a blanket approach.

Given the terms of the Apologies (Scotland) Act 2016, it's perhaps not immediately clear why this is the case but these are of course really matters for lawyers to address rather than officials.

What I would say is that we heard the power and saw the power of a personal apology in the evidence of 'Elizabeth' , who was speaking to abuse suffered by her late husband 'Andrew', on the very first day of applicant evidence. When the personal apology from Barnardo's was read to her, she said:

"That was all my husband ever wanted from them, was just: we're sorry, we should have listened to you, we should have asked you individually what was going on. That was all he ever wanted, was: sorry, we've made mistakes and we've learned. It's the start of the healing process, we're sorry. If Barnardo's could have come and said to him: "We're sorry", when he was here, maybe that could have started him back further along the

road to healing for himself."

As I said at the outset of this case study, it was noteworthy that some of those responsible for the provision of foster care did not seek leave to appear. Some were cited to give evidence in response in the final phase of the case study and those who were not cited and don't have leave to appear have now been served with Section 21 notices seeking their response to the evidence led to ensure that we have their response.

Those who took the opportunity to fully engage with this case study not only added to our own learning but often provided reflective evidence indicating what they were taking from their engagement now and I would suggest that can only be to the benefit of children who are in foster care now.

LADY SMITH: Absolutely, and in some cases we can see that beneficial changes have already occurred, which some witnesses frankly accepted probably wouldn't have happened if it hadn't have been for this Inquiry.

MS INNES: Yes, that's correct, my Lady.

LADY SMITH: Yes.

MS INNES: Those are my submissions, my Lady.

LADY SMITH: Thank you very much, Ms Innes.

I'd now like to turn to INCAS and invite Ms McCall to address me. When you're ready, Ms McCall.

Closing submissions by Ms McCall for INCAS

MS McCALL: Thank you, my Lady. In their opening submission INCAS made reference to the Clyde Committee's visions that children in need of care should get the nearest approximation to family life and should receive that individual treatment whereby they secure the necessary opportunity to build up their own personality and equip themselves for the transition to independence and self-reliance in later years.

They drew attention to the committee's recommendations for better selection and inspection of foster parents, more specialised training for Local Authority officials and for the need to ensure that financial gain was never the main motive for fostering children, and they asked the Inquiry to consider the extent to which these recommendations were fulfilled.

INCAS also highlighted their concerns about the placement of children and their treatment in foster care. The Inquiry has heard detailed evidence from survivors about their experience. There have been many descriptions of physical and sexual violence, forced labour, neglect, estrangement from siblings and other family members.

Even allowing for differing standards, in INCAS's submission, it is sadly all too clear that fostered

children were subject to abuse and INCAS trusts that the Inquiry's findings will reflect the nature and the extent of it.

The evidence establishes that ill-treatment was not confined to children placed by or in a particular Local Authority area, nor can it be dismissed as a result of a few bad apples within the ranks of foster carers.

In INCAS's submission, the evidence heard in this case study demonstrates systemic failures, and in this closing submission they set out examples of issues that arose time and again and they invite the Inquiry to make the necessary findings to reflect those failures in the system.

Turning to the recruitment and selection of foster carers, the evidence demonstrates that the process for selection and recruitment of carers was not fit for purpose in guarding against the risks of the wrong people becoming carers or individuals becoming carers for the wrong reasons.

The Clyde Committee had highlighted the importance of ensuring that money was never the primary motivation for enrolling as a carer, but in spite of attention having been drawn to the risks around financial motivation, the Inquiry has heard evidence that for some it appeared that it was all about the money.

This was illustrated by the absence of love and affection shown to fostered children, the diversion of money from the needs of the fostered child to those of the biological children of the carers, the failure to provide the fostered child with adequate clothing or food.

The evidence shows it was not only financial motivation that needed to be guarded against. The Inquiry has also heard evidence that being a foster carer bestowed a favourable status in the community and that this reputational advantage could be enhanced by the willingness to foster particular children, notably those from a minority ethnic or mixed-race background.

There's been significant evidence of foster carers using children as slave labour. This seems particularly so in remote or rural settings where it was at times combined with problems of language and culture, with children being placed in a community where the predominant language was not their mother tongue.

While this is a failure in the process for assessing the suitability of placements, it's also an obvious failure in the system for recruitment and selection of suitable parents. The selection process either failed to pick up on improper motivation or in recruiting carers there was a failure to make clear what was and

what was not acceptable in relation to any expectation of children doing chores.

For many of the older survivors boarded-out to the Highlands and Islands they did not feel they were part of a care system, but rather they were simply sent away as labour.

Again, even allowing for differing standards in previous decades, there can be little doubt that children were subject to forced labour.

LADY SMITH: And it does chime with what I heard evidence about in the child migration case study, about children being sent thousands of miles away and then used as labour, as little labourers and bare feet in the cold in some cases.

MS McCALL: Yes, and that's been reflected by the views of survivors expressed to me, my Lady.

Can I turn then to the placement of children?

From the evidence led, the Inquiry should conclude that there were systemic failures in the process of placing children appropriately. Children were at times sent to unsuitable placements. Children were left or left longer than they should have been in placements where it was apparent there were problems, including abuse.

By way of example of unsuitable placements, children

who displayed challenging behaviour, perhaps as a result of trauma, were placed with novice carers. Such carers were ill-equipped to deal with the child's behaviour and were not given sufficient support, resulting in the breakdown of the placement.

As a result, the concern is that children with problems were labelled as problem children and treated accordingly.

As already mentioned, children were sent to placements which were unsuitable due to the culture and language of the family and/or the community into which they were fostered. These placements were geographically remote from the area familiar to the child and from any existing community or family ties.

Children who had been placed in an emergency did not have the suitability of that placement reviewed in a timeous manner, with the result that they remained for longer than they should have in an unsuitable setting.

Aside from issues around the suitability of the initial placement, there was evidence that children were returned to and were left in placements even after it was or should have been apparent that there was an issue. At times this resulted in further abuse of the child within the placement.

The evidence of children remaining in abusive

placements was illustrated by the accounts of Richard Tracey and 'Alex' . Social workers were made aware of allegations of abuse. It appears some sort of investigation took place. However, in spite of an apparent admission by one of the foster carers, the placements continued.

Even when it was recognised that children needed to be moved out of an abusive placement, there was evidence that they were left longer than they should have been. This was illustrated by the evidence of Shirley Caffell. It was clear from her account, and the records confirm, that problems were apparent in [redacted] 1967, yet she was not moved until [redacted] 1968. During that time, she [redacted] experienced further abuse. Even when the police became aware, [redacted] returned to the same placement where [redacted] endured another three weeks.

Shirley's was not an isolated experience.

I turn then to the failures to listen to children or others.

The Inquiry has heard evidence that children were not listened to when they made allegations of abuse. Children did not have a trusted point of contact independent of the foster carer in whom they could confide. As a result, children were often interviewed about allegations in the presence of the carer.

Even where no accusations of abuse had yet been made, there were instances of children being told by the foster carer how to behave and what to say to social workers during any visits. There were also examples of social workers telling children to be grateful or to stop being naughty rather than enquiring after their well-being.

The system was such that children's voices were not easily heard and were rarely heeded.

While the Inquiry has heard examples where others alerted the authorities to abuse and action was taken, the Inquiry has also heard of instances where those voices fell on deaf ears and concerns were either ignored or not acted upon swiftly. These included teachers, clergy and a general practitioner.

Moving on to failures to investigate. The Inquiry's heard numerous examples of social workers, teachers and even police being alerted to potential abuse yet no steps were taken to formally investigate.

It is very concerning that survivors have given evidence that they told a social worker or other responsible adult about the abuse but nothing was done. That concern is amplified when it's appreciated that in some cases the social work records confirm that the authorities were aware of the allegations or signs of

possible abuse or concern, yet there is no evidence of any investigation or action being taken.

Rather than being the result of individual mistakes or errors of judgement, the Inquiry should conclude that the failure to investigate or investigate properly was systemic.

Retention of abusive carers. There were a number of examples where it appears social workers had concerns about a foster carer or even where carers had been reprimanded but the carers remained within the system and were able to foster or adopt further children.

Moving to the failures to respect and safeguard children's family ties and history. Many of the problems highlighted in this submission serve to illustrate that the process of placing children in foster care was far from being child-centred. Aside from the issues I've already highlighted, it seems there was little or no concern for the needs and rights of children to maintain their identity, history and family ties.

Children were placed apart from their siblings. Their birthdays were not marked in foster care. In some cases, their dates of birth were changed. Children were told their parents were dead when they were not. Gifts or cards from family were intercepted and destroyed.

So in conclusion, INCAS recognises that systems and processes have been improved. That is apparent from the evidence of the Local Authorities. No doubt the Inquiry will give consideration to those changes in deciding on whether and on what recommendations to make to ensure best practice.

What INCAS asks is that the Inquiry record and acknowledge the extent of the past abuse of children in foster care and that Local Authorities and others failed in their duties to protect children.

The examples set out in this submission permit the conclusion that there were systemic failures throughout the fostering process, and as a result children were exposed to unnecessary suffering. They were not listened to and not believed.

There is a recurring theme in this Inquiry across various case studies to date and it arises again in relation to foster care. It's been mentioned by Ms Innes. It's the issue of an apology.

INCAS notes that a number of Local Authorities have tendered a general apology and that is welcome insofar as it goes, but it's striking that when asked to give a personal apology to individual survivors, the Inquiry has heard officials indicate they are prevented from doing so for insurance purposes.

It is unclear to INCAS why insurers continue to take this stance, not least in cases where the survivor's evidence of abuse is unchallenged at the Inquiry and is supported by contemporaneous records. The effect is to send a message to survivors that they continue not to be believed and INCAS would respectfully invite the Inquiry to give consideration to a more detailed exploration of the barriers to individual apologies.

I'm grateful, my Lady.

LADY SMITH: Thank you very much, Ms McCall.

I'd now like to turn to Police Scotland and Mr Kennedy, when you're ready. Thank you.

Closing submissions by Mr Kennedy for Police Scotland

MR KENNEDY: Thank you, my Lady. I'm grateful for the opportunity to make a closing submission on behalf of the Chief Constable of the Police Service of Scotland.

Firstly, the Chief Constable wishes once again to express sympathy to all those who experienced childhood abuse within Scotland, including those who suffered abuse in foster care.

The Chief Constable would like to reassure survivors, the Inquiry and the people of Scotland that Police Scotland is fully committed to thoroughly investigating all forms of child abuse in Scotland, regardless of when it happened or who was involved.

With regard to this phase of the Inquiry, Police Scotland continues to carry out investigations into non-recent abuse within foster care across Scotland. A number of these investigations have arisen from its review of previous investigations and from new reports of abuse from survivors who have come forward.

Police Scotland is committed to delivering its multifaceted response to the Inquiry by providing information and evidence to the Inquiry team in response to notices under the Inquiries Act, by assessing the current risk posed by any perpetrators of child abuse named by applicants, by investigating new reports of child abuse from Inquiry applicants, by reviewing and investigating previous reports of child abuse in conjunction with the Scottish Child Abuse Inquiry review team of the Crown Office and Procurator Fiscal Service and by continuously monitoring the oral evidence given by applicants and other witnesses during the Inquiry's public hearings.

The information and evidence provided to the Inquiry include Police Scotland's own practices and policies and those of the eight legacy police forces relating to the investigation of child abuse of those in care, including foster care, and how this has evolved over time.

LADY SMITH: Mr Kennedy, it may be my fault by not fully

following what you mean. You mentioned reviewing and investigating previous reports of child abuse in conjunction with the Inquiry team. I don't want anybody to misunderstand how these separate investigation activities take place. Can you just confirm that you're not suggesting that the police and the Inquiry work hand in hand in their investigations?

MR KENNEDY: No, indeed not.

The Inquiry review team is the department in the Crown Office and Procurator Fiscal Service rather than this Inquiry team.

LADY SMITH: Yes. I thought that was what you meant but some people might be confused (overspeaking) --

MR KENNEDY: Indeed, yes. It's a mouthful but it does have the words Inquiry team right at the centre of it.

LADY SMITH: Thank you.

MR KENNEDY: Certainly.

During this phase of the Inquiry we've heard evidence from a large number of witnesses, some of whom have expressed concern about the way in which their circumstances were dealt with by the police. While a small proportion of these relate to Police Scotland, the majority relate to legacy force investigations and from a time when policies and practices were not to modern day standards.

Where issues have been raised about the adequacy of a police investigation, the investigation has been reviewed and, where appropriate, reinvestigated: where concerns have been raised about the quality of service provided by Police Scotland, these have been addressed within the established complaints framework.

Police Scotland recognise the importance of continuous improvement through organisational learning and of ensuring its staff have the best skills and capabilities to deal with the specific needs of child abuse survivors. Police Scotland is keen to take advantage of any good practice or learning opportunities that may be identified from this phase of the Inquiry, they continue to develop and improve its service provision.

Police Scotland continues to build on its engagement with survivors of childhood abuse, seeking views and consulting with survivors, support services and statutory partners in an effort to enhance public confidence and improve service provision. It continues to provide and enhance its information products and has recently refreshed the animated video and information leaflet that I know were previously mentioned.

The information provided allows survivors to make an informed --

LADY SMITH: Is that generally available to the public, both the leaflet and the video?

MR KENNEDY: It's on the website. The website contains a lot of links and various other resources, including this video.

LADY SMITH: On the Police Scotland website?

MR KENNEDY: On the Police Scotland website.

LADY SMITH: Thank you.

MR KENNEDY: It allows survivors to make an informed choice about whether they wish to report abuse to police while also ensuring they're signposted to relevant support services.

Finally, Police Scotland remains committed to child protection, both locally and nationally. Locally on a daily basis it acts in its role as the core statutory child protection agency. Nationally it works with multi-agency and strategic leadership groups to implement continuous improvements and make a positive contribution to protecting Scotland's children, both now and in the future.

Unless there's any further information Your Ladyship would like me to obtain or provide, then that is my submission.

LADY SMITH: Thank you very much, Mr Kennedy. I have nothing else at the moment.

Although it's not yet 11.30, I think before I move to Scottish Ministers, who would be coming up next, I'll take the morning break just now for about quarter of an hour and sit again after that. Thank you.

(11.20 am)

(A short break)

(11.40 am)

LADY SMITH: I'd now like to turn, if I may, to Ms O'Neill, who is here for Scottish Ministers. Ms O'Neill, whenever you're ready, I'm ready to hear you.

Closing submissions by Ms O'Neill for Scottish Ministers

MS O'NEILL: Thank you, my Lady. The Inquiry has the written submissions that have been lodged on behalf of Scottish Ministers and I would adopt those and I don't propose to read them verbatim.

These submissions are made in the context that the operation of foster care and kinship care in Scotland is a matter for Scottish Local Authorities, but as said at the outset of this phase, the Scottish Ministers are responsible for the over-arching policy and legislative framework within which foster care and kinship care services are delivered. These submissions focus on the key issues identified by the Scottish Government from the evidence given to the Inquiry in this case study in respect of which a national response may be appropriate

or necessary.

The submissions also address certain matters in respect of which the Inquiry requested a response from the Scottish Government. There are certain qualifications or exceptions to that, my Lady, and I will come back to those.

LADY SMITH: Thank you.

MS O'NEILL: The written submissions set out the work that the Scottish Government has done in responding to this phase of the Inquiry's work and I will not read out that part of the submission.

I want, my Lady, to acknowledge on behalf of the Scottish Government the evidence given by those who suffered abuse in foster care, kinship care and in boarding-out.

My Lady, I'm very conscious that I think I have given a closing submission in every phase of this Inquiry so far and these submissions are very similar in each of those phases and I'm always extremely anxious, my Lady, not to give the impression that this acknowledgement that is given by the government is done by rote or is regarded as simply standard, my Lady, and I say that for the benefit of any survivors or applicants who are listening to these submissions, that these are given on an individual occasion in each phase

of the Inquiry in response to the evidence that has been given.

It is clear that children suffered serious sexual, physical and emotional abuse and neglect whilst in foster care or while being boarded-out or in kinship care. That included the emotional trauma of separation from siblings and, as in earlier stages of the Inquiry, the Scottish Government wishes to acknowledge the courage of all the survivors who gave evidence about their experiences and about the impact of childhood abuse on their future lives and to record its gratitude to them for contributing to the Inquiry.

My Lady, I will turn to a number of specific matters that are dealt with in the written submissions. Shortly before the deadline for the lodging of submissions, the Inquiry asked the Scottish Government to address certain specific matters and an extension of the deadline for lodging these submissions was granted to allow that to be done. The majority of the matters raised in the request are dealt with in the submissions. There are three matters, my Lady, that are not currently addressed. Those concern whether further regulation is required to provide that foster children and foster carers each have their own social workers. Secondly, whether regulation is required to provide that all

fostering panels have an independent chair. And, thirdly, whether regulation is required to make further provision as to the circumstances in which it is permissible for a Local Authority to place children in a foster home in breach of the criteria set at registration.

The responses to those questions continue to be worked on as a matter of priority and the Scottish Ministers seek the Inquiry's permission to provide further written submissions on those particular matters as soon as they possibly can.

LADY SMITH: How soon is that likely to be, Ms O'Neill?

MS O'NEILL: My Lady, the indication that's been given to me is that it would be some weeks. I have asked those instructing me to convey to those with whom they are working that this is a matter of priority and I've also asked that they take steps to write to the Inquiry with a timescale within which to provide those submissions.

LADY SMITH: I really would like to see them this year, Ms O'Neill. They should have been aware of these issues because they have arisen in the evidence for quite a while.

MS O'NEILL: My Lady, if I may say, I don't think there is any doubt that they will be with the Inquiry this year.

LADY SMITH: Good.

MS O'NEILL: What Your Ladyship has just said will have been listened to by those who are watching this hearing this morning.

LADY SMITH: Thank you.

MS O'NEILL: The first issue is the question of a national register or database of foster carers.

LADY SMITH: Yes.

MS O'NEILL: We've already heard that a range of witnesses gave evidence about the potential benefits of maintaining a national register or database of foster carers. Several witnesses expressed support for such a scheme, while others questioned whether it would add to existing pre-recruitment mechanisms.

My Lady, there's a section of the written submissions that deal with terminology and what might be meant by a register or a database and there are some distinctions in the different ideas that different organisations have had about the particular role that a register or database might serve, particularly the extent to which it would be used for the matching of children as well as providing an additional child protection mechanism.

LADY SMITH: You'll have heard my thoughts, which are as yet in a state of formation, if I can put it that way. I've not reached any conclusions. But I would see such

a register as doing more than being available for matching, as such.

MS O'NEILL: My Lady, I think in some respects the way I would put it was almost in reverse, that it would be principally -- and the concept has been principally expressed as a child protection measure with some --

LADY SMITH: Yes.

MS O'NEILL: -- others advocating that it was also a matching service.

My Lady, the history of that proposal and the discussion around a national database or register is set out in the written submission. Ms Innes referred earlier to the National Foster Care Review and its over-arching conclusion that it would not recommend the establishment of such a register.

I've made reference in the submissions to the Independent Care Review known as the Promise --

LADY SMITH: Just going back to the National Fostering Review, and of course we're talking about the review that reported in 2013 with most of the work being done, I think, in 2012. As I read it, their thinking and interest was principally as a matching tool, if I remember rightly. I'm not saying it was exclusively, and that was perhaps one of the things that weighed most heavily in them saying that they weren't recommending

it, because they didn't see it particularly useful for that.

MS O'NEILL: I think there were also -- and I made reference to these in the submissions, there were also practical issues around, for example, the work that would need to be done with fostering care agencies' IT systems to configure those and it was effectively a conclusion that on balance this was not something that they proposed to recommend.

That was followed up, my Lady, by a working group again looking at what other measures might be taken forward and those are described in the written submissions.

My Lady, where I'm essentially getting to is that this is an issue that has been revisited in the context of the Promise. It was a recommendation of the Independent Care Review, which is otherwise known as the Promise, that there should be further consideration given to the issue of a register. I think Ms Innes concluded by saying that it was at least a matter that merited discussion and, my Lady, the written submissions conclude by explaining that there is work underway to engage in that discussion. There are workshops to be held in the spring of next year, my Lady, with stakeholders and with foster carers to seek views on the

key functions of any proposed register and its potential benefit.

So, my Lady, the Scottish Government is not closed to that conversation and work is underway to look at that issue.

LADY SMITH: I'm very pleased to hear that. I see, not for the first time, protections under the PVG scheme being referred to as perhaps one of the reasons why you shouldn't have such a register, but you'll know, Ms O'Neill, of the criticisms of the usefulness -- the criticisms of that scheme so far as them really being a useful scheme that have been made I think particularly in the boarding school case study but not only there. It's not the great cure-all that seem people seem to think it is.

You'll also know that we've moved into an era now where we not only have a register of independent schools, for example, we have GTCS registration, that often come into the fore in the public eye of the importance of that registration and steps being taken in respect of those teachers who are criticised.

We also have more recently SSSC registration for the very wide range of those who work in the Social Services sector from those who probably wouldn't otherwise have qualifications or have gone into education to obtain

qualifications but are now expected to do so and be on the SSSC register.

I do feel that, as you say, where we are now it has to be considered. How is it that there's this cohort of people who look after other people's children privately in their own homes who are not having to be registered in any way?

MS O'NEILL: My Lady, that perhaps takes me on to the next issue, which is regulation and training, which is a slightly separate issue I think from the question of a national register.

LADY SMITH: Yes.

MS O'NEILL: Again, my Lady, the written submissions acknowledge the discussion that there has been before the Inquiry about the potential for regulation by the SSSC.

My Lady, the Scottish Government's position remains that the regime established by the SSSC, which involves registration of the Social Services workforce and regulation by way of codes of practice, is not appropriate for the regulation of foster carers. My Lady, that is because regulation by a national regulator such as the SSSC would in the government's view be difficult to reconcile with the responsibility of individual Local Authorities to approve foster carers

and to take steps to assess and review their suitability.

My Lady, the fitness to practise regime operated by the SSSC, in terms of which, for example, Social Services workers can have their registration refused or suspended or be removed from the register in response to allegations of misconduct, health issues or deficient professional practice, has been designed in the context of wider employment law rights and protections that do not apply to foster carers.

LADY SMITH: Okay, so, Ms O'Neill, what happens if a particular Local Authority, for example, gets to the stage that in practice it's offering little or not training to its foster carers?

MS O'NEILL: My Lady, I'm going to come to training and I want to distinguish between those two --

LADY SMITH: Between training and qualification?

MS O'NEILL: Between training and regulation, my Lady. This submission is on the question of whether foster carers ought to be registered with and subject to the jurisdiction of the SSSC, and the government's position is that they ought not to be because that is not the way in which that scheme was designed and is not suitable for individuals who are acting essentially in a voluntary capacity rather than as employees with

an employer behind them.

My Lady, that's the submission on behalf of the Scottish Government in relation to SSSC regulation.

LADY SMITH: Can you tell me this: have Scottish Government gone on and asked themselves the question of whether there should be a different body with which there would need to be registration or that would have oversight of the way foster carers are working?

MS O'NEILL: So, my Lady, the Scottish Government has not, I have no instructions that it has considered that particular issue.

One thing I'm going to come to is the ongoing review of scrutiny and regulation and if Your Ladyship allows me to come to that, one of the issues that that is looking at is whether there ought to be a super-regulator for some of these professions as well, so I will come on to that.

I do want to turn to the question of training and qualifications if I may, my Lady.

LADY SMITH: Thank you. Forgive me. There's a lot to think about here. I'm very grateful to you. Do carry on.

MS O'NEILL: As the Inquiry is aware, there is no express statutory requirement for foster carers and kinship carers to undertake training or development work. Training is or should be relevant in practice for Local

Authorities and fostering panels who are approving and reviewing the approval of foster carers and kinship carers, and Local Authorities of course do deliver training alongside, for example, the Fostering Network, which receives funding from Scottish Government to support Fosterline Scotland, which gives advice and assistance on a range of issues, including training.

My Lady, the government acknowledges that the Inquiry has heard evidence from foster carers who have described their experiences of training to the effect that it may not be consistent across Scotland and may be more or less adequate or fit for purpose. Much of that evidence did relate to the historic position, but some of it concerned relatively recent experience, and some foster carers gave evidence that training and the work done to prepare foster carers for their role had developed and improved over the years.

Steps have been taken to develop a more comprehensive national approach to training for foster carers and kinship carers, but the Scottish Government accepts that there have been significant delays in implementing that national approach. In particular, the Standard for Foster Care, which has been referred to already and that was developed by the Scottish Social Services Council, has not yet been fully implemented.

When the standard was published in 2017, the Scottish Government indicated that options for implementation would be considered within the context of the Independent Care Review and the Promise implementation plan that flows from the Independent Care Review makes commitments in the context of training and support for foster and kinship carers.

LADY SMITH: Can you give me any idea of when options for implementation of the standard -- of a review of the standard and the original standard will take place?

MS O'NEILL: I'm afraid, my Lady, they will take place in the context of the wider implementation of the Promise. That work is underway. I can't give Your Ladyship a timescale for implementation of a fresh approach to training.

LADY SMITH: Or the standards?

MS O'NEILL: Well, my Lady, the standard itself would be part of the work in relation to training because you would be training to deliver to the standard.

LADY SMITH: Yes. Is there -- well, has government considered whether there's merit in publishing a standard even if you haven't completed your thinking about government oversight of training systems?

MS O'NEILL: So, my Lady, the original standard of course is in the public domain and is available. It hasn't been

implemented in full but it is available in the public domain as far as I am aware and it's a review of that standard that is being undertaken as part of the Promise implementation.

LADY SMITH: It's now five years out of date; is that right?

MS O'NEILL: It's five years old, my Lady, is the way I would articulate it. I don't think I'm in a position to say that it's no longer relevant or out of date. That's a matter for the review.

LADY SMITH: I can see that.

Can you help me with this, Ms O'Neill: when these considerations take place, whether it's the standard, reviewing the standard, further regulation of foster care, what is the current practice in accessing the learning, understanding and experience of foster carers themselves in Scotland? How does government go about reaching out to involve them to share their ideas and what some of them have learnt over, in some cases, long years of being foster carers?

MS O'NEILL: My Lady, what I can say to the Inquiry is what I understand about specific projects or initiatives that have been undertaken. So I've already I think referred to the working group that was established in response to the National Foster Care Review. That working group included representatives of organisations that

themselves represent foster carers and kinship carers. The representative organisations are part of what the government would describe as the stakeholder group that is involved in these discussions.

As I understand it, my Lady, the work that I've described that is to take place in the spring of next year on the question of registration would also be looking to engage foster carers. Whether, my Lady, that is intended to be through representative organisations or whether it's individual foster carers I would be speculating. I don't have that information to hand, but certainly those who represent foster carers are involved in that process.

LADY SMITH: Yes. Well, thank you for that. But what you've described is, as often happens, the source -- the actual source of information that is relevant to the review, the inquiry or whatever, does not directly engage and it's possibly not just at one remove but two removes from them, that what may have been their learning and ideas is transmitted and it either gets diluted or misunderstood on the way.

As we know, foster care involving so much individual experience, not just for the children but for those who provide the foster care up and down the country, I would have thought that the government might want to think of

how they go about really drawing them in directly to whatever they're trying to learn about and plan for.

MS O'NEILL: I'm conscious that there may be more information about how that is done which I'm not sharing with the Inquiry this morning. The only other observation I would make is in discussion about these kinds of issues in the past, I'm conscious that one of the things that the representative organisations are able to do is to draw together the experiences of perhaps multiple individuals.

I take entirely Your Ladyship's point that that becomes a mediated experience, but nevertheless it serves a useful purpose in being able to aggregate the experience of different individuals.

LADY SMITH: Thank you.

MS O'NEILL: My Lady, just to conclude on training, the Scottish Government also remains of the view that while training is essential, a formal qualification ought not to be a condition of approval for foster carers and kinship carers, and that the introduction of that kind of requirement would not be consistent with the voluntary nature of foster care and kinship care and could have a negative impact on the pool of people who offer themselves as foster carers or kinship carers.

My Lady, I've made reference in the submission to

evidence from one witness expressing that view as well.

My Lady, the next issue is the monitoring and inspection of foster care and kinship care, and again there is evidence before the Inquiry about how foster care service provision is monitored and inspected. I've made reference to the evidence of Alison Jamieson of the Care Inspectorate and in particular to the new quality framework that has been introduced, which is directly relevant to fostering, adoption and adult placement services.

That framework has been discussed in evidence before the Inquiry. It is a relatively new framework and the government's position is that that framework should be given some time to be implemented and that it's too early to determine if that approach has enabled more relevant inspections of fostering and kinship services and to address perceptions that the previous regimes were too prescriptive, generic and process rather than outcome-driven.

More generally, my Lady, and this is the point that I wanted to raise earlier, the Scottish Government announced in September of this year an independent review of inspection, scrutiny and regulation to look at how social care services in the round are regulated and inspected across social care support services in

Scotland.

The stated aim of that review is to ensure that a human rights and person-centred approach is central to the inspection and regulation of social care and to consider how this can be applied across linked services.

It will include, but not exclusively so, consideration of foster care and kinship care and the work of the Care Inspectorate and Local Authorities and, my Lady, it's in that context that the remit for that review includes consideration of whether, for example, there ought to be an organisation akin to the Professional Services Authority and the Inquiry may be aware of the work of the Professional Services Authority for Health and Social Care. It operates effectively as a super-regulator of medical and other professions and provides guidance and support and education to other regulators of those kinds of services. That's part of the review's remit, to think about whether there ought to be a parallel body in Scotland in this sector.

Just to pick up again on something that was discussed earlier, part of the remit of that review involves looking at information sharing and the adequacy of information-sharing arrangements.

LADY SMITH: Thank you.

MS O'NEILL: My Lady, in relation to the inspection and

monitoring of individual placements, the government's conscious that evidence has been given about inadequacies in the arrangements for inspection and monitoring of individual placements, and this evidence, my Lady, points to the need for more comprehensive work by the Scottish Government in conjunction with Local Authorities and third sector organisations, and those who are giving and receiving foster care and kinship care, to understand what, if any, changes may be needed and the Scottish Government will take that work forward as part of The Promise Implementation Programme.

My Lady, the next item is the national foster care allowance and again there has been discussion before the Inquiry on the question whether there should be a national foster care allowance.

The Promise Implementation Plan published this year includes a commitment that the Scottish Government would set a recommended national allowance for foster and kinship allowances in line with recommendations from the national review of care allowances' final report and recommendations and the Scottish Government again acknowledges that the introduction of a Scottish recommended allowance for foster and kinship carers has taken far longer than originally anticipated. Discussions with COSLA and Social Work Scotland on this

issue, began in response to the outcome of the Independent Care Review, were paused during the Covid pandemic and have resumed, and the Scottish Government remains committed to delivering the allowance as quickly as possible but is unable to provide a definite timescale for delivery at this time.

The preference is to pursue the implementation of allowances through collaboration and consensus-building. However, all available options are being considered, including whether an allowance should be the subject of regulation.

My Lady, on the issue of checks on household members, that was of course a specific topic of discussion before the Inquiry, particularly around suitability checks in relation to members of foster carers' and kinship carers' households.

The written submissions set out the legislative provisions that are in place at this stage to allow for enhanced disclosures to be obtained in relation to household members of proposed foster carers.

My Lady, as has been discussed already and is set out in the written submission, the government does not consider that it would be appropriate to extend to members of households who are not themselves engaged in regulated work with children the compulsory membership

of the PVG regime that's to apply to persons who are engaged in that kind of work. The government's reasoning is that that would involve the application of the scheme to individuals based on where and with whom they live rather than by reference to the regulated role that they discharge.

My Lady, that's of course subject to the proviso that level 2 disclosure checks will be available in relation to individuals living in the same household as a person being assessed for their suitability as a foster carer as those checks are available now.

Finally, my Lady, I wanted to address the issue of continuing care. Continuing care is a key component of the measures introduced in the Children and Young People (Scotland) Act 2014 --

LADY SMITH: Sorry, Ms O'Neill, I think most of us here know what level 2 disclosure checks are, but for anyone interested in reading this who doesn't, can you spell out the difference between the level 2 and the enhanced?

MS O'NEILL: The level 2 disclosure -- and, my Lady, I may misstate this and I will correct it after the event if I do -- clearly the enhanced disclosure provides more information than a level 2 disclosure would and it would include, for example, intelligence about an individual rather than simply conviction information.

LADY SMITH: Thank you. It's a very good example. Level 2 will give you hard fact in terms of what has definitely happened, whereas level 3 will also include what has been reported as possibly having happened about somebody.

MS O'NEILL: Indeed, my Lady, because of that distinction needs to be treated very carefully.

LADY SMITH: Of course.

MS O'NEILL: My Lady, I was going to turn finally to continuing care and the aim of continuing care is to enable young people to have a supported transition from care by allowing them to stay in their care setting up to the age of 21 and to achieve a more gradual transition from care that maintains and builds on strong and positive relationships developed in their care setting.

Scottish Government acknowledges that continuing care is not being implemented consistently across Scotland. A CELCIS report was published in March of this year dealing with that issue and had been commissioned by the Scottish Government and it confirms previous anecdotal evidence of some of the key barriers and enablers to consistent implementation of the policy across Scotland.

The Scottish Government working with CELCIS has

responded to that by creating a working group to explore how best to respond to those issues. Meetings have taken place in relation to that and are due to take place -- were due to take place indeed tomorrow. Will not be taking place due to industrial action and will be reconvened in the new year.

That working group is going to look at existing guidance with a view to updating that guidance to provide clarity as to what's expected in the implementation of continuing care and it's intended that that group will identify whether any further legislative changes are required to support the implementation of continuing care and broader support measures for care-experienced young people.

So, my Lady, work is being done to address those issues.

My Lady, conscious of what was said already about the matters on which the Inquiry is still to receive submissions from the Scottish Government, those are my submissions at this stage.

LADY SMITH: Thank you very much, Ms O'Neill.

I'd like now to turn to the submissions for the Lord Advocate and, Ms Shand, I think you're here for those.

Closing submissions by Ms Shand for COPFS

MS SHAND: Yes, my Lady, thank you.

My Lady, I'm grateful for this opportunity to make a closing submission to the Inquiry on behalf of the Lord Advocate.

During the current case study, the Inquiry has heard evidence of the physical, sexual and emotional abuse of children in the foster care setting. The Inquiry has also heard that some of this abuse was reported to and thereafter investigated by the Crown Office and Procurator Fiscal Service.

Indeed, the Inquiry has heard evidence that prosecutorial action was subsequently taken by COPFS -- Crown Office and Procurator Fiscal Service -- in respect of a number of individuals against whom allegations of abuse were made.

It must be acknowledged that in some cases applicants to the Inquiry were critical of their experience of interacting with COPFS, and in particular of COPFS' communication with them. While COPFS strives to be a compassionate and forward-thinking service, it has acknowledged that on the evidence of some of the applicants the organisation fell short of that aim.

COPFS is committed, my Lady, to striving to deliver the quality of service the public rightly expects. Therefore, evidence critical of COPFS, alongside all other evidence given to the Inquiry, has been and will

continue to be very carefully considered and reflected upon. To this end, criticism of COPFS is being fed into the following ongoing internal COPFS programmes and reviews.

Firstly, my Lady, the VIA Modernisation Programme.

This programme concerns the Victim Information and Advice Service, generally shortened to VIA: the purpose of the programme is to undertake a comprehensive review of VIA in order to deliver an improved service to victims, witnesses and next of kin and to support the effective preparation and prosecution of case work.

Second, the criticism of COPFS is being fed into the work being undertaken by the Service Improvement Working Group. This is a group that was set up in April 2022 as part of the ongoing work to improve service delivery in COPFS in general.

And third, two reviews, my Lady. The Sexual Crime Prosecution Review announced by the Lord Advocate in December 2021 and the Child Deaths Review commissioned by the Solicitor General in September 2022. Again, as I say, criticism of COPFS is being fed into those review initiatives.

By feeding criticisms of COPFS into these programmes and reviews, the aim is that it informs and ultimately improves the service provided by the organisation.

In conclusion, my Lady, may I repeat the Lord Advocate's ongoing commitment to supporting the work of the Inquiry and to contributing both positively and constructively to its work and also to ensuring the fair, effective and rigorous prosecution of crime in the public interest for all members of society, including the most vulnerable.

Thank you, my Lady.

LADY SMITH: Thank you very much, Ms Shand.

I would like to move now to submissions for SSSC and I think I see Mr Weir, you're here for them. When you're ready, I'm ready to hear you. Thank you.

Closing submissions by Mr Weir for SSSC

MR WEIR: Thank you, my Lady, and thank you for the opportunity to provide a brief closing submission for this phase of the Inquiry on behalf of the SSSC.

Your Ladyship heard from Maree Allison, Director of Regulation, and had the benefit of a submission prepared by the SSSC setting out how we could assist this phase. Your Ladyship heard that we do not regular foster carers. However, there are two areas of our functions which formed our submission to the Inquiry and which Maree spoke to in her evidence. I would invite Your Ladyship to make the following findings in relation to Maree's evidence.

Firstly, the SSSC does not regulate foster carers. The two areas of our functions that are of interest to this phase of the Inquiry where specific fitness-to-practise cases involving social workers' practice relating to their involvement with foster care and the development of a Standard for Foster Care.

Thirdly, between 2008 and 2021, the SSSC received 2,609 referrals about social workers of which 269 were concluded with a sanction and of those six were of particular interest to the Inquiry.

Case holders categorise our cases on specific categories of misconduct, which each have a subcategory.

In relation to the development of the Standard for Foster Care, the Scottish Government asked the SSSC to develop a framework for learning which applies to all foster carers and foster care organisations in Scotland. There was an extensive consultation on the standards and these were published in April 2017.

LADY SMITH: And that's the standard you referred to a moment ago as being the Standard for Foster Care, is it?

MR WEIR: Yes, my Lady.

LADY SMITH: Thank you.

MR WEIR: In developing those standards, the SSSC consulted extensively with relevant stakeholders and drafted them

with the National Occupation Standards in mind. So far the government has not asked the SSSC to review the standards and the SSSC would not do so unless asked by the government.

LADY SMITH: Why not, Mr Weir? Do you know? If SSSC felt that the standards required to be reviewed, would they not approach government?

MR WEIR: It would be a matter for government. We would wait until we got a request from the government to do so and there would be a number of issues taken into consideration by the policy landscape, et cetera.

LADY SMITH: I see, thank you.

MR WEIR: During Maree's evidence, counsel asked about a case which was missing from the SSSC's original submission. This was due to the fact that the case closed before we started categorising those cases consistently, as I referred to earlier in my submission.

We have now added a failure to act in allegations of abuse of adults and a separate area to act in allegations of abuse of children, categories of misconduct to highlight both the seriousness of these types of failings and allow for better searching of our systems in future.

LADY SMITH: So when you say you have added a failure to act on the allegations there mentioned, are you saying

that's a potential case of misconduct?

MR WEIR: It was always a potential case of misconduct. What I'm saying is we're now categorising our system as such so we can search that in future if that's necessary. Before, some of the challenges we had was it wasn't apparently obvious from the system itself whether there was an allegation relating to the failure to act on allegations of abuse.

LADY SMITH: So that would mean, I hope, that anybody working for SSSC, and inevitably you often have somebody new who has to deal with a query about allegations of abuse of children, can go straight into the system and search that topic and will find up-to-date information?

MR WEIR: Yes, my Lady, that's the hope.

LADY SMITH: Good. Thank you.

MR WEIR: We noted evidence from at least one person that had a poor experience in dealing with the SSSC, especially when they were trying to make their voice heard about the abuse they suffered and the failure of people to hear and do anything about that. I am very sorry on behalf of the SSSC if anything about our interactions with that person and indeed anyone else that has come forward has contributed to their pain and suffering.

While we have clear rules on what we can

investigate, we need to make sure that everyone who has contact with us is treated with compassion, respect, and that they know that we take every complaint seriously. We have invested a lot of time and resource into improving our approach in this area, including regular review of our correspondence, including trauma-informed practice awareness and training and introducing helplines and support for people involved in the fitness-to-practise process. We know there is more we can do and we welcome feedback from anyone who has contact with us about how we can make that better.

We are in the process of reviewing all transcripts from this phase of the Inquiry primarily to identify if the evidence given raises any concerns about the fitness to practise of registered social workers. So far we have identified two matters and concluded that the concerns either did not meet our thresholds for investigation or we had already investigated the matter.

That work is ongoing.

In reviewing the transcripts of the evidence heard by the Inquiry we have noted the themes relating to social work professional practice and particularly failures to identify and acts on signs of potential abuse. We are working with Scottish Government and NHS Education Scotland to develop resources to support

implementation of the revised national guidance for child protection. We will consider the learning from this phase of the Inquiry as part of the development of that guidance. We carry out annual monitoring with social work degree programmes and can set a theme for the focus of that monitoring. We will set a theme around safeguarding for our next phase of monitoring.

LADY SMITH: When you say you carry out annual monitoring of the social work degree programmes, what does that involve? How are you monitoring them?

MR WEIR: I believe our colleagues in the workforce education and standards area review the modules and learning materials relating to the social work degree and provide feedback to higher education providers as to what should be contained therein.

LADY SMITH: Are they, for example, looking at course content across the board, course content where it differs from one education provider to another, talking to the provider about whether they should be including something in their course content that's not there?

MR WEIR: I believe all of that's correct. They review it across the board and they also provide feedback to higher education providers about what content should be there but isn't but I can check that with my colleagues and provide a more full answer to the Inquiry.

LADY SMITH: Thank you very much.

MR WEIR: I would like to end by restating the SSSC's commitment to continually reviewing and improving how we regulate the social services workforce and to assisting the Inquiry however we can.

Thank you, my Lady, those are my closing submissions on behalf of the SSSC.

LADY SMITH: Thank you very much.

Now I'd like to turn, if I may, to Glasgow City Council. I think yes, I see Mr Pugh. Mr Pugh, when you're ready.

Closing submissions by Mr Pugh for Glasgow City Council

MR PUGH: Thank you, my Lady.

My Lady, Glasgow City Council has lodged some closing submissions and I don't intend to read those out. I do, however, adopt them.

What I intend to do is simply to highlight some of the aspects, particularly in relation to the evidence, before addressing more fully what I've set out in part 2 of the submission, if that accords.

LADY SMITH: Thank you.

MR PUGH: I would, however, my Lady, like to start with an apology. Glasgow City Council accepts that children suffered abuse whilst in foster care under both its care and the care of its predecessors. It accepts that some

of that abuse has been allowed to occur due to deficits in systems that should have been there to prevent and detect it, and for any child abused while in the care of it or its predecessors, Glasgow City Council is sorry.

My Lady, whilst that unreserved apology will never undo the abuse that any child suffered, the council hopes that through learning it never again finds itself having fallen short in the protection of the most vulnerable children in society.

My Lady, in terms of the council's participation in this phase of the Inquiry, I've set out the various ways, at paragraphs 5 through 11, that the council has participated. I don't intend to read those out but I do just want to say something about -- and this is because I'm going to come back to it at the end -- something about the council have assigned -- this is paragraph 11 -- two social work service managers, a Ms Bradley and Ms Coll, to watch all of the applicant evidence in this case.

My Lady will undoubtedly have noticed that and it's not just been the applicant evidence related to Glasgow. The council took the view that it needed to hear all of the applicant evidence in the Inquiry and I'll come back to how that's been taken forward right at the end of the submission, if that's okay, my Lady.

LADY SMITH: Yes, please do. Thank you.

MR PUGH: Moving through to paragraph 14 onwards, I've set out there what's described as the challenge in foster care. Ms Innes described it this morning as the inherent risk in foster care and that, for the avoidance of doubt, is what I'm referring to.

It follows the difficulty or the requirement to balance what could and should be a family life with the need for appropriate supervision and I heard Your Ladyship's observation this morning about the requirement to let placements settle down and not to have social workers constantly there. But -- and this is looking at paragraph 18, my Lady -- there's a clear sense in the evidence that this case study has heard that in the past the balances were not struck appropriately and that the challenges were not met.

The Inquiry heard, for example, the evidence of supervising social workers not addressing areas of concern with foster carers because they might be worried about the effect on the foster carers rather than considering the effect on the children, and that seemed to be part of a pattern of a lot of the evidence that the Inquiry heard and that Your Ladyship, certainly for those applicants that I attended, was constantly requiring to point out to applicants.

LADY SMITH: And it's clear from some of the records, the entries in the records, that there was almost a fear at times of upsetting the foster parents.

MR PUGH: Indeed. And one doesn't know through -- and I'll come back to some of the record-keeping deficiencies -- one doesn't know if that's because there was a shortage of foster carers, there were difficulties with the resources, there were general difficulties sometimes in the social work department, and Susanne Millar in her evidence pointed to some of the reasons as to why those might be.

But whatever the reasons, there seemed to be a constant focus on foster carers rather than the foster children and I'll come back to that when addressing the questions of systematic or systemic failures, my Lady.

LADY SMITH: Thank you.

MR PUGH: I make the point at paragraph 19 that policies and procedures have, as one would expect, changed almost beyond all recognition in the period that the Inquiry's concerned with. I think that was something that Ms McCall on behalf of INCAS noted this morning, my Lady.

If I can move through to paragraph 28, my Lady, and this is on the question of the extent of abuse, my Lady, it's impossible, in my submission, to identify the

precise extent of the abuse in foster care in Glasgow.

In its addendum response, Glasgow City Council has tried to give some context to it and has described it as more than rare and isolated.

The basis for that, my Lady, are the three reasons I've given. First, since 1998, the council's retained a central log of complaints. Not all relate to alleged abuse and not all have been substantiated, but that shows around 374 complaints in the relevant period.

Secondly, my Lady, the audit undertaken in the Section 21 addendum response showed that of the total files sampled, some 3 per cent contained allegations of abuse.

Thirdly, my Lady, and the council are grateful to it, but the Abrams and Fleming report obviously was a valuable source of information in relation to Glasgow City Council and that report, together with the evidence heard in this phase of the Inquiry, or phase two of the Inquiry, demonstrates -- it all demonstrates, in my submission, that it was more than rare and isolated.

My Lady, I've gone on from there to set out a lot of the evidence and to try to tie in what I think the common themes will be with the various policy documents that have been produced by Glasgow. I've given, where available, the Inquiry numbers. I don't intend for

today's purposes to read any of that.

If I can just say something in relation to the period post 2014, the council -- and this is from paragraphs 47 on, my Lady. In the period post 2014, the council recognises that that's beyond the terms of reference for the Inquiry, but of course development hasn't stopped at 2014 and the council have produced, both in the addendum, some further information about the way things are done, and also, as Your Ladyship will have seen, its current 2022 guidelines are at GLA-000002178 and set out the current requirements for, for example, recruitment, selection, training and all of the various policies and controls that Your Ladyship would expect to see when dealing with the particular risk that there is in foster care.

My Lady, I do want to say -- this is on to paragraph 53. I do want to say something about record-keeping and it was a point that Ms Innes made this morning.

Ms Millar's evidence was that record-keeping is not an adjunct to social work.

Her evidence was that it's a core function and it's important that we don't lose sight of that.

Since 1998, the council's maintained a log of complaints which was centralised in 2006. That log is

not just for about complaints of abuse but also for complaints about standards of foster care. The important point about that, my Lady, is the one made by Ms Millar, that sometimes those complaints about the standards of foster care, if trends are seen early enough, then that allows the possibility that abuse or subsequent abuse might be avoided and that's the reason for spotting trends and that's the point I think Ms Innes made this morning.

LADY SMITH: I'm glad you mention that, Mr Pugh, because it's very obvious if a social worker isn't picking up and recording failings in standards that aren't indicative of current abuse, then the possibility that, for example, a foster carer isn't really coping and may tip into abusive practices as the pressure mounts on them. I mean, nobody has said that any pair of foster carers or an individual foster carer sets out to get a child into their home so that they could deliberately abuse them and there are certainly pictures from the evidence, not just the Glasgow evidence, of abuse happening because of the mounting pressure on the foster carers. Because of unexpected difficulties in coping with the child's particular needs and challenges. Because they're exhausted. Because they have too many children in the household. A whole range of reasons.

That you have to be aware from the start as to whether there are signs of things possibly beginning to go wrong or being such as they may go wrong.

MR PUGH: Indeed, my Lady. And one adds into that the growing understand of the effect of trauma and this is something discussed by Ms Miller in her evidence and the experts in their evidence, the growing understanding of the effect of trauma and the understanding of the effect that that has on behavioural issues, all of which, by early identification of problems, one would hope, as Your Ladyship points out, avoids escalation.

LADY SMITH: Indeed. Thank you.

MR PUGH: This is still on paragraph 53, my Lady, but in terms of the use that that log is put to is that there's an annual meeting, an annual basis to identify themes and learning and that trends and standards of care can be relevant to potential abuse because they may indicate problems that require to be addressed before abuse arises.

The other point regarding record-keeping, my Lady, is the one that comes so heavily in relation to the Glasgow cases from those that were boarded-out to remoter locations where there's simply no record, and it doesn't allow them to trace, as Ms Millar pointed out, their story. It doesn't allow them to understand where

they came from.

As I think Your Ladyship might remember, Ms Millar, one of the big take aways is in relation to preserving that information for children and Your Ladyship specifically asked a question about whether foster carers are now required to keep records themselves and whether that's subject to review at fostering reviews and that was the case, my Lady.

LADY SMITH: I am sorry if she did deal with this and I'm just not remembering. I heard evidence of the possibility of foster carers logging into the system themselves and being able to enter notes for the records online. Does that work in Glasgow or not?

MR PUGH: I think the answer was that it couldn't be done online in Glasgow --

LADY SMITH: I think that's right, yes.

MR PUGH: -- because there were data protection implications in relation to accessing other records, was my recollection of the evidence, my Lady.

LADY SMITH: What's Glasgow's position on the possibility of revisiting that? I'm just thinking in the modern world of making it as easy as possible for a foster carer to keep noting how things are going?

MR PUGH: I haven't specifically asked, but I'm more than happy to take it away and to provide an answer to that

and to do so following today's submissions.

LADY SMITH: Thank you very much.

MR PUGH: If I can then turn to what I've described as part 2 of the council's submissions, and these were dealing with -- rather than the comment on the evidence, these were dealing with the other matters that were raised in the email that was sent to parties.

First, my Lady, the council's response to the evidence. The phase one evidence I think -- and this is from paragraph 65 on in the submission, my Lady. The response to the phase one evidence was best described, I think, as being of interest and learning. The reports provided by all of the experts to this Inquiry together with their oral evidence led to significant discussion within the senior levels of the council's social work department, or the health and social care partnership, technically, my Lady, about these matters.

The council's response to the phase two evidence is, I think it's fair to say, harder to describe. It was perhaps best put by Ms Millar when she said on her second day that it was difficult. Your Ladyship will recall that she described it at times as it made her ashamed of her profession, and the organisation which she now heads.

Regarding the boarding-out period, the evidence has

been particularly distressing for the council. My Lady, it's difficult now to understand the precise social conditions that brought the practice about. However, as Ms Millar explained, the reflection that hits hardest is why it continued for so long after the Clyde Report and after the 1948 Act.

This was discussed between Your Ladyship and Ms Innes earlier this morning. It seems clear that the 1950s and 1960s were a difficult period in Glasgow and they were a difficult period for social work in Glasgow but -- and Ms Millar pointed this out, my Lady, that it was perhaps just indicative of there being no time to reflect and reappraise that the practice was allowed to continue for much longer.

LADY SMITH: I wonder if it was also a failure by the council to prioritise their responsibilities towards children in their care.

MR PUGH: Well, indeed, my Lady, and there seems to be a sense -- and this comes across from the Abrams and Fleming report -- that certainly in the early period after the Clyde Report there was a real reluctance on the part of the then Glasgow Corporation to accept the recommendations, for whatever reason. It's not plain what reason there was, but there seems to have been a real reluctance to accept the recommendations and one

just queries why that would be and queries whether that affected the attitudes going forward, my Lady.

But for all that being said, it being allowed to continue into the 1960s and 1970s following the Clyde Report in the 1940s was, as Ms Millar said, particularly difficult to hear.

LADY SMITH: And no doubt tempting to continue to think about terms of the children being out of sight, out of mind, and there was a sense of something of a romantic ideal of getting children into the green, open fresh air away from the city.

MR PUGH: No doubt. And it's so difficult to today's eyes to understand exactly what all of those thought processes would have been, but one comes back to the notion of perhaps not listening to children, perhaps prioritising the council's own requirement to provide foster care, to provide foster carers, and not to make life any more difficult than it needed to be.

It's impossible now through the lens of history to know exactly all of the reasons, but there certainly was a sense of that, my Lady.

LADY SMITH: And also, Mr Pugh, even before you get to the stage of listening to children, it's developing a practice of looking at their circumstances through the child's eyes. How is this likely to feel to the child?

How is the child likely to react to us imposing this change on their lives?

MR PUGH: Indeed, and if one looks back to the development of the policy documents, it's not until perhaps the 1980s and well into the 1990s before there's any formalisation of those notions of speaking to the child, seeking the child's views. Whether that's to do with the 1995 Act or whatever, you know, Professor Norrie gave his views on a lot of that but the reality was that it just wasn't there in the earlier phase, my Lady.

LADY SMITH: Thank you.

MR PUGH: The period from the 1970s remain difficult, though improvement starts to be seen and that's referring back to what I've set out as being the development of policies. An abiding impression is that social work knowledge and practice has grown significantly since the 1970s and Your Ladyship will recall Ms Millar's evidence not being able to really comprehend back to a file from the 1970s as to why a thought process would have been as it was.

So the development is plain.

Recruitment practices show a dramatic improvement over the period, as did the recognition of children's rights.

The wording of policies from the period, however,

shows -- and this is the point we've just really been discussing, my Lady -- that the focus was still on foster parents rather than children. One example of this was taken up with Ms Millar where the record shows that concerns were not acted upon for fear of alienating the foster mother, and that approach, which was to some extent reflective of an approach to children in society, perhaps, inhibited the proper inspection and supervision of foster parents. It inhibited safeguarding children and it wasn't until the 1980s and 1990s that this appeared, in Glasgow City Council, at least, to improve.

Moving on to paragraph 68, my Lady. An overall reflection of the council, both Susanne Millar and the social work managers that have attended for the evidence of applicants, has been the lifelong impact of mistreatment. The impact of trauma in children in care is a major focus in current social work practice. Hearing from applicants about the abuse suffered has confirmed the importance of addressing that trauma.

Moreover, it's confirmed to the council the importance of children in care maintaining their life story in a way that's accessible to them in adulthood. The evidence has demonstrated clearly that for those in care, maintaining that requires specific effort, both from the council and from foster carers, and that effort

is now a major focus of social work practice and the requirement for foster carers.

My Lady, at paragraph 69 I've set out what I say are the failures in systems and the response to abuse, and I'll just read through those. I think it's important to do so for the public record, my Lady.

LADY SMITH: Do you agree with the approach to the terminology of systemic failure that was suggested by Ms Innes?

MR PUGH: I agree that systemic failure has a broad interpretation, my Lady, yes.

LADY SMITH: That's very helpful. And of course systemic failure can involve a failure to have established an aspect of the system that was needed for effective child protection or it could be, well, there was part of the system that allowed for that but it wasn't being followed, or even if in an individual case it wasn't followed, that is a failure to use a system.

I think I have to be interested in all of these, don't I?

MR PUGH: Indeed, and that goes back to the -- whether one calls it a challenge in foster care or an inherent risk in foster care. The only way that that risk or challenge is met is if systems are put in place and if those systems are then followed and if one doesn't

happen, then that's a failing.

LADY SMITH: Thank you.

MR PUGH: So dealing with those, my Lady. The system of boarding-out children to rural areas had major flaws. Whilst the initial motivation may have been justifiable, the practice meant that appropriate supervision was simply not possible.

My Lady, in addition to that, I accept Your Ladyship's point from this morning that this was just a major cultural change. Language change is I think what Ms McCall pointed out. It was a major change and the whole system had major flaws.

Then, secondly, when the flaws in the system -- and this is perhaps the more important, my Lady, to some extent -- when the flaws in the system of boarding-out were identified by at the latest the time of the Clyde Report, the council did not react promptly or appropriately to the recommendations and subsequent development.

We accept, my Lady, that the conditions in Glasgow in the 1950s perhaps maybe still made that difficult, but it's really the point that we've discussed that we're back to prolonging something that could and should have been brought to an end much sooner.

Thirdly, my Lady, the systems of inspection and

review that the council had in place at various times lacked robustness. In part that was due to the attitude that placed the foster parent at the centre rather than the children.

There is a sense that until the 1990s or thereabouts foster care was considered to be safe and the main concern of the council was the recruitment and retention of carers. Real improvement does not appear to have been seen until the 1990s when the views of children were given much greater prominence.

Fourth, my Lady, is that record-keeping has been -- I would add the word there sorely lacking. The council benefits, as Your Ladyship knows, through both the council's submission and the Abrams and Fleming report, from a major archival resource in the Mitchell Library. However, that resource is only as good as the evidence within it and the underlying strength of the record-keeping.

The audit undertaken by the council in its addendum response demonstrates the problems with previous records. As Ms Millar explained, that's relevant in two ways. Firstly, records are a core function of social work, not an adjunct. They are necessary for social workers at the time when care is happening. And secondly, it's not now possible to know whether apparent

omissions were due to things not having been done or whether they've simply not been recorded.

Fifthly, investigations into complaints of abuse have been flawed. Again looking at the audit undertaken by the council, it shows that certain basic steps are at the very least not recorded. For instance, there were occasions where the foster carer appears not to have been addressed following a complaint. It also appears to be in the majority of cases that a record was made of a child having been spoken to.

With hindsight it's easy to see why not having a central log of complaints made investigations further flawed. It did not allow for the spotting of trends or the earlier identification of care issues that might have prevented abusive behaviours from developing.

Improvement appears to have been seen from around about 1992 or thereabouts. Following this time, 100 per cent of complaints sampled resulted in the termination of placement, although I accept, my Lady, it's a really, really small sample and the reasons for that are explained in the audit itself.

My Lady, at the time of lodging the written submissions I wasn't able to go on and give concrete examples beyond those that were given by Ms Millar in evidence about steps that had been taken, but I do have

further information about those steps.

The ones that I would draw the Inquiry's attention to -- and this relates back to the social service managers that have been listening to the evidence.

LADY SMITH: Yes.

MR PUGH: On 9 November, the Families for Children team, the fostering and adoption services, had a specific development day thinking about some of the reflections and feedback with specific focus on safeguarding and the role of the supervising social worker. So that was for the members of the Children and Families team.

That's being carried forward, my Lady, to a full discussion on 13 December at which there will be reflection on the testimony and highlighting of the areas for improvement.

LADY SMITH: So when you say the role of the supervising social worker, does that cover both the foster carer's social worker and the child's social worker? Or something else?

MR PUGH: My understanding is that it's both, my Lady, and Your Ladyship will remember in that regard Ms Millar's evidence of the recent co-ordination of training within Glasgow to make sure that there's not a loss of communication as between social workers with responsibility for children and --

LADY SMITH: So the message there is that in fulfilling a responsibility towards the foster carer and in fulfilling a responsibility towards the child, you, a social worker, are carrying out a supervisory role?

MR PUGH: Indeed, with a specific emphasis on safeguarding.

LADY SMITH: Thank you. That's very helpful.

MR PUGH: The areas that have been highlighted for improvement include practice development around the importance of relationships, the transitions in placements for children, both at the point of admission and between placements, that was something that really hit home on the service managers watching the evidence. And around sibling separation.

So those matters are being taken forward.

There is a report in production, my Lady, and that was alluded to by Ms Millar at the end of her evidence. It was at the time she gave evidence still a couple of informal documents. It's being turned into a report for the meeting on 13 December and I can give a commitment to share that report with the Inquiry once it's available, my Lady.

LADY SMITH: I'd really like to see that if I may, Mr Pugh.

I was also wondering whether it's anticipated that there will be any written output or even PowerPoint slides, whatever, for and from the meeting on

13 December that might be helpful.

MR PUGH: Again, I don't know, my Lady, but I can check and I can come back --

LADY SMITH: I'll leave it with you to find that out. If anything does emerge that would be relevant to our work here, I'd like to see it, please.

MR PUGH: I know, for example, that there's to be a facilitated conversation with those that have watched the evidence so I would hope to be able to provide something, my Lady.

LADY SMITH: Thank you.

MR PUGH: The only other two points that I would like to take up just from the things that have been raised this morning.

The position in relation to the national register.

LADY SMITH: Yes.

MR PUGH: Your Ladyship will recall the evidence of Ms Millar on that.

LADY SMITH: Yes. She's quite firm she doesn't think it would be a good idea, I think.

MR PUGH: Essentially. I've heard what my learned friend Ms O'Neill says in relation to the government's ongoing work in that regard, and all I can do, I think, my Lady, is take away that that's ongoing and feed that back to Ms Millar and if she can then input into that

conversation on a policy level, then I have no doubt that can be done.

LADY SMITH: Thank you.

MR PUGH: The only other question that's arisen, both from Ms Innes and from Ms McCall, is in relation to the specific apology.

LADY SMITH: Yes.

MR PUGH: That's not something that I understand to have been an issue in relation to any Glasgow applicant and I don't understand to be an issue, but again if it's something that the Inquiry's wanting a specific response on, then I can take that away and provide that, my Lady.

LADY SMITH: Thank you. I'll check and we'll get back to you if we're looking for anything more on that, Mr Pugh. Thank you very much indeed. And thank you for your detailed written submissions. They've been very helpful in advance and will continue to be so.

MR PUGH: Thank you, my Lady.

LADY SMITH: I think what I'll do now is rise for the lunch break before going on to the next Local Authority, which will be North Lanarkshire Council, and I'll hear from Mr Batchelor on North Lanarkshire Council this afternoon. Thank you very much.

(12.53 pm)

(The luncheon adjournment)

(2.00 pm)

LADY SMITH: Good afternoon. As I said before the lunch break, I'd like now, please, to move on to North Lanarkshire Council and, Mr Batchelor, as the first of your responsibilities could I invite you to address me on the North Lanarkshire submissions, please.

Closing submissions by Mr Batchelor for North Lanarkshire Council

MR BATCHELOR: Thank you, my Lady.

To start with, I start by adopting North Lanarkshire Council's written submission which has been submitted to the Inquiry.

North Lanarkshire Council welcomes the opportunity to provide closing submissions to the Inquiry. I don't intend to say anything about the background to the council or its engagement with the Inquiry. The Inquiry will be familiar with that already, but suffice to say that the council's endeavoured to adopt a helpful and reflective approach in its dealings with the Inquiry in order to assist the Inquiry to best meet its objectives.

At the start of this case study, North Lanarkshire Council acknowledged that some children in foster and kinship care placements were abused. The council accepts and the Inquiry may find as a finding in fact that children were subjected to sexual abuse, physical

abuse, emotional abuse and neglect in such placements with North Lanarkshire Council and its predecessor authorities.

North Lanarkshire Council apologises to any person who suffered abuse as a child whilst in the care of the council or its predecessor authorities.

Turning to findings in fact, the Inquiry's obviously heard a large amount of evidence. Largely, therefore, the council's approached the evidence on a thematic basis, albeit with reference to individual cases.

I think it's important for the public record, however, to acknowledge particularly the criminal convictions which have occurred and the council's aware of three criminal convictions relating to children in foster care. One foster carer was convicted of physical abuse of a child in their care in 2019. Two family members of foster carers have been convicted of sexual abuse of children in foster care.

At the time of providing the original response to the Section 21 notice, the council had indicated that there were only two relevant criminal convictions but since that time, later in 2020, an individual called John Deeney was convicted of abusing a child in foster care and those offences took place between 1981 and 1984.

The second conviction relates to a foster carer named Jean Kirkland who was convicted of physical abuse of a child in foster care at Hamilton Sheriff Court in June 2019. She was convicted of assault of a child and an assault to injury of that child and she was sentenced to a restriction of liberty order for a period of 12 months. The council's had sight of the terms of that conviction during the course of the Inquiry.

The third relevant criminal conviction relates to the adopted son of foster parents. He was convicted of sexual offences against other children in foster care between approximately 1992 and 1996 and I'll come on to address the specifics surrounding that case in a moment.

In addition to the criminal convictions referred to at the time of framing the Section 21 response there were three further foster carers who from the council's perspective were considered to have abused children in their care.

In addition to that, a significant number of other complaints of abuse had been identified. And the details of those were provided to the Inquiry.

The council accepts that it's likely that there are other examples of abuse within historic records which have not been located or where there's no record of a complaint of abuse having been made. One example of

the former category, which was highlighted by the evidence, was the case of 'Christine', who gave evidence on 8 July. There there's clear reference in 'Christine's' records to her being verbally abused by foster carers in the presence of a social worker when she returned to collect her belongings at the end of the placement.

Whilst there have only been a comparatively small number of cases where abuse has been confirmed through a formal process, the council acknowledges there have been a significant number of complaints and the true number of cases where abuse has occurred will be larger than those that have resulted in criminal convictions or findings by the council that abuse occurred.

I consider it's appropriate in this closing submission, my Lady, to make some corrections to some things which have been said on behalf of the council on previous occasions and particularly in the initial Part B response.

First of all, in relation to failings or deficiencies in systems, in the initial Part B response, North Lanarkshire Council's position was that it did not consider that its historic systems had failed to protect children. In part this was based on a misunderstanding of what was meant by the word systemic failings and

I know we've already had some exchanges about what those words mean today, but I think there was a genuine misunderstanding on the part of some Local Authorities about --

LADY SMITH: Yes.

MR BATCHELOR: -- what was intended by those words.

But as Alison Gordon, the Chief Social Work Officer of North Lanarkshire Council indicated in her evidence, the council would answer that question differently now with the benefit of all of the evidence available, I think, with a proper understanding of the question.

LADY SMITH: She did very fairly accept that it had a broader meaning than she'd first understood it to have. And is it accepted, Mr Batchelor, that as I've shorthanded it already, you're talking about a failure to apply an aspect of existing systems, failure to have an important aspect of existing systems, and a failure in child protection somehow being a result?

MR BATCHELOR: I think sometimes as lawyers we get too hung up on words. I think perhaps the simplest way to put it would be: did things go wrong? Did the systems protect children in care? If children were abused in care, then axiomatically there's a system which didn't work, whether that's a matter of the system being weak or the system not being applied and it more being a matter of

practice, these are all things from which we can learn lessons and that's ultimately what the Terms of Reference of the Inquiry are intended to do.

LADY SMITH: That's really helpful. I'm grateful to you for that. Thank you.

MR BATCHELOR: Just expanding on that, my Lady, Ms Gordon acknowledged in her evidence that there'd been failings in the system as a whole in the past and there were elements of the council's systems and it predecessor systems that were not strong enough and which did not safeguard children and young people as fully as they might.

Part of that was around the systems in place and the quality assurance of those systems and some of that was around practice and there were examples in the evidence where there were opportunities, if not to prevent abuse occurring in its entirety, then to identify and to respond more quickly to situations in which abuse was occurring.

There are a number of recurring themes in the evidence which indicate where historically systems or practices were deficient and I will come on to address those in more detail shortly. But in some cases, particularly some older cases, it's clear that there was minimal or no meaningful contact maintained with

children.

When children were seen, there was a tendency to see them in their foster placements with the foster carer present and in older cases, and even in some cases in more recent times, the child's voice was not heard. Children didn't have the opportunity to make disclosures and the systems in place didn't provide the greatest opportunity for them to do so.

Systems for selecting, assessing, monitoring and training foster carers have become significantly more robust over time and it's the council's position that all of these areas can be regarded as amounting to deficiencies in the systems in place to prevent abuse from happening.

A further correction to the initial Part B response relates to failings in response to abuse or allegations of abuse. Having considered the totality of the evidence, the answer to that question would also now be different for North Lanarkshire Council.

One specific example was raised in evidence and that was the case of 'Carrie' who gave evidence on 21 September 2022 through her statement being read into the evidence. Her evidence related in part to the criminal conviction of the adopted son of foster parents and it's clear from evidence recovered by the Inquiry

that 'Carrie's' initial disclosure of abuse, which was made to a prefect at school and subsequently reported to that girl's mother, was brought to the attention of the social work department more or less at the same time by the foster carers.

As far as the council have been able to ascertain, there's no clear note in the available records of this occurring being made on the file. However, the police statements of the social workers involved make it clear that the disclosure was brought to their attention. Despite this, child protection procedures do not appear to have been instigated in relation to this disclosure. As Ms Gordon quite candidly and in my view correctly conceded in her evidence, a child protection investigation should have been instituted at that time. As she said in her evidence, it's necessary for social workers to demonstrate an appropriate level of professional curiosity. A formal process should have been instigated and followed at that point. It's not necessarily clear what would have happened thereafter but it would be safe to assume that a greater level of scrutiny would have been brought to bear in relation to the disclosure at an earlier stage than it eventually was.

LADY SMITH: Thank you.

MR BATCHELOR: Turning to the council's response to the evidence and their reflections upon it, the council in the first instance wishes to acknowledge the bravery of the applicants who gave statements and oral evidence to the Inquiry. The council understands that will not have been an easy process.

The council's listened to that evidence very carefully and taken it into account in reflecting on the lessons to be learned in the Inquiry.

In her evidence, Alison Gordon also spoke to a key piece of work which had been carried out at the council by way of a presentation which had been delivered to North Lanarkshire Council employees in relation to lessons to be learned from the Inquiry. Pulling all of that together, the written submission contains a number of discrete areas where it's considered that lessons can be learned, albeit that some of them have quite a significant degree of overlap.

The first of those, which is a theme which has already been highlighted by Ms Innes and by others in submission, is the relationship with children and the visits that social workers have with children. A recurring theme in the evidence was that applicants didn't feel that they had somebody they could trust to speak to. There were clear examples in the evidence of

applicants who didn't consider they could speak freely to their social worker, for instance the evidence of 'Christine', 'Rose' and 'Jane'.

There was clear evidence that historically at least children were not frequently seen on their own, independent of their foster carer or outside the foster home and the council found when it was reviewing records that there was some evidence that children were not being seen as frequently as they should have been.

Another aspect of this which has already been commented upon is that some children had multiple social workers involved in their care and some children thought that the social worker was there for adults and not for them, so there was at least a lack of clarity about the role of the particular social worker.

North Lanarkshire Council considers that it's a key facet of child protection that children should be seen on their own and seen in a variety of different environments, including away from the foster placement. It's necessary that the child and their worker can build a trusting relationship so that the child will feel comfortable discussing their worries or concerns with their worker thereby maximising the possibility of a disclosure which would not otherwise have been being made.

There may of course, as we've already discussed, inevitably be transitions of workers at times and that's unavoidable. However, if that is the case and the social worker does not yet have that rapport and trusting relationship with the child, they should know who the most important person is in that child's life and maximise opportunities for the child to speak with them.

The second broad theme relates to the assessment and monitoring of foster care placements.

One of the lessons which was highlighted by some of the applicants themselves was the need for robust assessment and monitoring of foster care placements. Historically there were not the same vetting and assessment processes in place for the selection and approval of foster carers as there are in the modern day.

Importantly, however, and this is something particularly relevant to the cases involving North Lanarkshire Council, there needs to be a robust assessment of the risk posed to children from other members of the household, not just from foster carers. In two of the cases involving criminal convictions and the two cases involving sexual abuse, that abuse was perpetrated by another member of the household who was

under the age of 18 at the time. One was the natural son of the foster carers, the other was an adopted son of the foster carers.

It's not entirely clear, due to the lack of documentary evidence, what, if any, consideration was given to the risk posed by other children in the household by those individuals at the time but the council's current practice is that disclosure and PVG checks are carried out for household members over 16 years of age. Local Authority checks are also carried out on all household members and all household members, including children, are spoken to by the responsible social worker carrying out the assessment and it is of course an important part of that assessment to assess any risks that might be posed by other children in the placement to those.

LADY SMITH: I don't know whether your council have turned their mind to this and you'll have heard me discussing with Ms O'Neill this morning the current situation of PVG checks and the difference between level 2 and enhanced disclosure and the current thinking in government is not to extend the enhanced disclosure system to others in the household. Do you know if your council has any position on that?

MR BATCHELOR: It's not something that I've discussed with

them but it's certainly something I can endeavour to find out.

LADY SMITH: It would be interesting to know. Even if it's only they wouldn't have any objection to it, they can't see any harm in doing it, if the system could be redesigned so as to allow for that.

MR BATCHELOR: (Nods).

LADY SMITH: Thank you.

MR BATCHELOR: One other specific issue was raised in 'Carrie's' case about the criminal convictions of the adopted son for offences of dishonestly and Ms Gordon in her evidence indicated that that was the sort of information that she would consider relevant to the ongoing monitoring of a placement and the relevant assessment of risk around a placement. It's not clear whether those convictions were brought to the attention of the social work department but there's certainly nothing that we've been able to see in 'Carrie's' records which would suggest that they were.

I think this example just reinforces the fact that there has to be ongoing monitoring of placements and good communications between different parts of the social work department and even perhaps between different social work departments in different Local Authority areas.

Training and education of foster carers is another theme which has already been mentioned. Foster carers themselves need to have the requisite skills and attributes to allow them to care for the child in an appropriate way and, as Ms Gordon put it in her evidence, to be invested in them. Foster carers need to be appropriately trained and educated to allow them to understand children's behaviour and the impact that early life trauma can have upon a child. Again this is another point which has already been made.

Historically there appears to have been a fundamental lack of understanding about how to deal with children who had suffered trauma.

Support for carers is another theme which arose from the evidence in relation to North Lanarkshire out of the case of 'George. 'George' was put in a supported carer placement and at the disruption meeting following the breakdown of that placement it was noted that for future supported care placements contracts should be drawn up. There appeared to have been a lack of clarity of roles and responsibilities and expectations when the placement was initially set up.

The supported carers themselves indicated that they didn't feel adequately supported by the social work department, they didn't consider that the visits they

received and the support they received was frequent enough, sometimes they called the social work department and their calls had gone unreturned.

'Jane' also gave insightful evidence about the need for carers to be able to seek support if they feel like they're not coping and the council agrees with that evidence and that's again another matter which was touched upon by my Lady this morning.

It's important that carers have access to advice and support which will allow them to deal appropriately with problems which may arise during a placement. Again, as was touched upon this morning, if tensions arise in a placement then that increases the level of risk.

Another recurring theme from the evidence and something which the council noted from its review of the records was there was a lack of preparation for those in foster care for leaving care. Children were leaving care at an early age with few life skills and there was a lack of structured support after leaving care and a lack of contact with the social work department.

The council's review of records indicated that there was some positive aftercare support but it was inconsistent and one specific example in relation to that was 'Christine's' evidence. She left her foster placement on her 16th birthday and felt entirely

unprepared for leaving foster care.

The issue of records is another recurring theme which has come up on a number of occasions and there are several facets to that. The first is access to records, which can be an extremely important part of a care-experienced person coming to terms with their past.

On reviewing current practice, as Ms Gordon spoke to in evidence, the council realised that the way they were facilitating access to records was not reflecting best practice and specifically subject access requests were being handled primarily as a processing exercise and a legal obligation and not necessarily as an opportunity for engaging with the individual who was seeking the records.

And the council identified that there needed to be a change in culture and practice to help support that individual in accessing their records. There needed to be increased staff training across the workforce so that staff were confident and competent to undertake subject access requests properly and to engage with people directly about their records in order to provide the best support and to explain to them why their records had been written in a particular manner.

Which leads me on to the question of language of

records, again another theme which has already been touched upon. It's necessary that the language in records is child-centred, non-judgemental and appropriate, and particularly in historic records language was prevalent which spoke of children in stigmatising, pejorative and judgemental language.

Even in more recent times, as Ms Gordon highlighted in her evidence, some workers may use shorthand descriptors, which may not necessarily be appropriate.

LADY SMITH: And of course if, as an adult, somebody sees inappropriate language, judgemental, pejorative, whatever, it may well feel to them like they're being abused the way they were as a child all over again, even though it's a historical record because it's new to them.

MR BATCHELOR: Indeed, my Lady.

LADY SMITH: Just as -- you may not agree with this, but just as you might say, putting hurdles in the way of people who want to access their records is going to raise the risk of them feeling: this is the same authority that enabled me to be abused as a child and here we go again, I feel exactly the same way.

MR BATCHELOR: And it plays into the lack of trust which is already there.

LADY SMITH: Indeed. Thank you.

MR BATCHELOR: The next theme which the council identified related to the child's life story, that the records which were reviewed as part of the case study disclosed it was apparent that some adults who had experience of care had significant gaps in their understanding of their life. They had limited details about their birth families as well as limited understanding of why the social work department were involved in their lives, why they were moved between placements, et cetera.

Another point which has been touched upon, which is highlighted by this, is a real need for comprehensive documentation articulating the justification for these decisions.

But fundamentally it also highlights the need to engage with children about their life story and their understanding of that and to make sure that children are involved in decision making when the decisions are made and not just on a one-off occasion but on repeated occasions.

The child's voice again is something which -- and we've seen this in other case studies also -- records demonstrated very few explicit details of the child's views, thoughts and feelings gathered directly from them in historic cases.

So far as the child's view and voice were reflected

in the record, it was often through the lens of adults or through the lens of the foster carers.

LADY SMITH: If I may say, it's a really important point that's made there, if 20, 30 years on, or maybe more, a person is looking back at the records of their life as a child, it may be extraordinarily precious for them to be able to see reliably what they were saying and thinking at the time.

MR BATCHELOR: Indeed, my Lady, and again it comes back to that first point which I started with, the themes of the importance of a trusting relationship and a safe space for children to say how they really feel. And the question of language obviously being used in the records also.

LADY SMITH: Mm-hmm.

MR BATCHELOR: Chronologies is something which has already been spoken about and again the council identified the importance of a detailed chronology, not just for children but in relation to foster carers also. In relation to foster carers again it's that accumulation of minor incidents which over time might be seen to actually represent a pattern.

LADY SMITH: Yes.

MR BATCHELOR: And therefore a level of risk that needs to be investigated further.

Another central part of this case study has been bodies or organisations responding to complaints or allegations of abuse, and again the council identified the importance of having a centralised record of that and a clear system for making sure that these things were logged and documented.

Since 2006 the council have had a log of complaints, concerns and allegations. The council identified that there could be improvements in recording and use of that log to track progress and outcomes and new guidance was issued in that regard and that was discussed during Ms Gordon's evidence.

It would be fair to say that sometimes when you're in the witness box and looking at your guidance on the screen, it maybe leads you to think: well, actually, maybe we should just look at that again, and that's what Ms Gordon's reaction was, that there was some of the language in it which she thought could be clearer and she wanted to go back and ensure that the language being used was consistent with national guidance and also I think as a result of an exchange with Your Ladyship, to make sure that the guidance made clear that there was an option that whilst an allegation may be unsubstantiated, that didn't necessarily mean there was a finding that it wasn't correct.

LADY SMITH: Yes. I was very struck about how frank she was and open to review of the way the forms are drafted at the moment. That was a flag, I think, of an authority that is now thinking the right way.

MR BATCHELOR: Finally, my Lady, in relation to changes and improvements, the council has already made a number of service improvements as a result of learning from the Inquiry and as part of its work in implementing the Promise; the initial work, anyway.

Non-exhaustively I've listed four areas in the written submission in relation to that: subject access requests, training for staff, as previously discussed, and that change in culture from it being an information-processing exercise to being an interaction with an individual; training in the use of child-centred language in records, whilst that's largely been -- the worst language certainly -- in more historic records, it's always important to keep the child-centred language in mind and not to be cutting and pasting things or using just stock terms when more appropriate language would do.

As parts of the reflections on children leaving care, the council have enhanced their aftercare support for those in that situation and have established an aftercare hub to which care-experienced people can

pop in without an appointment for support or just a chat.

And a general increase focused on family time and maintaining family relationships as well as work through the adult part of the social work department on lifelong links to support reconnections where relationships have been lost or alternatively broken down.

The work in relation to implementing the Promise goes on at North Lanarkshire and the council wishes to extend its thanks to the Inquiry for the opportunity to take an active role in the case study and it looks forward to the publication of the Inquiry's findings in due course.

LADY SMITH: Thank you very much.

Staying with the norths, I'd like to turn to North Ayrshire Council, Mr Blair, when you're ready.

Closing submissions by Mr Blair for North Ayrshire Council

MR BLAIR: Very much obliged for allowing me to present this closing submission on behalf of North Ayrshire Council.

My Lady, I've forwarded the Inquiry a relatively detailed, I hope, submission in written form and it's certainly not my intention to take my Lady or the Inquiry through this verbatim.

I do, though, adopt the entirety of this submission and stand by the terms of it.

What I would like to do in the time available is to perhaps highlight certain key themes and passages within this submission and to seek to address any matters that my Lady has arising from that.

LADY SMITH: Thank you.

MR BLAIR: I should say at the outset the key objective for the council has always been to assist the Inquiry in discharging its functions. By participation and conduct throughout the Inquiry, it would be my hope on behalf of this authority that the council has demonstrated the seriousness with which the council has regarded these proceedings and that it has shown it has taken steps to meaningfully participate in the Inquiry, to engage with the ultimate goal of reflecting and learning for the benefit of children in or who may be placed in foster care.

In that regard the council again stresses the need for it as an organisation with responsibility for foster care in acknowledging the errors of the past, apologising for those and recognising the impact on those who were in foster care and who experienced poor treatment, including abuse.

I should say at the outset as I'm going to invite the Inquiry that this authority considers that foster care is still a key element in the spectrum of the

measures available to it to protect and to nurture children in a family-based setting where they require care away from their natural family.

It would invite the Inquiry to make a general finding that fostering remains important and performs an important societal function and provides most but sadly not all children with an opportunity to experience a positive, nurturing childhood.

In using that word nurturing, my Lady, one reflection that arises generally from the evidence that this Inquiry has heard is that it's not enough to provide baseline care for children. One is often dealing with children who already come from difficult traumatised backgrounds and that the authorities who provide foster care and the foster parents involved themselves should have in view those particular difficulties that those children may have and that what one is providing by foster care is the nurturing of a child not simply care in a very limited form.

LADY SMITH: I think on the same themes we have to note that foster care and kinship care are across Scotland -- we haven't heard from every single authority, but across Scotland it seemed by far the commonest means of discharging the responsibility to take children into residential care as opposed to other forms of

residential care. There has been an enormous shift over the last 10, 20 years in particular.

MR BLAIR: Entirely, my Lady. Insofar as I represent another three other authorities, in those submissions a similar point is made: it would appear that this is -- I hesitate to say a default tool but a preferred tool in the armoury available to Local Authorities.

LADY SMITH: It is and there are dangers in defaults.

MR BLAIR: Entirely, as my Lady said in her remarks to Ms Innes this morning about assumptions being made about particular systems.

LADY SMITH: Uh-huh.

MR BLAIR: In developing that just a little further, the council would also welcome an acknowledgement of the importance of national support to ensure that foster carers are sufficiently resourced, funded and supported to continue to do the important work they do.

My Lady, the council has of course provided a Section 21 response in some detail --

LADY SMITH: Just before you leave that, I can't remember if you're coming back to it on your written submission. On funding, does your Local Authority have a position on the publication of a national fostering allowance minimum? Or not?

MR BLAIR: Not as far as I'm aware.

LADY SMITH: You remember the Scottish Government touched on it this morning and Ms Innes mentioned it as well.

MR BLAIR: Yes. I can quickly check -- no, I'm told they have no position on that. I should say as a general comment that any matter arising this morning where my Lady has expressed a view, I'm conscious, for example, of the question of making specific apologies, that has very much been listened to by those instructing me today.

LADY SMITH: Good.

MR BLAIR: And anything that arises in terms of comments from today will be fed back to a session which is about to take place within North Ayrshire Council in about two weeks' time.

LADY SMITH: That's very helpful. Thank you.

MR BLAIR: Thank you, my Lady.

I don't intend of course to take my Lady to the Section 21 response in any sense. I would simply say that a great part of the council's position in terms of its position at closing, as it was at opening, rests on that response.

I'm conscious also, my Lady, that quite properly a particular case arose during the examination of the work of North Ayrshire Council, a case of William Rae, otherwise known as Billy Rae, short-circuited to BR for

the purposes of this submission. The council has provided the Inquiry with a series of addenda in relation to that particular matter and of course Mr Scott Hunter, the Chief Social Work Officer of the authority, gave evidence in relation to that matter.

I will speak just a little more about that matter later on as I'm conscious that it touches on the kinship care issue that my Lady alluded to a few moments ago.

LADY SMITH: Thank you.

MR BLAIR: In terms of a general reflection on the Inquiry, I'd like to make a number of observations.

This is a council which wishes to acknowledge the remarkable courage of all survivors who provided their experience of testimony. The council notes innumerous witnesses who have given evidence to the Inquiry, either directly or through the reading-in process, reliving their own trauma, whether the person is here giving evidence or writing it down perhaps for the first time, in order to ensure that future generations do not suffer as they have done.

Of course, saying this and being truly aware of it are two different things and that's why this council made arrangements for authorised senior officers to listen either in person or remotely to the direct oral witness evidence relating to the council throughout

these proceedings. And the power of that testimony has only served to make the council to seek to improve the fostering experience for all.

As witness EIC said:

"For me, this is about the truth coming out and the hope that children in care in the future will be better cared for."

Thousands of words have been heard in this Inquiry, tens of thousands of words have been put into written form. My Lady, in my respectful submission that simple sentence encapsulates the purpose of this Inquiry, of what this authority, and I imagine all of those involved in this process, seek to achieve.

And it serves as a salutary reminder again of the appalling consequences for those who have suffered abuse.

Again the council restates the sincere apology made in its opening submission. It does that sincerely. As my learned friend said earlier today, one of the other opening submissions, it's very easy to come over as saying something as rote or pro forma. That is not the case for this authority. This council does take seriously the reality that children within its care have been abused.

In terms of specific reflections and evidence led in

relation to the council, I should say a number of things.

The council hopes that it has provided, in terms of reflections on its role in this Inquiry, an evidence base for the Inquiry in terms of fostering care to assist the Inquiry in relation to North Ayrshire. It has sought to highlight the important role of effective fostering and nurturing and protecting some of our most vulnerable children. It hopes it has demonstrated that in terms of an understanding of legislation, guidance and good practice the council has demonstrated that it meets high standards.

In relation to the evidence led in relation to the Inquiry, the council would offer up some observations on some of the wider themes arising from its own evidence and to some extent the evidence led by other authorities.

The council continues to learn through the bravery of witnesses in terms of the impact of abuse, the lifelong impact it has on their lives. The voice of those who have been abused is crucial in learning from the failures made and to inform practitioners in terms of practice and policy.

The evolution of legislation has of course identified the centre of the voice of the child being

paramount in informing better ways of working.

My Lady, I was present when Mr Hunter gave his evidence. I'm mindful of the comments made by my Lady during the case study for this authority that it can be the -- the voice of the child can be given too much weight in the sense that that voice might not be conveying the real message, the real problems that that child is experiencing. The child who says, "Everything is fine, I'm okay", it's very easy to hear that but not look beyond it.

What I would say, and I'll develop this just a little further later when I do focus on the voice of the child, it's very important that practitioners continue to focus on what the child is expressing verbally and non-verbally, through their behaviours and actions, how they feel about the situation they find themselves in, and feelings are of course something that one might intuit rather than hear in terms through the use of language.

The council accepts and recognises that interactions with carers and the extent to which children thrive physically, mentally, educationally in terms of friendships, learning and taking part in social and sporting experiences are equally important indicators of the true voice of that child in the widest sense. The

child struggling at school, the child who has health issues, the child who seems to be solitary with few friends or few interests, that may tell the social worker dealing with that child rather more than what the child is simply saying in the language of the child.

What I would go on to say in relation to that is that another important consideration is the need for the council in upholding the rights of children is to act to promote the welfare of those children, certainly based upon the professional judgement based on the information available, but also importantly the triangulation of information from key sources. In other words, the importance of teamwork and inter-agency working is key to that process.

Children may say different things to different people at different times and in different ways. That's experience of life. Anyone who's had any interaction with a child will know that. How much more so when one is dealing with children who are traumatised and may have difficulties in expressing how they're truly feeling. They may have more confidence in speaking to one person but not the other.

Those are some general reflections, my Lady.

I'd like to just make some further comments arising from the evidence of Mr Hunter in that regard. I would

overall commend Mr Hunter to the Inquiry as a witness. He has of course only been Chief Social Work Officer in this authority since I think January of this year, so he had a particular difficulty in that regard, but I would hope he rose to the occasion.

My Lady may remember that he provided further evidence on the methodology used in conducting the file review, the demographic of North Ayrshire, the person-at-risk factors and of course practice within the council, including the review between 2006 and 2010 carried out by KPMG.

Touching on a matter which has been discussed this morning, my Lady, the council's general position is that the vast majority of children placed in care are children where abuse did not occur. However, the council accepts that abuse did occur.

The issue of what is systemic failure, if I can put forward the council's position in this sense. It is the position of North Ayrshire Council that, having carried out what is, in my submission, a robust review of the evidence, cannot say to this Inquiry that abuse within North Ayrshire in terms of numbers has been widespread, but equally, if there has been a failure in a system in the sense described by my Lady, then the council would accept that in that sense one might make a finding of

systemic failure.

The concern the council had at the outset, which I believe was shared by other authorities, is a view that the use of the word systemic or systematic suggests something in terms of volume of abuse as opposed to an approach to assessing whether systems have failed, and this council would accept that general position against the background that on the review carried out of the evidence in North Ayrshire, there's insufficient evidence to support the view that abuse was widespread within North Ayrshire, but equally the council accepts that where failures could be found, they may, subject to my Lady's view, be capable of being characterised as systemic in that sense.

My Lady, in that regard, I would invite my Lady to recall that within the Section 21 response this authority did provide evidence that where allegations of abuse were made, the council took steps to safeguard children with immediate effect, removing from the foster placement, review of registration was commenced and processed where appropriate. The fostering panel has played and continued to play a key role in reviewing registrations. And 18 carers against whom complaints of abuse were made were ultimately de-registered by the council.

Of course, my Lady, I readily accept, as does the authority, that not all records are complete, not everything is recorded. But with those caveats in mind, I would offer up to the Inquiry the view that this is an authority which can demonstrate from its Section 21 response a robust approach in relation to allegations of abuse which have been made, subject to, of course, the fact that unfortunately abuse has taken place from time to time.

In relation to the witness evidence led in this Inquiry, my Lady has, in my submission, the observations in relation to the BR case. No doubt my Lady will form her own views, having had the benefit of hearing evidence in the BR case.

The main message, in my respectful submission, which emerges from the BR case can really be encapsulated at paragraphs 6.7 and 6.8 of the written submission.

The BR case, in my respectful submission, highlights the tension between listening to and furthering the child's views, particularly where, as in that case, the child in care was of an age to express relevant views. The council of course readily acknowledges the crucial importance of obtaining and taking account of such views.

This case does, though, highlight that in so doing,

professionals often require to look behind what is said to them and to appropriately interrogate those views.

While it remains the position of the council that relevant professionals are trained and reminded to be alive to a child reporting a positive experience which is not in fact the case, all such judgements are of course subject to professional autonomy.

In that regard, it's therefore instructive to remind ourselves of part of the speech of Baroness Hale of Richmond in the ZH Tanzania case where she considered Article 12 of the UN Convention, which relates to seeking the views and listening to children.

This is an immigration case. It's about splitting up a family. But, in my respectful submission, the judgement of Lady Hale contains inevitably many nuggets of great insight in terms of how the UN Convention is to be approached and how the Articles of the Convention might be applied domestically.

In my respectful submission, I would offer up the following as a way of encapsulating this idea of listening to the voice of the child:

Acknowledging that the best interests of the child are a primary consideration in these cases immediately raises the question of how these are to be discovered. The important thing is that those conducting and

deciding these cases should be alive to the point and prepare to ask the right questions.

The point, however, is that it's one way of enabling the right questions to be asked and answered at the right time. A coherence of approach.

My Lady, I would like to move on in drawing this to a conclusion to perhaps look at some proposed findings in fact, recommendations that this council would invite the Inquiry to consider, overall learning and examples of planned work within the authority to respond to this Inquiry.

I'm conscious, my Lady, that this is somewhat different from a proof and it's relatively difficult to make invitations as to findings of fact on specific cases.

So the findings of fact that are invited are as set out, my Lady, at paragraph 7.1 onwards. Again, I will not read these out line by line but I would simply invite my Lady to accept these proposed findings of fact, which in the main are findings to the effect that foster care can be valuable and effective, that this particular council has demonstrated an awareness of national policy and guidance, that in general it's acted appropriately in responding to complaints, that it has provided to the Inquiry evidence which supports the view

that abuse is not systemic in the sense I've sought to describe in North Ayrshire, but equally of course accepting that individual failures are different from that wider picture.

LADY SMITH: Just let me follow up on what you're saying in that bullet point. Let me just unpack it.

MR BLAIR: I think it's bullet point ...

LADY SMITH: The one you were just referring to:

"The council's carried out detailed analysis of its information and it has provided evidence supporting their view that there is no evidence of widespread or systemic abuse or systemic failure on the part of the council in preventing or detecting abuse."

Do you actually go that far when it comes to a suggestion that there's no evidence of systemic abuse or systemic failure?

MR BLAIR: I would qualify it in the sense of my original interaction with my Lady and the emerging discussion today. Not systemic in the sense of there's evidence of abuse being widespread in that sense.

LADY SMITH: I've got that, yes.

MR BLAIR: I would entirely accept that in a narrower sense if there was a system failure then it goes too far to say there is no evidence. The question is whether the failure that arose is a failure of a system in the sense

that my Lady's described.

LADY SMITH: So a failure in a system or an absence of a part of the system that's required for child protection.

MR BLAIR: Absolutely. An absence of applying a system or an absence of a system to begin with.

Perhaps again in relation to that point if I could offer up this observation. One of the themes that has struck me in working in these cases is that even though one might be acting for an authority in one part of the country and an authority in another part of the country, it's striking how similar issues arise that can't simply be explained in terms of local culture, and it may be that an approach to the question of systemic abuse has to be looked at nationally in the sense that individual instances may not indicate a pattern but they may inform whether at a national level that points to a lack of a system. If these things keep happening, then nationally that perhaps suggests there may be gaps that could properly be described as systemic in that sense.

When I come on to, as I'm about to, recommendations that might be accepted by this Inquiry, in my respectful submission those local instances of failure which might not be characterised as systemic may nevertheless inform the view whether there are systemic failures nationally.

LADY SMITH: Thank you.

MR BLAIR: Indeed, I'm now moving on to those recommendations, my Lady.

LADY SMITH: Thank you.

MR BLAIR: Part 8 of the submission.

The council would invite this Inquiry to consider whether recommendations might be made on these lines, whether enhanced or additional funding of Local Authority foster care would help prevent and detect abuse. Whether the current level of support and training for foster carers is appropriate. Whether enhanced funding is needed to support birth families to keep children within that family or the wider familial network or other initiatives as part of an early intervention strategy.

I suppose reflective almost of the view in the late 1940s which led to the development of the foster care system, the idea that children should be cared for in something approaching a family setting, perhaps there's need to reflect further on whether or not in fact that needs to be wound back just a little more and look at supporting children in their original birth family.

The production of national guidance on recording and record-keeping to support best practice.

The Inquiry has plainly heard evidence of different

approaches to record-keeping throughout the country and problems which are common to authorities throughout the country, gaps in record-keeping, inappropriate language, absence of records, inappropriate redactions and so on and so forth. National guidance may be of assistance.

To continue to improve the voice of the child through routine and systematic access to specialist independent advocacy services.

To address the national challenge of recruitment and resources which arise from seeking to place children in their home area.

In addition, the council would suggest that there should be a learning review on conviction of a foster carer for abuse as an automatic requirement.

My Lady, moving towards overall learning and where this council now is, part 9 of the submission deals with that. In specific terms at part 9, point 3, this council has done and will do the following. There is to be a debrief of officers, senior officers of the authority, on 12 December to feed back on the key aspects of this case study and to agree the next steps for this council in learning from these proceedings.

In the last year its fostering handbook has been worked upon to redraft it. Its fostering procedures, including its policy procedure around carer allegations,

has also been reviewed and that work is now largely complete. Documents are about to be presented to the governance board of the council.

There is a significant work in place led by a dedicated post-holder over the last year to update practice guidance.

In terms of training and mandatory training for staff, that has been rolled out to foster carers as well in the last year, facilitated by team managers.

There is ongoing work within the Children and Families Service to reinforce the crucial role of chronologies, a theme following the completion of the council's Section 21 response.

There has been refresher training on the importance of chronologies and specifically on the recording of significant events.

LADY SMITH: Can you tell me whether -- sorry, just let me find it. Yes -- the redraft of the fostering handbook will in effect be the same exercise as updating fostering practice guidance or are these two different things?

MR BLAIR: I think they're two different things. I'm just trying to interpret the nod from the back of the room but that was my understanding.

LADY SMITH: Two different exercises?

MR BLAIR: They inform each other, of course.
LADY SMITH: I think you're getting an answer.
MR BLAIR: Yes, that's correct.
LADY SMITH: Thank you.
MR BLAIR: Lastly, and moving to conclusion, on file audits the team manager of the fostering team carries out a three-monthly file audit to ensure that amongst other matters unannounced visits to children in foster care are carried out as required, foster carer compliance with mandatory training requirements is followed through.

That really picks up on some of the points earlier today about foster carers not turning up for training and how is that addressed. This authority seeks very much to engage with that to make sure that that's picked up before it becomes a running sore.

Lastly in relation to the Promise, there is ongoing work within North Ayrshire to ensure foster carers are aware of and involved in implementation of the Promise locally and as recently as 4 November, foster carers were invited to attend the authority-wide conference on the Promise.

LADY SMITH: Thank you.
MR BLAIR: My Lady, as of 17 November 2022, this council has 142 looked-after children in foster care. Its priority

remains to safeguard and promote their welfare and that the welfare of those children will in the future be placed in foster care will be their priority throughout not just when they're in foster care but also on leaving care and beyond.

LADY SMITH: Does your 142 include kinship care or are your kinship figures in addition to that?

MR BLAIR: Kinship, my Lady, that seems to be -- I'll come back to my Lady rather than approach that on an ad hoc basis.

LADY SMITH: Thank you.

MR BLAIR: My Lady, those are the closing submissions for this authority. I would invite my Lady to accept the general tenor of those submissions and I'm grateful again on behalf of this authority to appear and make these closing submissions.

LADY SMITH: Thank you very much.

I'll take the afternoon break now, a short break, and then when we get back we'll come back to you, Mr Blair, on South Ayrshire, if I may.

MR BLAIR: Indeed, my Lady.

LADY SMITH: Thank you.

(3.00 pm)

(A short break)

(3.13 pm)

LADY SMITH: Mr Blair, we turn to South Ayrshire, is that all right?

Closing submissions by Mr Blair for South Ayrshire Council

MR BLAIR: That's correct, my Lady. I appear on behalf of South Ayrshire Council to make these closing submissions. Again I provided a fairly detailed written submission in that regard and again I adopt that in its entirety as representing the core position for this authority.

Again I'll endeavour, my Lady, to take from this certain key themes or points which the Inquiry may find of particular assistance. I'm mindful that a matter of just some weeks ago the final witness to this Inquiry was Mr Gary Hoey, the Chief Social Work Officer for South Ayrshire Council, so his evidence is relatively fresh in the minds of the Inquiry and I'll endeavour to take from it certain key points.

Again, this is an authority that provided a detailed Section 21 response and also additional evidence in relation GID-GIE case, and a further document was provided recently in relation to work carried out by Professor Martin in seeking to evidence to what extent the recommendations that arose in relation to the various reports carried out GID-GIE case have in fact been implemented by this authority.

At the outset I would readily accept that evidencing that those recommendations have been implemented has taken rather longer than may have been desirable and that was certainly a point my Lady made in evidence to Mr Hoey. What I would say is that the response from Professor Martin would appear to indicate that the various recommendations from the various reports, BAAF, Mr Duncan MacAulay and Ms Long have been acted on and have indeed been acted on over a period of time and continue to be implemented.

I'll endeavour to take my Lady to that in a little more detail later.

One point at the outset, my learned friend Ms Innes referenced this morning a particular issue in the GID-GIE case, which was overcrowding in that particular setting and in terms of point 4 of the analysis provided by Professor Martin, there is evidence to demonstrate that if overcrowding is detected as being an issue, there's a process by which that's referred to the agency decision maker and ultimately to the fostering panel to review.

So that's a very specific example of where a concern identified by my learned friend can be evidenced by this authority to have been dealt with in terms of further reflection and learning from the occurrence in the GID-GIE

case.

My Lady, in relation to the general position of this council, this is also an authority which would invite the Inquiry to find that it has acted appropriately, with diligence, transparency and good faith, in demonstrating that it has met the requests of the Inquiry in terms of meeting the Terms of Reference and this is also an authority which again continues to carry out research and to reflect on how we can better capture and reflect on the lessons learned, not just from this Inquiry but generally from the past.

My Lady, in relation to a general further reflection, again this is an authority which continues to review and reflect on that evidence since opening submissions were made and continues to seek to inform itself by learning from those who have been courageous in coming forward and giving their experiences, not just in South Ayrshire but more generally throughout Scotland, in explaining how abuse has impacted on them and continues to affect their lives, and this authority will continue to learn from that journey undertaken by others.

Again, my Lady, this is an authority which again seeks to apologise for the abuse which has occurred within the foster care system and recognises again that

an apology can only go so far.

In relation to the response to evidence led in the case study, I would offer the following general points in part 4 of the submission.

The evidence in particular has shown that the team around the child has a clear responsibility to advocate on behalf of the child in terms of decision making. One body or profession should not hold the franchise or majority in determining the decision. That should be shared equally among the partners.

Mr Hoey in particular in his evidence made clear there should be no hierarchy. An example he gave in his evidence was that 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.

LADY SMITH: That did come across as an important point, I think, Mr Blair.

MR BLAIR: Yes.

LADY SMITH: And whilst on the one hand it's I hope easy to agree that in the modern world there has to be a social worker whose responsibility is the child and a separate social worker whose responsibility is the foster carer, but from the child's perspective, bearing in mind there

may need to be changes of social worker naturally from time to time or they may just not gel with that person, however hard they try, you have to be alive to the possibility that there will be others in the child's life who may be able to fulfil that role of being a confidante, of being a trusted person that the child can turn to and listen to them.

MR BLAIR: Entirely, my Lady, and in a sense that reflects the general point about a child-centred practice because it's very easy for us as adults to view the world from an adult perspective whereby children should know that they speak to person A or B about certain matters. As a generality that might be right but as a matter of reality to that child, formal structures of that kind are meaningless. It's far more about who can they trust? Who do they think will listen to them and empathise with them? And it may be the teaching assistant rather than the dedicated social worker.

LADY SMITH: I think we've heard, for instance, in the school context it may be that the child naturally turns to somebody who is not a professional but works in the school kitchens or helps out in some other way, and it's not to be assumed that you need to have a professional label on you to be the right person for that child to feel they can lean on.

MR BLAIR: Absolutely. The dinner lady may hold the key in that sense.

LADY SMITH: Yes.

MR BLAIR: A theme I picked up on earlier was a trauma-informed approach and Mr Hoey in his evidence, in my respectful submission, made a number of points in that regard: he stressed that the council and foster carers should have knowledge of trauma and the impact that can have on children for whom they are providing care and nurturing and he called this a trauma-informed approach.

Adversity and vulnerability they may have already experienced will developmentally and emotionally require greater support and an unconditional understanding of their uniqueness. Review by this council has highlighted the need for further evolution of a person-centred approach to offer those who have experienced abuse and seek recourse and support and in that regard this council has in its preparation for this Inquiry in terms of its response outlined via BAAF, via the fostering panel and EDM process how it seeks to achieve that general trauma-informed approach, and again I give further examples within part 4.9 of this submission of exactly what that looks like in practical terms.

LADY SMITH: Thank you.

MR BLAIR: My Lady, moving to part 5 of the submission, really in relation to the failings or deficiencies in systems or in responses to abuse identified from the evidence, and again in this particular Local Authority the view arrived at after carrying out of what in my respectful submission is narrated by Mr Hoey in his evidence was a fairly robust and detailed exercise in analysing the files is that instances of abuse appear to be extremely low.

Now, immediately the authority accepts that records may not always be complete, not all instances of abuse may have been reported. The council does again put forward the general position that the question of the prevalence of abuse within South Ayrshire appears to be extremely low. Again, my Lady, we're in that territory of systemic abuse and whether one is dealing with how widespread the abuse is as opposed to whether there were failures of particular systems, but as a general position the council puts forwards that the instances of abuse in South Ayrshire are extremely low.

That is of course quite different from saying that any amount of abuse is acceptable. No amount of abuse is acceptable. Any instance of abuse or failure to prevent abuse is of great concern.

Of course, evidence of a low level of abuse, recorded abuse at least, is of course entirely different from whether systems in place to tackle abuse, suspected or ought to have been suspected, were sufficiently effective. Of course, we see an example of that in the GID-GIE case, where again my Lady has been provided, I hope, with fairly detailed evidence in the Section 21 response and in the addenda requested by the Inquiry about the issues GID-GIE case, where there may have been problems and what could have been done to identify those problems.

So in that sense, I would say that this is an authority which has identified within its practice an incidence where plainly there were significant concerns arising GID-GIE case.

Again, my Lady, this perhaps plays into this broader theme that even if within South Ayrshire there is a basis for saying in the evidence that incidences of abuse have been extremely low, where there is evidence of failure, again that may inform the extent to which at a national level the Inquiry might consider there is systemic failure and again GID-GIE case may indicate where matters may gel with the evidence led by other authorities.

My Lady, in relation GID-GIE case in particular,

Mr Hoey of course gave a considerable amount of evidence, and I'm really looking at paragraph 5.10 onwards of the submission. Mr Hoey does acknowledge for the council, and the council acknowledges itself, that the voice of the children in GID-GIE case may not have been heard.

As I recall his evidence, those are pretty much the words that Mr Hoey used in describing what happened in GID-GIE

In GID-GIE case, problems may have arisen because of inadequate individual decision making at the time as opposed to perhaps a systemic failure to follow, understand law, policy or guidance. That was very much the guidance of Mr Hoey on GID-GIE

The carers, GID-GIE were carers with the council from 2001 to 2007. The children in their care were a sibling group of four plus one other child. In that particular case, the Crown did not proceed with a prosecution.

An action plan was formed in February 2012 specific to social work services following on from an early report from Louise Long and of course that led to a multi-agency review led by Duncan MacAulay and a report to a Chief Officers Group in 2012.

The Inquiry has of course had sight of the relevant

reports and again taking up the evidence of Mr Hoey, the council would again reiterate, consistent with current practice, that there would have been a significant case review immediately following upon disclosures of the kind in [redacted] case. That did not happen in the [redacted] case. That is entirely unfortunate, and Mr Hoey was quite clear that child protection procedures would be appropriate in that regard, particularly instigating an inter-agency referral discussion or IRD.

LADY SMITH: Yes.

MR BLAIR: As a direct result of this process of compiling the Section 21 response, the Chief Officer Group commissioned Professor Martin to provide additional scrutiny, support and guidance to the learning from the [redacted] case and to ensure that there has been full implementation of the actions identified.

Mr Hoey, of course, touched on this in his evidence and at paragraph 5.15 I set out many ways in which the process has resulted in an improvement principal, including an electronic system for foster care files, robust foster carer assessments, the use of partnership agreements, improved means of ensuring that one doesn't lead to an excess of registered numbers, clear processes for formal decision making and oversight, clear guidance of expectations, development of a handbook for foster

carers, file audit calendars, ongoing evaluation and so on and so forth.

I hope in cutting short at that point at 5.15 I'm not downplaying the work that's been undertaken by the council and is supported by the independent assessment of Professor Martin that these things have taken place within this authority and to a great extent that's been because of the Inquiry process causing the authority to reflect on whether these recommendations have been followed through.

They have been and my Lady has the assurance from the report from Professor Martin that the steps consequent upon the various reports have in fact been followed through in full.

I make that point at 5.16, that work on implementation has been ongoing for a considerable time, since the early reports.

The council does of course regret the failure to demonstrate that it's only now that it can evidence in terms of the report from Professor Martin that that practice has changed.

I want to touch on some reflections, my Lady, on lessons to be learned and changes to be made.

It's clear, my Lady, that from listening to the testimony of adults that they all carry with them the

impact of trauma inflicted upon them in childhood. For many, significant abuse and trauma occurred within their natural families and the council acknowledges that for some the impact of further abuse within the system that was made to protect and nurture them has in fact compounded those difficulties.

I should, though, wish to highlight that in preparing for the hearing today evidence has been prepared by the council -- and this is set out at paragraph 6.1 of the submission -- about the voices of children who see foster care as a positive experience.

This reflects the work of the Champions' Board, something I mentioned in the opening submission, that South Ayrshire Council have.

LADY SMITH: South Ayrshire is not the only council that informed the Champions' Board.

MR BLAIR: Indeed. Absolutely, my Lady, I'm conscious of that. And there was a recent meeting of the Champions' Board and an effort was made to try and capture views from children there and these are simply samples, my Lady, of what was said:

"I want to say here forever. I love it here. The foster carers are my family. [redacted] my foster carer, says 'I love you' when I'm going to bed. My foster carers have showed they love me. They gave me a key to

the house and a football top with my name on it. It's super fun here, never boring, I love it. I know I'm staying here until I'm a grown up. I love my bedroom and new duvet cover. I feel really safe. I always get spoiled and I get to do things."

So again, my Lady, this is a council that restates its position at the opening submission that foster care is and can be a valuable and very effective way of caring for and nurturing vulnerable, traumatised children --

LADY SMITH: Mr Blair, you're absolutely right, and these are not the only indications that have been put before me that it can be an enormous success. Indeed, we've had some applicants who have had a bad experience but also wonderfully positive experiences, some of whom have built lasting relationships that have survived into adulthood, and that is what makes it, if you like, all the more heartbreaking, that it can work.

MR BLAIR: Yes.

LADY SMITH: It can enhance the child's life. Whilst it will never get rid of early trauma, it may enable them to live with it in a much more healthy way in which they cope and have resilience. But when it goes wrong, when it involves abuse, it's horrific.

MR BLAIR: It's entirely horrific, my Lady. The positive

reinforcement of a decent loving family for a traumatised child goes a long way to addressing deficits in their early years entirely, and the literature is vast on that. It's why it's heartening to know that there are these positive experiences out there.

Particularly poignant of course are case where children go from one home where everything's great and loving, expecting that to be the way, and then they are met with horror. I mean, how much, in terms of further trauma, is that likely to create, to get that flip-flop existence of never knowing whether you're going to a stable household or a horribly abusive one. It's dreadful, dreadful stuff.

LADY SMITH: Mm.

MR BLAIR: My Lady, Mr Hoey in that regard, building on the idea of the positivity of the foster care experience, did give, in my respectful submission, particularly helpful evidence in relation to what the council has learned from the Inquiry as a whole, including based on GID-GIE case and other cases and that's really at paragraphs 6.5 onwards.

Again, my Lady, there's a fair bit of material in this. I don't intend to read it out line by line.

6.5, summary of responses. Mr Hoey has provided

evidence to the Inquiry of ongoing improvements, including written policy and procedures, the creation of a specific handbook, assessment of prospective foster carers are more robust, including motivation to foster, checks on ex-partners and family members where applicable and references including employers, education, and where appropriate, health.

My Lady, I can say that in light of the comments made earlier about wider assessment of the household and the PVG disclosure debate, anything that this Inquiry can usefully offer in that regard will be taken up and listened to by this authority as it does appear to me at least to tie in very much to what this authority's already doing in recognising that perhaps the checks of the past were perhaps not sufficiently robust in terms of what one might expect in the modern world.

Again other examples are given at 6.5.

6.6, Mr Hoey's evidence, he was quite clear that foster care again was a key element in the spectrum of measures available to protect and nurture children away from their natural family. He provided clear evidence on the voice of the child and again recognised that professionals engaging with children, it was essential that skills are used to not just listen to the child but engage, question and analyse concerning behaviours.

As I said earlier in my earlier submission but again in this submission, there may be situations where the child responds and says, "Everything is fine, it's okay", but that has to be looked at in the context of the overall concerning behaviour.

This particular council involves children in their care planning, in the setting and developing of policies and procedures, and seeks their views individually and at an authority level. Again in the modern world, including through electronic means, such as the Mind of My Own system, group work or age-appropriate methods.

But what is the voice of the child? One of the key themes that emerged from Mr Hoey's evidence, in my respectful submission, is that the voice of the child has to be looked at in a far more sophisticated way than simply what they actually say.

6.8, the point is made that the voice of the child may be non-verbal. The true voice of the child may be listened to through not just what they say but non-verbally. Poor school behaviour may be far more eloquent of a problem in the foster home more so than the child reporting that everything is fine.

I should say perhaps also that some children who super perform in school or super perform on the sports field, that can perhaps be an indicator as well of

concerns that children are pouring their lives into their books or their football as a way of dealing with problems in their lives and one should be alive to that and not simply looking at children who struggle academically or in terms of sports as perhaps evincing wider problems in their lives.

Mistaken interpretation of the voice of the behaviour of the child. Behaviour such as bed-wetting can be misconstrued and mistakenly considered to be related to past experience rather than present unhappiness or emotional pain.

Nor should the voice of the child be limited to the child in immediate focus. The voice in the wider sense should include listening to the voice of all of the children in a given setting and not just the child in the instant matter.

Mr Hoey gave evidence that for example in the GID-GIE case the behaviour of the eldest child was characterised by her foster carers and indeed sadly by some of the social workers as problematic without there being a sufficient degree of professional curiosity.

Again, my Lady, this is an authority that would offer up to this Inquiry the words of Lady Hale in the ZH case about the need to listen to the child and to ask the right questions at the right time.

Coming back to that idea of professional curiosity and professional optimism, Mr Hoey was quite clear that professional curiosity should have the key role in critical analysis and evaluation by the team around the child. The need, as he said, to think the unthinkable rather than simply looking at matters on the surface and being professionally optimistic.

In relation to the trauma-informed approach, and again taking us back to [redacted] case, Mr Hoey noted that in [redacted] case consideration might have been given to wider concerns relating to the suitability of the [redacted] in relation to the physical health of [redacted] and the mental health of [redacted] as a wider part of their ability to care and nurture for children who were already traumatised.

My Lady, again a number of other points arise in chapter 6 of this submission. I won't go into those in detail. They're set out.

I'd like to move to facts which the Inquiry should find established, before moving on to some recommendations.

LADY SMITH: Thank you.

MR BLAIR: Again in a general sense it's difficult, in my respectful submission, to ask for a very granular findings of fact in relation to this particular

authority, but it would invite this Inquiry to accept that foster care can remain valuable, can be very effective, that foster carers are crucial in supporting and nurturing children. And the council would welcome a finding of the importance of national support to ensure that that role can be sufficiently resourced, funded and supported.

The council would also invite the Inquiry to find that there is a finite pool of foster care families and that there is an element of competition between Local Authorities and the agencies in the UK, perhaps picking up on the point raised by my Lady that there can be a shortfall in one area but not necessarily a way of knowing where there may be parents in another Local Authority area who would be more than willing to take that child on, whether in the short term or in the long term.

Again taken as a whole the council would invite the Inquiry to find that it's carried out and continues to carry out a detailed analysis of the information it holds in terms of assisting this Inquiry and to find that where instances of abuse have occurred they may illustrate wider issues at a national level in terms of whether there's evidence of systemic failure at such a level.

Again, there are further findings invited in terms of the submission, my Lady.

In terms of recommendations, again this is an authority which does invite certain recommendations. It invites this Inquiry to consider, again summarising some of these recommendations, whether there should be a national register of foster carers as a means of recording de-registration as well. De-registration may be more significant as the current process relies on authorities contacting each other to identify if carers had fulfilled their role in other areas.

Centralisation and access by Disclosure Scotland may assist in recognising areas where carers may have resigned for reasons that are not altruistic.

The council also notes there is a review of the children's hearing system in play as a consequence of the Promise. This is welcomed. The council hopes that this work may address some of the issues highlighted by the Inquiry, including fostering panels being reluctant to de-register foster carers and requiring children to be returned notwithstanding social work concerns.

This council would recommend there should be robust statutory guidance to tie all allegations against foster carers into child protection multi-agency procedures.

And again there should be robust statutory guidance

and recording practices on what is good record-keeping, the appropriate use of chronologies, to help workers identify persistent issues or patterns and strengthening the ways in which children in care records are archived and preserved.

Mr Hoey was clear that national guidance on the monitoring of practice should evince the view that effective monitoring should be qualitative and not simply an assessment of whether legal and local requirements were met. In other words, not simply box ticking but whether quality standards are also met.

In relation to the question of foster care and kinship care and private fostering, the authority would ask this Inquiry to consider whether the lessons for foster care apply equally to private fostering and kinship care. Of course, we do have a modern statutory regime which still differentiates between kinship and foster care in terms of the levels of approval and diligence undertaken prior to placement. This council would invite the Inquiry to reflect on whether that is an appropriate approach in light of the evidence heard.

My Lady, in terms of concluding remarks, the council welcomes this historic Inquiry. As at 15 November, this council had 106 children in kinship care and 99 children in foster care. The learning from this Inquiry will be

of a clear benefit for them. The council wants the voices of those in foster care to show that the [redacted] and [redacted] of this world are there for them, helping them to build happy and content lives in safe and loving environments. The council expresses its sincere gratitude for being permitted to make these submissions and for being part of this process.

My Lady, those are my submissions.

LADY SMITH: Thank you very much, Mr Blair, that's all very helpful.

Now, if I've got this right, we may just have time to hear you, Mr Watson, on the part of East Dunbartonshire.

Closing submissions by Mr Watson for East Dunbartonshire Council

MR WATSON: Yes, my Lady. East Dunbartonshire Council has been grateful for the opportunity to participate in this phase of the Inquiry. Your Ladyship will recall that they made an application for leave to appear late in proceedings and we're grateful to Your Ladyship for granting that, and thereafter for their Chief Social Work Officer, Caroline Sinclair, giving evidence to Your Ladyship.

The provision of foster care has been and remains an important element of the support they provide to

families and to children. They seek to safeguard and support children who need care, including through foster care and of course through kinship care, which Your Ladyship discussed in evidence with Ms Sinclair as well.

They look to adopt best practices in recruitment, in training, in support and in the oversight of foster carers; and the process of engagement with the Inquiry has already highlighted to the council several areas where they can enhance their care and safeguarding of children and indeed their support of foster carers.

My Lady, I will return to some specifics of that, but that's been through both the process of preparing the Section 21 responses and thereafter engaging in the evidence of the Inquiry and giving evidence directly to Your Ladyship.

While there are aspects that the council is currently reviewing and working on, Your Ladyship's recommendations in due course will also drive further improvements based on the evidence the Inquiry has heard.

Your Ladyship has heard from many applicants not only about their experiences but also about their hopes for the future and that's really been a consistent element of the evidence that's been taken from

applicants.

Your Ladyship will have noted a number of recurring themes and many of these have been picked up in submissions already today.

One theme from applicants has been their desire that no child should suffer as they did.

Secondly, the need for clear communication. Your Ladyship heard from many who were moved with little or no warning or who raised concerns and did not hear an outcome from that. Again, my Lady, that's been a consistent theme not only of children who were actively abused but who were looking back on their experiences in care and were reporting the substantial negative effect it had on them to be moved without engagement or forewarning of them or indeed of them properly understanding the nature of a foster care placement.

Thirdly, the importance of being heard, of being listened to when they did want to speak out, and again I'll return to that.

Finally, the need for full and accurate records of their time in care to help them to understand what had happened and, where possible, why.

Much of the applicant evidence did not relate to East Dunbartonshire Council. Some of these themes were

explored in witnesses from other councils, but the council takes all of the evidence seriously and reflects upon the extent to which that can still improve their practices.

They want to ensure that their practices now are updated to avoid the ills of the past, and with that in mind I turn then to several specifics.

Your Ladyship heard from Caroline Sinclair, the Chief Social Worker Officer for East Dunbartonshire Council. On disaggregation of Strathclyde Regional Council in 1996, they were left with no foster care families so they had to rebuild the service from scratch.

In 1997 they had four registered foster carers and that increased incrementally to the 20 or so that there are currently.

Ms Sinclair explained how they had done that and also spoke through the iterations of the guidance for foster care provision from 1996 onwards.

My Lady, there were two specific themes which emerged through that evidence from Ms Sinclair. The first was the identification of abuse itself. Your Ladyship heard about the line between behaviour that was identified as abuse and behaviour that was treated as a quality of care issue. That was referred

to as the threshold question.

There was evidence of one specific occasion where a young person had initially reported being kicked by a foster carer, later referred to as a tap, and did not want to speak to the police.

Your Ladyship noted the importance of the definition being used for abuse and whether the conclusion that something did not merit being reported to the police meant that it did not fall to be treated as an abuse. Allied to that is the importance of whether the fact that a child withdraws a complaint is treated as being an end to the matter, and of course neither of those should be the case. Both require to be addressed in detail and considered both individually and whether as part of a picture. It isn't as simple as identifying something as falling within a definition of abuse.

As Ms Sinclair stated in her evidence, there are many reasons why children and young people might minimise or not even report incidents. As she said, part of the ongoing evolution of the foster care approach and the understanding of what's needed is further commitment to finding ways to make sure that children and young people can tell somebody if something is not right and have confidence that it will be acted on appropriately, and of course that question of having

confidence is fundamental if a child or young person is going to speak up.

Ms Sinclair agreed that it would be best to record as much detail as possible and advised that their policies do need revision and that's a matter that the council continued to address.

They are already specific about what must be recorded, for instance, of abuse, but it must be clear for all incidents, regardless of which side of the threshold of abuse or quality of care they fall.

Separately in their Section 21 response the council acknowledged that there may be instances of abuse which were not recorded in the files or where the victim did not feel able to make a complaint, and that is of course a matter of great regret.

It might be said that no amount of support can guarantee that a child or young person will report their concerns or their experiences but that is what the council aims to achieve.

Ms Sinclair outlined subsequent developments and I'll say a little bit more about that later.

Turning to specific findings of fact on that element, my Lady, East Dunbartonshire Council acknowledges the importance of an accurate definition of abuse so that appropriate safeguarding can occur even

when an incident does not amount to a criminal matter. They acknowledge that it is not clear this has always been achieved in practice.

Secondly, the council also acknowledges that children and young people may not have felt able to make a complaint.

That's one element, my Lady. The second particular theme was that of record-keeping. Your Ladyship heard evidence regarding the transfer of responsibility between Local Authorities. Local Government was reorganised in 1975 and again in 1996, and Ms Sinclair agreed in evidence that it was possible that some records were no longer available. The council has made every effort to locate records and to take those into account in responding to the Inquiry, but there is no doubt that the changes in responsibility at least created the opportunity for records to be lost.

Your Ladyship in the course of today has already addressed the importance of records being available for adults who were in care and it's a great regret where that is not now the case.

Secondly on the question of record-keeping, Your Ladyship noted during Ms Sinclair's evidence that figures in the Section 21 notice response did not seem to add up. Ms Sinclair undertook to recheck the

position and revert, and on behalf of the council we submitted a supplementary letter on 1 July with corrected figures.

My Lady, I don't intend to go into the contents of that letter just now, but on the back of Your Ladyship's questioning they established that foster carers were being double-counted if they were registered under different categories: respite, permanent placement and so on, and on the other hand children could be undercounted as the numbers reflected the number of family groups, not individual children.

That has now been rectified to the past by manual review of the files and accurate numbers have been provided. But perhaps more importantly, the council has now developed their recording system to provide greater accuracy. It has been revised to provide defined and separate categories for foster carers and different types of placements as well as recording each individual child.

Thirdly on the question of record-keeping, the review of records identified that even when an allegation had been made and it was clear there had been some response, there was not always clear documentations of the outcome and how that had been communicated to the children or young people, to the

person making the allegation or to the foster carers. The council recognised that this is an area that they need to address.

As Ms Sinclair said, it is about closing the loop, communicating clearly to the young person at the time but also ensuring that if in later life they review their records, they can see the whole story of what happened to them at the time and that's a matter that the council are continuing to address in order to ensure it's fully addressed within the records.

Turning to findings of fact on that element, my Lady, East Dunbartonshire Council acknowledges that the records of some children in care and of some foster families may have been lost as a consequence of Local Government reorganisation and it cannot now be demonstrated what records may have existed.

The council also acknowledges that their system of recording the numbers of registered carers and children in placement was not robust. They have now addressed this in their social work recording system.

Finally the council acknowledges they have not always communicated outcomes clearly to children and young people and to foster carers and have not always properly documented that in their records.

Turning then to outcomes and recommendations,

Your Ladyship heard evidence on the ways in which support of children in foster care has been enhanced. Your Ladyship heard that evidence and indeed explored it with Ms Sinclair during her evidence and I do not intend to repeat it.

What is important, however, is that Your Ladyship has heard both from applicants and from Local Authorities how services have developed and how they could be further enhanced and when Your Ladyship comes to make recommendations, that will be significant.

Ms Sinclair spoke to several specific aspects. The collaboration between councils and sharing best practice, policies, procedures and training, and that is a theme which has been developed over the course of these closing submissions as well and no doubt one Your Ladyship will consider further.

Secondly, the provision of an app in addition to other means of communication to enhance the opportunities for children and young people to give their views about experiences in care.

My Lady, this wasn't intended as an emergency recourse but rather another platform that children and young people may feel more comfortable using in addition to everything else that is available to them.

Thirdly, the introduction of a care leavers'

Champions' Board. Again that's already been discussed today.

Fourthly, the development of a care-experienced modern apprenticeship post.

And finally the commissioning of independent advocacy from an external provider for the assistance of children in care, and Your Ladyship heard about the importance of that external voice for the child in the midst of their care experiences.

My Lady, East Dunbartonshire Council reiterates their commitment to the Inquiry now and as it continues. As I've set out, they are working on changes in the light of their engagement to date but they are also very keen to learn from Your Ladyship's recommendations in due course.

My Lady, those are my submissions on behalf of East Dunbartonshire unless I can assist further.

LADY SMITH: I have no further questions. Thank you very much, Mr Watson. I'm grateful to you for that.

Well, it's now almost 4 o'clock. I'm going to pause in the closing submissions there for today and tomorrow morning I'll begin with the City of Edinburgh Council.

Thank you.

(3.58 pm)

(The Inquiry adjourned until 10.00 am on

Wednesday, 30 November 2022)

I N D E X