

1 Thursday, 1 December 2022

2 (10.00 am)

3 LADY SMITH: Good morning. Welcome to the last day in our
4 hearings in foster care and boarding-out.

5 We turn this morning to the last of the closing
6 submissions and I'd like to start by asking Scottish
7 Borders Council to present their submissions, and that's
8 Mr Batchelor once more. Thank you.

9 Closing submissions by Mr Batchelor for Scottish Borders
10 Council

11 MR BATCHELOR: Thank you, my Lady. On behalf of Scottish
12 Borders Council, I adopt the written submission which
13 has been submitted to the Inquiry.

14 At the outset, the council wishes to reiterate its
15 acknowledgement that children under the care of the
16 council and its predecessor authorities were subjected
17 to sexual, physical and emotional abuse whilst in foster
18 care. The council apologises to any child in its care
19 who was abused and the council wishes to apologise for
20 any weaknesses in its systems which contributed to
21 children suffering from abuse whilst in its care.

22 In common with other Local Authorities, the council
23 compiled a detailed response to the Section 21 notice.
24 There are some parts of the council's response to that
25 notice which should be corrected and I wish to address

1 those now for the public record.

2 LADY SMITH: Thank you.

3 MR BATCHELOR: When responding to the Section 21 notices
4 served on it by the Inquiry, the council undertook
5 a review of records. A number of cases involving
6 complaints of abuse from 1990 onwards were identified in
7 that review. The methodology which was followed by the
8 council was to review the fostering panel minutes where
9 there was a record of a complaint of abuse and to
10 cross-refer those with individual files for foster
11 carers and for children.

12 The council accepts that the methodology employed in
13 their review of historic records was limited and it was
14 based upon complaints which had been recorded in those
15 centralised minutes. Those minutes were available for
16 the period from 1990 to 2014 only and the council
17 acknowledges that there will be other complaints of
18 abuse in its historic records which have not been found.

19 LADY SMITH: Yes. If what was happening in Borders reflects
20 what was happening elsewhere in the country, the
21 majority of complaints, instances of abuse, are likely
22 to have been earlier than 1990.

23 MR BATCHELOR: Indeed. Nothing prior to 1990 will have been
24 included in the response. And the council also
25 acknowledges that there are likely to be other cases

1 where children in foster care under the care of the
2 council or its predecessor authorities have been abused,
3 but there's no actual record of that in the records
4 anyway.

5 LADY SMITH: Same again as we've experienced elsewhere.

6 MR BATCHELOR: All I would say on behalf of the council,
7 my Lady, is that they were trying to do their best and
8 they thought that that was a proportionate way to try
9 and answer the question. It wasn't intended to avoid
10 uncovering the skeletons in the closet, as it were.

11 LADY SMITH: I'm grateful to them for recognising, though,
12 the apparent problem that arose. Can I say, I can quite
13 understand that if you're not wholly immersed in the
14 work of this Inquiry, and, for example, the realisation
15 that it really does matter to go back to the beginning
16 of the period we've been asked to examine, which
17 of course is within living memory, and the earliest
18 we've got of that, as I think I've said before, is 1916,
19 evidence through the daughter of somebody who was in
20 care, yes, 1916, you may just not realise why I would
21 need to hear evidence about what happened before 1990.

22 Of course we want to know what the current position
23 is, but we learn so much from history that we need to go
24 back further than that.

25 I can understand having made that mistake, if I can

1 just say that, Mr Batchelor.

2 MR BATCHELOR: Thank you, my Lady.

3 The original response used the word "minimal" to
4 describe the nature and extent of abuse which had
5 occurred and as the Chief Social Work Officer, Stuart
6 Easingwood, indicated in his evidence, he didn't
7 consider that was an appropriate word to use and it
8 might give a misleading impression of what was intended
9 and certainly the council doesn't seek to minimise any
10 case of abuse.

11 The council acknowledges that it doesn't know the
12 true nature and extent of abuse suffered by children in
13 foster care between 1930 and 2014. However, it is clear
14 that the extent of abuse goes beyond the cases which
15 have been identified in the council's original response
16 for the reasons we've already discussed.

17 In addition, in the initial response the council had
18 not identified cases where policies and procedures had
19 not been followed in practice. In light of the evidence
20 presented at the Inquiry, the council has to acknowledge
21 its policies and procedures were not always followed in
22 practice and that's epitomised by the case of [REDACTED]
23 where clearly child protection procedures ought to have
24 been instituted and were not.

25 Finally on the response, my Lady, in relation to

1 systemic failures, the council's initial response
2 indicated that it didn't consider it was a fair
3 inference to draw that its systems and the systems of
4 its predecessors had failed to protect children.

5 It's clear from the evidence presented, however,
6 that some mistakes were made and that historically
7 systems were not robust enough and in some instances
8 were not adhered to.

9 There are two recent significant cases which the
10 council considered it should address specifically. The
11 first concerns a criminal conviction, about which we
12 heard evidence. A council foster carer, Chris Thompson,
13 was convicted of sexual abuse of two children in care in
14 April 2011. The conduct itself took place in 2009 and
15 2010.

16 The circumstances were that the first complainer had
17 lived with Mr Thompson and his wife for seven years.
18 Both complainers were over the age of 16 but under the
19 age of 18. They had previously been victims of sexual
20 abuse and Mr Thompson was aware of that.

21 Mr Thompson was sentenced to 52 months'
22 imprisonment.

23 When the initial disclosure was made, there was
24 an appropriate child protection response. Child
25 protection procedures were instigated and the police

1 informed. All four children in the placement were
2 removed and placed with alternative carers and
3 a disruption meeting took place.

4 And although lessons were learned from this case, no
5 significant case review was carried out. With hindsight
6 it's accepted that there should have been one.
7 Mr Thompson's offences involved serious sexual abuse
8 with lasting impacts on the victims and it was
9 considered locally to be a significant case at the time
10 and lessons were learned after the case.

11 Mr Easingwood's evidence highlighted a number of
12 changes which took place locally as a result of that
13 case and that evidence came from his knowledge from when
14 he was a team leader in the locality area at the time.

15 The second case which is worth highlighting and
16 which was discussed in evidence involved a foster carer
17 who was de-registered in 2014 following a series of
18 incidents of concerning supervision of children in her
19 care and the subsequent minimisation of the potential
20 consequences of that lack of supervision.

21 An independent internal review of that case took
22 place and in light of that guidance was issued for
23 managing situations where there are incidences of
24 repeated allegations of poor practice.

25 My Lady will see from both of those examples themes

1 which come through which have been discussed over the
2 last two days in relation to chronologies in the latter
3 case and the doubling-up of social workers in the former
4 case, which I'll come and address again in a moment.

5 LADY SMITH: Yes.

6 MR BATCHELOR: Turning to the applicant evidence, my Lady,
7 [REDACTED] applicants gave evidence in relation to their
8 experiences in foster care with the council and its
9 predecessor authorities and the council wishes to
10 address some specific issues arising from that evidence.

11 First, the case of [REDACTED]. [REDACTED] was in the care
12 of [REDACTED] Council and was placed in foster
13 care [REDACTED]. He was a child with
14 behavioural problems who'd spent a significant period of
15 time in residential care prior to his placement. He was
16 placed with inexperienced foster carers in [REDACTED] and
17 it's clear from the available records and [REDACTED]
18 evidence that the council failed to respond
19 appropriately when disclosures of physical abuse were
20 made in the 1990s.

21 The records clearly document that [REDACTED] foster
22 father used physical chastisement during disagreements.
23 The social work department were aware of this and the
24 records at one point even refer to [REDACTED] being
25 assaulted by his foster father.

1 Although child protection procedures are referred to
2 in the records as something which were considered, they
3 were not instituted. They should have been. It's
4 difficult to understand why they were not and
5 Mr Easingwood reflected in his evidence if a similar
6 situation were to happen now, child protection
7 procedures would be instigated.

8 The second applicant was 'Agnes'. 'Agnes' was in
9 foster care in the 1960s or perhaps more accurately she
10 was boarded-out in the 1960s. She'd been in residential
11 care and was boarded-out to the Isle of Bute between
12 1964 and 1970 when she was between the ages of 12 and
13 18. She gave evidence of a cold placement where she was
14 emotionally abused. She was separated from her siblings
15 and wider family.

16 There are very limited records available of
17 'Agnes's' time in care. However, it's clear that the
18 geographic distance between social workers in the
19 Borders and the Isle of Bute made proper monitoring and
20 supervision of the placement impossible. 'Agnes' does
21 not appear to have had anyone to speak to about what was
22 happening to her. There are very few documented visits.
23 The record-keeping around her placement was almost
24 nonexistent and there's no rationale noted for placing
25 her with the particular carers in that particular

1 location.

2 Picking up on 'Agnes's' evidence, my Lady, when
3 reflecting on the evidence, a theme which has come
4 through from [REDACTED] evidence is the
5 importance of geography when placing a child in foster
6 care. [REDACTED] applicants in this
7 case study were placed outside the council area.

8 In his evidence, Mr Easingwood confirmed that it's
9 the council's preference to place children within the
10 council area, and there are obvious reasons for that
11 both from a safeguarding perspective but also from the
12 point of view of the general welfare of the child.

13 LADY SMITH: Yet you could see in the case of a small
14 authority they are likely to have a much smaller number
15 of foster carers on their books and maybe are more
16 likely at any time to be pushed into considering
17 placement outwith their own boundaries.

18 MR BATCHELOR: Indeed. A smaller authority with fewer
19 carers, which I suppose is at one corner of the country.

20 LADY SMITH: Yes, indeed.

21 MR BATCHELOR: Placing a child in familiar surroundings to
22 which the child can relate and within their own
23 community produces better outcomes. Placing a child
24 with foster parents within the locale means the Local
25 Authority is better placed -- it's a fairly obvious

1 point, I suppose -- to have proper oversight of the
2 placement and it's easier for social workers and others
3 to build relationships with the child, to spend more
4 time with them and to build trust.

5 In 'Agnes's' case, she doesn't appear to have had
6 a social worker to whom she felt able to speak to about
7 her problems.

8 In [REDACTED] case, contact with the [REDACTED] Council
9 social worker was less frequent than it otherwise would
10 have been due to the geographic restrictions.

11 Although assistance was sought from [REDACTED]
12 [REDACTED] Council, [REDACTED] evidence was that his
13 relationship with those workers wasn't the same as it
14 was with the [REDACTED] workers.

15 Another theme relates to the suitability of
16 placement and matching children with carers. In current
17 practice it's recognised that the matching of children
18 with foster care is key. It's necessary that carers
19 have the requisite skills to cope with the child's
20 needs. In [REDACTED] case the records indicate the foster
21 carers were inexperienced. They'd not looked after
22 foster children before. [REDACTED] was an older child who
23 had suffered trauma and significant loss of familial
24 relationships.

25 Prior to the placement there was an intensive

1 assessment process over a three-month period and there
2 was some evidence that the foster carers were made aware
3 of the difficulties involved in caring for a child with
4 [REDACTED] background. However, the available records
5 indicate that the council were unable to put them in
6 touch with other more experienced foster carers who had
7 fostered an older child and [REDACTED] evidence in
8 relation to this was that the foster carers were
9 ill-equipped to take on a child like him. They either
10 weren't fully aware of the challenges or were not
11 provided with the appropriate support, in his view.

12 In 'Agnes's' case, there is no evidence of any
13 consideration being given to the suitability of the
14 placement.

15 Turning to lessons learned, my Lady, this is not
16 intended to be an exhaustive list. However, some key
17 points which arise from the evidence relating to the
18 Scottish Borders Council are noted in the written
19 submission.

20 The first of those is that it's necessary for
21 children in foster care to have their own allocated
22 social worker who is separate from the foster carer's
23 social worker and for those roles to be kept separate.
24 As I said, this was a lesson which was learned in light
25 of the conviction of Chris Thompson. Although there

1 were separate social workers allocated to the children
2 and to the foster carer, on occasions social workers
3 had, to put it colloquially, doubled-up by performing
4 the required statutory review on the children. However,
5 the social worker performing that role was not actually
6 the child's social worker.

7 LADY SMITH: That's a really bad error, isn't it, because
8 it's a key point? In carrying out the review,
9 information may be identified which is a matter of
10 concern but a child's not going to raise something with
11 a stranger easily.

12 MR BATCHELOR: No, my Lady. And even if it's not entirely
13 a stranger, it blurs the distinctions between the roles.

14 LADY SMITH: Or even with somebody who they see as the
15 friend of the foster parents.

16 MR BATCHELOR: Indeed.

17 LADY SMITH: And they want to talk about something that
18 they're not happy about in the foster home. Nor is the
19 fosterer's social worker going to have got to know the
20 child the way one hopes that the child's own social
21 worker will have got to know them.

22 MR BATCHELOR: So although it's not necessarily the case
23 that a disclosure would have been made at an earlier
24 date had that not been done, it was still considered by
25 the council as obviously very important, for the reasons

1 my Lady outlines, to keep those two roles separate and
2 for the child to see that they're separate.

3 The child should feel their social worker is there
4 for them.

5 LADY SMITH: Yes.

6 MR BATCHELOR: As I say, blurring the distinction risks the
7 social worker becoming blinkered and losing objectivity
8 over the placement.

9 The important consideration is to create a space for
10 a child to tell you about something that's concerning
11 them.

12 As we've discussed in relation to some previous
13 submissions, the contact between a child and their
14 social worker should take place in a variety of
15 different settings to ensure that workers maximise the
16 opportunity for the child to tell them about anything
17 concerning them.

18 The second point arising out of the Chris Thompson
19 case, my Lady, is that a settled placement is not
20 necessarily a safe placement. In that case, the
21 children had been in the placement for a number of years
22 and the council didn't have concerns about it.

23 LADY SMITH: No news might not be good news. We're back to
24 the danger of making assumptions.

25 MR BATCHELOR: Again, the need to create a safe environment

1 for children to discuss any concerns they have in
2 a variety of settings is a significant learning point
3 and again it goes back to the theme of professional
4 curiosity which we've discussed over the last two days.

5 The third lesson which arises from the 2014
6 de-registration case is it's key that a clear record of
7 more minor incidents is kept, and there's a properly
8 constructed and detailed chronology available in the
9 social work records.

10 As I say, that arose from the 2014 case where, after
11 an internal review, the council compiled a policy on the
12 accumulation of minor incidents and that review
13 concluded that a chronology should be kept in all cases
14 of foster carers as the most recent report for the
15 fostering panel in that case hadn't raised any concerns
16 about the foster carer's care.

17 Fourth, and again another recurring theme which we
18 have discussed, relates to records. It's vital to have
19 clear, accurate and comprehensive recording in
20 children's files. That recording should highlight the
21 child's views, needs and wishes, as well as clear
22 records of decision making and should be couched in
23 appropriate language.

24 And particularly those records should be clear in
25 relation to key decisions in a child's life.

1 In older records, the child's voice is not generally
2 reflected at all, as we've discussed. For example, in
3 'Agness's' case, there's no indication of her views or
4 wishes in the scant records which are available. It's
5 necessary that records include a clear chronology of
6 significant events in a child's life to ensure that this
7 can be understood and the records should also clearly
8 reflect the decisions made by organisations in relation
9 to the care of the child and the reasons for those
10 decisions.

11 Again, that's particularly important when
12 considering the need for children, young people or
13 adults who are care-experienced wanting to see what's
14 happened to them in the past when they're older.

15 LADY SMITH: I probably should have mentioned this before.
16 Interestingly, or not, whilst the current regulations,
17 the 2009 regulations, make provision for retention of
18 the foster carers' records or prospective foster carers'
19 records, the 25-year retention period, I haven't been
20 able to find any regulation that has any requirement
21 about the making of or retention of children's records,
22 but maybe it's somewhere else. Maybe it's in social
23 work regulations? I don't know.

24 I don't expect you to know off the top of your head,
25 Mr Batchelor.

1 MR BATCHELOR: I was about to open my mouth and also
2 speculate because I think there is something in relation
3 to social work regulations but I don't have it at my
4 fingertips.

5 LADY SMITH: It would be helpful, I would have thought, if
6 they were in the Looked After Children (Scotland)
7 Regulations because that's where you'd expect to see
8 them. It just also gives you the impression of the
9 paperwork for the foster carers being more important
10 than the paperwork for the children and that's not
11 right.

12 MR BATCHELOR: No, it's not.

13 Finally on records, my Lady, we've already discussed
14 that it's necessary that records are written in
15 appropriate language, and in [REDACTED] case, records from
16 as recently as the mid-1990s refer to him in
17 stigmatising language, which was not child-centred.

18 Scottish Borders Council is committed to providing
19 a high standard of care and support to children in
20 foster care and to foster carers. It remains committed
21 to assisting the Inquiry in its work and welcomes the
22 opportunity to learn from the findings of the Inquiry
23 and to implementing any recommendations which the
24 Inquiry makes.

25 LADY SMITH: Thank you very much.

1 MR BATCHELOR: Thank you, my Lady.

2 If I may just add on a personal note, my Lady, to
3 finish that final submission, I would like to extend my
4 personal thanks to Ms Innes and the Inquiry team for the
5 very helpful approach which has been adopted during this
6 case study. It's obviously been a very significant and
7 large case study and we certainly don't underestimate
8 the amount of work that's come into it.

9 LADY SMITH: That's very good of you to articulate that,
10 Mr Batchelor. I'm sure it's appreciated. Yes, it has
11 been long, it has been tough, it has been arduous, but
12 the subject matter undoubtedly justifies it. Thank you.

13 Now, Barnardo's. Ms Comiskey.

14 Closing submissions by Ms Comiskey for Barnardo's

15 MS COMISKEY: The Inquiry has heard evidence from applicants
16 who were in foster care where the placement was provided
17 by Barnardo's. Barnardo's wants to thank all those who
18 gave evidence, particularly those who were foster
19 children through Barnardo's, for their courage and
20 clarity in giving evidence, despite the obvious toll
21 that took on them. We appreciate how difficult that has
22 been for those who have suffered abuse.

23 It is an area of great sensitivity to those impacted
24 by it and has had lasting effects on many lives.

25 Barnardo's is also grateful to the Inquiry team for

1 the manner in which they have conducted this case study,
2 and in that I would extend in particular to Ms Innes and
3 Ms Rattray.

4 In Barnardo's opening submissions and on previous
5 occasions they have stated that Barnardo's wants to hear
6 from former children who were in our care, and that
7 offer remains open. Barnardo's Making Connections
8 service is happy to speak directly to former foster
9 children or to provide records from their time in foster
10 care. The service is open to all former foster
11 children.

12 Barnardo's encourages all those who want to know
13 more to contact them. They will be provided with
14 support throughout that process.

15 The Inquiry also heard evidence from Richard
16 Simpson, Barnardo's Head of Safeguarding and Quality,
17 and Brenda Farrell, Barnardo's UK Head of Fostering and
18 Adoption. At the outset of their oral evidence, Richard
19 Simpson, Barnardo's Head of Safeguarding and Quality,
20 and Brenda Farrell, Barnardo's UK Head of Fostering and
21 Adoption, reiterated Barnardo's apology to all those
22 applicants who were formerly in their foster care. They
23 stated:

24 "Abuse suffered as a child can have a harmful and
25 long-lasting impact on someone's life. We acknowledge

1 that some children were abused while in our care and it
2 is a matter of deep regret to Barnardo's that we failed
3 to protect these children. We are deeply sorry to those
4 who suffered abuse for the harmful impact that may have
5 had on their lives."

6 We do not intend to summarise the evidence during
7 this case study, but rather to highlight areas of
8 particular note where we consider we can assist with
9 proposed findings of fact.

10 LADY SMITH: Thank you.

11 MS COMISKEY: Beginning with the relationship between
12 Barnardo's and Local Authorities.

13 Barnardo's has provided an overview of its
14 involvement with fostering within its Part A to D
15 response. This was also discussed during Mr Simpson and
16 Ms Farrell's oral evidence. In short, Barnardo's'
17 practice of boarding-out children began in the post-war
18 period. This developed into working in partnership with
19 specific Local Authorities in order to provide more
20 specialist fostering placements, with several projects
21 set up in Edinburgh and in Glasgow.

22 In 2008, Barnardo's established a Scotland-wide
23 service under one Assistant Director. Fostering
24 provision is now provided as part of the Excel Fostering
25 Framework, which allows Local Authorities to commission

1 the placements that they require for the children in
2 their care.

3 Barnardo's has produced fostering records which show
4 that the Local Authorities were working closely with
5 Barnardo's from the 1960s onwards. Records from the
6 1990s demonstrate that Barnardo's social workers were
7 visiting fostering families separately and in
8 conjunction with the Local Authority social worker.
9 Resources within the Local Authority appear to have been
10 stretched, with review meetings and planned actions
11 being delayed.

12 Barnardo's considers that the roles and
13 responsibilities of the Local Authorities and Barnardo's
14 has developed and become more defined over the years.
15 There is now a very clear protocol outlined within the
16 commissioning framework between Barnardo's and the Local
17 Authorities. That agreement sets out the respective
18 roles and responsibilities of the Local Authorities and
19 the fostering provider.

20 Barnardo's considers that this collaborative
21 approach between Barnardo's and the Local Authorities is
22 essential, with clearly agreed roles and
23 responsibilities for each, and the proposed finding in
24 fact, my Lady, would be the evidence heard by the
25 Inquiry suggests that the collaborative nature of this

1 partnership and each party's roles and responsibilities
2 were historically not always well-defined. Services may
3 have been affected by the level of resource within the
4 Local Authority. Collaborative working in the
5 partnership between the Local Authority and any
6 fostering agency is critical to the provision of
7 a safeguarded and protected environment for that child.

8 LADY SMITH: It's an interesting way to put it. It's not
9 simply a straightforward delegation by the Local
10 Authority. There needs to be a sense of ongoing
11 collaboration if the child's interests are going to be
12 properly protected, I think.

13 MS COMISKEY: Indeed, my Lady. There is room for input from
14 the provider, such as Barnardo's, to assist.

15 LADY SMITH: Yes. Thank you.

16 MS COMISKEY: Assessment process.

17 Barnardo's have always had in place a system whereby
18 potential foster carers were assessed. Barnardo's
19 approved foster carers independently of legislation or
20 regulation prior to the introduction of the 1959
21 regulations through a combination of home visits,
22 application information, references and interviews
23 within the community.

24 Subsequent to the 1959 regulations coming into
25 force, Barnardo's approved foster carers on

1 an independent basis in accordance with these
2 regulations.

3 After the 1996 regulations were brought into force,
4 Barnardo's approved foster carers as a result of formal
5 agreements with Local Authorities.

6 We heard evidence from an applicant whose husband
7 was under the care of the Local Authority as a child, as
8 was supervised by Barnardo's in the 1960s. The records
9 indicate that Barnardo's did not follow their usual
10 process of selecting and vetting foster carers because
11 of a kinship element.

12 Barnardo's considers its responsibilities were the
13 same as a more traditional fostering arrangement. From
14 the evidence, there is no doubt that significant harm
15 and abuse resulted from that placement. Barnardo's
16 failed to protect him from that abuse and would wish to
17 restate the genuine and heartfelt apology given by
18 Mr Simpson during his evidence to the Inquiry.

19 LADY SMITH: Thank you. Thank you for that.

20 MS COMISKEY: Today, Barnardo's carries out robust
21 assessments which are constantly being developed and
22 reviewed. A member of senior management leads on
23 safeguarding.

24 Where any abuse, neglect or incident of concern is
25 suspected, it is reported, reviewed, and the learning

1 shared, with changes being implemented. The learning is
2 gathered quarterly, scrutinised and applied. For
3 example, by providing further training to staff or by
4 introducing new systems.

5 By way of example, Barnardo's recently introduced
6 the internal safeguarding review process and this was
7 discussed by Ms Farrell in her evidence. This involves
8 the collation and analysis of a chronology of the foster
9 carer's fostering journey so as to better detect reports
10 of low-level concerns and disguised compliance.
11 Training on disguised compliance was also given to
12 staff.

13 LADY SMITH: Disguised compliance being something which one
14 might also refer to as disguised non-compliance, because
15 what's being disguised is the fact that there isn't
16 actually compliance.

17 MS COMISKEY: Indeed, my Lady, on that.

18 Perhaps before I go on to the proposed findings in
19 fact, I note that the Inquiry has been interested in
20 whether independent chairs are engaged in fostering
21 panels, and I can advise that, in line with regulations,
22 all Barnardo's registered fostering services with Care
23 Inspectorate Scotland have panels to approve their
24 fostering carers and are chaired by independent chairs,
25 and also have independent vice chairs.

1 LADY SMITH: Thank you.

2 MS COMISKEY: The proposed finding in fact under the
3 assessment section, my Lady, is that the records
4 indicate that an assessment system has been used by
5 Barnardo's since it boarded-out children in the post-war
6 period. This system has developed and been refined over
7 the years. Barnardo's accept that there was an instance
8 where its own system of checking and vetting applicants
9 was not carried out, and that the child placed in
10 a kinship-type fostering arrangement suffered abuse.

11 LADY SMITH: Thank you.

12 MS COMISKEY: Policy for permanence.

13 As early as 1943, Barnardo's recognised the
14 importance of raising children in a safe and nurturing
15 family environment in what were described at the time as
16 normal home conditions. The advantages of permanent
17 placements with a family as opposed to residential
18 children's home became more and more apparent over the
19 years.

20 The Inquiry heard evidence from an applicant who was
21 placed alongside his sibling with a foster family, and
22 noting the evidence in the submissions yesterday from
23 Falkirk Council, the sibling in question was a brother,
24 so regarding language, my Lady, it is something that has
25 been noted by Barnardo's since yesterday, the feedback

1 that came from Falkirk Council as to the language that
2 is preferred.

3 LADY SMITH: Ah, yes.

4 MS COMISKEY: No same-race placements were available and the
5 family offered the children a foster placement and then
6 permanency. Special dispensation from the usual policy
7 rules in favour of same-race placements was sought from
8 senior managers.

9 It was felt that it was best for the children to
10 remain with their foster parents. Unfortunately, the
11 applicant's placement with the family later broke down.

12 The Inquiry also heard evidence from his former
13 Local Authority social worker, and she suggested that
14 Barnardo's and other providers may have had a policy in
15 the 1990s whereby foster children were placed for
16 a two-year period before another placement was found.

17 Barnardo's' aspiration at that time was to have
18 children placed in a permanent placement within
19 a two-year period. Children may have been placed with
20 temporary foster carers so as to avoid lengthy stays in
21 a children's home. Those temporary foster parents may
22 have offered permanency, or if not, Barnardo's would
23 continue to work towards finding a permanent home for
24 the children.

25 Barnardo's recognises that there can be an adverse

1 impact from being moved between different residential
2 facilities and placements on a child's development and
3 attachment. Barnardo's' aim remains to enable children
4 to stay in one foster placement as far as possible.

5 Regarding the proposed finding in fact, there can be
6 difficulties in terms of the availability of permanent
7 foster carers and whether they will be a suitable match
8 for that child. In such circumstances, temporary foster
9 carers can play an important role in providing a family
10 environment for the child.

11 Voice of the child.

12 From as early as the 1943 Barnardo's book, there was
13 a focus in Barnardo's on the child and getting the
14 child's view. It is recognised that the child's view
15 was significant and important.

16 In 1984, children in foster care were provided with
17 a booklet by Barnardo's, telling them that they could
18 complain. It was specifically designed to allow a child
19 the opportunity and space to express how they were
20 feeling within their family environment.

21 Regrettably, a common theme that has emerged
22 throughout the Inquiry's work, and not just in the
23 context of the fostering case study, is that the voice
24 of the child was not always heard. Often the child was
25 not being spoken to on their own, outwith the presence

1 of the foster family, or they were not being afforded
2 the opportunity to express freely how they were feeling
3 in the placement.

4 Children in a foster placement can be more isolated
5 compared to a child in a children's home or unit. There
6 was discussion at the foster care panel session on the
7 importance of children having access to independent
8 advocates. It was unanimous amongst those participating
9 that by independent it was important that such advocates
10 were neither employed by the provider or by the Local
11 Authority.

12 Barnardo's services in Scotland at the present time
13 are working with the sector to develop a programme which
14 allows for the provision of independent advocates.
15 Barnardo's are setting up a pilot to run that system to
16 work through any issues and to ensure that a model can
17 be implemented to allow them to ensure that each child
18 in foster care in Barnardo's in Scotland has access to
19 an independent advocate.

20 And the findings in fact proposed, my Lady, are it
21 was a theme of the fostering case study as a whole that
22 the voice of the child was not always heard and those in
23 foster placements did not feel like they were able to
24 raise concern and make complaints.

25 In conclusion, my Lady, Barnardo's welcomes the work

1 of the Inquiry throughout and have cooperated with it.
2 That has included responding to all requests from the
3 Inquiry, making a number of written submissions, and
4 following closely all the evidence relating to
5 Barnardo's.

6 Barnardo's is committed to the important work of the
7 Inquiry and considers that its findings and
8 recommendations in relation to fostering will help
9 improve fostering services throughout Scotland.

10 Working with the Inquiry goes hand in hand with
11 Barnardo's own commitment to continually improve its
12 provision of care and services to children in Scotland.

13 Unless there's anything further, my Lady, that is my
14 submissions on behalf of Barnardo's.

15 LADY SMITH: I've nothing further, thank you very much,
16 that's very helpful, Ms Comiskey.

17 And finally, could I turn to Swiis Foster Care
18 Scotland, Ms Ross, when you're ready.

19 Closing submissions by Ms Ross for Swiis Foster Care
20 Scotland

21 MS ROSS: Thank you, my Lady.

22 My Lady, before I turn to the substance of the
23 submissions for Swiis, it may assist to direct
24 Your Ladyship's attention, not necessarily at this very
25 moment, to regulation 43 of the Looked After Children

1 (Scotland) Regulations 2009, because that is the
2 provision that covers the retention of children's
3 records.

4 LADY SMITH: Ah, that's where it is. 43 has a similar
5 provision to 32, does it?

6 MS ROSS: Yes, in respect of children.

7 LADY SMITH: Thank you.

8 MS ROSS: And in case it's helpful, a case record relating
9 to a child who is placed by a Local Authority must be
10 retained by that authority until the 100th anniversary
11 of the child's date of birth or, if the child dies
12 before attaining the age of 18 years, for a period of 25
13 years beginning with the date of death.

14 LADY SMITH: And that's 43?

15 MS ROSS: Regulation 43.

16 LADY SMITH: I think we have referred to the 100 years rule
17 that's now in place. My apologies. I have heard so
18 much information over the last seven months. Yes.

19 MS ROSS: It's a small point but the question having been
20 raised --

21 LADY SMITH: It's important.

22 MS ROSS: -- I think that's where it's to be found.

23 LADY SMITH: Thank you.

24 MS ROSS: If I may then get to the substance, and these
25 submissions are brief. In the first instance I would

1 simply adopt what is said in the written closing
2 submission on behalf of Swiis, and simply supplement
3 that submission with these observations.

4 Firstly, Swiis has been working in Scotland since
5 2005, and relative to the span of experience covered by
6 this Inquiry, that is really quite a short time.
7 Nevertheless, in that period, Swiis has built up strong
8 relationships with Local Authorities, with the
9 regulators, and with others.

10 It has a special role, working as an independent
11 organisation in the not-for-profit context.

12 LADY SMITH: Yes. Just to interject there, Ms Ross, if I'm
13 right in the indications I'm getting about it being more
14 and more difficult for Local Authorities to get enough
15 foster carers on their books --

16 MS ROSS: Yes.

17 LADY SMITH: -- the services available from independent
18 providers such as Swiis, such as Barnardo's, such as the
19 National Fostering Association, may become of more and
20 more critical importance in future years. Is that how
21 Swiis see it?

22 MS ROSS: Yes, my Lady. I do intend to turn to the way in
23 which that relationship looks now and might in the
24 future, particularly in the context of payment, because
25 there were a couple of things which were said yesterday

1 and I do want to turn to that.

2 LADY SMITH: Yes. Thank you.

3 MS ROSS: In fact, it may be appropriate simply to mention

4 that specifically now, because one matter that I did

5 want to highlight, and it did come out in the

6 submissions yesterday, I think from Perth and Kinross,

7 and it was in respect of the sense that there might

8 be -- I think the word was "competition", used.

9 LADY SMITH: Yes.

10 MS ROSS: That was the term that was used and reference was

11 made to payments which were made to foster carers.

12 If I may, there are perhaps five observations,

13 further comments, to make in response to that.

14 LADY SMITH: Thank you.

15 MS ROSS: The first is a simple one, and I think that this

16 was something that Your Ladyship articulated in

17 discussion yesterday. The first point is that it is

18 perfectly compatible for there to be a relationship

19 between a foster carer and a child where that

20 relationship is supportive and indeed loving and

21 completely sincere, and for there to be a fee paid.

22 Those two things are not mutually exclusive.

23 LADY SMITH: No.

24 MS ROSS: That then leads to the second point, which is that

25 providing foster care can be very demanding, requiring

1 a high level of skill and expertise, particularly where
2 there are children with special needs, with particular
3 vulnerabilities that require intensive support. And
4 it's important to recognise that skill and expertise can
5 be needed.

6 LADY SMITH: Yes.

7 MS ROSS: And recognising that can include financial
8 recognition. It does merit proper payment.

9 From the Swiss perspective, Swiss does seek to
10 recruit staff who are highly knowledgeable and staff in
11 the sense both of administrative staff but also foster
12 carers who do come with specialist skills, and they are
13 often recruiting from those who have experience perhaps
14 in the past as social workers or from residential care
15 settings or perhaps from nursing. Those are some of the
16 typical backgrounds of foster carers.

17 LADY SMITH: Yes.

18 MS ROSS: So it's important to realise that they're bringing
19 those sorts of skills.

20 LADY SMITH: Is the fact that in some cases the person who's
21 willing to become a foster carer will be giving up other
22 work because of perhaps the ages of the children that
23 they're going to take or the special needs of the
24 children they're going to take, and thereby depriving
25 themselves of an income that they would earn somewhere

1 else?

2 MS ROSS: My Lady, I think this is covered to some extent in

3 the written submissions that have been made for Swiis.

4 LADY SMITH: Yes.

5 MS ROSS: For enhanced care, I'll come onto this, there is

6 a difference between standard care and enhanced care,

7 and you'll recall, I think from the evidence of

8 Sam Arnott, that she explained that over the years Swiis

9 has moved from provision of standard care to now almost

10 exclusively provision of enhanced care, and if you're

11 providing enhanced care, it's simply not possible to do

12 that alongside another job. It is the sort of

13 commitment that requires full-time dedication.

14 LADY SMITH: Yes.

15 MS ROSS: I don't have to hand the precise references to

16 explain the circumstances in which it's an absolute

17 obligation that you're available full time, but yes,

18 that will be the position for --

19 LADY SMITH: It must be right --

20 MS ROSS: Yes.

21 LADY SMITH: -- to be absolutely fair to the person you're

22 asking to come onto your books that you do recognise

23 that there may be a financial downside for them, even

24 with the allowances that they're going to be paid by

25 Swiis, because there may be a difference.

1 MS ROSS: Yes. And if you are serious about attracting
2 people who can bring those skills and that level of
3 experience, then it's just completely unrealistic to
4 expect to be able to do that on the cheap. You have to
5 recognise that those are valuable skills which have to
6 be rewarded.

7 LADY SMITH: Yes.

8 MS ROSS: I mean, coming back to the first point, people are
9 motivated through a wish to care for children, but
10 that's not incompatible with paying them properly. It's
11 important.

12 LADY SMITH: Yes.

13 MS ROSS: I think that then leads to the third point, which
14 I've perhaps already covered to an extent, which is that
15 it's not always possible to compare what a Local
16 Authority provides with what Swiis provides, and I've
17 already referred to the move from providing standard
18 care to enhanced care.

19 These are not the same thing. Enhanced care will
20 often require very intensive support, and Local
21 Authorities are not always in a position to provide
22 that. They will not necessarily have carers available
23 to meet those sorts of needs, and so it is necessary to
24 turn to the relationships that they have with external
25 providers, with independent providers, in order to meet

1 the needs of those children, and that perhaps is the
2 answer to Your Ladyship's original question, which is:
3 is it envisaged that that is the sort of model that is
4 likely to develop? Well, yes, quite likely that will be
5 the case.

6 LADY SMITH: Yes.

7 MS ROSS: It will depend on the availability that Local
8 Authorities themselves have, but also on the position of
9 organisations such as Swiis, who are able to meet those
10 needs.

11 LADY SMITH: That's not unlike what's happened in Scotland
12 with the provision of, for example, residential
13 institutions for children with certain additional
14 support needs that can't simply be met within mainstream
15 school. Most of them now, I think, are independently
16 run and the services purchased by the Local Authority in
17 which the child lives.

18 MS ROSS: Yes.

19 LADY SMITH: It's not surprising.

20 MS ROSS: Yes. Yes, as Local Authorities, public
21 authorities, working with the not-for-profit sector are
22 able to identify who is best placed to provide that,
23 then they may very well find that it's more appropriate
24 to turn to the external provider, yes.

25 It's important to remember that distinction and to

1 keep in mind that when one is thinking of who's
2 available for Local Authorities in providing foster care
3 and who's available to independent organisations, that
4 one is not necessarily comparing like with like.

5 That then leads to the fourth observation, which is
6 that it would be very unfortunate to see independent
7 not-for-profit organisations such as Swiis as being in
8 competition. Swiis works together with Local
9 Authorities and it has to be remembered, and this was
10 part of the evidence from Sam Arnott, of course, that
11 that is a working relationship which is based on
12 a properly regulated public procurement process.
13 Everybody is satisfied about the levels of payment and
14 that should be seen properly as cooperative and
15 collaborative and not competitive. In my submission,
16 it's just the wrong way to look at it, as being
17 a competition.

18 The final point in relation to payments is I'm aware
19 that the Inquiry has already heard information about the
20 proposals that there are for a minimum maintenance
21 level.

22 LADY SMITH: Yes.

23 MS ROSS: That is something that is in place in England and
24 Wales and Northern Ireland already, so Scotland is the
25 outlier.

1 I think that a recent survey disclosed that
2 maintenance levels paid in Scotland are low, are the
3 lowest relative to other parts of the United Kingdom,
4 and whilst it's a matter for others, certainly the
5 introduction of the minimum maintenance level is
6 something that Swiis clearly would welcome and Swiis are
7 supportive of that.

8 Swiis do pay the same maintenance level for each age
9 category regardless of whether it's standard or
10 enhanced, but the fees that are paid on top of that do
11 differ.

12 So that is really the final point in respect of the
13 observations that have been made about --

14 LADY SMITH: Remind me, Swiis pay both the allowance that
15 should meet the costs of maintaining the child and
16 a fee; is that right?

17 MS ROSS: Yes, that's my understanding, my Lady, yes.

18 Those really are the particular points that I wanted
19 to make --

20 LADY SMITH: Thank you.

21 MS ROSS: -- having heard the submissions yesterday and
22 aware that Swiis is in an unusual position, of course
23 along with other external providers such as Barnardo's,
24 but Swiis does have a particular perspective and
25 knowledge of the questions about payment.

1 LADY SMITH: Yes.

2 MS ROSS: Turning then to one or two other matters, and if
3 I may say, generally the Inquiry and the evidence which
4 has been brought forward before the Inquiry do more than
5 just to bring to light things that have been done in the
6 past or ought not to have been done, whether those
7 things have encompassed abuse or neglect or just not
8 listening. And they together, the work of the Inquiry
9 and the evidence that's been brought forward, do help to
10 form an understanding of what has happened more recently
11 as well and do help to create an environment where it's
12 possible to bring about improvements, strengthening
13 checks, promoting consistency across Local Authorities,
14 and it is hoped, and Swiis shares the hope, that they
15 will help to shape plans for what needs to be done now.

16 There are two specific points that I'd wish to
17 mention, again, having heard some of the questions that
18 have arisen.

19 The first is I understand it's a matter of interest
20 to the Inquiry to understand about the fostering panel
21 and I can confirm the evidence was provided in writing,
22 but I can confirm there is an independent fostering
23 panel within Swiis and that the chair is independent.
24 There's some fairly detailed explanation provided about
25 the relationship between staff and that panel.

1 LADY SMITH: Thank you.

2 MS ROSS: Questions have also arisen about the way in which
3 the voice of the child is heard, and the question of
4 access to advocacy.

5 Swiis, as an organisation, encourages the use of
6 independent advocates and so it will refer, where
7 necessary, or encourage children, where necessary, to be
8 in contact with organisations such as Who Cares?
9 Scotland and has encouraged children, where appropriate,
10 to seek advice or guidance or representation from
11 Clan Childlaw in certain circumstances, so as
12 an organisation it is alert to the need to do that.

13 LADY SMITH: Thank you.

14 MS ROSS: My Lady, in conclusion, Swiis is grateful to have
15 been able to participate in the work of the Inquiry. In
16 particular, Sam Arnott sincerely appreciated the
17 opportunity to come and to contribute, and I would
18 invite the Inquiry simply to accept her evidence.
19 I should say, I don't propose any formal findings in
20 fact.

21 LADY SMITH: No, I can see that.

22 MS ROSS: That's clearly a matter for the Inquiry.

23 Swiis looks forward to continuing and developing its
24 services and its relationships with Local Authorities
25 and others, and will do so informed by the valuable work

1 of this Inquiry. It will give the most careful
2 consideration to the outcomes.

3 There is already in place, within Swiis, a strong
4 staff team who work with dedicated and compassionate
5 foster carers, but as an organisation, Swiis recognises
6 that it is important to keep up to date and to be alert
7 to all options for improvement.

8 If I can conclude simply by repeating the gratitude
9 that there is within Swiis for this opportunity to
10 endorse the thanks that have already been extended to
11 all of those who have made this Inquiry work, and unless
12 Your Ladyship has any further questions, those are the
13 submissions on behalf of Swiis.

14 LADY SMITH: I have no further questions. Thank you very
15 much, Ms Ross.

16 MS ROSS: Thank you, my Lady.

17 Closing remarks by Lady Smith

18 LADY SMITH: Well, before I rise in this case study for the
19 last time, I want to extend my thanks to everybody who
20 has engaged so assiduously in what's been, yes, a long
21 haul. As I mentioned earlier, these hearings started
22 over seven months ago. And as Ms Innes drew attention
23 to, we've heard evidence from rather more than 250
24 witnesses and we've got over 40,000 documents on foster
25 care now, which is even more than we thought we might

1 gather, containing valuable evidence.

2 Can I also extend my thanks to those providers who
3 have been so frank in acknowledging that abuse took
4 place, in acknowledging that their systems failed or
5 they didn't have requisite systems, in offering
6 apologies. The point's been made about the difference
7 amongst the providers in their apologies. Some will be
8 of more comfort to applicants than others, but they're
9 all there, and it's been extremely valuable, I consider,
10 to have had those apologies made.

11 It's also remarkable to have heard from providers
12 how they have responded to the demands of the Inquiry,
13 not just in the hard work of trawling through their
14 records and answering our reams of difficult questions,
15 but also in thinking themselves about what they need to
16 do now or what they needed to do between the time we
17 first asked them and coming along to hearings, and
18 I have noted with interest and gratitude and a degree of
19 pleasure the changes that some of them have already made
20 to their practices, policies and procedures, and how
21 honestly they have accepted that it's because of this
22 Inquiry that they have done so.

23 It'll be a little time before you hear from me in
24 writing, but I'm sure you appreciate that the written
25 output can't be rushed on this subject, but I just

1 wanted to make those points at this stage before I let
2 you all go with my grateful thanks to those who have
3 attended representing parties with leave to appear, but
4 also my thanks to the team that have been supporting me.
5 They are remarkable. I couldn't have done this without
6 them, and they have worked so hard. You're right to
7 have noticed that. And it's very good that you've
8 recognised it today.

9 So I will rise now. That is the close of hearings
10 on foster care and boarding-out.

11 (10.56 am)

12 (The Inquiry adjourned until the next phase)

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

Closing submissions by Mr Batchelor	1
for Scottish Borders Council	
Closing submissions by Ms Comiskey	17
for Barnardo's	
Closing submissions by Ms Ross for	28
Swiis Foster Care Scotland	
Closing remarks by Lady Smith	40

