

SCOTTISH CHILD ABUSE INQUIRY

Report by: CSWO and Chief Officer Children's Services, Partnerships & Communities

Report for Decision

1 Recommendations

Council is requested to

1. acknowledge the exceptional work undertaken by our independent social worker and legal team who worked tirelessly to bring together their findings from the reading of historical files and present our submission to the Scottish Child Abuse Inquiry
2. note the actions taken by Midlothian Council in response to the requirements of the Inquiry
3. Agree to work arising from the evidence presented to the Inquiry and the concluding statements of Lady Smith, the Inquiry chair, in relation to foster care being taken forward as outlined below
4. receive a further report of any additional action needed to progress the findings of the foster care phase of the Inquiry when Lady Smith's findings are published
5. Agree that a report is prepared for Council providing an update on the matters above for noting.

2 Purpose of Report/Executive Summary

This report advises of

1. the background to, and remit of, the Scottish Child Abuse Inquiry
2. work in relation to the Inquiry that has been carried out to date by Midlothian Council
3. the Inquiry's proceedings, particularly the most recent phase focusing on local authority foster care
4. findings in relation to the abuse of children in care for whom Midlothian Council and its predecessor bodies were responsible
5. actions being taken by Midlothian Council to respond effectively to the concerns and issues raised in the course of the Inquiry's proceedings.

3 Background

3.1 The Scottish Child Abuse Inquiry

The Inquiry was set up in 2015 at the behest of Scottish Ministers and is chaired by Lady Smith, a judge of the Supreme Courts of Scotland, appointed to the Inner House in November 2012. It was intended to acknowledge and respond to the many people who, as children, had endured physical, sexual and emotional abuse in care placements. The Inquiry gave them the opportunity to talk openly about their experiences and to identify those who had perpetrated abuse upon them. Survivor experiences, provided as evidence to the Inquiry, was an instrumental factor in the establishment by the Scottish Government of a national financial compensation scheme for survivors of abuse in care, Redress Scotland, in 2021.

The Inquiry covers the time period 1930 to 2014. It has had several phases, each focusing on a different type of care setting. It has sought testimony from abuse survivors, as well as from care providers, including local authorities. It has previously considered evidence in respect of establishments run by religious bodies and charities as well as private boarding schools. The most recent phase related to local authority foster care. In 2019, all local authorities in Scotland were requested to submit an extensive report in respect of their involvement in the provision of foster care during the time in question. The report required information to be supplied as to the governance, policy, procedure and practice in relation to foster care as well as any complaints, allegations or concerning incidents.

In May 2022 the Inquiry commenced hearing evidence from abuse survivors. It also received testimony from social workers, foster carers, chief social work officers, academics and managers of voluntary sector fostering providers. In general, local authority chief social work officers were required to appear if the Inquiry chair had specific concerns on which she wished clarification or supplementary information. Midlothian's Chief Social Work Officer was not requested to appear. The hearings concluded in December 2022, with the last few days being dedicated to closing submissions on behalf of local authorities. Midlothian Council's closing submissions were presented by Scott Blair, Advocate. Lady's Smith's findings on abuse in foster care will be published as soon as is practicable.

3.2 Work carried out by Midlothian Council in relation to the Inquiry

In order to respond effectively to the Inquiry's request for information extensive background research was undertaken. This required extensive perusal of archive records of Midlothian Council proceedings, and those of its predecessor authorities, as well as social work records of foster carers and of children in foster care over many decades.

Though some records of predecessor authorities existed, there were significant periods of time for which the available information was very limited. Supplementary data was sought from a number of sources

including some retired senior managers of social work services in Lothian Regional Council and authors of relevant published academic literature.

Midlothian Council was therefore able to respond to the extensive range of questions posed by the Inquiry and submitted a comprehensive report on the operation of foster care within Midlothian over the 84 years covered by the Inquiry. The time available for completion of the report (required by 30/09/2020), however, precluded the scrutiny of a substantial number of relevant social work case records; under 100 were therefore examined in detail. Midlothian Council holds over 30,000 archived social work records of which around 8,000 are records of children who were in care or otherwise received social work support. There are, in addition, over 80,000 social work records held on the Mosaic electronic database. These of course do not represent the totality of individuals and families who received a social work service during this time. Prior to the introduction of a legal requirement in respect of local authority record retention in 1989, many closed case records were destroyed. The earliest files relevant to the Inquiry date from the 1950s, though it is clear from other data that those that exist could only form a relatively small proportion of the actual likely total. It was made clear to the Inquiry that responses to questions relating to incidence, for example, of concerns about children's welfare, could only be speculative and based on the small number of files that had been scrutinised.

Given the limitations of the sample size for the initial report, it was decided to continue examination of records of foster carers and children who had been in foster care in order to gain a more reliable picture of the operation of foster care over the Inquiry period. No list existed of such records, thus it was necessary to examine many more records than were the subject of the Inquiry. Up until 31/03/2022, therefore, over 2,800 archive social work records were checked. Of these, 500 referred to children who had been in foster care and 200 to foster carers. Supplementary reports were provided to the Inquiry that conveyed any additional relevant information found.

Close attention was paid to the testimony of survivors during the hearings and any important points for internal action noted.

3.3 Findings

Though the Inquiry sought information on incidence of concerns, Midlothian Council made clear that it was not possible to assess this with any degree of accuracy. No figures are available that would give any definitive idea of how many foster placements were made by Midlothian Council over the 84 year period covered by the Inquiry. It is probable that many hundreds, if not thousands, of placements were made. The report made to the Inquiry indicated that any calculation of incidence would therefore be entirely speculative. The findings, from the 500 child records and 200 foster carer files examined, do not, however, suggest that abuse of children was systemic, sustained or widespread in foster placements for which Midlothian was responsible.

A total of 71 incidents, allegations, concerns or complaints involving a child in foster care have been identified in respect of 66 children. This represents approximately 15% of the records sampled. Of course not all of these could be termed abuse and many were unsubstantiated. All incidents noted appear to have been investigated according to the systems in place at the time and appropriate action taken. Some children were removed from the foster placement concerned and in a few cases carers were de-registered. There were four cases where charges were brought against a foster carer by the police – two involving assault and two sexual misconduct. We are not, however, aware of any prosecutions resulting in conviction.

It should, of course, be borne in mind that what was considered acceptable practice, for example, in relation to physical discipline, has changed significantly over the years, as have the regulations, guidance and legislation on which practice is based. It should also be noted that practice in foster care in Midlothian, and in out of home care generally, has improved substantially over the Inquiry period. This was made clear both in the written reports to the Inquiry and highlighted in the opening and closing submissions by the advocate engaged by the Council. There are, nonetheless, learning points that have arisen from the examination of case records, as well as from the conclusions drawn by the Inquiry chair.

3.4 Practice implications

It is indisputable that current practice in placement of children with foster carers in Midlothian and of Midlothian children in any foster care placement is thorough and effective. The process of training, assessing and reviewing carers is robust and the experience of children is on the whole positive. There are, however, a number of areas where improvements may be considered. These are drawn both from Lady Smith's statements, from observations gleaned from the scrutiny of children's and carers' records and from the closing statements made by the advocate acting for Midlothian Council.

Midlothian Council unequivocally welcomed the Inquiry and the opportunity to engage fully with it. It acknowledged unambiguously the abuse in foster care that many of the survivors who gave evidence had experienced and the severe and enduring impact of that abuse. Despite that, it is important to recognise that, in Midlothian and more widely, foster care was, for most, a positive experience.

The advocate representing Midlothian Council conveyed these points in his closing submission and invited Lady Smith to adopt formally a number of findings. These are reflected in the practice implications noted below.

1. Systemic failure in foster care

Lady Smith made it clear that she believed the systems in place through most of the Inquiry period were inadequate both in terms of protecting and optimising children's welfare and in the training and supervision of foster carers.

Midlothian found no compelling evidence, in respect of the systems in place in Midlothian Council or its predecessor authorities, of widespread or sustained failure to protect children adequately while in their care. Incidents appear to have been documented and investigated according to the legal and procedural requirements in place at the time. Of course this does not mean that, at national level, oversight and management of foster care, and the legislation, regulation and guidance that directed them, were sufficient to ensure that children were both adequately protected and their welfare promoted.

Practice standards in Midlothian now require a minimum level of contact with children in care, and that they are frequently and regularly seen by staff independently of their carers.

2. Record keeping and access to records

A number of issues were raised in the course of the Inquiry in respect of social work records, by the chair, legal representatives and survivors. These included the difficulties experienced by many in accessing information about their time in care. Care records were not legally required to be retained prior to the introduction of retention legislation in 1989. Many earlier records had therefore been destroyed. The earliest records found in Midlothian date from the 1950s, though very few from before 1975 (the inception of Lothian Regional Council) are still extant.

Of those records that were accessed, many were uninformative, confusing or inaccurate. Several survivors described the process of accessing records as impersonal and bureaucratic. Lady Smith remarked that the child's voice seemed largely absent from many of the records, giving the impression of little meaningful contact between children and the local authority officers tasked with overseeing their welfare. Of course it is not possible to know what could have been recorded but was not, but there is no substantial body of evidence that indicates that children's concerns were not noted nor responded to by Midlothian Council and its predecessors.

Understanding the sequence of events and the reasons for decisions also posed challenges. Lady Smith highlighted the importance of chronologies, setting out important life events clearly, in facilitating knowledge of the earlier lives of care experienced people.

Active review of record keeping processes is under way. A revised system for dealing with access to care records is being trialled, providing direct personal contact and support to people requesting record access. Chronologies are now routinely produced and held on record for all children in care or subject to child protection procedures.

3. Training and supervision of foster carers

Repeated references were made in the presentation of evidence about the (sometimes gross) inadequacy in foster carers' level of understanding of the impact of trauma and adversity on children and the potential consequent effect on their behaviour. Of course the body of research and experience on these issues is now far more substantial than would have been the case decades ago. Some of the foster carers who gave evidence, however, indicated that they were given little support or training on these matters.

While Midlothian Council offers an extensive programme of professional learning to foster carers, not all elements are mandatory. While understanding trauma does feature in pre-approval training, post-approval opportunities for further exploration of this are less well taken up. Lady Smith indicated that, in her view, there should be a requirement for foster carers to maintain and update their knowledge of important aspects of children's development with a strong focus on the impact of the trauma, instability and abuse that most children in the care system have experienced.

Lady Smith also raised the importance of all members of a family applying to foster, including children, being fully assessed as to risk and involvement. This issue was pertinent to an incident that had occurred in a Midlothian foster family and further detail on this was requested by the Inquiry.

Another recurring issue was the use of funds received by foster carers from the placing authority, and concerns that these funds were not always used for the benefit of the children for whom they were intended. It should be borne in mind, however, that until the 1980s foster carers did not receive a fee as such and the allowance received was intended both for the financial support of the child and some element of recompense for the carer. There is now a clear distinction between the two elements and Midlothian Council staff maintain oversight of foster carers' expenditure.

The value of foster care to the vulnerable and traumatised children who enter the care system is indisputable. Despite the often harrowing experiences related by survivors, foster care is a safe, positive and enriching experience for most of the children who use it. Midlothian's Family Placement Team endeavours to attain best practice and effective outcomes and has a wide range of measures and services in place to support this. The advocate acting for Midlothian Council emphasised, in his concluding submission, how important foster care had been in improving the wellbeing and life chances of children placed and the specific approaches taken by the Family Placement Team to provide a high quality service.

4. Separation of families

Separation of family members from one another was a matter that arose repeatedly. It was not unusual, particularly in the early part of the Inquiry period, for families to be placed at great distance from their place of origin and for siblings to be parted from one another.

In some cases they had little or no contact with one another thereafter. Parental contact was also inconsistent, often with little effort being made to ensure that parents were assisted in maintaining contact with their children.

Placements far from home are far less common now. The majority of Midlothian children are placed with foster carers in Midlothian or with carers supported by Midlothian Council in neighbouring authority areas. Family contact is seen as an essential element of any care placement and is included in all care planning. Where siblings cannot be placed together, steps are taken to ensure that relationships are sustained and contact frequent and regular.

It is regrettable, though sometimes unavoidable, that siblings are separated when placed in care. Families with whom social work services are involved are often larger than the average. Few local foster carers have sufficient physical space to accommodate large families. It is also unlikely that, even when carers could accommodate several children, that all placements would be available simultaneously, particularly in an emergency. The emotional demands on foster carers of caring for a large number of traumatised children should also not be underestimated.

Active campaigns to recruit foster carers who could take larger families, with financial and support arrangements that would enable the places to be retained for large sibling groups; housing assistance from the Council and other local social landlords to enable foster carers to access larger properties; and intensive family support at home are all possible solutions which could be considered.

5. Outcomes and long-term support

The testimony of many of the survivors conveyed how profound, severe and enduring the effects of the abuse they had suffered had been. Many had experienced poor mental health, difficulties in sustaining relationships, drug and alcohol dependence and problems in being effective parents, over many decades. Others had found the experience of accessing their care records disturbing and had resulted in resurrecting distressing memories.

Lady Smith indicated that the public bodies and voluntary organisations who were responsible for placing children, or who operated services in which children were placed, should, if requested, provide support to individuals affected. Midlothian Council has a dedicated email address to which any requests for support can be addressed. This is monitored by the Council's Chief Social Work Officer and Principal Solicitor who initiate any services needed.

6. Data analysis

Lady Smith expressed concern that insufficient attention was paid to the collection, analysis and scrutiny of data in relation to the foster

care experience. In particular she mentioned unplanned endings of foster placements, the number of moves experienced by individual children and the incidence of separation of families. She was also concerned about the long term life outcomes for people who had been in foster care and the incidence of the kind of problems described by survivors in the above section.

Midlothian Council is currently examining how such the production and usage of such data can be improved.

7. Relationships

The quality of relationships and nature of contact between children in foster care was raised by many survivors. While some described positive and supportive experiences there were others whose experiences had been largely negative. Some stated that social work contact had been cursory and infrequent and that they were rarely or never given the opportunity to talk independently of the carer. Some had raised concerns that went unheeded or were disbelieved. Lady Smith also indicated that it was important that social workers were able to notice and respond to non-verbal signals that a child was unhappy or being badly treated in placement.

Midlothian Council's advocate invited Lady Smith to acknowledge that the demands on social workers and the caseloads carried by many precluded the desirable level of contact and inhibited their capacity to form trusted and trusting relationships with children. This can only be effectively addressed, however, by reducing the number of cases social workers are routinely carrying.

Lady Smith also was concerned that insufficient attention was paid to ensuring that carers and children were appropriately matched. While this was acknowledged in the Council's closing submission, it was also noted that the limited availability of placements, especially in emergencies, meant that frequently little or no choice was available.

Finally Lady Smith noted the value of kinship care in sustaining family relationships and avoiding children being placed with strangers. Midlothian Council supports an increasing number of kinship carers and this is always considered as a positive option for children who cannot be cared for within their own home. Scrutiny of archive records does, however, indicate that, while most kinship care placements are both supportive and sustained, there is a concerning number that have broken down with children then having to be placed with foster carers.

Ensuring that kinship carers are supported with adequate professional advice as well as financially assisted is therefore desirable. At present kinship carers are not normally allocated to a social worker once they have been approved and/or a kinship care order granted. If the child is 'looked after' (under a compulsory order from a court or children's hearings, or under a voluntary

arrangement agreed to by parents), the child will normally have a social worker allocated.

It is recommended that the contents of this report are noted, that Midlothian Council continue to cooperate fully with the Scottish Child Abuse Inquiry and that actions to respond to the issues raised in the course of the Inquiry are progressed as set out in the report.

4 Report Implications (Resource, Digital and Risk)

4.1 Resource

At the moment there are no additional resource implications. A budget for conducting the work Midlothian Council is required to carry out to comply with the Inquiry's statutory requests for information was agreed in 2016.

4.2 Digital

It is intended that technological improvements to recording and communication systems will improve access to information for people who are, or have been, in the care of Midlothian Council.

4.3 Risk

No specific risks are indicated in the content of this report. The assessment and management of risk of course is an integral component of good practice in foster care and is a requisite element of assessment and review of foster carers and of each placement.

4.4 Ensuring Equalities (if required a separate IIA must be completed)

This report seeks to build on good practice within Midlothian Council by improving how children in out of home care and adults who are care experienced are supported.

4.4 Additional Report Implications

There are no additional report implications at present but it is likely that there will be implications for local authorities when Lady Smith's final conclusions are published.

Appendices

Appendix A – Additional Report Implications

Appendix B – Background information/Links

APPENDIX A – Report Implications

A.1 Key Priorities within the Single Midlothian Plan

Getting it Right for Every Child

A.2 Key Drivers for Change

Key drivers addressed in this report:

- Holistic Working
- Hub and Spoke
- Modern
- Sustainable
- Transformational
- Preventative
- Asset-based
- Continuous Improvement
- One size fits one
- None of the above

A.3 Key Delivery Streams

Key delivery streams addressed in this report:

- One Council Working with you, for you
- Preventative and Sustainable
- Efficient and Modern
- Innovative and Ambitious
- None of the above

A.4 Delivering Best Value

The report does not directly impact on Delivering Best Value

A.5 Involving Communities and Other Stakeholders

The report does not directly relate to involving communities, though both foster carers and children within the care system are actively encouraged to contribute to improvement in practice.

A.6 Impact on Performance and Outcomes

The report does not directly impact on Midlothian Council's performance and outcomes, though, in line with Lady Smith's concluding comments, we will seek to improve monitoring of outcomes for children in foster care.

A.7 Adopting a Preventative Approach

Findings have informed and will inform best practice in relation to children in the care of Midlothian Council and minimise their need for social work interventions as they move to adulthood.

A.8 Supporting Sustainable Development

Not applicable

APPENDIX B

Background Papers/Resource Links (if applicable)

Midlothian Council's submissions to the Scottish Child Abuse Inquiry are confidential documents and are therefore not available to persons who have not signed the SCAI's confidentiality agreement.