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REPORT

Protecting and Safeguarding Children in Care

A Review of Developments in Services for Children
in Care in Scotland

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1 Introduction

This review will focus on developments to protect and safeguard children and young people in residential and foster care that have happened, for the most part, over the past 25 years, although it will touch on longer term developments when necessary. It will complement and update the Shaw *Historical Abuse Systemic Review* (1). It will bring together existing evidence on changes in legislation, policy and practice which have been aimed at improving the quality and safety of residential and foster care, and it will identify gaps in existing knowledge. This review does not focus specifically on the abuse of children in care but rather the developments in care practice which have been triggered by reviews and inquiries into abuse in care.

Previous work on the abuse of children in care settings has identified three key aspects of residential and foster care practice which have been linked to the safety and protection of children in care: *recruitment, selection, support and training of carers; inspection, monitoring and standards; and listening to children and children's participation* (2). This review will use these three areas as a framework to discuss developments in residential and foster care in Scotland.

It must be acknowledged, however, that the protection and safeguarding of children and young people in care involves every aspect of the care system. It is not possible to cover this in detail and to describe every aspect of legislation, policy and practice. In particular, there are a range of issues which this review does not address but which are crucial for the wellbeing of children in care. These include assessment and planning, decision-making processes, education and the health and mental health of looked after children. While crucial in their own right, they were beyond the scope of this review. This review, therefore, provides a broad overview of the main developments in services for children in care in Scotland which are focused on their protection from abuse and neglect.

2 The Context of Care Services in Scotland

There has been a long history of care services and child protection in Scotland and the UK. Development of care services has reflected new understandings of the nature and extent of child abuse and neglect, advances in policy and practice in caring for children when they have to be removed from their family home, broader changes in the place of children in society and an increasing focus of children's rights.

2.1 Legislation

Two strands of legislation come together in the development of services to safeguard and protect children in care: the laws on protecting children from abuse and maltreatment, and the laws on placing children and young people away from their family home in residential and foster care.

Protecting children from abuse was enshrined in law over 100 years ago in the *Prevention of Cruelty to, and Protection of, Children Act 1889*. It was updated in the *Children and Young Persons (Scotland) Act 1937* and this has been seen as laying the foundation for the modern law on child protection (1). Currently, the primary legislation for the protection of children is the *Children (Scotland) Act 1995*. The law under which children in Scotland have been placed in residential and foster care has also evolved over time. For the first half of the 20th century, children were placed in care under the Poor Law and a range of other legislation, including the *Children and Young Persons (Scotland) Act 1937*, criminal justice law, adoption law, and the 'mental deficiency and lunacy' law (3).

Following World War II, the *Children Act 1948* was brought in to coincide with the repeal of the Poor Law, and this provided a new framework for the care of vulnerable children across the UK. It emphasised the child's best interest and was regarded as a major step forward for child welfare, paving the way for services over the next twenty years. There is some evidence, however, that its impact on services in Scotland was patchy (1).

In the 1960s, the Kilbrandon Committee (4) addressed the issue of juvenile offenders and proposed radical changes to the way in which the needs of vulnerable children should be met, with a welfare focus on care and education. The Kilbrandon Committee proposed a new decision-making structure in Scotland's distinctive Children's Hearing System. Following the White Paper on *Social Work and the Community*, the *Social Work (Scotland) Act 1968* brought together the separate probation service, child care service, welfare service and mental health service. The *Social Work (Scotland) Act 1968* provided the legal framework for children's services for the next 25 years until the *Children (Scotland) Act 1995* came into force.

Drawing on the *UN Convention on the Rights of the Child* (1989) and developments in children's rights, the *Children (Scotland) Act 1995* made explicit certain rights of children, particularly the participation of children in decisions which affected them. It also brought in new terminology describing children in care away from home as being 'looked after and accommodated'. The Act also extended responsibilities for preparing children for leaving care and supporting children and young people when they left care for independence.

Most recently, the *Children and Young People (Scotland) Act 2014* has been implemented and addresses a number of issues relevant to looked after children and young people, including aftercare, corporate parenting and children's rights.

2.2 The Numbers of Children in Care

Over the years, there has been a significant change in the numbers of children placed in residential and foster care and the balance of services (3). Prior to World War II, there were no comprehensive figures for children and young people placed away from their family home. The Clyde Inquiry found that there were 17,607 children and young people cared for away from their family home on 15 March 1945: of these, 45 per cent were in foster care, and 55 per cent were in some form of residential care (5). Over the next 50 years, the number of children in care fell considerably and there was also a shift away from residential care towards foster care and other community placements. By the end of the 1960s, there were 11,221 children in care and the proportion of those in residential care had fallen to just below 40 per cent. The numbers of children in out-of-home care continued to fall through the 1970s and more rapidly in the 1980s. So by the end of the 1980s, there were 5,775 children in out-of-home care and the proportion in residential care remained at approximately 40 per cent. Over the past twenty years, however, while there have been more children placed in out-of-home care, the number in residential care has continued to fall. So the latest figures show that there are 11,282 children in care with the majority in foster care (5,333) and kinship care (4,193) and only 1,467 (13 per cent) in residential care (6). Another significant factor is that over recent years, an increasing proportion of child protection cases have been referred to the Children's Hearings System.

2.3 The Nature of Care Services

The nature of the care system has also changed dramatically over the years. In the mid-19th century, industrial schools were established for destitute or homeless children and reformatory schools for young offenders. Children were also placed in 'institutions for mental defectives' or in adult institutions such as hospitals. Large residential institutions such as Quarriers Homes in Bridge of Weir and Aberlour Orphanage on Speyside housed hundreds of children. Constructed as children's villages, each had a school, church, farm and residential accommodation. Over time, there has been a move away from remote,

large institutions and towards much smaller residential care homes with links to the local community.

Scotland also has a long history of 'boarding out' or the fostering of children in family homes. We saw above that even in the 1940s, a significant proportion of children were 'boarded out' with families. In many cases, children were boarded out in crofting communities in the Highlands and Islands, and there is evidence of abuse and exploitation of children in these settings (7). Over the years, there has been an increased focus on placing children and young people in family settings, and more recently there has been a large increase in the use of kinship care.

3 Recruitment, Selection, Support and Training of Staff and Carers

Many of the inquiry reports on the abuse of children in care have highlighted issues in relation to the recruitment and selection of carers, their education and training, and the levels of support they receive when caring for children and young people. Primarily, this has focused on staff in residential child care, and it is only more recently that there has been an increased attention to this in relation to foster carers.

3.1 Recruitment and Selection

The recruitment and selection of residential and foster carers has been a key issue in a number of reports and inquiries, and, in the early 1990s, the Warner Report *Choosing with Care* focused specifically on recruitment, selection, development and management of staff in residential child care (8). In England, the Support Force for Children's Residential Care was established and in 1995 published a detailed code of practice (9) in order to support employers to implement the recommendations of the Warner Report. The code of practice detailed:

- Preparing the ground (departmental policy, job description, person specification, application form, information for candidates, advertising the post, aids to recruitment).
- Selecting staff (choosing selection exercises, involving children and young people, shortlisting, references, preliminary interviews, visits, written exercises, oral presentations, group exercises, psychometric testing, final interviews, decision-making).
- Checking and monitoring (police checks, government checks, superannuation information, verification of qualifications, equal opportunities monitoring, advertisement monitoring).

The *Skinner Review of Residential Child Care* recommended that the Warner recommendations should be considered for application in Scotland (10) and this was picked up again by the Kent Report *Children's Safeguards Review* which describes the Code of Practice as '... quite simply, excellent.' (11). Kent recommended that the Scottish Office should require the recommendations of the Warner Report to be implemented and should commission work to put the *Support Force Code of Practice* into a Scottish context (Recommendation 14) (11).

Following the *Children's Safeguards Review*, the Scottish Executive funded the Scottish Recruitment and Selection Consortium to develop a 'Toolkit' for safer selection of staff and carers who work with children. The Consortium's remit was broader than residential child care and involved foster care, field social work, day care, and community

resources. The Toolkit identified 18 elements for a safer selection process which, in brief, were: capabilities, job description, person specification, advertisement, application form, shortlisting, equal opportunities, screening interview, identity check, verification of qualifications, reference request, criminal records check, client record checks, personnel records check, selection process, assessment, panel interview and personal interview. The Consortium also advocated the development of the selection centre approach which involves a process of exercises and tests combining the assessment of as many key aspects of the role as possible (12). The Toolkit was launched across Scotland in 2001 but without any requirement for employers to implement the recommendations.

In 2004, the Scottish Executive commissioned research from the Scottish Institute for Residential Child Care (SIRCC) to audit recruitment practices in residential child care. The survey found that systematic checks were regularly undertaken by all employers but there was much more variation in the implementation of other elements of the Toolkit such as assessment exercises. Recruitment procedures were focused on checks to prevent the selection of people who had proved unsuitable in the past rather than on those elements which would identify and select people who would be capable of providing high standards of care in the future (13).

In 2007, the Scottish Executive published Safer Recruitment through Better Recruitment: Guidance in Relation to Staff Working in Social Care and Social Work Settings (14). The guidance covered a Foundation Level of safer recruitment practice to meet existing requirements and a Higher Level which provides best practice to promote continuous improvement. The Foundation Level covered: disclosure checks on criminal records and individuals disqualified from working with children, checks of appropriate registers and lists including verification of identity and qualifications, and the request and follow up of references. The Higher Level covered a range of good practice, including: having a recruitment and selection policy statement; developing competencies for posts; job description; person specification; application form; information pack for candidates; scrutinising applications and shortlisting; screening interview to check information on the application form; invitation to interview; interview panel; scope of the interview to include attitude towards vulnerable people and safeguarding; the personal interview; conditional offer of appointment and pre-appointment checks; psychometric/occupational testing; assessment/selection centre process; and involving service users in recruitment and selection (14).

The approval of foster carers is addressed in the Fostering of Children (Scotland) Regulations 1996 (15) and National Care Standards: Foster Care and Family Placement Services (16). The regulations set out the general expectation about the responsibilities of the fostering panel and the matters to be covered in assessment of foster carers. Standard 5 of the National Standards addresses assessment of foster carers and includes statements on: the assessment of foster carers' ability to promote the health, education and personal and social development of children and young people in their care; clear, published policies and procedures on the assessment and approval of foster carers; assessment to be carried out by a qualified social worker with experience of child care,

foster care and family placement work; the assessment and approval process to involve all members of the foster carer's household; and necessary checks including criminal records checks. Standard 6 addresses the application process and sets out timescales and feedback on the process. The report *Moving Forward in Foster and Kinship Care* addressed the recruitment and assessment of foster carers. It identified the developments in assessment of foster carers over recent years, including the increased focus on applicants' own histories, the introduction of competency-based assessments, heightened awareness of the need to protect children and more rigorous checking of applicants' histories and criminal records (17).

In 2008, the Care Commission produced a report on the quality of recruitment practice (18). The Commission sampled over 4,400 services and identified those with at least one requirement that related to safer recruitment practice (4,434 services were sampled and 22 per cent had at least one requirement). In relation to children's services, the report found that the following services had at least one requirement: adoption service (22 services sampled and 50 per cent with a requirement), fostering service (35 services sampled and 34 per cent with a requirement), school care accommodation service (17 services sampled and 24 per cent with a requirement), secure accommodation service (3 services sampled and 33 per cent with a requirement), and care homes for children and young people (104 services sampled and 19 per cent with a requirement). The majority of requirements related to applicant references and Disclosure Scotland checks (18). Since this research there have been further developments, particularly in relation to vetting.

3.2 Vetting

We have seen above the importance placed on the vetting of potential staff and carers, and inquiries and inspection reports have raised a number of concerns about references, police checks and other vetting procedures. Checks on criminal records are widely considered to help protect society against people who may seek to abuse positions of trust. They are not the sole answer to ensuring applicants' suitability as many people who abuse positions of trust are not known to the police and have no previous convictions.

Alongside developments in recruitment practice, a number of new legislative safeguards to prevent unsuitable people from working with children have been taken forward. Parallel to legislation in England and Wales, the *Protection of Children (Scotland) Act 2003* established a list of individuals unsuitable to work with children because they have harmed a child or put a child at risk of harm and have been dismissed or moved away from contact with children as a consequence : the Disqualified from Working with Children List. This Act was repealed by the *Protection of Vulnerable Groups (Scotland) Act 2007* (with the exceptions of Sections 13 and 16).

The *Protection of Vulnerable Groups Act* gives powers to bar certain individuals from working with children or certain adults, requires Scottish Ministers to keep lists of those

individuals, and establishes a new membership scheme for people undertaking regulated work with children or protected adults. The new membership scheme to replace and improve upon previous disclosure arrangements for people who work with vulnerable groups came into force in February 2011. The Protecting Vulnerable Groups (PVG) Scheme helps to ensure that those who have regular contact with children and protected adults through paid and unpaid work do not have a known history of harmful behaviour. There are three levels of disclosure which may be required depending on the nature of the regular contact with children: basic disclosure, standard disclosure and enhanced disclosure (19).

However, no matter how intensive the selection, assessment and vetting procedures for residential staff and foster carers, it is unlikely that they will ever be able to effectively screen out all abusers. There is a continued need for vigilance across all parts of the looked after children system.

3.3 Education, Qualifications and Training

The training and development of residential staff members and foster carers has been a focus of attention over many years. It is only since 2002, however, that residential care staff in Scotland has required a particular level of qualification and in 2014, the Scottish Government made a commitment to bring in mandatory training for foster carers.

Since the 1940s, there have been a number of training initiatives for residential child care staff such as the Certificate in the Residential Care of Children and Young People (CRCCYP) and the Certificate in Social Service (CSS). In the 1990s Glasgow University set up an Advanced Certificate in Residential Child Care which ran for a number of years. The Skinner Review of Residential Child Care in Scotland recommended training targets for residential child care staff: 30 per cent of all staff and 90 per cent of all senior staff should hold a Diploma in Social Work or equivalent, and 60 per cent of staff should be assessed as competent at Higher National Certificate (HNC)/Scottish Vocational Qualification (SVQ) Level 3 (10). These targets were not achieved and some years later the Kent Report *Children's Safeguards Review* made a number of recommendations to improve the training and qualifications of residential care staff. This included a recommendation to develop a 'national college' to provide induction training, learning support for SVQs, post-qualifying training, and specialist training such as a Diploma in Therapeutic Child Care (11).

The Scottish Government took this forward by funding the Scottish Institute of Residential Child Care (SIRCC) which was established in 2000 by a consortium involving the University of Strathclyde, Robert Gordon University, Langside College, Save the Children and Who Cares? Scotland. A central focus was to take forward the education and training of residential child care workers and to make available a range of courses and support for SVQs, plus specialist in-service courses. SIRCC also developed a specialist residential child care pathway on the qualifying social work degree, and launched a

Masters-level course for senior residential staff, the MSc in Advanced Residential Child Care.

Linked to broader developments for the registration of social work and social care staff, the qualifications criteria for residential child care staff were established. The current qualifications required are:

- Residential child care staff: HNC and an SVQ Level 3 Social Services (Children and Young People) or equivalent qualifications.
- Residential child care staff who have supervisory responsibilities: SVQ Level 4 Social Services (Children and Young People) or a BA (Honours) in Social Work or equivalent qualifications.
- Managers: in addition to a qualification required for staff who have supervisory responsibilities they must have an SVQ Leadership and Management for Care Services Level 4 or any award in management at or above SCQF Level 8.

Since the establishment of the Social Services Register in 2005, the residential child care workforce has been working towards achieving qualifications, and there has been significant progress in this area. Figures from the Scottish Social Services Council indicate that of the 6122 registered residential child care staff, 3913 (64%) had achieved the minimum qualifications and 2209 (36%) were working to achieve their qualifications. Only 177 (three per cent of the total number of registrants) had to request an extension to achieve their qualifications at their three-year re-registration point (20).

However, following the *Shaw Report* (1), the *National Residential Child Care Initiative* looked again at the training and qualifications of residential child care staff. It recommended that all new residential child care workers should be required to hold, or be working towards, a relevant care qualification at SCQF Level 9 (as the minimum), which includes, or is in addition to, the assessment of competence in practice. The Scottish Government has expressed its commitment to introduce a new 'standard' for the training of residential child care staff and managers, to progress the SCQF Level 9 qualification for residential child care workers, supervisors and managers in residential child care (21).

While there have been various forms of training and education for foster carers, it is only very recently that there has been a move to make educational qualifications mandatory for foster carers in Scotland. Foster carer training was a specific focus of the 2008 *Moving Forward in Kinship and Foster Care* report (17). The needs of modern foster carers were explored in light of the current and future challenges they face, along with how appropriate knowledge and skills could be developed through training. The report concluded that foster carers in Scotland have access to a wide range of high-quality training, but that time and resources were often being wasted by organisations constantly reinventing the wheel. To address this problem - and to ensure a continued improvement in standards among carers - the report proposed that a national, co-ordinated approach to induction and training be introduced, including a mandatory post-approval learning and development programme (17).

In 2012, the *National Foster Care Review* (22) was tasked with developing a viable plan for realising the recommendations of the *Moving Forward in Kinship and Foster Care* report. The *National Foster Care Review* recommended that a national Learning and Development Framework for Foster Carers should be developed. This Framework should extend across the three distinct sections of a foster carers learning and development journey, covering: (1) Preparatory; (2) Induction/Year 1; and (3) Continuing Learning and Development/Year 2 onwards. The Framework should meet the appropriate National Occupational Standards (NOS). The NOS include a core group of standards which apply to all workers in services for children and young people, including communication, protection, reflection on practice and health and safety. In addition there are NOS which apply to specific practice areas, including foster care. The Framework should be a system that ensures a measure of standardisation across all fostering agencies, quality assured course delivery, and opportunities for accreditation. The Framework should be underpinned by agreements with the Scottish Qualifications Authority (or other appropriate body) to ensure that satisfactory completion of each section (and sub-sections) can be formally accredited, either along an existing qualification spine, or - if necessary - along the path to a new 'Foster Carer Award'. The Learning and Development Framework should include guidance for agencies around the learning and development needs of sons, daughters and other adults in the fostering household. The Learning and Development Framework should provide agencies with an example 'Personal Learning and Development Log' (22).

In its response to the *National Foster Care Review*, the Scottish Government accepted the recommendation in full and 'will therefore put together a working group to help commission a framework that sets out the right level of learning and skills development at pre-approval and post-approval by a fostering panel.' This will be based on National Occupational Standards and will be a mandatory condition for approval as foster carer (23).

3.4 Regulation of the Workforce

There was a long-standing debate in the UK about the need to regulate the social care workforce in line with other professions. In Scotland, this was taken forward through the *Regulation of Care (Scotland) Act 2001* which set up the Scottish Social Services Council (SSSC). Parallel bodies were established in England and in Wales.

The SSSC has a number of responsibilities. It has developed standards of conduct and practice for the workforce and it has published codes of practice for social services workers and for social services employers (24).

The code of practice for social services workers states that they must:

- Protect the rights and promote the interests of service users and carers.
- Strive to establish and maintain the trust and confidence of service users and carers.

- Promote the independence of service users while protecting them as far as possible from danger or harm.
- Respect the rights of service users whilst seeking to ensure that their behaviour does not harm themselves or other people.
- Uphold public trust and confidence in social services.
- Be accountable for the quality of their work and take responsibility for maintaining and improving their knowledge and skills.

The code of practice for social services employers states that they must:

- Make sure people are suitable to enter the workforce and understand their roles and responsibilities.
- Have written policies and procedures in place to enable social service workers to meet the Scottish Social Services Council (SSSC) Code of Practice for Social Service Workers.
- Provide training and development opportunities to enable social service workers to strengthen and develop their skills and knowledge.
- Put in place and implement written policies and procedures to deal with dangerous, discriminatory or exploitative behaviour and practice.
- Promote the SSSC's Codes of Practice to social service workers, service users and carers and co-operate with the SSSC's proceedings (24).

The SSSC has also established a Register of Social Services Workers. Since this was first established on 1 April 2003, with social workers being the first group of workers to register, the Register has grown to include:

- Social workers
- Social work students
- Care Inspectorate officers
- Workers in residential child care services
- Workers in care home services for adults
- Workers in day care of children services
- Workers in school hostels, residential special schools and independent boarding schools
- Workers in housing support services
- Workers in care at home services.

Over 60,000 workers are now on the SSSC Register. It should be noted, however, that foster carers are not included in the registration process and this has been raised as an issue that should be addressed.

The SSSC has a responsibility to protect and enhance the safety and welfare of people who use services, and as part of this responsibility, the SSSC Fitness to Practice team investigates concerns about good character, conduct and competence of a person on the register or applying for registration. The SSSC can take action where necessary and,

ultimately, this includes removing a person from the register so that they are no longer able to practice. In 2010, the SSSC published a report on its work in relation to initial and continued suitability for registration for the period 2009-2010. Over this period it received 14,090 applications for registration and following initial screening, it considered 540 applications that raised a question about current suitability. Most of these were granted registration unconditionally and a number of forms were returned for further information. The Registration sub-committee refused one application for registration. There were some 434 concluded conduct cases in this period. In approximately three-quarters of cases no further action was taken because the matters raised did not make the registrant unsuitable for registration. Other actions included warnings and imposition of training conditions. Following Conduct Sub-Committee hearings, eight registrants were removed from the register: five social workers, one residential child care worker, one practitioner in day care of children services, and one manager in day care of children services. The allegations that led to removal included: failure to carry out the duties of a social worker, dishonesty, conviction for domestic assault, inappropriate behaviour at work, and breach of health and safety regulations (25). The SSSC Annual Report for 2012-13 reports an increase in the number of referrals. In 2011/12, 857 referrals were made about registered workers or applicants for registration, and in 2012/13 this figure increased to 1,281, an increase of 49 per cent. In 2011/12, 19 registrants were removed from the register and in 2012/13, 15 registrants were removed (26).

3.5 External support

Inquiries and reviews have acknowledged the importance of support for residential workers and foster carers when looking after vulnerable and troubled children. Access to specialist services and consultants, such as psychiatrists and counsellors is important in providing support and advice to the day-to-day carers of children in care. In addition to the day-to-day involvement of a range of specialist services and professionals in supporting looked after children and young people, a number of centres and voluntary agencies have supported the work with looked after children.

Following the Skinner Review of Residential Care in Scotland, the Centre for Residential Child Care was established at the University of Strathclyde. The Centre undertook a range of consultancy, training, research, seminars and conferences. The *Children's Safeguards Review* acknowledged the importance of the work being done by the Centre and proposed that the profile of the Centre should be raised, that it should receive increased funding and that a Chair in Residential Child Care should be created. We have seen that this was taken forward with the establishment of SIRCC and, while education and training formed the bulk of its activity, it also provided consultancy, research and evaluation, practice publications, seminars and conferences.

In April 2011, the Centre for Excellence for Looked After Children in Scotland (CELCIS) was established. This centre incorporates the work of SIRCC and has extended its reach to the wider looked after children workforce, including foster care services, teachers,

healthcare workers, kinship carers, advocates and all those whose daily work has an impact on the outcomes of looked after children. While workforce development continues to be an important part of the work of CELCIS, there is an increased focus on service improvement and direct support to sector institutions, including local authorities.

The British Agencies for Adoption and Fostering (BAAF) and the Fostering Network (TFN) have long provided support for adopters and foster carers in Scotland. Both agencies provide training, consultancy, advice for professionals, research, and resources for foster carers and professionals. In 2013, TFN received Scottish Government funding for Fosterline Scotland which provides early intervention through advice, advocacy and mediation, primarily by telephone support, to the fostering community throughout Scotland. Over a number of years, there have been proposals for a training centre based on the model and experience of SIRCC and this was a recommendation of the *Moving Forward in Kinship and Foster Care* report (17).

In 2005, the Social Work Inspection Agency carried out the *Inspection into the Care and Protection of Children in Eilean Siar* (27). The report describes a case of three children who were neglected and abused over a period of many years and details the role of a range of agencies which were in contact with the children and family but did not protect them by removing the children earlier. One recommendation of the report was that the Scottish Government should establish a multi-agency national resource for those working with complex child protection issues, establish a register of recognised experts, set up a database of relevant research, and contribute to qualifying training and continued professional development. The Multi-Agency Resource Service (MARS) and the Scottish Child Care and Protection Network (SCCPN) were established and more recently merged to form WithScotland. WithScotland supports child protection practice, policy and research by working in collaboration, connecting research with practice, exchanging knowledge and ideas and co-ordinating activities across Child Protection committees (28).

4 Inspection, Monitoring and Standards

As there has been increasing regulation of the workforce, there has also been an increasing focus on the regulation of care services. Residential and foster care services, along with a range of other services for adults and children, now have to be registered and they are inspected on a regular basis against published standards.

The Care Commission was established in 2002 by the *Regulation of Care (Scotland) Act 2001*. However, in 2011, the Care Inspectorate (Social Care and Social Work Improvement Scotland) took over the functions of the Care Commission, the Social Work Inspection Agency (SWIA) and the child protection unit of Her Majesty's Inspectorate of Education (HMIE) when it was established by the *Public Sector Reform (Scotland) Act 2010*.

The Care Inspectorate is the independent regulator of social work and social care services in Scotland. In relation to children in care, it regulates: adoption agencies, care homes for children and young people, fostering and family placement, school care accommodation, secure care accommodation, and short breaks and respite care. By law, care services must be registered with the Care Inspectorate in order to operate in Scotland. To successfully register (and stay registered), the service must continuously meet the requirements of relevant legislation, care standards and regulations such as the *Social Work and Social Care Improvement Scotland (Requirements for Care Services) Regulations 2011*. These regulations detail a range of issues which care services need to address such as: the welfare of users, personal plans, the fitness of managers, employees and premises, the facilities available, staffing, and complaints procedures (29).

The Care Commission and the Care Inspectorate have published a number of reports based on inspections which have addressed: the quality of care services (30); protecting children and young people in residential care (31); mental health of children and young people in residential care (32); physical health of children and young people in residential care (33); child protection services (34); and deaths of looked after children (35).

4.1 Guidance and Standards

Regulations and guidance on residential care and foster care have existed for some time and Shaw reports their evolution over time (1). Following the *Children (Scotland) Act 1995*, a number of regulations were produced which related to children in care: *The Arrangements to Look After Children (Scotland) Regulations 1996*; *The Fostering of Children (Scotland) Regulations 1996*; *The Residential Establishments - Child Care (Scotland) Regulations 1996*; and *The Secure Accommodation (Scotland) Regulations 1996* (36).

The Arrangements to Look After Children (Scotland) Regulations 1996 covered general issues such as the duty to make a care plan and the matters to be covered in the care plan, reviewing of children's cases, records, notifications, health, monitoring and termination of the placement. *The Fostering of Children (Scotland) Regulations 1996* covered the approval of foster carers and appointment of fostering panels, written agreement with foster carers, payment of allowances, review and termination of approval, the decision to place a child in a foster placement, emergency and immediate placements, arrangements with voluntary organisations, records for foster carers and confidentiality. *The Residential Establishments - Child Care (Scotland) Regulations 1996* address the need for a statement of functions and objectives, appointment of the person in charge and appointment and vetting of staff, precautions against fire and accident, sanctions, provision of education, log book, personal records, religious instruction, health and medical care, monitoring of registered establishments, and information in respect of children placed in a residential establishment. *The Secure Accommodation (Scotland) Regulations 1996* covers the different legislation by which a child can be placed in secure accommodation, the welfare of children, the maximum length of time in secure and review of the use of secure accommodation (36). Extensive guidance on the regulations was produced in 2004 (36).

The Looked After Children (Scotland) Regulations 2009 replaced the Arrangements to Look After Children (Scotland) Regulations 1996 and The Fostering of Children (Scotland) Regulations 1996. The new regulations revised the requirements around assessment and care planning and updated a number of other matters, as well as providing regulations on kinship care (37).

Linked to the regulation of care services, the Scottish Executive published 19 sets of National Care Standards covering a wide range of social care services. There are now 23 sets of standards. There are six sets of standards about services for children and young people and four of these are relevant to looked after children: *adoption agencies, care homes for children and young people, foster care and family placement services, and school care accommodation services* (38). All the National Standards are based on the principles of dignity, privacy, choice, safety, realising potential, and equality and diversity. The standards for *Care Homes for Children and Young People* (39), as an example, have 17 standards in four sections:

Beginning your stay (standards 1 to 7)

1. Arriving for the first time
2. First meetings
3. Keeping in touch with people who are important to you
4. Support arrangements
5. Your environment
6. Feeling safe and secure
7. Management and staffing arrangements

Leading your life (standards 8 to 16)

8. Exercising your rights
9. Making choices
10. Eating well
11. Keeping well - lifestyle
12. Keeping well - medication
13. Learning
14. Private life
15. Daily life
16. Supporting communication

Moving on (standard 17)

17. Moving on

Expressing your views (standards 18 and 19)

18. Concerns, comments and complaints
19. Advocacy

The Scottish Government is currently undertaking work to review the National Care Standards.

4.2 National Guidance for the External Management of Residential Child Care Establishments

Inquiries into the abuse of children in care have frequently highlighted failings in external management. While external management had been discussed in previous regulations and guidance, following a recommendation by the National Residential Child Care Initiative Workforce report (40), the *National Guidance for the External Management of Residential Child Care Establishments* was published in 2013 and highlights the importance of the role of external managers. It describes the key requirements of an external manager as having the skills, knowledge and experience to be: a champion for residential child care, an effective safeguard for children and young people, and a significant source of support to the 'person in charge'. It lays out the key responsibilities as follows:

- Ensure that acceptable standards are maintained.
- Monitor the experiences of children.
- Ensure that practice complies with legislation, regulations and national and local guidance.
- Develop a relationship with the 'person in charge' which allows them to best support and constructively challenge.

- Ensure all staff are aware of their responsibilities, properly supported and have clear professional development plans.
- Ensure the home and physical environment is in a good state of repair, and ensure any problems are dealt with swiftly.
- Identify the need for and instigate any necessary changes.
- Report on progress to the managing authority or agency.
- Ensure the work of their organisation is informed by the views of children and young people.
- Ensure robust and fair policies are in place to oversee any allegations made against staff to safeguard young people and staff.
- Promote the objectives, purpose and values of the organisation, and, in this particular case, the residential unit (41).

4.3 Inspection of Care Services

‘The primary function of inspection... is serving the public interest by providing an additional safeguard for vulnerable people’ (42).

The Care Inspectorate inspects services using a framework of quality themes and statements, and against the relevant care standards. The core themes are: quality of care and support; quality of environment or information; quality of staffing; and quality of management and leadership. The services are given grades on a six-point scale from 1=Unsatisfactory to 6=Excellent. Certain services receive, as a minimum, an annual unannounced inspection and these include care homes for children and young people and secure accommodation. Other services receive a minimum frequency of inspection based on risk assessment and previous performance. The inspections draw on a range of information including: the service’s annual return; self-assessment and notifications to the Care Inspectorate; questionnaires; meeting with young people and staff; and various documentation such as case files, policies and procedures, and meeting minutes. The inspection report can make recommendations for the improvement of services. It can also set out a requirement to ensure the care service complies with the law or conditions of registration and these are legally enforceable. The Care Inspectorate has powers of enforcement and can serve an improvement notice and the provider of the care services must make the required improvements within a given timescale and, if these are not carried out, the service’s registration may be cancelled. If the Care Inspectorate believes that there is a serious and immediate threat to life or wellbeing, it can apply to the Sheriff Court for emergency cancellation of a service’s registration. The Care Inspectorate publishes the inspection reports, grading of services, complaints and enforcements on its website (43).

The Care Inspectorate is also leading new joint inspections of children's services in every area of Scotland. Rather than looking just at individual care services, these strategic inspections bring together professionals from the care, social work, health, police and education regulators (44).

4.4 Child Protection

We noted at the start of this review that protecting children from abuse was enshrined in law over 100 years ago in the *Prevention of Cruelty to, and Protection of, Children Act 1889*. There have been significant developments in child protection legislation, policy and practice and this review will provide a broad overview and identify some of the developments which are particularly relevant to looked after children and young people.

Following the *Social Work (Scotland) Act 1968*, the protection of children and young people was dealt with through the Children's Hearings System. The Act stated that areas where a child might be in need of compulsory measures of care included protection, control, guidance and treatment. Child Protection Committees were first established in each local authority area across Scotland in 1991. Since then, they have been subject to many reforms and reviews, in particular in 2005 when they were strengthened as part of the then Scottish Executive's Child Protection Reform Programme. The national guidance for Child Protection Committees was published in 2005 and has now been embedded in the 2014 revised *National Guidance for Child Protection in Scotland*.

In 2004, as part of the Scottish Government's child protection reform programme the *Children's Charter* was drawn up following consultation with children and young people (45). The Charter sets out a list of demands children should feel entitled to make:

- Get to know us
- Speak with us
- Listen to us
- Take us seriously
- Involve us
- Respect our privacy
- Be responsible to us
- Think about our lives as a whole
- Think carefully about how you use information about us
- Put us in touch with the right people
- Use your power to help
- Make things happen when they should
- Help us be safe

The *Framework for Standards for Child Protection* was developed as a means for translating the commitments made to children in the Charter into practice:

- Standard 1: Children get the help they need when they need it
- Standard 2: Professionals take timely and effective action to protect children
- Standard 3 Professionals ensure children are listened to and respected

- Standard 4: Agencies and professionals share information about children where this is necessary to protect them
- Standard 5: Agencies and professionals work together to assess needs and risks and develop effective plans
- Standard 6: Professionals are competent and confident
- Standard 7: Agencies work in partnership with members of the community to protect children
- Standard 8: Agencies, individually and collectively, demonstrate leadership and accountability for their work and its effectiveness.

Following the *Children (Scotland) Act 1995*, the Scottish Office published child protection guidance aimed at all professionals working with children and families - *Protecting Children - A Shared Responsibility* (46). The guidance recognised that some groups of children are particularly vulnerable or have additional needs and this includes children living away from home or in other settings. Local authorities and other agencies providing care for children in residential placements, schools and foster care should ensure procedures are in place to respond to allegations of abuse of children living away from home. This should address: interagency child protection procedures, criminal investigation, disciplinary procedures, and review of approval for carers or registration and inspection of establishments. In 2010, the 1998 guidance was updated and replaced by a new national framework (47) which was further revised in 2014 (48). The 2010 National Guidance also provided guidance on historical allegations of abuse (47) which was amended slightly in 2014 (48).

The focus of this review has been the protection and safeguarding of children in care. Recent research in the UK has thrown light on the current extent of abuse in residential and foster care (49). This research involved a brief survey of all local authorities across the UK to provide estimates of the scale, characteristics and outcomes of allegations concerning looked after children and a more detailed follow-up survey of confirmed cases of abuse or neglect in foster and residential care in 24 local authorities. Nineteen local authorities in Scotland returned information on allegations of abuse.

On average, local authorities reported 10-11 allegations of abuse in foster care per area in each year of the study, giving a UK estimate of approximately 2,000-2,500 allegations per year. This represents slightly less than four allegations per 100 children in foster care across the UK each year. The figures for Scotland were significantly lower than the rest of the UK with one allegation per 100 children in foster care and approximately one-fifth of these were substantiated. Given the numbers of children in foster care in Scotland, this would equate to approximately 50 allegations of abuse per year and ten confirmed cases of abuse. The numbers for residential care were, on average, five to seven allegations per area in each year, giving a UK estimate of approximately 1,100-2,500 allegations per year. This equates to between ten and 12 allegations per 100 children living in residential care across the UK in each year of the survey. Again the figures for Scotland were significantly lower with approximately two allegations per 100 children in residential care and less than a half were confirmed. Again, given the

number of children in residential care in Scotland, this would equate to approximately 30 allegations of abuse per year and approximately 13 confirmed cases of abuse.

It is important to note that the research report clearly acknowledges that, while the figures may reflect real differences across countries, they may also reflect differences in thresholds of what is recorded, differences in picking up abuse which is occurring, or differences in the response rates to the survey.

The research found that between one-fifth and one-quarter of allegations were confirmed as abuse or neglect and this was similar for both residential and foster care. While just under one-third of allegations were deemed to be unfounded, the remaining two-fifths were unsubstantiated because of lack of evidence.

In relation to residential child care, the report found that one-half of cases concerning residential staff were categorised as either physical abuse or use of excessive physical restraint and generally involved staff reacting inappropriately to challenging behaviour by young people (49). In 2005, guidance on the use of physical restraint was produced for practitioners in residential child care in Scotland (50), and this was updated in 2013 to provide more detailed information about the use and minimisation of physical restraint in residential care establishments (51).

This research shows that despite all the developments which have taken place, abuse of children and young people continues to occur and there is a continued need to focus on protecting and safeguarding children in care.

4.5 Corporate Parenting

There has long been a focus on the importance of interagency responses to the needs of vulnerable children. In relation to children in residential and foster care, this has developed into the idea of corporate parenting. Corporate parenting means the formal and local partnerships needed between all local authority departments and services, and associated agencies, who are responsible for working together to meet the needs of looked after children and young people, and care leavers. The Scottish Government summarised the three key elements of corporate parenting as:

- The statutory duty on all parts of a local authority to co-operate in promoting the welfare of children and young people who are looked after by them, and a duty on other agencies to co-operate with councils in fulfilling that duty.
- Co-ordinating the activities of the many different professionals and carers who are involved in a child or young person's life, and taking a strategic, child-centred approach to service delivery.
- Shifting the emphasis from 'corporate' to 'parenting', taking all actions necessary to promote and support the physical, emotional, social and cognitive development of a child from infancy to adulthood (52).

Corporate parenting aligns with the broader policy framework of *Getting it Right for Every Child (GIRFEC)* which is founded on ten core components which can be applied in any setting and in any circumstance:

1. A focus on improving outcomes for children, young people and their families based on a shared understanding of wellbeing.
2. A common approach to the proportionate sharing of information where appropriate.
3. An integral role for children, young people and families in assessment, planning and intervention.
4. A co-ordinated and unified approach to identifying concerns, assessing needs, and agreeing actions and outcomes, based on the *wellbeing indicators*.
5. Streamlined planning, assessment and decision-making processes that lead to the right help at the right time.
6. Consistent high standards of co-operation, joint working and communication where more than one agency needs to be involved, locally and across Scotland.
7. A *Named Person* for every child and young person, and a *Lead Professional* (where necessary) to co-ordinate and monitor multi-agency activity.
8. Maximising the skilled workforce within universal services to address needs and risks as early as possible.
9. A confident and competent workforce across all services for children, young people and their families.
10. The capacity to share demographic, assessment, and planning information - including electronically - within and across agency boundaries.

The *Children and Young People (Scotland) Act 2014* has further formalised the role of the corporate parent in law and these provisions will come into force in April 2015. This part of the law applies all looked after children and young people including those who are under the age of 26 and who were looked after from the age of 14 but are no longer looked after. The Act sets out the responsibilities of the corporate parent as:

- Being alert to matters which might adversely affect the wellbeing of the children.
- Assessing the needs of those children and young people for services and support it provides.
- Promoting the interests of those children and young people.
- Seeking to provide those children and young people with opportunities to participate in activities designed to promote their wellbeing.
- Taking appropriate action to help those children and young people access opportunities to promote their wellbeing make use of services, and access support.

There is a duty for corporate parents to collaborate with each other, for example, by sharing information, providing advice or assistance, co-ordinating activities, joint funding and sharing responsibility. They must publish plans on their corporate parenting and provide information to Scottish Ministers about how they are carrying out their corporate parenting responsibilities.

4.6 Leaving Care

Young people leaving care for independence form a particularly vulnerable group and the move out of care to independent living is a challenging time. While some young people achieve positive outcomes to independence, as a group, young people leaving care tend to have poor outcomes in health, education, employment, and accommodation (53). There has long been concern that young people leave care at too early an age, that transitions are too abrupt and they do not receive the support they require (54) (55) (56).

The *Children (Scotland) Act 1995* set out the duties of local authorities to provide advice and assistance for preparing children and young people for independence and the responsibilities to advise, guide and assist those who have left care. In 2004, the Scottish Government published regulations and guidance on services for young people leaving care (57).

The *Children and Young People (Scotland) Act 2014* extends the responsibilities for young people leaving care and is a major step forward in ensuring the ongoing support of care leavers in Scotland. Under the *Children (Scotland) Act 1995*, eligibility for 'Aftercare' services is restricted to young people who were looked after by a local authority on or after their minimum school leaving age. This will be changed to those who are at least sixteen. Under the 2014 Act, care leavers between the ages of 19 and 25 will be eligible to request 'advice, guidance and assistance' from their local authority (under the 1995 Act the upper age limit was 21). The *Children and Young People (Scotland) Act* also brings in a new right to 'Continuing Care' and it means that the accommodation and other assistance that is being provided before a young person leaves care can continue to be provided after they leave care. This is being brought in in a staged way from April 2015.

Recent research on throughcare and aftercare services in Scotland's local authorities found a large amount of variation in policy and practice (53). There was a variety of approaches to how local authorities target and engage care leavers. Some authorities offer support to all eligible young people, other local authorities prioritise young people in residential care, foster care or external placements. There were also different approaches to how services were structured, although more than half were delivered through a centralised service. Delivery and structural change was a recurring feature for throughcare and aftercare teams. There was a major issue with accessing and collating accurate data. Recent guidance for local authorities and other corporate parents, *Staying Put Scotland: Providing Care Leavers with Connectedness and Belonging* (58) sets out an explicit philosophy of care based on the importance of relationship-based practice, extended and graduated transitions, and post-care accommodation options.

5 Listening to Children and Children's Participation

The most crucial lesson from cases of abuse in residential and foster care is the need to listen to children and young people and to respond effectively to their concerns. Many children and young people who were abused either did not tell of their abuse at the time or, if they did, were not believed. This has been highlighted consistently in inquiries and reviews (10) (11) (1). There are a variety of ways that organisations can encourage a culture which welcomes the contributions and feedback of children and develop ways that are transparent and easy to access. Children and young people need to be provided with clear information and support to use complaints systems and other mechanisms for their voices to be heard. However, an ongoing challenge is to develop such systems while avoiding an institutionalised experience for children and young people. One form of support for children in care has been provided by the development of children's rights services and advocacy services. These provide a framework for the promotion of children's rights and good practice in care settings. Advocacy services also provide a useful way of enabling children and young people's concerns about care to be made, although there may be issues about the independence of advocacy services (59).

5.1 Telephone Helplines

Telephone helplines have also provided an invaluable support for children in care. An NSPCC report found that over 3,000 children and young people in care in the UK were counselled by Childline in 2009/2010 (60). In addition to the issue of being in care, children most commonly raised family relationship problems. Other issues raised included: physical abuse, running away, loneliness, bullying, depression or mental health, self-harm, sexual abuse, school or educational problems, and emotional abuse. Of continuing concern is that looked after children often contacted ChildLine because they felt they had no other trusted adults they could turn to (60).

Over recent years alternative methods have been developed through websites and online resources which provide a range of methods for children and young people to access support, such as texting, message boards, email or online counselling (61).

5.2 Complaints Procedures

In Scotland, the *National Health Service and Community Care Act 1990* made complaints procedures statutory for all client groups. We saw above those complaints procedures were also covered in the *Social Work and Social Care Improvement Scotland (Requirements for Care Services) Regulations 2011* where it states that a care provider

must establish a complaints procedure which is appropriate to the needs of service users. Complaints must be fully investigated and the provider must also provide the Care Inspectorate with a summary of complaints and the action taken if requested. A central role of the Care Inspectorate itself is to hear complaints, and it sees this as an important way to improve care services. In 2012/13, the Care Inspectorate received 2,172 complaints about care services and 1,877 of these were formally registered as complaints and investigated (62). The National Care Standards also address complaints; Standard 18 of the *Care Homes for Children and Young People* states that, 'The care home welcomes your views so they can continuously improve the quality of services. Staff encourage you to give your views and suggestions, whether positive or negative' (39).

5.3 Advocacy and Children's Rights Services

Skinner considered that children's rights services were important for promoting good practice in residential child care and providing an appropriate way of handling the vast majority of complaints and concerns (10). Back in the 1990s, Utting described children's rights services as 'one of the most beneficial developments of the last decade' (42). Generally, children's rights services provide independent advocacy, support and representation to looked after children and young people. While some local authorities provide children's rights services themselves, others have entered into partnership with Who Cares? Scotland or other voluntary organisations. Research has identified that looked after children and young people had more consistent access to advocacy services than other children. These services were provided by two main sources of support: local authority children's rights officers and Who Cares? Scotland (59). The Scottish Children's Reporter Administration provides contact details for advocacy services for looked after children across Scotland and this includes services provided by local authority Children's Rights Officers and advocacy services, Who Cares? Scotland, Barnardos, Children 1st and other independent advocacy services (63).

5.4 Scotland's Commissioner for Children and Young People

An increasing number of countries around the world have appointed Children's Commissioners or Ombudsmen to address the rights of children. In May 2003, the *Commissioner for Children and Young People (Act) 2003* received Royal Assent.

The primary functions of the Commissioner are laid down in the Act and are:

- Promoting and safeguarding the rights of children and young people, having regard to the UN Convention on the Rights of the Child.
- Promoting the best interests of children and young people as a primary consideration.
- Promoting the views of children and young people on all matters affecting them.

- Encouraging equal opportunities.
- Involving children and young people in the work of the Commissioner.
- Carrying out investigations into whether service providers have given due regard to the rights, interests and views of children and young people.
- Producing and publishing reports on the Commissioner's work and investigations.

The Commissioner will provide children and young people in residential and foster care with an independent, national watchdog and a champion to promote their interests first and foremost. The Commissioner has carried out specific work in relation to children in care and this includes work on outdoor play and activities (64) (65) and the age of leaving care (54) (55).

The *Children and Young People (Scotland) Act 2014* sets out new powers for the Scottish Commissioner for Children and Young People. It extends the power of the Commissioner to carry out investigations in relation to individual children or young people rather than children and young people in general. The Act also enables the Commission to make a requirement to respond so that a services provider must give a statement setting out what they intend to do in response to the Commissioner's recommendations or the reasons for not doing anything.

6 Historic Abuse of Children in Care

Many of the developments in this review were begun because of concerns about the experiences and outcomes of children who were in residential and foster care at that particular time. It is only more recently that issues about historic abuse and the experiences of adults who experienced care as children have been highlighted and addressed, and have given added impetus to developments focused on current care services.

6.1 Petition 535 and Apology

A major trigger was Petition 535 which called for an inquiry into past institutional abuse and for unreserved apologies from the state and religious bodies (66). In December 2004, the First Minister made an apology on behalf of the people of Scotland and acknowledged that some children in residential care in Scotland suffered physical, emotional and sexual abuse, and that they deserved ‘full recognition by us of what happened to them’ and of the ‘burden’ with which they had had to cope for the rest of their lives. In addition to the statement of apology, the Scottish Executive indicated a range of proposals to examine the background of historic abuse and to support survivors of abuse more effectively (67). The First Minister’s apology focused solely on institutional abuse and there was no mention of children abused in foster care. This has been reflected in subsequent developments.

6.2 Historical Abuse Systemic Review (The Shaw Report)

The Scottish Parliament set up the Historical Abuse Systemic Review to consider the laws, rules, regulations and powers that governed how residential schools and children’s homes were run, regulated and inspected, what systems were in place to make sure that these requirements were followed, and how these systems worked in practice (1). The recommendations of the Shaw Report fell into three main areas. It recommended that public records legislation should be reviewed and professional records managers should be offered training and guidance in order to ensure that care leavers are able to access their files and records. The report also recommended that a centre should be established to support care leavers in accessing advocacy, mediation and counselling support, as well as carrying out research into residential child care, maintaining information and a database on residential child care, and creating an index for locations where records of services are held. Finally, a National Task Group should be established to undertake a wide-ranging audit of the extent to which children currently in residential establishments are protected (1).

6.3 Time to Be Heard and National Confidential Forum

In response to the Shaw Review, the Scottish Government made a commitment to establish a forum ‘to give survivors the chance to speak about their experiences and to help them come to terms with the past’ (68). A pilot confidential forum independent of government called *Time to be Heard* (TTBH) was set up to test the model of ‘giving former residents of residential schools and children’s homes the opportunity to recount their experiences in care, especially abusive experiences, to an independent and non-judgemental panel’ (69). As a pilot, TTBH was open to former residents of Quarrier’s Homes and 98 individuals testified either in person, through teleconferencing, or by written submission. After the forum, participants were generally very positive about their experience, although there was some concern that while TTBH addressed issues of acknowledgement of historic abuse, it lacked powers in terms of accountability.

Following the TTBH pilot, Scottish Government established a National Confidential Forum (NCF). The statutory functions of the NCF are:

- To receive and listen to testimony from those who were in care as children with the aim of contributing positively to their current health and wellbeing.
- To prevent harm to children and young people currently in care by learning lessons from the past.
- To signpost other appropriate services before, during and after hearings to those who were in care as children.

It will also record the experiences of those who were in care as children to enhance public knowledge and understanding of an important part of Scotland’s history.

At the time of writing, the NCF is being set up and Forum hearings are anticipated to start towards the end of 2014 (70).

6.4 In Care Survivors Service Scotland (ICSSS)

The Shaw Review also resulted in the establishment, in 2008, of the In Care Survivors Service Scotland (ICSSS), as a support service for adults who suffered childhood abuse in care and their families. ICSSS services include counselling and support, advocacy, befriending, and support in accessing records. An evaluation found that its services were highly valued by survivors, support workers and managers (71).

6.5 Access to Records and Information on Care Services

The Shaw review highlighted the difficulties and frustrations that survivors and care leavers encountered in trying to access their personal records. Over the years, many records have been lost, damaged, or destroyed (1). The review of public records

legislation carried out in response to Shaw's recommendation concluded that the existing public records legislation was limited in scope and no longer fit for purpose, and highlighted the tensions with data protection and freedom of information legislation, particularly in relation to long-term preservation (72). New legislation, the *Public Records (Scotland) Act 2011*, requires public bodies to prepare and implement a records management plan for the appropriate storage, retention, disposal, archiving and security of records, with the goal of facilitating access to personal records.

The Scottish Government is also supporting work in developing a database of residential and care services in Scotland which will provide information about services both past and present (73).

6.6 National Residential Child Care Initiative (NRCCI)

The National Residential Child Care Initiative (NRCCI) was established in response to the Shaw Review, to deliver on the Scottish Government's commitment 'to work with partners to make residential care the first and best placement of choice for those children who need its services' (74). Its remit was to undertake a strategic review of residential child care services in Scotland and to develop a blueprint for their future development. The NRCCI set up three working groups to address:

- The experience of children and young people with complex and multiple needs being placed in residential care;
- The status, training, education, skills and competence of the residential child care workforce; and
- The pattern and type of provision required to meet future needs, and planning at national and local level.

Through the working groups, stakeholder engagement events, and stakeholder consultation and networks, the NRCCI consulted 100 agencies and organisations in addition to the more than 100 children and young people involved in interviews and focus groups. The importance of assessment and care planning; the need for a more strategic role for residential child care; better management information; effective collaboration across a range of professions and agencies and the need for a high quality and well-supported workforce in residential care emerged as common themes, in addition to detailed recommendations made by the working groups (75) (76) (40).

The Scottish Government accepted the reports and the key proposals in them. It set out a range of actions focused around: culture change, workforce, commissioning, improving learning outcomes and improving health outcomes. It established a high-level, strategic group to take forward these proposals (77).

6.7 Scottish Human Rights Commission InterAction on Historic Abuse

In 2010, the Scottish Human Rights Commission was funded to develop a Human Rights Framework for remedies to historic child abuse in Scotland based on an analysis of international human rights law, research on the views of survivors and other key stakeholders, and experience in other countries. The framework developed a human rights approach to seek ‘effective access to justice, remedies and reparation for all Scottish survivors of childhood abuse’ (78). The Commission called on the Scottish Government to clarify that the pilot forum was a stage in scoping the needs of survivors and to commit to taking a comprehensive human rights based approach to securing effective access to justice, effective remedies and reparation for survivors of childhood abuse. To do this, the Scottish Government should address:

- Full and effective participation of survivors and others whose rights are affected, and support for participation including advocacy and psychological support, protection and alternative means of testifying.
- Accountability for human rights violations through effective official investigations, and prosecutions where appropriate.
- Investigatory powers sufficient to establish a record of the truth.
- Effective access to justice.
- A reparations programme which includes; restitution, adequate compensation, rehabilitation, satisfaction and guarantees of non-repetition.
- Legislation to facilitate apologies by institutions.
- A comprehensive communications and outreach strategy to raise awareness.

The Scottish Human Rights Commission set up an InterAction on Historic Child Abuse and CELCIS provided support for the process (79). A human rights InterAction is a forum for independent mediation and resolution which brings key actors together to find a way forward within a human rights framework. The purpose of the InterAction was to develop an action plan outlining agreed steps to advance access to justice, a time frame within which steps will be taken and an independent monitoring process.

The Action Plan calls for commitments in relation to acknowledgement and accountability of historic abuse. In relation to acknowledgment it proposes the following commitments:

- Barriers to effective apologies from those with historic responsibility for child care in Scotland are increasingly removed, including through a full consideration of the merits of an Apology Law.
- In establishing the National Confidential Forum, every effort will be made to consider how this might contribute to establishing a national record.
- Consideration will be given to appropriate forms of commemoration, guided by the views of victims/survivors.

In order to improve accountability, the Plan recommends:

- There should be a review of the lessons learned from previous inquiries and related processes such as the Historical Abuse Systemic Review. The review should consider what added value a National Inquiry on Historic Abuse would have, and should scope the potential costs.
- The civil justice system should be increasingly accessible, adapted and appropriate for survivors of historic abuse of children in care, including through the review of the way in which the ‘time bar’ operates.
- There should be a nationally consistent and appropriate approach to the investigation and prosecution of offences relating to historic abuse of children in care.
- Reparation: Options for the development of a national survivor support fund should be explored with all of those affected, including victims/survivors, public, private, voluntary and religious bodies, local authorities and others affected.
- Empowerment: Survivors should be supported to understand and access the range of measures in this Action Plan.
- Records: the outcomes of the ongoing review of record keeping and access to historic records should be considered in the implementation and review of this Action Plan.

At the time of writing the SHRC InterAction was approaching a conclusion with a meeting scheduled for October 2014 at which representatives of key organisations will consider commitments to take forward the Action Plan.

7 Summary of Key Lessons

7.1 Recruitment, Selection, Support and Training of Staff and Carers

- Development of recruitment and selection materials based on the Warner Report, including *Safer Recruitment and Selection for Staff Working in Child Care: A Tool Kit* (12) and *Safer Recruitment through Better Recruitment: Guidance in Relation to Staff Working in Social Care and Social Work Settings* (14).
- The approval of foster carers was addressed in the *Fostering of Children (Scotland) Regulations 1996* (15) and *National Care Standards: Foster Care and Family Placement Services* (16).
- New legislative safeguards to prevent unsuitable people from working with children have been taken forward including the *Protection of Children (Scotland) Act 2003* which established a list of individuals unsuitable to work with children. This provision was strengthened through *The Protection of Vulnerable Groups Act 2007* which established a new membership scheme for people undertaking regulated work with children or protected adults.
- The Scottish Institute of Residential Child Care was established in 2000 with a central focus to take forward the education and training of residential child care workers and to make available a range of courses and support.
- The qualifications criteria for residential child care staff were established and for residential child care staff these are currently an HNC and an SVQ level 3 Social Services (Children and Young People). Higher qualifications levels are required of staff with supervisory responsibilities and for managers.
- In 2013, 64 per cent of residential child care staff had achieved the minimum qualifications and 36 per cent were working to achieve them.
- Following the *National Residential Child Care Initiative*, the Scottish Government has made a commitment to a new higher level qualification at SCQF level 9 for residential child care staff.
- While various forms of training have previously been available to foster carers, it is only recently that there has been a commitment to mandatory training. The recommendations of the *National Foster Care Review* for a national Learning and Development Framework for Foster Carers is to be taken forward.
- In 2002, the Scottish Social Services Council (SSSC) was established and developed standards of conduct and practice for the workforce and has published codes of practice for social services workers and for social services employers.
- In April 2003, the SSSC established a register of Social Services Workers and this now includes: social workers; social work students; Care Inspectorate officers; workers in residential child care services; workers in care home services for adults; workers in day care of children services; workers in school hostels, residential special schools

and independent boarding schools; workers in housing support services; and, workers in care at home services.

- The SSSC investigates concerns about good character, conduct and competence of a person on the register or applying for registration, and can, if necessary remove a person from the register so that they are no longer able to practice.
- A number of Centres have been established to provide a range of consultancy, training, research, seminars and conferences. These include: The Scottish Institute for Residential Child Care (SIRCC) and the Centre for Excellence for Looked After Children in Scotland (CELCIS), the Multi-Agency Resource Service (MARS) and the Scottish Child Care and Protection Network (SCCPN). The latter two centres merged recently to form WithScotland. The British Agencies for Adoption and Fostering (BAAF) and the Fostering Network (TFN) have long provided support for adopters and foster carers in Scotland.

7.2 Inspection, Monitoring and Standards

- The Care Commission was established in 2002 and in 2011, the Care Inspectorate took over the functions of the Care Commission, the Social Work Inspection Agency (SWIA) and the child protection unit of Her Majesty's Inspectorate for Education (HMIE).
- The Care Inspectorate is the independent regulator of social work and social care services in Scotland. In relation to children in care, it regulates: adoption agencies, care homes for children and young people, fostering and family placement, school care accommodation, secure care accommodation, and short breaks and respite care. By law, care services must be registered with the Care Inspectorate in order to operate in Scotland.
- There are now 23 sets of National Care Standards and six sets of standards about services for children and young people. Four of these are relevant to looked after children: adoption agencies, care homes for children and young people, foster care and family placement services, and school care accommodation services.
- As an example, the standards for Care Homes for Children and Young People have 17 standards in 4 sections: beginning your stay; leading your life; moving on; and expressing your views.
- The *National Guidance for the External Management of Residential Child Care Establishments*, published in 2013, emphasises the importance of the role of external managers.
- The Care Inspectorate inspects services using a framework of quality themes and statements. The core themes are: quality of care and support; quality of environment or information; quality of staffing; and quality of management and leadership, and against the relevant care standards. The services are given grades on a six point scale from 1=Unsatisfactory to 6=Excellent.
- The Care Inspectorate has powers of enforcement and can take a range of actions including the cancellation of a service's registration.
- In 2004, as part of the Scottish Government's child protection reform programme the *Children's Charter* was drawn up following consultation with children and young

people. The *Framework for Standards for Child Protection* was developed as a means for translating the commitments made to children in the Charter into practice.

- *Protecting Children - A Shared Responsibility* recognised that some groups of children are particularly vulnerable or have additional needs and this includes children living away from home or in other settings. Local authorities and other agencies providing care for children in residential placements, schools and foster care should ensure procedures are in place to respond to allegations of abuse of children living away from home.
- The 2010 *National Guidance for Child Protection in Scotland* also provided guidance on historical allegations of abuse.
- Corporate parenting aligns with the broader policy framework of *Getting it Right for Every Child* (GIRFEC).
- The *Children and Young People (Scotland) Act 2014* has further formalised the role of the corporate parent in law and these provisions will come into force in April 2015.
- The *Children (Scotland) Act 1995* set out the duties of local authorities to provide advice and assistance for preparing children and young people for independence and the responsibilities to advise, guide and assist those who have left care. In 2004, the Scottish Government published regulations and guidance on services for young people leaving care.
- The *Children and Young People (Scotland) Act 2014* extends the responsibilities for young people leaving care and is a major step forward in ensuring the ongoing support of care leavers in Scotland.

7.3 Listening to Children and Children's Participation

- Development of telephone helplines for children and, more recently, other methods of providing help and support such as: texting, message boards, email or online counselling.
- Development of complaints procedures for children and young people.
- Development of children's rights services and advocacy services for children in care.
- *Scotland's Commissioner for Children and Young People* promotes and safeguards the rights of children and young people, promotes the best interests of children and young people as a primary consideration, promoting the views of children and young people on all matters affecting them, and carries out investigations into whether service providers have given due regard to the rights, interests and views of children and young people.
- The *Children and Young People (Scotland) Act 2014* extends the power of the Commissioner to carry out investigations in relation to individual children or young people.

7.4 Historic Abuse of Children in Care

- Apology by the First Minister on behalf of the people of Scotland acknowledging that some children in residential care in Scotland suffered physical, emotional and sexual abuse.
- The *Historical Abuse Systemic Review* considered the laws, rules, regulations and powers that governed how residential schools and children's homes were run, regulated and inspected, what systems were in place to make sure that these requirements were followed, and how these systems worked in practice (1).
- *Time to Be Heard* pilot forum gave former residents of Quarrier's Homes the opportunity to recount their experiences in care, especially abusive experiences, to an independent and non-judgemental panel (69).
- *National Confidential Forum* established to receive and listen to testimony from those who were in care as children with the aim of contributing positively to their current health and wellbeing; to prevent harm to children and young people currently in care by learning lessons from the past, and to signpost other appropriate services to those who were in care as children - before, during, and after hearings.
- In Care Survivors Service Scotland (ICSSS) is a support service for adults who suffered childhood abuse in care and their families. ICSSS services include counselling and support, advocacy, befriending, and support in accessing records.
- The *Public Records (Scotland) Act 2011*, requires public bodies to prepare and implement a records management plan for the appropriate storage, retention, disposal, archiving and security of records, with the goal of facilitating access to personal records.
- *National Residential Child Care Initiative* undertakes a strategic review of residential child care services in Scotland to develop a blueprint for their future development.
- Work being undertaken to develop a database of residential and care services in Scotland which will provide information about services both past and present.
- A Human Rights Framework was developed to seek effective access to justice, remedies and reparation for all Scottish survivors of childhood abuse.
- Scottish Human Rights Commission InterAction on Historic Abuse of Children in Care develops an Action Plan which calls for commitments in relation to acknowledgement and accountability of historic abuse.

7.5 Issues and Gaps

We have seen that in relation to the three key aspects of residential and foster care practice which have been linked to the safety and protection of children in care: recruitment, selection, support and training of carers; and inspection, monitoring and standards; and listening to children and children's participation, there have been significant developments. However, it should be apparent by this point that significantly more effort and focus has been directed at residential care than foster care. This is most apparent in relation to the responses to historic abuse which have focused almost exclusively on residential care.

Most children looked after away from home now, however, are in foster care or kinship care. Research and inquiries have shown that abuse takes place in foster care as well as in residential care. In the *Children's Safeguards Review*, Kent stated that he was particularly concerned that there is even less information about abuse in foster care than there is about abuse in residential settings and recommended that there should be research into abuse in foster care (11). Since the *Children's Safeguards Review* there has been increased focus on residential care but much less of a focus on foster care. The *Children's Safeguards Review* also called for national statistics on allegations of abuse of looked after children, the nature of the abuse, the alleged perpetrator and whether the allegation was confirmed as abuse. This information is still not collected on a national basis. Such information would also provide the basis for further research on the causes of abuse of looked after children, and on the effectiveness of particular measures to protect children and young people, for example complaints procedures or the work of children's rights officers or advocacy services (11).

Although we have seen the developments across a range of areas such as recruitment and selection and vetting procedures, this does not mean that these procedures are used efficiently and effectively. The Kerelaw Report, for example, identifies failings in complying with procedures and delays in providing relevant information (80). Simply having systems in place does not mean that they will be effective in safeguarding and protecting children, they must be used properly and efficiently.

There is also a need to more systematically engage with, and publish, the views of children and young people on their experiences of care and the issues relevant to them. This links to the need to more systematically address the outcomes of looked after children and young people, and the quality of services. Research has highlighted the variation in quality across child care services. While there is high quality and effective provision, there are also services providing poor quality experiences to children and young people.

There, therefore, needs to be a much stronger evidence base in order to take forward further improvements in services for looked after children and young people and to identify better outcomes for children and young people themselves.

8 Conclusion

This review has provided a broad overview of developments which have focused on the protection and safeguarding of children and young people in care in Scotland. It has identified key legislation, policy and initiatives which have impacted on the protection and safeguarding of children in care. Where possible, it has presented information and research findings which indicate the impact of these developments on the experience and outcomes for children in care. For many developments and initiatives, however, it is difficult to gauge the direct impact on practice and on the outcomes and experiences of children and young people in care.

The latest figures on the abuse of children in residential and foster care suggests that these are lower in Scotland than the rest of the UK, although the authors caution that a number of factors may be involved, such as different reporting mechanisms or different thresholds being applied (49). This overview has also identified a range of other evidence which indicates that services are not fulfilling the needs of children and young people. Despite all the safeguards, children and young people in care continue to suffer abuse and neglect which underlines the importance of constant scrutiny of policy and practice.

Importantly, our focus should not only be on protection and safeguarding, we must also highlight all the aspects and features of the care system which promote health and wellbeing for children in care, and, in particular, the work of residential and foster carers in promoting positive relationships with looked after children and young people which allow them to flourish and develop.

Appendix 1: Timeline of Events

| Year | |
|------|--|
| 1989 | United Nations Convention on the Rights of the Child |
| 1992 | Choosing with Care: The Report of the Committee of Inquiry into the Selection, Development and Management of Staff in Children's Homes (The Warner Report) |
| 1992 | Another Kind of Home: Review of Residential Child Care in Scotland |
| 1994 | Centre for Residential Child Care, University of Strathclyde |
| 1995 | Children (Scotland) Act 1995 |
| 1996 | The Arrangements to Look After Children (Scotland) Regulations 1996 |
| 1996 | Fostering of Children (Scotland) Regulations 1996 |
| 1996 | The Residential Establishments - Child Care (Scotland) Regulations 1996 |
| 1996 | The Secure Accommodation (Scotland) Regulations 1996 |
| 1997 | Children's Safeguards Review |
| 1998 | Protecting Children - A Shared Responsibility |
| 2001 | Safer Recruitment and Selection for Staff Working in Child Care: A Tool Kit |
| 2001 | Regulation of Care (Scotland) Act 2001 |
| 2001 | Scottish Institute for Residential Child Care (SIRCC) |
| 2002 | Care Commission |
| 2002 | National Care Standards |
| 2002 | Scottish Social Services Council |
| 2003 | Protection of Children (Scotland) Act 2003 |
| 2003 | Register of Social Services Workers established by Scottish Social Services Council |
| 2003 | Commissioner for Children and Young People (Act) 2003 |
| 2004 | Protecting Children - The Charter |
| 2004 | Scotland's Children: The Children (Scotland) Act Regulations and Guidance |
| 2005 | National Guidance for Child Protection Committees |
| 2007 | Safer Recruitment through Better Recruitment: Guidance in Relation to Staff Working in Social Care and other Social Work Settings |
| 2007 | Protection of Vulnerable Groups (Scotland) Act 2007 |
| 2007 | Historical Abuse Systemic Review (The Shaw Report) |
| 2008 | National Residential Child Care Initiative |
| 2008 | In Care Survivors Service Scotland (ICSSS) |
| 2008 | Moving Forward in Kinship and Foster Care |
| 2009 | Inquiry into Abuse at Kerelaw Residential School and Secure Unit |
| 2009 | Looked After Children (Scotland) Regulations 2009 |
| 2010 | Time To Be Heard Pilot Forum |
| 2010 | National Guidance for Child Protection in Scotland 2010 |
| 2011 | Guidance on the Looked After Children (Scotland) Regulations 2009 and the Adoption and Children (Scotland) Act 2007 |
| 2011 | Protecting Vulnerable Groups (PVG) Scheme |
| 2011 | Care Inspectorate |
| 2011 | Public Records (Scotland) Act 2011 |
| 2011 | Centre for Excellence for Looked After Children in Scotland |

| | |
|------|--|
| 2012 | WithScotland |
| 2012 | National Foster Care Review |
| 2012 | SHRC InterAction on Historic Abuse of Children in Care |
| 2013 | National Guidance for the External Management of Residential Child Care Establishments |
| 2014 | National Guidance for Child Protection in Scotland 2014 |
| 2014 | Children and Young People (Scotland) Act 2014 |
| 2014 | National Confidential Forum |

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About CELCIS

CELCIS is the Centre for Excellence for Looked After Children in Scotland. Together with partners, we are working to improve the lives of all looked after children in Scotland. We do so by providing a focal point for the sharing of knowledge and the development of best practice, by providing a wide range of services to improve the skills of those working with looked after children, and by placing the interests of children at the heart of our work.

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