

The Report of the Inquiry into Child Care Policies in Fife

Return to an Address of the Honourable the
House of Commons dated 27 October 1992

*Ordered by the House of Commons to be printed
27th October 1992*

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EXTRACTS FROM THE REPORT OF THE
INQUIRY INTO CHILD CARE POLICIES
IN FIFE

SHERIFF BRIAN KEARNEY (CHAIRMAN)

PROFESSOR ELISABETH L G MAPSTONE OBE
(CHILD CARE ADVISER)

The Report of the Fife Inquiry is lengthy and, in order to provide in shorter form and more conveniently key parts of the main Report to a wide range of people, Sections A and J together with the contents pages from the full Report have been extracted and are published in this summary volume.

It is not designed as a substitute for the main Report; a full understanding of the conclusions set out in this volume requires the accompaniment of the arguments and discussions contained in the full text.

TERMS OF REFERENCE OF INQUIRY

1. To inquire into the policies pursued by Fife Regional Council through its Social Work Department in discharging its functions under the Social Work (Scotland) Act 1968 and related legislation
 - in the use of voluntary and compulsory measures of care for children, and
 - in particular, in the advice given to children's hearings before they decide on or review compulsory measures of care for children referred to them.
2. To assess the extent to which the Regional Council's current policies relating to these matters and the Department's interpretation and application of them meet the best interests of children at risk.
3. To make recommendations for any modification of the child care policies of Fife Regional Council and their interpretation and application in the best interests of children.
4. To report to the Secretary of State.

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PART A
PROLOGUE

PROLOGUE

1. The setting up of our Inquiry was announced in the House of Commons on 1 March 1989. After a preliminary hearing on 11 April 1989 oral evidence began on 8 May 1989. Thereafter until 24 January 1991 we gathered written evidence and heard oral evidence. Within 6 weeks of the conclusion of oral evidence we had received the principal submissions by parties on the evidence and since then have been engaged in compiling our Report. The Inquiry, accordingly, was by any standards a long one and as will appear from the body of this Report it was complex. The Inquiry was, moreover, held in private by direction of the Secretary of State exercising the powers conferred upon him by Section 99(2) of the Children Act 1975. Obviously it is only by perusal of our entire Report that the reader will learn of all the issues we looked into and our conclusions thereon but we thought a few simple words at the beginning would be helpful.
2. Our formal terms of reference were simple, perhaps deceptively so. They required us to look into the 'policies' pursued by the Social Work Department in Fife in regard to voluntary and compulsory measures of care for children with particular reference to the advice given to children's hearings; instructed us to assess the extent to which these policies as implemented served the best interests of children who were 'at risk'; and instructed us to make recommendations for any modification of these policies and their interpretation and application 'in the best interests of children'.
3. It was obvious to us from the outset—and had it not been we should soon have learned—that you do not, in the field of social work at any rate, find out what a 'policy' is by studying a 'policy document' in isolation or even in conjunction with a few written guidelines or memoranda. On the contrary we saw 'policy' as denoting the principles on which people habitually act. Of course people do not always act completely consistently: this did not make our task any easier but we did not think we should let this deter us completely. A river may sometimes change direction but it still leads to the sea.
4. The length and complexity of our inquiries was also affected by the view we took of the scope of our terms of reference when they referred to 'children at risk' and 'the best interests of children'. We took the view from the outset, as we explained to the preliminary hearing, that the essence of the hearings system was to 'secure the wellbeing of children in need of care'. The words 'at risk' and the reference to 'the best interests of the children at risk' had therefore to be given a wide interpretation so as to be regarded as referring to any risk that children might not, as a consequence of the operation of the child care policies in Fife, be secured the best opportunity for their wellbeing. Accordingly we were obliged to concern ourselves not only with the interests of those children who were at acute risk of, for example, physical or sexual abuse or neglect, but also with the possibility that, as a result of Social Work policies, children might be receiving inappropriate care, insufficient education, and in general less than young people are entitled to expect in our modern civilised society. This approach, which we believe was inevitable on a reasonable reading of the remit, was also, as we understood it, well received by those who participated in the Inquiry and, when we look back on our investigations, was shown to have been not merely correct but inevitable because of the interdependent nature of services for children.
5. The origins of our Inquiry lay in expressions of concern regarding the direction which the child care social work policies of the Region's Social Work Department appeared to be taking. The concerns focused on the content and manner of the changes introduced subsequent to the arrival in the Region of Mr Allan J Bowman, the present Director of Social Work. Mr Bowman initially came to the Region

in January 1985 as Depute to the then Director Mr M Anthony Gillespie; he succeeded Mr Gillespie in June 1986 after the latter's retirement.

6. Mr Bowman, while still Depute Director, was responsible for promoting initiatives in the field of child care; these were characterised by further moves away from relying on care within children's homes of the 'old fashioned' type and moving towards caring for children 'in the community', either in their own homes, the homes of relatives or friends or with foster parents or 'community carers'. The general direction of these changes had been laid down before Mr Bowman came but after his arrival they increasingly, at least in the eyes of many observers, bore his characteristic imprint; and certainly, when Mr Bowman himself came to give evidence to us, he said he was happy to accept responsibility for all that had been done in his name.

7. One of the initiatives taken by Mr Bowman was to draft a policy document setting out the direction which he believed that the local authority child care should take in the next few years; his draft was based on a process of consultation with members of the Department at various levels, and he believed that it represented their aspirations and that it embodied good social work practice in this field. The document contained a number of principles which, by the mid 1980s, had become (and still are) familiar enough and generally accepted. Emphasis was placed on the importance of keeping families together when this could be done without risk and on the consequential need to examine all alternatives before taking the step of removing children from home and admitting them to the care of the local authority. In similar vein, and reflecting the by then well established concept of the danger of 'drift' in care, the document contained provisions against such drift including the importance of having a proper care plan and of maintaining good links with the child's home setting. The document specified that if a residential establishment required to be used, it should be located if possible within the Region. The concluding statement was that children should not be removed from home because of educational failure or offending unless there were additional factors present: it underlined the aim of the Department, in conjunction with Education, to seek to offer alternative disposals which did not require admission to care. The document was adopted by Fife Regional Council on 26 November 1985 and on 2 December of the same year Mr Bowman circulated it to his staff with a covering memorandum indicating that it should in the future act as a 'benchmark' for their future work in child care.

8. In the months and years which followed the adoption of this policy document it emerged that, in some people's eyes at least, directions were being taken and followed which suggested that the policy was not being interpreted as simply an embodiment of good child care practice but as a radical and controversial programme aimed at the pursuit of the doctrinaire end of reducing at almost any cost the number of children in care. For example an article in the 'Scotsman' on 12 February 1986 reported that this 'radical approach to change' had caused critical repercussions inside and outside of the Region's Social Work Department and included reports of disquiet and low morale in some offices as a consequence of the way in which the change was being carried through.

9. One source of criticism outside of the Department was the Fife Children's Panel; these are persons appointed by the Secretary of State. These Members of the Panel comprise the tribunal of 3 who consider and make decisions on the disposal of the children who are before them. Representations by the Children's Panel were made to Social Work Services Group which is the division of Scottish Office having responsibility for the oversight of the children's hearings system.

10. As a consequence of these representations and at the invitation of the Director and with his agreement on the terms of reference and method, 2 Social Work Advisers in Social Work Services Group conducted an Inquiry by examining 20 cases in which children's hearings had made a residential requirement. They studied the files in relation to these cases, interviewed social work staff and examined some of the Department's printed guidelines. They also carried out interviews with the Regional Reporter and members of his staff.

11. In the abstract of their Report, issued in December 1988 the Advisers concluded *inter alia* that there was no evidence that the Department was not fulfilling its

statutory duty in implementing the decisions of children's hearings. The Advisers recommended that the Department should examine their internal channels of communication because they believed that messages about the intentions of policy and procedures were not always reaching staff accurately. The Advisers also made a number of recommendations indicating that the Department should more explicitly acknowledge and recognise the central role of the hearings system, and make clear to social workers the need to provide comprehensive information to the Reporter and hearings based on what they considered to be in the best interests of the child. They felt it necessary to emphasise that the provision of direct assistance to vulnerable children and families need not be stigmatising. Another recommendation was that, while alternatives to conventional residential care should be developed, it was important that the alternative schemes should be 'tried and tested' and in place in sufficient numbers before resources were transferred from conventional residential provision. They urged the Department to take steps to encourage the positive use of residential care when it was required. The Advisers report concluded, 'Above all the aim of the Department should be to restore confidence in the Social Work Department by the children's hearings which on the evidence of this limited study would seem to be shaken'.

12. The response of the Department was that, while accepting and welcoming that it had not been in default in complying with its statutory obligations to carry through decisions of children's hearings, and also welcoming the recommendation that channels of communication should be improved, it rejected entirely the other criticisms and recommendations. They contended in substance that the recommendations were totally unnecessary pointing out that social workers and ancillary support staff had been substantially increased, that adequate consultation had taken place and that the Department would not hesitate to recommend a child's removal from home if that was considered to be in his or her best interests. They stated that the Department had emphasised to staff that they should act with the best interests of children uppermost in their minds rather than, as may have been alleged, with rigid adherence to departmental policy. The Department complained that those findings which they did not accept were based upon misconception. It suggested 'with hindsight' that the Advisers' study was 'probably too limited in its scope to overcome the flaws which the Department believed it contained'. It concluded by hoping that the action it had taken to date would overcome any concerns that remained over its provision of services to children's hearings but observed that it had some difficulty in being more confident that this was the case 'without the benefit of information on the source and nature of the complaints received by Social Work Services Group even though these are now almost 2 years old'.

13. Since our Inquiry was the second inquiry into the workings of the Department, and since the Department had rejected those criticisms in the earlier Inquiry which were unfavourable to it, we thought it was incumbent on us to be as thorough and comprehensive as was practicable; we also attempted to do all that was practicable to spell out the problems which we discovered in order to allow a full and adequate response by the Department. Moreover, as a judicial inquiry, we had to keep in mind the importance of being and being seen to be fair to all involved. We had to ensure that any information on which the Inquiry was going to rely was laid fully before the Region in order to enable it to counter or explain any particular point. Generally this was accomplished by having the Region's Solicitor personally present throughout the oral evidence and giving him the opportunity to cross examine, if necessary after an adjournment, in order to enable him to take full instructions. We had been pressed at the initial preliminary hearing to allow for the possibility of witnesses giving evidence in the absence of the Region's Solicitor. We agreed to allow this and some individuals took advantage of this provision. In the case of these witnesses we forwarded to the Region any part of the evidence on which we were going to rely so that the Region could, if it was so minded, counter that evidence in whatever way it thought right.

14. All this was achieved, as we will more fully set out in Part D of this Report, with the help of a comparatively small band of legal representatives. The Children's Panel was represented at almost every session by Mr Ceri Williams, Solicitor; the

Region were throughout represented by their Head of Legal Services, Mr Iain A Matheson and the Reporter to the Children's Panel Mr Alistair F Kelly, was also personally present throughout. Initially Mr Peter Gillam, Solicitor, was present on a daily basis for the British Association of Social Workers and its members and from the beginning the legal representative of the National Association of Local Government Officers chose to be kept in touch with our inquiries by receiving copies of the daily transcripts. After a few weeks Mr Gillam also adopted this expedient. Some individual witnesses were represented by Mr Gillam or solicitors appointed by NALGO. Some were represented independently.

15. The Inquiry Team was also fairly compact comprising until the last weeks of the oral evidence the Chairman, the Adviser, and the Clerk supported by a Secretary back at the office. In the closing weeks of oral evidence our Assistant Clerk joined us and after this stage was completed she took over the bulk of the remaining clerking activities. The compact nature of the Inquiry Team was no doubt in one aspect an economical way of operating, but it required us to devote a lot of our time during the period of oral evidence (when voluminous written evidence was also being submitted) to considering evidence, examining documents, and, not least, preparing sometimes in considerable detail the lines of questioning which we wished to address to witnesses. Accordingly during the active part of the Inquiry we had limited time in which to analyse and systematise the very extensive evidence and had to spend proportionately more time on this after the hearing of evidence had been completed.

16. From the beginning the Region maintained the stance that no serious criticism should be made of its Social Work Department's implementation of policy. This made it all the more necessary for us to be painstaking and thorough. It also made it clear that it would be incumbent upon us, if minded to make any serious criticism, to be in a position to demonstrate by reference to evidence that any such criticism was well founded.

17. The open nature of our Terms of Reference potentially brought the entire field of the practice of child care within the Region into our purview. We regarded our task as principally looking into concerns which had been and were being expressed. We advertised our interest and allowed concerned parties to inform us about their views. There emerged as principal participants the Children's Panel, the Reporter, the Region, BASW and NALGO. We received a submission from SWSG advertising *inter alia* to the report of the Advisers and its reception by the Region. We saw it as reasonable to treat the concerns voiced by this range of interests as setting the general agenda for our Inquiry: while we had to reserve to ourselves the right to explore any issue of concern which emerged we did not regard it as our task to conduct a systematic comprehensive review of all aspects of child care practice in the Region in the manner of a Board of Inspection. Thus there is no discussion in this Report of the Region's policies or practices in the areas of private foster care, adoption or the fostering of young children (except in the context of the children's hearings system) since these were not raised with us by any of the principal participants we have mentioned or any of the individuals who made representations to us.

18. In examining the areas of concern we had to set limits to our investigations. This necessity arose in 2 contexts. We were conscious that, even in a region wherein the Social Work Department has adopted a 'policy document' there will be differences of approach in individual offices as a consequence of the different experience, training and personality of the respective Area Organisers and their staffs. We could not always, without extending our inquiries even further than we have done, pursue every matter of concern in relation to all of the 7 social work areas into which the Department was divided. We also had to consider some problems of statutory interpretation, social work practice and the practice of children's hearings which had implication beyond Fife and, in certain social work practice matters, beyond Scotland. We did not think it appropriate—nor could this have been done without even more expense of time and resources—to obtain 'expert' evidence on such matters but relied upon such information as was presented to us and our own specialised knowledge. Moreover we only considered

such matters when we thought it was essential to do so in order fully to explore the issues necessary satisfactorily to dispose of our Terms of Reference.

19. Fife Region from the outset welcomed the setting up of our Inquiry and promised full co-operation. The Region's Solicitor, Mr Matheson, from time to time echoed this and emphasised that his client Authority looked to us to conduct a thorough and searching inquiry. We had been told that the necessity of holding an Inquiry had been doubted. The then Chairman of the Fife Children's Panel, Miss Isabel D Walkingshaw, told us that she had read recently, '... really why should we be having an Inquiry when no child has died'. We were glad to agree with the Region's expressed wish that our Inquiry should be thorough and comprehensive. We totally rejected any thought that since we were not inquiring into a child death we should not be inquiring at all. Indeed the consideration that our Inquiry was, so to speak, a pre-emptive or preventive Inquiry, looking into whether or not the interests of children at risk were being adequately served made us all the more anxious to try to be sure that we did not miss any important piece of evidence which might be relevant. The open nature of our Terms of Reference made it all the more necessary for us to be thorough.

20. As the Inquiry developed the Region thought it necessary to mount a detailed attack on some of the practices and, to an extent, on the professional competence of the Regional Reporter to the Children's Panel Mr Kelly. This was because of the link which they perceived between the practices of the Department of the Regional Reporter, Mr Kelly, and the perceptions of social workers as to the type of children who are likely to require compulsory measures of care. In an Inquiry such as ours it would in any event have been necessary to consider the linkage between the Social Work Department and the Reporter's Department but the specific criticisms of the Regional Reporter required us to consider additional evidence and give such judgement as we could on the serious charges which the Region brought against its Reporter.

21. The Region, and its Director of Social Work, also found it necessary to criticise the Children's Panel. Some of these criticisms were directed at the hearings system in general and some were aimed at the leadership of the Children's Panel in Fife specifically. We had to deal with these criticisms also.

22. It was a necessary feature of our investigations that the broad concerns raised on all sides required to be investigated, sometimes in very minute detail, in the context of specific situations nearly always involving detailed analysis of incidents involving specific children. A few of these incidents received attention in the press for reasons unconnected with our Inquiry but the great majority have not come to public notice. Unlike any other judicial inquiry of this type of which we are aware we were involved in re-examining, for our own purposes—in a formal context with transcripts of evidence taken—many detailed and sometimes very intimate allegations and information relating to vulnerable children.

23. We therefore had to face the fact that our Report, which might be published, would result in some of the children whose cases we examined being identified. This was and is a very real problem. In the Cleveland Report one detailed example, 'Samantha's Story', is given¹ and the Report makes clear that the Inquiry had sought for and obtained the permission of 'Samantha', then aged 19 to allow her story to be made public. This approach was not practicable for us. We adopted the obvious course of giving the children pseudonyms. We were conscious, however, that the mere narration of characteristic details might, particularly in the context of a comparatively small region like Fife, convey information which, if published, could lead to identification. On the other hand we could not satisfactorily examine the general points which were being made without specifying some detail. Moreover the necessity we perceived of requiring to found our conclusions on specific evidence gave us no alternative but to quote detailed evidence relating to particular children.

24. How much to reveal in order to discuss the point and how much to conceal in order to avoid identification was always a matter of fine judgement. We think many readers would have found our Report more informative if we had set out

¹Report of the Inquiry into Child Abuse in Cleveland 1987 p9

in a separate appendix case histories of the individual children with fairly full details of the relevant portions of their lives and with only the names changed. This would have made our own task easier and, by making the children's lives seem more real, might have added to our Report's credibility. We judged, however, that to approach the matter in this way would be totally unacceptable in that it would unduly risk identification and decided instead to refer simply to individual instances as they arose. We also hope that, in the interests of the vulnerable children concerned, that it may not be considered necessary, by piecing together information, to seek to identify individual children for any purpose.¹

Notes on Structure and Lay-Out

25. Our Report is, as our Inquiry was, long and complex. In Part J we have brought together the principal arguments of parties in order to focus on some of the issues which were before us. In Part J we have brought together our main conclusions and our recommendations. We would emphasise, however, that our Report, if it is to be adequately understood, must be read as a whole. The final picture which we presented was not a simple one but the conclusions which we drew gained support from many sources and only by examining the evidence, as we have set it out, and the reasoning, will the reader gain an appreciation of the true nature of the position which we have recorded.

26. In this Report the present tense is sometimes used with reference to persons or organisations in Fife. This represents the situation as it was known to us at the time the Report was written.

27. We were pressed to limit identification of witnesses, including social workers, and have done so as far as seemed practicable. There is therefore no comprehensive list of named witnesses and other persons who figured in our Inquiry. We have however brought together in Appendix 1 a combined list of witnesses and certain persons figuring in the Inquiry, some named and some identified by a letter of the alphabet. Many witnesses and other persons are simply referred to throughout as 'John's social worker' or 'John's mother'. When documents are reproduced in the Appendices we have, when appropriate, substituted the assigned letter of the alphabet for the name.

28. Fife's Child Guidance Service has now been renamed the Regional Psychological Service and is sometimes known as the Schools Psychological Service. We use all three names from time to time.

29. In the absence of a word in our language meaning 'his or her', we have adopted the expedient of using 'his' or 'her', or 'his or her' arbitrarily except where the context demands otherwise.

ANNEXATIONS AND APPENDICES

30. Some items of written evidence are incorporated in the main text but most of the written material on which we rely (representing, it must be said, only a minute proportion of the documents we examined), have been collected together as Appendices. Annexations A to D, however, have been separated from the main text only in order to avoid unnecessarily breaking into the flow of an already long and complex Report and these Annexations are accordingly to be regarded as integral Parts of the Report.

¹See Annexation B

PART J
FINAL ARGUMENTS AND
CONCLUSIONS

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I FINAL ARGUMENTS AND CONCLUSIONS

1. We have now set down the main issues of our Inquiry, indicating those matters of fact which were agreed and giving our decision on the many matters of fact which were in dispute. We have also given our views on certain matters of child care practice and certain legal and quasi legal matters where these opinions were necessary for the evaluative elements in our Report.
2. In this Part we seek to draw together the main issues of our Inquiry. We shall first of all set out the broad background and then, by reference to the final submissions of principal parties, indicate, usually by reference to earlier parts of this Report, the general nature of our conclusions. Most of the general thrust of the arguments of parties, including considerations affecting the competency and weight of the evidence, as well as some of their more detailed submissions, have already been covered in the earlier parts of this Report. There remain, however, amongst the voluminous submissions of parties, some particular arguments—some broad general argument and others on matters of detail—which it has not been appropriate to deal with elsewhere. We take the opportunity of dealing with such of these points in this Part as seem to be necessary fully to explain our position on essential matters. We could not deal with all of the great variety of issues and arguments which parties raised and advanced. We had to identify those issues which were much more relevant to our remit and adequately focused in the evidence. We believe, that there is no substantive issue of concern which we have not considered.
3. As mentioned in Part D of our Report the final submissions of parties varied in style and presentation. The submission of the Children's Panel was fairly succinct and quoted comparatively few passages of evidence and case instances.
4. The submission by the Region was more elaborate; it referred directly or by implication to all the main issues of the Inquiry and quoted and discussed a number of case instances. It dealt with, directly or by implication, most of the main issues of the Inquiry and, when taken together with the Director's Written Response and the Director's oral evidence, enabled us to be fully aware of the Region's and the Director's final stances.
5. The final submission by the Regional Reporter was very elaborate and detailed and contained references to a large proportion of the case related incidents which we had examined, sometimes utilising the same case instance in order to illustrate a separate line of argument.
6. The submissions of BASW were the most succinct, although they touched on very large issues. We have reproduced their final submission as Appendix 30 and have summarised it shortly in this Part.
7. We thought the complexity of the final submissions reflected the complexity of the Inquiry. We also found, as we have already remarked, that quite frequently a single incident would serve to illustrate more than one relevant issue.
8. It was a feature of our Inquiry that Mr Matheson, on behalf of the Region, consistently submitted that the Social Work Department had a complete answer to all and any substantial criticisms which had been made although, when presenting the views of the Education Directorate, which is also of course part of the Region, he had to direct our attention to the fact that Education maintained up to the end that substantial criticisms of the policy and practice of the Social Work Department fell to be made. Nevertheless his final submission to us was that the Regional Council's current child care policy and the manner in which it is interpreted and applied met the best interests of children at risk and that no significant modifications were required to the policy or the way in which it was interpreted or applied.

9. The Director of Social Work also took the position that the policies and practices of his Department were in general of high quality and in harmony with the best current standards of child care practice. At one stage Mr Bowman did indicate that he looked to our Inquiry to make recommendations which would affect the future direction of policy: indeed at one point Mr Bowman indicated that he regarded the Inquiry as having a therapeutic function similar to that of a children's hearing whereby, we understood him to mean, valuable insights might be obtained. Fundamentally, however, the Director's final stance, after having considered the evidence which had been laid before us, was that nothing had been revealed which justified the criticisms or indeed rendered an Inquiry such as ours necessary.

10. We have formalised certain recommendations in this Part. As will have been gathered the view that the Department's policy as implemented should be free from significant criticism is not one with which we agree and therefore sometimes our mere finding that a particular feature of policy existed will require to be taken note of quite apart from any recommendation which we may make.

II THE DIRECTOR OF SOCIAL WORK'S VIEWS OF THE CHANGES

THE CHANGES GENERALLY

1. In written and oral evidence the Director of Social Work emphasised the continuity of policy as between the pre-1985 and post-1985 period. In his Written Response he stated that the interpretation of the principles of the 1981 policy appeared to vary very little from those of the latter 1985 policy. He quoted as a supporting example of this a statement in a paper to the Social Work Committee by a Working Group which included the statement, 'The 1981 Child Care Policy Document committed the Region to exhausting all possible alternatives prior to residential care' and told us that the same paper goes on to discuss the need for 'diverting children from inappropriate residential care through provision of credible alternatives' and for child care work to be governed by the principle of 'the minimum necessary controlling intervention in children's lives'. He also stated that the 1981 policy included a system of staff supervision but commented that no staff development was undertaken because minimal resources were available for training. He stated that in the consultation exercise held with staff in 1985 the importance of management and leadership emerged as a key subject and that the need of a 'single management structure' which would be able to give advice, support and management links was recognised.
2. Mr Bowman sought to emphasise that while the wording of the Policy Document was his own the content was consistent with the results of wide soundings taken within the Department. He told us that he 'sought to distil and develop the very clear aspirations of the professional social work staff in Fife in a way that was consistent with broad good social work practice and with the general aspirations of the Council'. As to the content of the new policy he described the earlier policy as saying things along the lines that children should not go into care unless absolutely necessary but suggested that the earlier policy did not say enough about what it meant by that and how this was to be achieved. He thought the revised policy 'sharpened that area up'. Another change which the Director regarded as central was the reorganisation of the management of the Department. A further central feature was the introduction of the Research and Development Unit.
3. An important part of Mr Bowman's initial task had been the closing down of children's homes, which had made substantial demands on his time. He had had to ensure that children were properly placed, staff retrained or replaced in alternative jobs and new resources created.
4. He did not regard his views or practices as revolutionary or particularly innovative and quoted the well known work *Children Who Wait* as having had and continuing to have an influence on his thinking.¹ He described this book as being, even by 1985 standards, fairly 'outdated' but regarded it as supportive of his approach that it is not good enough to plan for children already in care however perfectly you do it in a vacuum because you must keep in mind where children came from. He spoke of the 'key issue' of the concept of children who remain in care for 6 months tending to remain in care for 2 years or thereby.²
5. Mr Bowman's experience with intermediate treatment groups in England had influenced him when thinking about how to deal with offending behaviour which he regarded as a major issue to be addressed by social workers. Further, his personal experience of issues of difficult children in secondary schools, who required specialised attention unless they were to be excluded and thereby experience periods of no education, was a matter which he regarded as having to be addressed.

¹*Children who Wait*: Jane Rowe and Lydia Lambert, ABAA, 1973

²We agree that the concept of recognising the importance of planning for children in care was not new, as the inclusion of six-monthly Child in Care Reviews in the 1975 Children Act shows

He acknowledged that the works of Dr Thorpe and some of his colleagues at Lancaster had played a part in his thinking and development.

6. With regard to the professional discretion of the individual social worker his ambition was that his workers in Fife should feel able to operate both self critically and creatively and he believed that effective supervision, linked with adequate training, should overcome any tendency which workers may have to oversimplify their approach to child care work. Workers properly trained and supervised should, for example, be able to hold in their minds that excessive dependency on a social worker was something which was in general to be avoided without necessarily assuming, for example, that terminating an order of a children's hearing under Section 44(1)(a) of the 1968 Act would automatically and by itself have any effect on removing such dependency. In general he saw social work as a fairly effective profession provided intervention was seen as having some end in view.

PREVENTIVE WORK

7. The Director believed that his initiatives had done nothing to inhibit, and indeed had done much to promote, preventive work with offenders. He spoke of additional funding for the '1-2-1' Befriending Scheme. The Director did not agree that support had been withdrawn from the 'Seal' Association (a facility designed to encourage the constructive use of leisure and based in Dunfermline) although there had been an interruption of its funding at one stage. The Director agreed, however, that Seal's targeting had been changed so that it aimed only at those who had offended and not also at those who were thought likely to offend.

RESIDENTIAL CARE

8. The Director of Social Work acknowledged that much of his effort had been directed towards the closing of children's homes. He also acknowledged that he saw no very useful place for an establishment such as Melville House in the modern child care scene but stated that he believed that residential care was 'part of the whole spectrum of what we are doing and I think that's what I have tried to provide, particularly through Ribleton House which is a very flexible resource'.

9. He thought he might have pushed the boundaries of community development further than others would have done but did not believe that his Department had been affected by 'undue over-enthusiasm' in promoting community options. He did, however, say that there might have been 'over-optimism'.

10. In general he did not think his attitude should be described as one of 'reluctance' to engage in social work intervention. He agreed that, in some fields at least, he believed that one had to be 'careful' in relation to the amount and type of intervention which was appropriate but he did not think his approach was dissimilar from that of most Directors of Social Work or Social Services.

DIVERSION OF CHILDREN
FROM HEARING SYSTEM

11. The Director did not see the policies he introduced, as implemented, as effecting any improper diversion from the Hearings System of cases which should be dealt with within that system. He regarded diversion as having been a very long established practice in Fife with the present Regional Reporter himself playing the leading role in such diversion. He did not believe this had caused any concern to the Children's Panel.

12. In relation to the social worker not agreeing that the disposal selected by the children's hearing was in the best interests of the child he recognised that this could present a dilemma to the social worker. He did favour the initiation of a very quick review hearing in order to attempt to change the requirement and acknowledged that social workers must work within the framework of the Hearings System. We are aware that this problem is not susceptible of any easy resolution since both the Panel and the social worker believe that they are operating in the interests of the child. This raises fundamental issues about the operation of the system as a whole. We wish to comment on 2 aspects:—

- i. The appearance of a child before differently constituted hearings can accentuate the differences between the tribunal at any one time and the social worker who may have continuing involvement over a period of perhaps years. We are well aware of the problems in ensuring continuity of membership of the tribunal for individual children but nevertheless we think such continuity is important for the child. The appearance by the child at the

hearing contrasts in this way very sharply with the appearance of the child at a Child in Care Review. We **recommend** that considerations of this sort should form part of any future national appraisal of the Hearings System.

ii. The second aspect to which we draw attention is the issue of the hearing specifying in a non-residential requirement the type of work to be done with a child. In Fife this focused on the relationship between hearings and the centrally managed teams. The Director contended that while it was the statutory obligation of the Department to implement hearing requirements it was the responsibilities of those managing specialist non-residential services to identify where they could best be utilised, rather than allow them to be diluted by being allocated inappropriately. He drew, in this connection, an analogy with the managers of residential establishments generally, where this right is not in dispute. On balance we agree with the Director. However since the Children's Services Teams were acknowledged to be no more skilled than the specialist Area Teams we think that the wish of the Hearings to specify Children's Services Team involvement may have been related to a lack of confidence in the way a Section 44(1)(a) home supervision requirement would be implemented in the absence of this specification.

THE DIRECTOR'S VIEW
SUMMED UP

13. To sum up briefly how the Director saw his policy work out is difficult but to round off this part of this chapter we must make the attempt. Mr Bowman presented his reforms as continuous with the Department's earlier policy in reducing reliance upon care within residential establishments and the 'sharpening up' of existing policies in order to reflect what is best in social work thinking. He believed his social workers functioned in a critical and constructive way and that they were aware of the limitations which reality places on the ability of social work to effect a desired change in the life pattern of a client. He thought awareness of such limitations was desirable generally but was particularly important when such change was to be effected within a residential context. He thought social workers were also aware of the need for setting distinct and clearly planned objectives but that they nevertheless acknowledged the value which such services, residential or not, can render provided they are carefully thought out and applied in a way which is calculated to serve the needs of the individual child. The Director, moreover saw the practical implementation of his policy as being consistent with and enabling his staff to work within the context of the Children's Hearings System.

III THE FINAL SUBMISSION OF THE PANEL

Introductory

1. The final submission of the Children's Panel was comparatively brief. It mentioned the main themes of the Inquiry and also went into some matters of detail. In this chapter we shall only mention their main contentions.

2. The Panel also in their final submission took the opportunity of attempting to clarify certain matters of fact raised in the concluding days of the Director of Social Work's oral evidence. We have not pursued these matters since we took the view that to do so would, in fairness, require the calling or recalling of witnesses from the Department at a stage in our investigations when we did not regard this as necessary or expedient having regard to the extensive evidence and argument already before us.

THE TENSIONS BETWEEN THE
FIFE CHILDREN'S PANEL AND
THE SOCIAL WORK
DEPARTMENT

3. The Panel opened their submission by contending that on the evidence, these tensions went far beyond the norm. They referred to the meeting between Mr Tempest and panel members in February 1988 which Mr Tempest described as a 'complete cultural shock' and to the evidence of Mr D's senior in Rosyth, who referred to relationships as 'strained continually'. They also referred to some 'anecdotal' evidence on which, having considered the matter, we do not think we should found. They referred to *Social Work Management and Practice: Systems Principles* for the following quotation:

'... the introduction of the 'Policy for Children and Families', which was linked to substantial closures of residential places for children in children's homes, was accompanied by a significant, and almost immediate, worsening of relationships with other agencies involved in the Children's Hearing System. This was particularly so with members of the Children's Panel, the Education Department and the Child Guidance Service.'

4. They referred to other examples of what they saw as unsatisfactory relationships with the Panel including the Department's practice of sending senior social workers to hearings, which they thought was intended to put pressure on panel members. They referred to the evidence of the third social worker named by Mr Narbrough when he contrasted his earlier experience of 'going to panels and giving support' and the hearing as 'a clearing house for those ideas about families and children concerned' with his later experience in the Department whereby he felt constraints in the direction of being encouraged 'not to take kids to hearings unless it was absolutely necessary'.

INFORMATION TO HEARINGS

5. They also referred to the evidence on information withheld from hearings and quoted some examples. They submitted that the attitude of the Department in its approach to 'care in the community'—described in 'The Fife Response' as 'determined to practice what others only preach' had failed to give sufficient weight to compulsory measures of care which had been considered only in a negative manner.

6. They referred to evidence of 'tactics' on the part of social workers in relation to hearings and pointed out that a decision made without access to salient facts would be a flawed decision, and that an approach to a hearing without trust in the panel members' ability to deal with the case sensitively and appropriately, would be 'a flawed approach'.

CLOSURE OF CHILDREN'S
HOMES AND RESIDENTIAL CARE

7. The Panel pointed out that while they welcomed the spirit of 'care in the community', they asserted that the Department had rushed the closure of children's homes and 'turned its face against residential care' in a way which was

damaging to children. It contended that the Adolescent Placement Scheme had not been able adequately to cope with the most difficult children who required expert handling day and night.

8. In relation to residential care generally they submitted that there was ample evidence that the possibility that placement in a residential establishment might be an inherently appropriate option as opposed to an option which should only be resorted to when other options, such as placement with an alternative family had failed, had never been recognised. In support of this they cited passages in evidence. They referred to the Director of Social Work having indicated, in a marginal note to a Memorandum by the Chief Executive, his disagreement with the Chief Executive's proposal that explicit written recognition should be awarded to the value of residential placement for the small number of children for whom it could be appropriate. They suggested that the inference must be that the Department had a private view that residential care was damaging in itself.

9. They noted that Melville House had apparently had no child placed at the recommendation of a social worker since 1985. They noted that an early venture of the Research and Development Department, had been to examine Melville House—'an early piece of research, seeking to prove a negative' as they put it. They averred that there was evidence that Rimpleton House had been said to be 'full' in 1988 and contrasted this with the evidence that it was, according to the evidence, under-used. The Panel accepted that on occasion hearings had made some unsuitable placement in Melville House but ascribed this to the Department's tactics; these included informing the hearing that Rimpleton House was not available and treating a hearing's request for a residential placement for a child as a trigger for the Children's Services Team in a situation for which the Children's Services Team was not, in the hearing's view, appropriate. They also referred to case material.

COMPULSORY AND
VOLUNTARY MEASURES OF
CARE

10. The Panel submitted that there was ample case evidence to the effect that there was a 'dogged insistence' on 'voluntary measures', necessitating the discharge of the referral, and that these were advocated in circumstances when the social worker could not adequately explain this advocacy; the inference must therefore be that undue pressure was being exerted by management. They pointed to the evidence of Mr D and also to the evidence of the third social worker named by Mr Narbrough, who spoke of his professional judgement being impaired 'to a small extent'. They commented that they regarded the impairment of professional judgement as 'exceedingly dangerous' because it damages the trust that a hearing should have in a social worker's report and recommendation.

PROFESSIONAL DISCRETION OF
THE INDIVIDUAL SOCIAL
WORKER

11. The Panel reminded us of the methods which had been used by the Department to implement its policy. They referred to the new posts of Depute Area Social Work Organiser, the appointment of the Principal Officer (Children and Families), the formation of the Children's Services Teams, the creation of the Research and Development Section and the consultancy with Lancaster University. They believed that the Depute Area Social Work Organisers and the Principal Officer had performed a 'tight gatekeeping' role in relation to admissions into care. They stated their view that the purpose of the Children's Services Team was to reduce the numbers of children coming into care, rather than to deal with children's problems as identified by the child's Area based social worker. They asserted that the Research and Development Section approached its task in a simplistic way which was directed at the reduction in numbers coming into care.

12. In relation to the Lancaster Consultancy, the Panel submitted that the emphasis on 'specificity' in reports was inappropriate to the working of the Hearings System. They commented on 'specificity' that it amounted to giving the hearing information only directly related to the ground of referral and commented:-

'Anyone familiar with Hearings will realise that grounds are often nothing more than a starting point for a wide ranging discussion of a child's problems. One of the strengths of a welfare system is that the disposal can be tailored to problems rather than grounds. One of the weaknesses of specificity is that

it does not give enough information to allow problems to be adequately explored.'

13. The Panel also made some detailed submissions as to seminars conducted by Lancaster University which went beyond what we thought we could comment on, on the basis of the evidence before us.

THE PANEL'S POSITION
SUMMED UP

14. The Panel began their submission by asserting:-

'It has been said before but it bears repeating that the Panel has no interest in protocol, 'empire building' or 'power of veto'. Its concern in this matter is merely to ensure that by being allotted the correct place, the best possible service is offered to the children of Fife.'

15. They go on to refer to the possibility that 'a proper system of consultation would go a long way to resolving the problems that Fife has found itself in' but comment that 'systems elsewhere rely heavily on a high degree of mutual trust and support between Panel and Department'.

16. They conclude by stating their belief that many, if not all, of the difficulties of the past 6 years are directly attributable to the Department's philosophy of child care which has resulted in a common loss of trust among all agencies. They aver that the Department's single-minded determination to push its policy of minimal intervention at all costs had been a serious disadvantage to the children who come before hearings.

IV THE FINAL SUBMISSIONS OF THE REGIONAL REPORTER

Introductory

1. The final submission of the Reporter was in different form from that of the Children's Panel. It contained many inter-related arguments and very many references to the details of individual children's cases. Sometimes arguments and case instances would appear in one part of his submission in order to illustrate one particular point and would then emerge later as illustrative of another point. We do not say this in criticism of Mr Kelly—the reader of this Report will have noticed that we had to face similar problems.

2. The length and complexity of Mr Kelly's final submission makes it impracticable for us usefully to summarise it here. As was to be expected, having regard to the Reporter's (as opposed to the Panel's) more comprehensive access to detailed papers, he was able as our evidence emerged, to present his position in written and oral form, and develop his lines of argument. We have in the course of our Report been able to deal with many of Mr Kelly's arguments within the context wherein they arose, and therefore need not deal with them here except broadly and by reference. The final submission of the Region's Solicitor on behalf of the Region was much shorter than that of the Reporter but, as we shall narrate presently, we felt it appropriate to deal with it similarly here.

THREE BASIC CRITICISMS

3. Mr Kelly reminded us that he had from the beginning asserted that the basic problems were the lack of a reference in the Policy Document to the child's welfare as being paramount, and the Department's failure to give proper recognition to the Children's Hearings System. In his final submission he added a third criticism. His words are as follows:-

'I would add a third basic criticism of Fife child care policy as an over-rigid or mechanistic application of such policy resulting in policy concepts of individual merit in themselves becoming ends in themselves. It could be said that the aforementioned 'ends' appeared to become equated with 'the best interests of the child', so that it appeared that in the minds of those who were over-enthusiastically applying policy in an over-rigid or mechanistic way, such 'ends' and 'best interests of the child' became inseparable.'

MARGINALISATION OF HEARINGS SYSTEM

4. The Reporter, agreeing with the Panel, submitted that the Hearings System had been marginalised.

5. The Reporter also contended that the Department's policy was oriented towards recommending 'voluntary support' and that this acted as a disincentive towards recommending compulsory care. He quoted Article 3 of the 1985 Policy Document and the book '*Social Work Management and Practice*' at p137:-

'In October 1985, a Scottish Social Work Department adopted a policy statement 'Services for Children and Families'. This policy stressed voluntarism and a move from statutory involvement. The aim of the policy was to reduce the need for families to have their children taken into care and, where families needed advice or guidance, to organise services in a way which reduced the need for statutory involvement by, for example, funding welfare rights organisations to provide advice on financial problems.'

6. Mr Kelly also cited the statistical analysis of the December 1988-February 1989 'run' of cases prepared by Dr Kendrick, for its conclusion that most of the disagreement between the Department's recommendations and decisions of

children's hearings related to whether compulsory measures of care were necessary. He quoted the following from p46, (paragraph 23.2) of Dr Kendrick's Report:-

'151 disposals were made during this 3 month period and the Social Work Department recommendation was known for 147 of them. Overall 81 per cent of known Social Work Department recommendations were accepted by the children's hearing in this period. Over three-quarters of the recommendations which were not accepted were recommendations either to discharge the case at a new case hearing or to terminate an existing supervision requirement at a precipitated or other review hearing. This suggests that most of the disagreement between Social Work Department recommendations and children's hearing decisions concern the question of the necessity of compulsory measures of care rather than the specific type of supervision requirement.'

7. The Reporter linked the Department's favour for voluntary measures with an apparent practice of avoiding the Reporter 'insofar as it was possible so to do' and suggested that there was a fear that if the Reporter was contacted, the Reporter might set off a chain of events including the child being referred to a hearing, with a subsequent supervision requirement involving the possibility of the child being removed from home and/or the community. He, like the Children's Panel with reference to a later stage, submitted that information was not passed to the Reporter in circumstances wherein it should have been, and quoted case examples in support of his view.

8. He also quoted the memorandum of 26 August 1988 from the Area Social Work Organiser in Rosyth.¹ He referred to the evidence that the former Rosyth employee (Mr D) had interpreted the 'serious consequences for children' referred to in that memorandum, as meaning being received into care or going into a residential establishment.

9. The Reporter criticised the practice, as he understood the evidence, of reports requiring to be countersigned by a senior social worker if a disposal (such as placement in a residential establishment or with a foster carer) other than a 'home' disposal were being recommended; he regarded this as illogical, in that the child could well be at risk at home. He also submitted that the degree of responsibility which was being accepted by the counter-signer was unclear.

10. In general the Reporter contended that full background information should be provided in reports but, as the case examples and the impressions of observers had shown, it did not happen; this had led to a consequent lack of both trust and credibility with the impression being given that Social Work Department policy was prevailing against the interests of the individual child. He referred to the acceptance by the Depute Area Social Work Organiser of Rosyth that at the seminars which she attended, the inclusion of 'negative' information in reports was discouraged on the ground that it was not 'relevant'.

11. The Reporter suggested that the reason workers gave inadequate information lay with their misunderstanding of paragraph 2 of the 'Guidance on Investigations Etc' where it said 'the information presented should be as factual as possible and only included if relevant to the reason for referral'.

12. The Reporter recalled the evidence of the Depute Area Social Work Organiser at Glenrothes (Mr F) who had regarded the phrase quoted above as being 'a bit nonsensical', and also evidence from the serving worker in Cowdenbeath (the third social worker named by Mr Narbrough) who thought that social work policy, as implemented, had the potential to impair his judgement to a small extent and thought it was 'too limited': both of these workers thought that hearings required to receive information which would enable them to understand the wider needs of the child.

13. In support of his view that the Children's Panel had been marginalised, the Reporter quoted examples from the initial 14 core cases, of workers not notifying

¹The memorandum read: 'It has come to my attention that some staff have on occasions, recently, contacted the Reporter's Office and the Depute and Regional Reporter, directly, to discuss children without their Seniors' knowledge. I would want to make it very clear that this is not appropriate and can have serious consequences for children'

his Department of matters which, he thought, should have been so notified. He reminded us that the Director of Social Work had told the Inquiry that the evidence which he had seen in relation to the 14 cases had given him 'a rewarding and encouraging picture' of how child care work was carried out by his staff, and that he had also said 'The efforts they appeared to be making in the cases seemed designed to achieve the best outcomes'.

14. The Reporter linked the 'marginalisation' of the Panel with the lack of recognition of the Children's Panel in the 1985 Policy Document. He also submitted that there should have been meaningful consultation with the representatives of the Children's Panel, including himself, before the introduction of changes. There had been a degree of consultation, for example, in relation to the draft 'Guidance on Investigations Etc', but it had been formal and not meaningful.

15. The Reporter summarised the outcome of the relationship between the Department and the Children's Panel as a 'breakdown' caused by 'a lack of trust on the part of panel members towards the Social Work Department'. He referred, as had the Panel, to Mr Tempest's evidence of his very unfavourable reception by the meeting of panel members which he attended on 9 February 1988, a few days after taking up his appointment, and to evidence from workers. He also referred to the passage in *Social Work Management and Practice* to which the Panel had referred.

16. The Reporter believed the reasons for the breakdown included the lack of credibility, as it appeared to panel members, of social work recommendations, the confrontations at hearings and the dogmatism and zeal with which the November 1985 policy was being pursued. He referred to evidence by a senior social worker¹ relating to the much quoted paragraph in the 'Review of IT in Scotland Part 2' (at p25):-

- '(iii) Where 44(1)(b) requirements are made against advice, the Social Work Department immediately reviews the case with a view to negotiating the child back into community based provision by
- a. requesting a review hearing or
 - b. supporting parents who wish to appeal against the 44(1)(b) decision.'

This worker, the Reporter recalled, thought the approach represented by this paragraph smacked to him of a 'reforming zeal that really is liable to be counter-productive in terms of working relationships'.

THE CONTENT OF THE POLICY,
AS IMPLEMENTED: GENERAL
CRITICISMS

17. The Reporter recalled that he had always fully supported the idea of keeping families together and of only having children admitted to the physical care of the authority when all other alternatives to such admission had been considered. He recalled his testimony to this effect in the first day of his oral evidence. He maintained that he detected in the Department's policy as practised, an 'exaggerated preference for keeping the child or returning the child home' and cited opinion and case evidence in support of his contention. He further averred that the remits of the Out of Care Team and the Children's Services Team had been too narrow. In particular, the former Out of Care Team had lacked credibility because of its explicit remit of having children removed from the physical care of the Department and returned home as soon as possible. He contended that there was an inappropriate reluctance to removing a child from home *per se*. This operated to the detriment of the child who required to be placed either with a foster carer or in a residential establishment.

18. In relation to children who required to be removed from home the Reporter contended that the Department was obsessed with the danger of children 'drifting in care'. Clause 4 of the 1985 Policy with its reference to remaining in care for 'no longer than a maximum period of 6 months, unless for exceptional reasons' was inappropriate and the 6 month period was arbitrary. The 'Care and Control Test' was used in an inappropriate way as a 'ready reckoner' to determine entry of children into physical care. Its use should cease and the only consideration should be whether or not removal from home served the best interests of the child in question.

¹The senior social worker who gave evidence to us in relation to the case of Robert

THE POLICY AS IMPLEMENTED:
FOSTER CARE AND RESIDENTIAL
CARE

19. Foster care placement could and frequently did make a valuable contribution to the care of children who had to be placed outside of their homes, but such placement had its limitations. Foster parents were not always able to cope with very difficult children. Some children could not cope with the demands of family life in the foster carers' homes. Some children's parents might find the idea of a substitute parent unacceptable. Foster parents should not be expected to cope with children who presented a danger to their own children. Multiple placement with foster carers was unsatisfactory from the point of the multiply placed child.

20. Mr Kelly referred to opinion and case evidence which, he said, proved that the foregoing considerations were not sufficiently recognised by the Department.

21. Mr Kelly also referred to the importance of foster parents receiving full information on the children to be placed with them, and the importance of their being able to convey their views to children's hearings.

22. The Reporter submitted that there was a belief within the Social Work Department that placement in a residential establishment was *per se* damaging to the child. He quoted the Director as saying in oral evidence that he 'and many others have got no clear idea of who is very definitely likely to benefit from residential care' and referred also to similar statements made by, or credibly attributed to, senior members of the Social Work Department's staff. He recalled the evidence that no children had been in recent years admitted to Melville House or Sycamore Cottage on the recommendation of a Fife social worker. While he recognised that Rimpleton House had the capacity to provide residential care for children at least in the medium term, he regretted the decision of July 1988 whereby the social work and educational functions within Rimpleton were separated, and divided between a principal responsible to the Director of Social Work, and the headteacher responsible to the Director of Education. In relation to the use of secure accommodation, he suggested that a high ratio of staffing within a residential establishment could not provide a substitute for secure accommodation in that for some children this would be regarded as too great an intrusion, and could be ineffective when put to the test. He noted that the Director agreed that for some children residence within the premises with a secure perimeter would be appropriate. The Reporter also founded upon Dr Kendrick's analysis of the December 1988-February 1989 cases as showing that less than one half of the decisions in favour of residential care had been supported by the Social Work Department.

23. In general the Reporter submitted that the negative side of care within residential establishments had received far too much emphasis from the Department. For example the risk of 'secondary delinquency' and absconding which received so much emphasis in relation to residential establishments ought to be balanced by similar risks arising in the home setting.

24. Mr Kelly contended that in particular circumstances and for particular children the professionally trained staff within residential establishments may be better able to offer children with difficult or disturbing behaviour more effective protection, controlled guidance, or treatment than was available 'within the community'. Mr Kelly quoted opinion and case evidence supporting his general view that unreasoning opposition to the use of care within residential establishments had been a feature of the implementation of policy since the introduction of the 1985 Policy Document. Among other matters, he referred to what he regarded as the unhelpful way in which the 'Report on Children in Care in Melville House' had been prepared and promulgated. He commented on the damaging effect this had had on those working within Melville and on the lack of social work interest in, and appreciation of, the value of Melville House as a residential school. He commented too on the lack of use of Sycamore Cottage and also on the importance of an appropriate facility for secure accommodation within residential establishments.

EDUCATION 25. The Reporter commented on the bad relations between the Directorate of Education and the Director of Social Work. He submitted that this had shown itself in various practical ways, and cited the diminution of co-operation in Rimpleton House, the 'Touch' Family Centre and the 'Beanstalk' and 'Fair Isle' nurseries.

The Reporter also criticised Clause 9 of the 1985 Policy Document as a 'truism' which, if insensitively applied, could dissuade a social worker from recommending compulsory care inclusive of residential care.

26. The Reporter noted the reservations of the Director of Education regarding school reports being provided to social workers in advance of the preparation of the social background report. He defended his own decision following the case of *Kennedy v A* 1986 SLT 258 that he, as Reporter, should not pass the school report to the Social Work Department.

'CARE AND PROTECTION'
CASES

27. The Reporter contended that pursuing a policy which did not have explicit reference to the welfare of the child being paramount carried special risks in 'care and protection cases'. He submitted that there had been a too eager application of that part of Article 1 of the 1985 Policy which referred to keeping families together. He submitted that the caveat 'unless vulnerable members of the family are placed at risk by this course of action' had sometimes been lost sight of. He quoted case examples which he believed sustained his view.

28. In relation to the Child Protection Register, Mr Kelly urged the importance of proper use of the Register and pointed to the differing views which had been expressed by the Department's managers when speaking about the usefulness of the Register in the course of evidence. He submitted that there had been some cases wherein the Register could have been used when it was not.

29. Mr Kelly's practice of not necessarily taking a case to a hearing, when social workers had obtained an order for detention of the child under Section 37(2) of the Act, had been criticised. Mr Kelly defended his stance stating that a Reporter acted properly in not taking a case to a hearing if he became aware that the circumstances of the child believed to be at risk did not conform to the circumstances as described in Section 37(2)(a) to (e). He contended that his practice was in accordance with law and with the practice of other Reporters.

V THE FINAL SUBMISSION OF BASW

THE POSITION OF THE CHILDREN'S PANEL

1. BASW's final submission pointed out that successful provision of child care services, which in Scotland included as a main plank of the structure, the Children's Panel, depended for its success on full co-operation and mutual trust between the components of the system, which they identified as the Social Work Department, the Education Department, the Reporter, the Panel members, the Police and the Health Services. They submitted that such trust and co-operation had 'clearly not always been present in Fife' and that, as a result, problems had emerged. They made no submission as to the cause of this breakdown of trust and left that for the Inquiry to determine. They did, however, comment that the 'partnership' of the foregoing agencies depended upon co-operation, goodwill and communication which had, in Fife, 'not always been present'. While not venturing to apportion responsibility, they did assert the belief that when such breakdown of trust and communication occurs, 'blame will not lie entirely with one of their partners, as such is rarely the case'. They also submitted that such breakdown must 'almost certainly' have had an adverse effect on children and social workers.
2. Specifically, they submitted that the objective and detached nature of the functions of the Children's Panel and the Hearings System needed to be 'formally and publicly acknowledged' by the Social Work Department in such a way as might be decided by the Regional Council, and that the role which panel members played, as lay persons, was to make decisions on compulsory measures of care using their judgement as to what would best serve the interests of the child. They acknowledged that tension would inevitably exist between the panel and social workers, but commented that the professional task included working within such tension.
3. They advocated liaison between the various 'partners' by regular, but not necessarily frequent, meetings at local and Headquarters level.
4. They suggested that social workers should be assured that their decisions and recommendations to the Children's Panel would be supported 'in all cases' by line management.
5. They suggested that social workers, like all other professionals involved, 'must provide all relevant information' to hearings and emphasised the importance of all qualified social workers having the ability to use their judgement and discretion in making decisions, and having freedom to communicate with other professionals and officers without needing specific authority from superiors, including contact with the Reporter's department in relation to individual children. BASW said they could find 'no significant fault' with the guidance issued as to the content of reports. Apart from exceptions which might be made in the case of newly qualified workers at an early stage in their employment, they deplored unnecessary control and monitoring of communication by the basic grade worker with other professionals, including the Reporter, in relation to the handling of individual cases.
6. They favoured reports for hearings containing a range of possible options, with comment on their likely outcomes and, where appropriate, recommendations in favour of one option when there was a clear argument in favour of it. They did not, in general, favour the concept of the Children's Panel making a condition in favour of a particular form of supervision.
7. The Association proposed the creation of a professional Inspectorate of Social Work within Social Work Services Group. The possibility of a Social Work Inspectorate in the field of child care was one which we ventilated in the early course of the Inquiry and in our Second Note of Matters of Interest. This has now been overtaken by events.

8. The Association also proposed that Reporters' departments should be subject to 'independent monitoring and inspection' by a similar body, separate from the Scottish Office and liaising with other relevant departments.

RESIDENTIAL CARE 9. BASW submitted that closer integration of residential and field social work services was necessary, and that different types of provision should be seen as parts of a comprehensive plan for the 'career' of the child in care. They submitted that residential staff should be invited to Child in Care Reviews and every effort made to ensure that they were present when residential care was likely to be provided. They said that liaison between residential and field staff should be 'encouraged and improved' where this was necessary.

10. BASW further submitted that residential care would continue to be a necessary and beneficial form of provision for some children. In most cases this would be for short periods, but there were some adolescents who, not being able to adjust to the stresses of new relationships in a surrogate family, preferred to develop to maturity in a group of peers sharing small institutional settings. They emphasised the demanding nature of residential child care work and emphasised the needs of residential staff supervision, consultancy and full support from management. The Association warned against too much over-time working and emphasised the importance for the residential social worker of having adequate time away from the residential setting. They emphasised the need for a high staff/resident ratio, and spoke favourably of units of not more than 8 beds which was a practice they believed was favoured by Strathclyde Region. They commended it for Fife.

11. BASW's specific submission closes with their comments on certain issues arising in the Scottish Child Care Law Review. Some, but not all, of the issues raised were focused in the course of the evidence before us. We shall not summarise these observations here.¹ We shall, however, return to them in chapter VII of this Part.

¹The entire BASW submission is reproduced in Appendix 30

VI THE FINAL SUBMISSIONS OF THE REGION

Introductory

1. The Region or, to be completely precise, the Region's Social Work Department under its present Director, Mr Bowman, was as it were the principal respondent in our Inquiry. It was for response by Mr Bowman that our Second Note of Matters of Interest was directed. The Director lodged his 4 volume reply thereto and came to give evidence before us for 20 days. We heard from such of his managers and staff as the Region elected to bring before us. Most of our Report has consisted of our dealing with the issues raised by the Region in response to the criticisms launched against them and with the Region's criticisms of them. We believe that the Region's stance in all important matters will by now be apparent and do not propose to rehearse it in detail here. We shall however cover the main points.

THE MERITS OF WORKING
'VOLUNTARILY' WITH A
FAMILY

2. The Reporter asked Mr Bowman to comment on the passage in *Social Work Management and Practice* containing the sentence 'The policy stressed voluntarism and a move from statutory involvement'. Mr Bowman, saying that he had not read the book and did not intend to, disclaimed the term 'voluntarism' but said that paragraphs 1, 2 and 3 of the Policy Statement of 1985 clearly represented a move away from compulsory or direct intervention to look at other strengths within the community and family, with families managing their own affairs more effectively. He said that if that was what was meant by 'voluntarism', that was something he could live with. The Director, as Mr Matheson reminded us in his final submission, also described the third Clause of the Policy Document as a 'simple statement of good social work practice' and emphasised that it was compatible with the Social Work Services Group publication 'Compulsory Measures of Care for Children: Home Supervision', including the opening sentences of paragraph 3.2 of that document:

'When active intervention proves necessary, the aim should generally be to make that intervention no more obtrusive or formal than is required to help the child remain in his or her family and community, and to function better there.'

He further quoted the following from later in the same paragraph:-

'Nevertheless if local authorities keep their preventive strategies under review in order to ensure that resources are targeted on the children and parents who are in the greatest need, they should be able to keep to a minimum the number of children who require compulsory measures of care.'

SECTION 12 OF THE 1968 ACT

3. Mr Matheson also submitted that Section 12 of the Social Work (Scotland) Act 1968 could be used to support the view that a child, having been referred to the Reporter, nevertheless may not require to be referred to a children's hearing in circumstances wherein the local authority could provide appropriate assistance and that the legislation not only allowed for this to happen but, by placing a duty on the local authority to provide assistance to diminish the need of a child being referred to a children's hearing, expected it.

4. As indicated in Part F we argue that Section 12 is properly used in this way. The criticism is, of course, that the Department diverted children from hearings inappropriately.

5. Mr Matheson, agreed with the Reporter's submission that the social worker did not have the responsibility to decide whether a child required compulsory measures of care but pointed out that in relation to some of the conditions referred

to in Section 32(2), for example the 'lack of parental care' condition constituting Section 32(2)(c), the decision might involve a substantial measure of subjective analysis and judgement on the part of the social worker.

6. The Region's Solicitor did not, however, accept that the Social Work Department could properly be described as having 'set their mind' against compulsory measures of care. Referring to the findings of the 'Study of Children's Hearings Disposals in Relation to Resources', which found a relatively high divergence between the Social Work Department's recommendations to discharge referrals and the decisions of hearings, Mr Matheson submitted that this line of thought was both 'simplistic and wrong' because of the number of other factors which required to be considered, notably the comparatively low proportion of 'care and protection' cases which, according to the statistical evidence, the Reporter referred to hearings. This practice, said Mr Matheson, would obviously distort the overall picture with regard to the extent to which there is agreement between recommendation and outcome.

7. Mr Matheson contended that in none of the initial 14 cases which we examined in detail was there any evidence which could lead us to the view that the attitude of a social worker in a particular situation had been unduly or unnaturally influenced by the Council's Child Care Policy or the way in which it was implemented.

8. Mr Matheson cited a number of pieces of evidence which he believed supported his view that social workers in the Department exercised independent professional judgement without being improperly influenced by policy considerations. He submitted that the evidence which we had gathered in relation to the initial 14 cases should be regarded as comprising the 'core' or 'heart' of our Inquiry and argued therefore that we must attach great weight to this body of evidence. In connection with the oral evidence in relation to these cases he reminded us that it had come from 10 main grade social workers, 3 senior social workers, 3 Depute Area Organisers and 2 Area Organisers. The cases had been drawn from 6 different offices and included workers with post-qualification experience ranging from a few years to more than 15 years and the picture which emerged was, he submitted, a consistent picture of Area Office staff being left to progress matters without undue or inappropriate interference from Headquarters.

9. Evidence both from the core cases and other sources satisfied us that there was a significant tendency towards the erosion of the professional discretion of the social worker caused by rigid implementation of policy.

10. Mr Matheson reminded us that the Director had spoken of the gatekeeping role of the Depute Area Social Work Organiser as a valid and sensible one which responded to the concern which had been expressed that possibly too many children had been admitted to care and concern about the quality of the care which was offered. The 'gatekeeping', however, said Mr Matheson, was not excessively tight. He reminded us that the Director had said that it would have been perfectly feasible, in the context of care within residential establishments, to maintain 'very tight' Headquarters gatekeeping if that had been the intention but this had not been done. Similarly, said Mr Matheson the fact that requests for reception into care were not routed through a single person based at Headquarters and since the Principal Officer (Children and Families) did not have line management responsibility for Area Office workers, this showed that the Department were not seeking rigidly to impose any particular policy. Mr Matheson cited the evidence of Mr J, the Depute Area Social Work Organiser for Dunfermline (North), as confirming that it was for him, as Depute, to decide whether a child came into care with nobody saying to him 'you shall do such and such'. Of course social workers had to justify to the Depute a recommendation for care, particularly residential care, but the Region submitted that there was no evidence that this was done in such a way as to reduce or restrict the discretion of individual workers.

11. Mr Matheson identified the issue of the possibility of unduly rigorous enforcement of policy by management as one of the most crucial points which we had to consider. There was no evidence, he submitted, that the practice of counter-signing had been used in any oppressive way and in any event, he reminded us, there was evidence of this practice in other Regions. There was also evidence that it had been very unevenly enforced in Fife.

12. In relation to individual decisions in the 14 core cases which the Inquiry had examined there were, said Mr Matheson, no major instances of a main grade worker being over-ruled by management. Workers had admitted to being powerfully affected by the advice received in supervision but it was not reasonable to conclude that this supervision had been exercised so as to extinguish professional judgement. Nor was it reasonable to argue that Central Office control was exercised through centrally managed child care teams. The Glenrothes office operated its own Alternative to Care workers. Mr Matheson suggested that if the Department were intent upon rigorous imposition of one particular view it would surely have been logical to insist that Glenrothes, being the third busiest office in Fife, should be obliged to make use of the services of the Children's Services Team.

13. In relation to report writing Mr Matheson submitted that he could not recall any evidence of a social worker seeking to explain the non-inclusion of a piece of information on the basis that it was contrary to the 'Guidance'. He also, adopting the Director's evidence, pointed out that the 'Guidance' was indeed guidance and not 'instructions'. In discussing whether or not there was evidence of any intention to 'divert' cases from the Hearings System Mr Matheson observed that he could not recall any social worker speaking in respect of the 14 cases we examined, indicating that the reason for any omission was to mislead the hearing. The aim had always been to produce a complete, balanced and accurate picture and not to 'manipulate' the hearing by means of selective presentation of information.

14. In relation to the retrospective study which had been carried through on admissions to care in May 1986 to April 1987, Mr Matheson defended this on the basis that it was a valuable exercise and founded upon the recommendations of the Butler-Sloss Report and the Social Services Inspectorate Report into Child Protection Services in Rochdale dated October 1990. From Butler-Sloss he quoted recommendation 4(i):-

'Senior managers in Social Services Departments need to ensure that they have efficient systems available to allow accurate monitoring of service activity which will alert them to problems that need to be resolved.'

From the Rochdale Report he quoted recommendation 20:-

'A management information system which reflects accurately levels of demand for and performance of services should be introduced as soon as possible.'

Was Fife, Mr Matheson asked, to be faulted for introducing 'such a system' ahead of other authorities?

THE REGION'S CRITICISMS OF
THE REPORTER

15. The Region's Solicitor felt it necessary to make serious criticism of the Reporter to the Children's Panel and certain of his practices in relation to the Children's Hearings System. These criticisms were illustrated by material in the Region's 14 cases of concern. The thrust of these criticisms and their relevancy to our Inquiry was that the Reporter had in a number of ways discouraged recourse to the Children's Hearings System and that this, and not any intention to divert children inappropriately from children's hearings, was the root cause of any evidence pointing to social workers not bringing a case to a hearing when such a course, other things being equal, might appear to have been indicated. The Reporter was said to have achieved this effect in a number of ways such as 'deferred decisions' and 'Reporters advice' which, if not directly contrary to law were inappropriate and unhelpful. Some more miscellaneous criticisms were also levelled at the Reporter on the basis that they were relevant to our inquiries because they explained any lack of harmony between the Social Work Department and the Hearings System in general, and the Reporter's department in particular in terms of faults of the Reporter or those for whom he was responsible rather than faults of the Director of Social Work or those for whom he was responsible.

16. The Region's Solicitor in his final submission pointed to instances wherein the Reporter had allowed place of safety orders granted by Justices of the Peace under Section 37(2) of the 1968 Act to 'fall' without a hearing having been arranged to consider the case. Mr Matheson submitted that it was inappropriate for a Reporter to have regard to the possibility that insufficient evidence may exist at

this early stage in the process of protecting a child. If a warrant were *prima facie* deficient, for example if it had not been signed by the Justice of the Peace, then the child would be being unlawfully detained and the Reporter would require to release the child but not otherwise.

17. The Region's Solicitor contended that although the Reporter had stated he applied the standard of the balance of probability as being the standard of proof to be applied in care and protection cases there was evidence indicating that a standard other than the balance of probability might be being applied by the Reporter's department.

18. The Region's Solicitor also criticised the Reporter for not always framing as the ground of referral, the ground which was most relevant to the needs of the child. In particular he was critical of the Reporter for tending not to frame grounds based upon lack of parental care when evidence of such lack was apparently available. Instead Mr Matheson detected a tendency to rely on a Schedule 1 offence being established against a parent or other member of the household in a criminal prosecution or to rely on an 'old' Schedule 1 offence.

19. Another quite specific misinterpretation of the law which the Region's Solicitor alleged against the Regional Reporter related to the latter's reading of the reasoning in the case of *Kennedy v A* 1986 SLT358. On this decision being reported, Mr Kelly had decided that he, as Reporter, should not pass education reports to the Social Work Department as he had done in the past. Mr Matheson contended that this approach was incorrect in law in that the decision was not intended to inhibit exchange of information between agencies before a hearing. He also alleged that the Reporter's decision on this matter had substantially contributed to the fact that Social Work and Education had appeared to adopt different stances.

20. The Region's Solicitor also criticised the Reporter for the quality of the advice which he and his staff had sometimes given to hearings. He recalled that Panel Chairman Miss Walkingshaw had said that sometimes the Reporter or Depute Reporter present at a hearing had not been aware of the type of advice which a hearing might require and had on occasion given incorrect legal advice.

21. The Region's Solicitor also criticised the Reporter in respect of certain detailed matters which had come to light during our Inquiry including the Reporter's arranging to discontinue the practice of receiving what were referred to as 'plain paper reports' from the police in situations wherein the police had investigated allegations of child offending but had found no satisfactory evidence thereof.

THE REGION'S CRITICISMS OF
THE CHILDREN'S PANEL

22. The Region's Solicitor also directed criticism at the Children's Panel and gave examples of what he described as 'lack of respect' towards the Social Work Department citing instances wherein panel members had, in the course of hearings, given indications that they thought the social worker at the hearing did not believe in the recommendation which had been put forward or that the panel member did not trust the Department to carry through the planned work for the child. Mr Matheson also suggested that there was evidence that the Panel sometimes employed a 'tariff' of disposals.

23. The Director of Social Work, commenting that tensions between Children's Panels and Social Work Departments were not unique to Fife expressed the view that some of the tensions within the Children's Panel membership in Fife, including the resignation of the 2 Chairmen in a relatively short time had to some extent 'been externalised, displaced and focused on the Social Work Department'. He elaborated on his submission against the Panels in general, by asserting that their composition reflected too narrow a range of the community. He criticised the Panel in Fife in particular for being too ready to take their criticisms to others rather than raise them by appropriate channels of communication within the Department. He submitted that there was what he described as an 'increasing semi-professionalisation' within the Children's Panel System, creating the danger of moving away from the original concept of lay people using their concern and experience of children to provide a sound lay judgement on ways of promoting the child's best interests, and cited panel members having argued for the power to attach conditions to supervision orders to provide children with specific resources.

THE STANCE OF THE SOCIAL
WORK DEPARTMENT IN
RELATION TO RESIDENTIAL
CARE

24. The Director's view was that the Department aimed at providing the appropriate services, including such care within residential establishments as was appropriate, to those children who required such services. He described Clause 5 of the Policy as being intended to 'provide a very straightforward check list'. He thought it right that workers should be asked to discount the option of placing children with foster parents or community carers before looking at the possibility of care within a residential establishment. He said that this must be looked at 'against a background of what seemed to be a substantial reliance on the use of residential care in circumstances that were not necessarily in the children's best interests'. It was not a question of workers having to try out care with foster parents or community carers before being entitled to proceed, as it were, to the next rung of the ladder. There was nothing to prevent a child being received into a residential establishment as a first step in those cases where that was the most appropriate in the child's best interests. He defended the specification of 6 months as the period after which the continued placement of a child within the care of a local authority required special justification, by reference to well acknowledged canons of good practice. He defended the 'gatekeeping' role of the Depute Area Organiser and claimed that it introduced clarity into a situation which had previously been unclear. There had always been constraints on the freedom of a social worker responsible for a case to gain admission to residential care for a child.

25. The requirement that reports recommending that the child be taken into the physical care of the authority should be countersigned, but that this applied to no other recommendation, perhaps needed reconsideration, as the Director of Social Work acknowledged, but it had to be borne in mind, submitted the Region's Solicitor, that this requirement was introduced at a time when, he said, there was a 'fairly widespread acceptance that there were a number of children placed inappropriately in residential care'. The assertion that an over anxiety to take children into the physical care of the local authority had been a prominent feature of the approach to child care, before the arrival of the present Director, and that this justified a particularly determined public stance against 'residential care' was emphasised. The Director defended his statement that he could 'not produce evidence to support the statement that residential services helped children', by referring to the context in which it was made, and said that emphasising positively what residential placement could accomplish would have implications for the other (non-residential) services.

26. In relation to the apparent disfavour with which the regime in Melville House was regarded, at least until shortly before our Inquiry began, the Director while not able to confirm in express terms that no boy had lately been admitted there in the first instance on the recommendation of a Fife social worker did not seriously dispute this and nor did the Region. Mr Bowman made no secret of his critical stance in relation to the regime within Melville House at this time and expressed strong reservations, for example, about the collective examination of the progress and shortcomings of residents, which he believed formed part of the set-up. He was satisfied that the 'Report on Children in Care in Melville House' was a satisfactory piece of research with important conclusions. He regarded the location of Melville House as excessively isolated although he agreed that the workers there did their best to maintain links with home; he also acknowledged that, under the Melville regime at the relevant period, residents there frequently spent much time at home during holidays, weekend leave and mid-week leave.

27. The Director accepted that Sycamore Cottage had not been used in recent years and gave some indication that he thought the Department might have made better use of it. In general, however, the Director, and the Region's Solicitor, contended strongly that there was no wholesale opposition to care within residential establishments as such. They pointed to this being allowed for in the Policy Document and identified Ribleton House as the principal resource. They concurred in BASW's view that some children would require care in other than a family setting and cited Ribleton House as an example of how the Council had sought to deal with teenagers requiring residential placement, pointing to evidence regarding the good staff/resident ratio within Ribleton. They considered that BASW's injunction that residential staff should in general be invited to reviews

at which planning for care was discussed was in general complied with and that liaison between residential and field staff had been encouraged.

28. The Region summed up their position in relation to care, and in particular residential care, as a cautious one; they referred to the recent press coverage indicating the considerable concern which existed in Britain at that time regarding the care of children, both by their own families and by public institutions, and submitted that these concerns vindicated the 'rightly cautious position' adopted by the Department.

CARE IN ALTERNATIVE
FAMILIES

29. The Director of Social Work spoke highly of the ability of alternative 'ordinary' families in dealing with a wide range of children some of whose problems were quite acute. He told us he never ceased to be surprised by the ability of ordinary families in this regard. The Region's Solicitor stressed the careful process whereby community carers were selected and the care that was taken to warn them of the difficulties which might lie in store. While acknowledging that there would be periods when carers were not available or not available in the preferred area, he demurred at the description applied to the system by the Panel that there was a 'chronic shortage' of carers. With regard to whether or not sufficient information was conveyed to carers about the children whom they were expected to take, he submitted that evidence of incomplete information being given to the carer ought to be regarded as exceptional.

VII THE NATURE OF THE NEW IMPETUS

Introductory

1. We have noted throughout our Report that implementation of policy in the Region was not uniform. Such uniformity was not to be expected in any Social Work Department and particularly not in a Department which, in common with most departments, operates through Area offices run by middle managers whose characteristic stances will 'filter' any policy initiative to a greater or lesser degree. A similar 'filtering' process must be carried out by senior social workers, and indeed main grade workers too may exercise their own 'filtering' of policy since, when in direct contact with children and families, they deal with unforeseen situations without immediate direction from their seniors.

2. All the foregoing does not, however amount to saying that we should not be prepared to find a characteristic way in which policy is implemented. We were satisfied from all the evidence that in Fife during the period which we had to study, there was such a characteristic mode and that this was so strongly present as to represent an orthodoxy, deviation from which was well recognised and perceived as being most unwelcome if it should be detected by Headquarters' management.

HOW WE DISCOVERED THE CONTENT OF THIS ORTHODOXY

3. The Policy Document, as we have already noted, was in general unexceptionable and it was in any event broadly continuous with earlier policies. It therefore seemed essential that our inquiries go beyond examining the document and any accompanying memoranda. Thus it was that by examining files and, most illuminatingly, by taking oral evidence from workers in relation to particularly difficult cases that we were able to find how social work was done in the demanding situations which cases of this kind present.

4. The cases we examined in most detail were the initial 14 cases which had their origin in those selected by the Reporter as illustrating his concerns. They did not, as emphasised by the Director of Social Work constitute any sort of scientific cross-section of hearings cases either by subject matter, age or condition of the child, or geographical situation. We did not think that selection on such statistical bases would have any meaning or usefulness for our inquiries. The cases were, as the Director of Social Work himself contended, best described as typical of cases which gave concern to the Regional Reporter, and we can accept that description: we thought we were right to investigate such cases as might be expected to embody in practical examples the key controversial issues. We also accept the Regional Solicitor's description of these cases, in his final submission, as the 'core' of the Inquiry. It was of great value to us that the work done in these cases was spoken to by social workers selected by the Region. We were able to examine the social workers on many aspects of their work at many stages of the cases. We thus obtained insight into how social work was done in relation to matters which went far beyond what could have been apparent to the Reporter or the Panel. The social workers generally defended the work that they had done. This work was not disowned by the Department but was usually supported by senior workers and managers. Their work was also in general defended by the Director of Social Work in his Written Response wherein he commented on individual decisions which we had drawn to his attention. In oral evidence the Director also commented favourably on the work done in the 'core' cases. We therefore felt well entitled to regard the work done in the cases as work on which it was fair to judge the Department in its implementation of the Region's policy.

5. In examining the core cases in oral evidence from the social workers, senior social workers and managers nominated by the Region it was possible for us to

explore the reasons given for individual decisions. We were then frequently able to understand the social worker's approach to the decision-making process. When other similar decisions were examined it was possible to consider whether any common approach could be detected which might indicate that individual decisions could properly be regarded, not as isolated events, but as representing examples of a characteristic approach towards implementation of policy. We were satisfied that evidence for such a characteristic approach did emerge. Examples of cases displaying this approach are to be found throughout our Report but Part F covers the main sources of our information and displays the main body of our reasoning as to the heart of the matter at issue.

6. We examined, in varying degrees of depth, other cases suggested by other witnesses and found frequent echoes of the characteristic mode of implementation of policy which we had found in the core cases.

7. Another source of evidence as to whether a particular Social Work judgement was or was not in implementation of policy would be by asking how far it appeared to illustrate or not concerns expressed by informed observers. These observers, namely the Panel Chairs, the Regional Reporter, the Health Board professionals, and the Education professionals, all in differing degrees of specificity gave evidence which supported the view that an orthodox mode of implementing policy existed.

8. One factor which seemed to point to a force at work which was aimed strongly at the reduction in the numbers of children in care, was the dramatic drop in the figures between 1985 and 1989. In 1989 the rate per 1,000 population 0-17 years in Fife was 3.4 against 10.3 for Scotland as a whole: Fife was the lowest of all the mainland Regions. On any consideration this was a very low rate, and when set against its historical background it was even more notable: in 1985 the rate was already low, viz, 5.9 in Fife as against 10.6 for Scotland as a whole and, even then, Fife was the lowest in rank order.¹

9. Having obtained, at the very outset of our Inquiry, information from the Regional Reporter bearing upon the 167 children who had come before hearings in Fife during the 3 month period December 1988 to February 1989 we were able to obtain some evidence of statistical patterns. We had a statistical analysis of this information prepared and took the view that the conclusions drawn from it, as always with statistical surveys, had limitations but could nonetheless be treated as a valuable source of corroborative information.

10. We also had to take account of some written papers, memoranda, expressions of opinion, and reported experiences of current and former employees of the Department, including of course the extensive written submissions and extensive oral evidence of the present Director of Social Work, Mr Bowman.

11. We took account as well of the arguments in the final submission of the Region's Solicitor. Mr Matheson contrasted the evidence of the Council's employees with some of those witnesses whom we had asked or 'cited' to come to the Inquiry. He submitted that the fact that the Council's employees appeared 'voluntarily' at the Inquiry was indicative of the fact that they wished to defend their work. We deal in Annexation A, paragraphs 81-84 of our Report with Mr Matheson's general proposition that evidence given as a result of citation was likely to be less reliable than evidence submitted voluntarily. We point out that we thought this generalisation was of limited value. Once evidence has been given, the judgement as to its credibility and reliability is a matter for the tribunal of fact which should, of course, take into account such matters as the demeanour of the witness and how far a witness' evidence coheres with other evidence which is accepted, and so on. We thought witnesses wished or did not wish to be formally requested to attend our Inquiry because of a variety of reasons; we did not think that any generalised assumption should be made because a particular witness had or had not been formally asked to come to the Inquiry.

12. As to the suggestion that the Council's employees appeared 'voluntarily': this is, of course, true in the sense that none was formally cited by us. The issue of how far the individual witnesses who gave evidence in relation to the core cases were 'voluntary', in the sense of having been requested by the Department to

¹See Appendix 6

appear before our Inquiry on the clear understanding that they were under no pressure by their employers so to do was not so far as we can recollect or trace in the transcripts put by Mr Matheson to any of the witnesses who gave evidence in relation to the initial 14 cases. We could not discount the possibility, mentioned to us for example by Miss Walkingshaw, that witnesses who gave evidence before us might be reluctant to be unduly critical of their employers because of fears connected with job security and promotion prospects. We had no positive evidence supporting Miss Walkingshaw's expressions of concern but would have been surprised to have encountered such direct evidence. Mr Matheson submitted that witnesses did not seek to avoid difficult questions by claiming that events had taken place a considerable time in the past and that they did not therefore have a clear recollection on particular issues. This was by no means true of all witnesses but it was true of many of the witnesses who gave evidence as to the core cases. We did however frequently encounter the situation wherein a witness could not justify a particular decision in a way which seemed reasonable to us and in such circumstances we regarded it as open to us to conclude that the underlying reason for the decision was connected with the particular climate in the Department which was consequential upon the policy initiatives which followed the introduction of the 1985 Policy Document.

13. Mr Matheson in his final submission mentioned that the Children's Panel had submitted that we should draw the conclusion that social workers 'under pressure not to place children were misleading hearings so as to avoid the necessity of explaining to their superiors that they had failed to persuade the panel'. Mr Matheson contrasts this with the Reporter's contention that the heart of the problem was the lack of explicit reference in the 1985 Policy Document to the welfare of the child being paramount and quotes the Reporter as stating in his final submission 'I have not said that social workers are deliberately ignoring the welfare of the child. They believe in what they are recommending'.

14. Mr Matheson submits that these stances are mutually exclusive and that the reason for this lack of agreement is that both of these parties seek to draw conclusions which are not based on the evidence. In our view the dichotomy suggested by the respective submissions of the Panel and the Reporter (and elaborated by Mr Matheson) in this regard is to an extent a false one. We received evidence from a wide spectrum of social workers. Some believed in the desirability of the mode of implementation of policy which constituted the orthodoxy. The stance of these witnesses gave justification for the Reporter's impressions. Some found it uncongenial. The stance of such witnesses gave the Panel some justification for their perceptions. Some were inexperienced and unwilling or unable to exercise independent critical judgement of the orthodoxy. Our own impression was that the variety of stances by social workers was in accordance with what would reasonably be expected. We of course judged each witness in accordance with how his or her evidence seemed to us.

15. In his final submission Mr Matheson referred to part of a written submission lodged on behalf of the Children's Panel in November 1989. Among other matters this asserted that the Panel had 'noted no change' in the attitude of social workers in that they continued to advocate voluntary measures over-enthusiastically. Even if, Mr Matheson argued, undue pressure had been placed on workers before, surely it was not conceivable, with the Inquiry in progress, that workers would still be pressed to make recommendations which they did not believe in. No oral evidence was led in amplification of the Panel's submission and without fuller information we would not wish to found too strongly on it. We do not however regard this statement as inconsistent with our own view of what has been happening. As indicated above some social workers in our view did believe strongly in what we have called the 'orthodoxy'. It may have been such social workers which the Panel was referring to. If so, it may have been the manner of the advocacy rather than the possible lack of sincerity which the Panel was concerned about. In any event we do not think we can assume that the existence of our Inquiry would necessarily have the effect pre-supposed by Mr Matheson. The Director of Social Work maintained that no serious criticisms fell to be made and that an Inquiry such as ours was unnecessary. In view of this stance we think it is quite

possible that procedures for which the Department was being criticised might continue while the Inquiry was in progress.

16. Mr Matheson's argument presupposes that a social worker who chooses without direct and specific external constraint to advise a particular course of action is operating with appropriate professional discretion in the interests of the individual child. This, in our view, is not so. Exercising social work judgement in the context of proper professional discretion requires that the social worker operate in an atmosphere in which that discretion is encouraged to develop and in which facilities to enable that discretion to be exercised fully are provided. We were not satisfied that these conditions obtained.

17. In his final submission Mr Matheson reminded us that only one serving member of the Department had come forward to give evidence in closed session. This was the social worker who spoke of social background reports being 'heavily edited' and who referred to a group of managers 'who all behave in an authoritarian and autocratic way'. He submitted that this showed that social work staff were aware of the facility of giving evidence in closed session and also indicated that, since only one had come forward, the problem spoken to could not be a significant one. Had the evidence of the anonymous worker been the only evidence of the problem spoken to then there would have been more weight in Mr Matheson's submission but, as we have indicated at various places in this Report (eg Part E paragraphs 59 & 60) our conclusions are based on a wide range of evidence. This wide range included evidence which the Region invited us to disbelieve. Looked at in this light the contribution of the anonymous worker provided a small but significant corroborative element. Mr Matheson who commented in his final submission that a question the Inquiry must have at the back of its mind was 'are there social workers with something to say who are unwilling to come forward?' and submitted that the answer must be 'no'. As we have indicated in paragraph 12 *supra* the possibility that workers might be influenced by fears regarding their employment prospects was one which was taken seriously by, for example, Miss Walkingshaw and we cannot rule it out. On the other hand, however, we could not found our conclusions on guesses about what witnesses who did not appear might have said. Our conclusions were based on the evidence which we heard and accepted.

18. Mr Matheson also argued in his final submission that it was impossible that social workers could be implementing a policy which was designed to do anything other than promote the best interests of a child without our having found 'clear written evidence' to support such a contention. Insofar as we understand this argument we reject it. The implementation of policy is not only or mainly found in policy documents and written memoranda. It is to be found within the reasoning processes of the social workers who implement policy. For the reasons set out in paragraphs 3 to 14 *supra* we are satisfied that we gained valid insights into the nature of the orthodoxy which to a greater or lesser extent affected the decisions of social workers during the period which we examined. It is towards defining the nature of this orthodoxy or 'impetus' to which we must now turn.

THE NATURE OF THE 'IMPETUS'
WHICH POLICY RECEIVED IN
1985/86

19. In our view the most obvious characteristic of this impetus was a tendency to over-simplify what constituted the best interests of children. The heart of the belief appeared to be that the interest of a child who was not being physically abused at home was to be looked after within his or her own home without social work involvement or, at the very most, with 'voluntary work' of an *ad hoc* nature including, for example, the supplying of a home help or the provision of a social work volunteer who could give some general help to the child and/or family. The direct involvement of a social worker with a child on a voluntary basis and even more the imposition of a statutory order was seen as, on the face of it, potentially damaging and possibly 'stigmatising'.

20. There was also a belief that if removal from home was required a foster parent placement should be made. It was suggested by certain witnesses that a foster parent placement had to have been tried and seen to fail more than once before placement in a residential establishment could be considered. That this was an aspect of the implementation of policy was strongly denied by Mr Bowman

in oral evidence but we found in studying the cases, examples wherein there were repeated unsatisfactory foster placements and it seemed that the only logical reason could be a firm understanding that that was the way in which expected policy was to be implemented. We also heard many expressions of opinion—including from workers above main grade level who were not opposed to the Department's implementation of policy, that this was the best way of working with children. All of the foregoing convinced us that there was a climate of opinion strongly in favour of this approach irrespective of the absence of any written directive so prescribing.

21. Associated with the foregoing was an attitude towards the use of care within residential establishments which we found to be almost universally negative. The Policy Document, of course, *allowed* for placement within residential establishments and the Director of Social Work said in evidence that he was aware of the value which a small residential unit could play in working with that small minority of children who would benefit from its services.

22. We regret to have to say that we found the Director's evidence on this point to be, at very best, somewhat misleading. Throughout his verbal testimony the Director maintained a stance which would, we think, be accepted as reasonable by many enlightened practitioners nowadays in the child care field. His evidence about the distinct value, although in very restricted circumstances, of care within a residential establishment of the type we have described was illustrative of such a stance. The Director commended to us the motto of Essex County Council 'Actions speak louder than words'. We agree with this sentiment. We judged the Department by its actions. The wide range of evidence before us satisfied us that the atmosphere in the Department was strongly set against any real possibility that residential establishments (apart from those specially staffed and equipped to deal with intellectually disabled children) had any place in child care other than for very short periods. This stance was not only related to placement within Melville House, which Mr Bowman clearly regarded as unacceptable in almost any circumstance, (a view which we are satisfied represented the orthodoxy within the Department) but also to placement within Ribleton House in all but the most dire circumstances—and sometimes not even then. We were satisfied on this point that the Department's stance was more accurately described as follows: 'what we hoped to achieve was voluntary supervision in the community, I feel that was the general consensus, and places like Ribleton House were bad enough to use without having to explore something like Melville'. The words were those of a main grade social worker who had worked for a time in Rosyth but the general approach represented by these words was in our view well supported by evidence which we accepted from a number of witnesses, of various levels of seniority and experience from inside and outside of the Department, including both present and former members of the Department; it was supported as well in various other ways by the case evidence and the statistical evidence.

23. The attitude towards residential care was itself an example of over-simplification. Residential care, meaning care within an establishment maintained by the local authority or other organisation, was regarded as homogeneous and damaging. We had no impression of workers at any level having even in their minds a range of possible types of residential establishment some of which might have something to offer for a particular child as opposed to others which might have less to offer. It might be said that the range of residential care *was* limited, at least within Fife and that Fife did not possess a medium stay residential unit with specially trained and experienced staff, which was able to deal with the most difficult and even disturbed children. The consideration that there was no such unit was in our view not unconnected with the Department's stance and we shall return to this point shortly: but even such residential resources as Fife did possess did not seem to be regarded as a possible resource for the children worked with by the Department. An example of the foregoing was constituted by the Sycamore project which was remarkably under-used.

RIGIDITY OF IMPLEMENTATION 24. The tendency of the new impetus was to over-simplify. This was associated in our view with a rigidity in approach to the working with cases. It was as if,

since it was believed that the simple 'solution' had been found, anyone who attempted to displace the simple solution was made to feel that his or her contribution was not fully valued. We found the combination of an over-simplified approach and, an over-rigid approach to be in accord with general experience. The person who holds that he or she has a clear insight into an uncomplicated 'answer' to a problem is more likely to be impatient of the contribution of others than one who regards the answer as unclear and therefore only likely to be clarified by the pooling of ideas.

25. The rigid approach is in practice proportional to the strength of conviction with which it is held. We thought the attitude of the Director of Social Work on the commitment which he had to particular policies was somewhat difficult to assess. He satisfied us, in the course of his oral evidence, that he well understood the position of a modern, middle of the road, enlightened approach to child care and social work generally; he emphasised the importance of empowering people to live their own lives as opposed to over-directiveness and went on to emphasise that, for example, many so called 'social problems' are, in disguise as it were, problems of poverty usually linked with lack of knowledge or ability of how best to obtain universally available services. The Director was, as we have noted, also overtly in favour of the sensitive if limited use of residential establishments.

26. We were clear, however, after considering the whole evidence that the tendency towards over-simplification which we have identified was a very strong one. There was also in our view ample evidence that the Director, once convinced of the necessity of a change, would seek to accomplish it by what appeared to be the most direct route without taking account of the views of others even if formal consultation with others had taken place. One example of his not giving due consideration to the opinions of those outside the Department was provided by his arranging for the 'Report on Children in Care in Melville House' (an establishment which was managed by the Education Department accommodating at the time 39 residents, 32 of whom were there on the recommendation of the Social Work Department) without engaging the advice or assistance of Education either at the level of the Principal of Melville House or at directorial level. Another example was the issuing in October 1985 of a directive to Social Work staff that all referrals suggesting non accidental injury, ill-treatment or neglect of a child must be notified to the police whose responsibility it would be to determine what action is required. Not only was this change in direction not discussed with those who might be affected by it such as paediatricians and health visitors: it was not notified to them and only came to the notice of the Area Review Committee some months after promulgation. Examples of consultation which those consulted found formal rather than real, were the discussions with Miss Walkingshaw to which we have already referred and the consultation with the Regional Reporter on the Department's 'Guidance on Investigations for and Contents of Reports for Children's Hearings and Initial Enquiries' of June 1987 in relation to which the Reporter, although he had sent in detailed comments, was disappointed that his comments did not appear to have had any effect.

27. Another example of a change introduced without consultation was constituted by the inauguration of the Children's Services Team which was developed from the existing family centres. This change was not discussed with the Children's Panel and only came to their notice when it was mentioned during hearings.

28. From, amongst other sources, the foregoing general evidence and the examination of cases we were well satisfied that the impetus to over-simplify was very strong and that it had the approval of the Director personally.

VIII CONSEQUENCES OF THE IMPLEMENTATION OF POLICY: THE DEPARTMENT AND THE CHILDREN'S PANEL

Introductory

1. The adoption by a Social Work Department of a clearly defined and rigidly interpreted mode of implementation of policy might be expected to have considerable impact both outside and inside the Department. This proved to be the case.
- THE POSSIBILITY OF
CONFRONTATION WITH THE
CHILDREN'S PANEL
2. Panel members, when constituted as a hearing tribunal, have the responsibility of deciding upon whether or not particular children require compulsory measures of care. In deciding upon cases on the basis of reports from the Department they are in a position to become aware of how the Department is implementing its child care policy at least with reference to admission of children to care. Since the make-up of hearings is not continuous as between an initial hearing and a continued hearing the impression of how an individual case is being handled by the Department may be disconnected. Panel members, however, deal with a wide range of cases and are in a position, from the knowledge so gained, to form impressions, which have in our view more than anecdotal value, of how a Social Work Department is handling cases. Children's hearings have of course the power to impose a supervision requirement even if in so doing they are not following the advice of the social worker. Accordingly in a situation wherein the Department's policy is being implemented in a rigid and dogmatic way the panel members are in a position to detect this and also, up to a point, to frustrate it. The hearing, with its responsibility to deal with cases on review maintains a continuing interest in a particular case. The hearing therefore has the power not only initially but throughout the case to affect the mode of implementation of the Department's policy. In such circumstances confrontation between the Panel and the Department is made possible. The Director of Social Work observed in his written submission that if a policy of minimum feasible intervention or undue rigidity were a feature of Departmental operations, it was surprising that similar concerns had not surfaced in relation to other client groups. While we cannot of course comment on the position of other client groups, we think it is clear that part of the reason why the concerns were able to 'surface' in relation to child care arose from the role which the Children's Panel plays in our child care system.
- MODE OF INTRODUCTION OF
CHANGES
3. Confrontation with the Children's Panel was in Fife made more likely by the way in which changes were introduced. The presentation of some of the content of the 'Report on Children in Care in Melville House' to the Panel training course at Tulliallan in January 1986 gave panel members the impression, which Mr Bowman ought to have foreseen, that a pre-emptive strike was being launched against a facility which panel members regarded as valuable. Irrespective of the merits or otherwise of the content of the Report the mode of presentation was likely to cause confrontation. Another example of an unannounced change comprised the introduction of the Children's Services Team as a substitute for some of the services which had been provided by the Family Centres.
- ATTEMPTS BY THE PANEL TO
COMMUNICATE THEIR
CONCERNS
4. Concerns were expressed, by means of letters to the Director, in relation to individual cases. These letters were replied to in detail by the Director who expressed disapproval of any unprofessional actings by his staff but did not appear to try to understand the concerns which lay behind the complaints. The Panel

Chair, Miss Walkingshaw and Mr Bowman had meetings which Miss Walkingshaw regarded as cordial but unproductive of any modification in the Department's stance. Ultimately the Panel initiated an approach to Social Work Services Group.

THE PANEL'S IMPRESSIONS
DERIVED FROM HEARINGS

5. We were satisfied that the tension between the Department and the Panel resulted in some hearings taking place in an atmosphere which was not conducive to discussion of the best interests of children.

6. The panel members came to suspect that some reports being presented to them were unsatisfactory in that they omitted negative information which might impel the hearing to take a more serious view of the case than that which was taken in the Social Enquiry Report laid before it by the Department. The panel members came to distrust reports which proposed 'packages' of voluntary measures for children and believed that sometimes the proposed measures would be unlikely to be carried through. This generalised suspicion sometimes caused hearings to doubt the genuineness of 'packages' which had been carefully thought out and might have had success.

7. Hearings particularly suspected that any request by them for assessment for residential care would be affected by the Department regarding residential care as what we have described as the negative pole of social work intervention. Panel members feared that this approach would result in a child's case being worked with by the Children's Services Team when this was inappropriate and there was some support for this in evidence. In consequence of their view of the Department's negative approach to residential care panel members sometimes might make a direct approach to Melville House for a placement. On at least one occasion such an approach resulted in an inappropriate placement in Melville.

8. Panel members averred that they had been told that Rimpleton House was 'full'. We received no positive evidence of this and did not pursue particular allegations. We thought that the most relevant evidence on this matter related to the decisions which were made as to whether or not placement in Rimpleton was suitable for particular children. We were satisfied on the evidence, that some quite inappropriate decisions were made by the Department that particular children should not be admitted to Rimpleton and that these decisions flowed from and exemplified the Department's stance of regarding care within an establishment as the negative pole of intervention.

THE PANEL'S CONCLUSIONS
AND OUR CONCLUSIONS

9. The Children's Panel identified the Department's error as that of embracing a policy of minimum intervention and, by intimidatory pressures, preventing social workers from expressing their sincere views to hearings.

10. We can understand the Panel describing the Department's approach to implementation of policy as rigid adherence to minimum intervention. That is how the rigid and simplistic approach to the hierarchical structure outlined by us in Part F of our Report and crystallised in this chapter must have seemed to panel members. The key element which we identified was the over-simplification of the issues together with a rigid approach. We believe that this approach contributed to some serious mistakes in the management of individual cases but these mistaken decisions co-existed with much very adequate field work by social workers. We shall return to this presently.

THE NECESSITY OF
ACKNOWLEDGEMENT OF THE
PROBLEM BY THE DIRECTOR OF
SOCIAL WORK

11. The Panel's final submission was that the Department's single-minded determination to push its policy of minimal intervention at all costs has been a serious disadvantage to the children who came before hearings. In our view, as we have outlined, we identify the Department's determination as interpreting policy in an over-simplified way and attempting to implement it too rigidly and mechanically.

CONSULTATION

12. The Children's Panel was not consulted regarding the 1985 Policy Document. Neither was it consulted in relation to the 1981 Document. The essence of the problem was not, however, the wording of the Document but the impetus given to policy and the change in resources with which the implementation of policy was associated.

13. We noted with interest the concluding submission by the Children's Panel emphasising that in any proper system of consultation a high degree of mutual trust and respect is a prerequisite. Without such mutual trust any formal structure for consultation processes between the Department and the Panel would not be likely to be fruitful. We therefore make no attempt to propose such a structure.

14. We do, however, believe that the Children's Panel, composed as it is of the quasi judicial officers responsible for disposing of the cases of the children who come before them, should have and be seen to have a high status in our legal system. The Regional Panel should have a role when decisions are made by Social Work Committees in relation to the child care policies of Departments including policies in relation to the allocation of resources.

15. In the short term: we **recommend** that Fife Regional Council give urgent consideration to the best way of giving the Fife Children's Panel, through its Chair for the time being or otherwise, a voice in the deliberations of its Social Work Committee, or a sub-committee thereof, when matters bearing upon child care policy, including the allocation of resources, are under discussion.

16. In the longer term: we **recommend** that central government consider how best the Children's Panel should be represented within the committee structure of Regional Councils when child care policy, including matters of resources, is being discussed and consider introducing legislation in order to make such representation mandatory.

IX CONSEQUENCES OF IMPLEMENTATION OF POLICY: THE DEPARTMENT AND THE REGIONAL REPORTER

Introductory

1. The Reporter is the channel whereby children who may be in need of compulsory measures of care are referred to hearings. It was therefore possible that a Department which adopted a rigid mode of implementation of policy relative to admission of children to care might find itself in conflict with the Reporter as it found itself in conflict with the Panel. Such proved to be the case.

THE REPORTER'S EARLY INDICATIONS OF CONCERN

2. We found there was evidence, which we have narrated in chapters II and IV of Part C of our Report, of Mr Kelly indicating concern as to the force and direction which the Department's policy regarding admission of children to care was taking. For example the Reporter wrote to the Director of Social Work expressing concern at the presentation to the Children's Panel training course at Tulliallan including some of the content of the 'Report on Children in Care in Melville House'. The Reporter also wrote to the Director of Social Work with his comments on the document 'Guidance on Investigations for and Contents of Reports for Children's Hearings and Initial Enquiries' which we have referred to so often. In his letter the Reporter expressed approval of many of the provisions in the 'Guidance on Investigations Etc' but made some significant reservations. He was accordingly disappointed when the final version of this document was sent to him in the same form as before with only the word 'draft' deleted. The Reporter had also written to the Department with increasing frequency regarding cases wherein recommendations of the Department gave him concern.

3. In the course of evidence the Reporter agreed that although he had communicated with the Director of Social Work on these matters he had never sent to the Director a comprehensive memorandum outlining his concerns as he was now expressing them in the forum of our Inquiry. In his final submission Mr Matheson criticises the Reporter for not taking appropriate steps to alert the Director of Social Work to his concerns and contends that as a result of the Reporter's failure to do this the Council was not given the opportunity of investigating and addressing the concerns which the Reporter had spoken about to the Inquiry.

4. In his final submission Mr Matheson also repeats his suggestion made in evidence that the Reporter, in expressing his concerns to our Inquiry, was 'simply jumping on the bandwagon created following the issuing of Social Work Services Group 20 case report in July 1988'. The implication would appear to be that the Reporter, for some ulterior purpose, was taking up criticisms which he did not believe in. Mr Matheson in his oral examination of the Reporter had suggested that the Reporter's motives were those of being 'piqued' or 'miffed'. As we have already indicated, we had no impression at all that the Reporter had any ulterior motive in making his criticisms of the Department and its policy as implemented as he saw it.

5. Mr Kelly acknowledged that he had not made any critical reference to the Department in any of his annual reports and, as we have said, agreed that he had not submitted any comprehensive memorandum. He believed that day-to-day contact between himself and his department and the Director of Social Work and his Department should have alerted Social Work to his concerns. We can understand that, as a Chief Officer of the Region, he would be reluctant to disparage the Department's work in his annual reports.

6. We shall return presently to the position of a Regional Reporter in relation to his local authority but simply recall at present that we were very satisfied indeed that Mr Kelly's concerns, as presented to us, were genuine.

THE REGION'S FORMAL
CRITICISMS OF THE REPORTER

7. The Region, through their Solicitor, found it necessary to be very highly critical of their Regional Reporter both in their line of cross-examination, in written evidence lodged with the Inquiry and in final submissions. A main theme of this criticism was that the Reporter was conservative in his approach to taking certain types of cases to hearings. This criticism was voiced by some witnesses.

8. The Region contended that the Reporter's conservative stance in relation to stating grounds of referral, particularly in cases wherein grounds under Section 32(1)(c)¹ might appropriately have been stated, influenced social workers in their understanding of what, in law, constituted grounds of referral under Section 32(1)(c) so as to make referral to a hearing appropriate. In short the Reporter's stance was being relied upon to counter the argument that the Department was unreasonably diverting cases from hearings. The argument was supplemented by further arguments that certain practices and mistakes within the Reporter's department accounted for the stresses experienced between the Panel and the Department thus absolving the Director from any substantial blame. We concluded that Mr Kelly's general stance as a Reporter in relation to bringing care or protection cases to hearings was properly described as rather conservative. We concluded that the majority of the Region's criticisms of Mr Kelly's practices were unfounded but in some instances we thought their comments were justified and made recommendations accordingly. We concluded that Mr Kelly's stance may well have influenced social workers in their perception of the facts and circumstances which were sufficient to constitute grounds for bringing care or protection cases to hearings but we were satisfied that the principal cause of the Department's inappropriate diversion of cases from hearings lay in its mode of implementation of policy.

THE LEGAL CONTEXT

9. It seemed to us, however, that difficulties in interpreting and applying the enacted law and, to an extent, interpreting the case law, affecting the Hearings System had played its part in some of the difficulties which had arisen in Fife. Many of the problems were focused for us by the Region's Solicitor, by the Regional Reporter, by the Children's Panel and by BASW and some were focused by ourselves.

SECTION 37(1A) OF THE 1968
ACT: THE WORD 'MAY'

10. This Section of the Act imposes on the local authority the duty, if it appears to them that the child 'may' be in need of compulsory measures of care to give to the Reporter such information about the child as they have been able to discover. Both the Regional Solicitor and the Reporter invited us to interpret this Section of the Act as meaning that a social worker had merely to apply his or her mind to whether or not there appeared to be evidence supporting any of the grounds stated in Section 32(2) of the Act and that if, in fact, there appeared to be such evidence the Reporter would have to be notified.

11. For the reasons set out in Part H, chapter VIII, paragraph 2 we reject this interpretation. We think the social worker has a discretion to decide that, although facts exist justifying one of the grounds, the child may nevertheless not be in need of compulsory measures of care and therefore should not be reported to the Reporter.

12. The social worker, however, must beware of acting in such a way as to erode the authority of the Reporter. The social worker, while entitled to conclude that compulsory measures are not necessary should only make that decision when the position is clear.

13. We believe that Section 12 of the 1968 Act indicates that a social worker may be acting responsibly in telling the Reporter, in a case which has been notified to him or her, that the local authority is able to provide appropriate assistance which will render compulsory measures of care unnecessary. We agree with

¹'Lack of parental care is likely to cause him unnecessary suffering or seriously to impair his health or development'

the Region's Solicitor's contention that this Section should 'not be used as a justification for failing to advise the Reporter as to the existence of circumstances which indicated that a child may be in need of compulsory measures of care'.

14. We **find** as follows:-

We accept that social workers have a role in 'screening' cases so that children with no real prospect of having compulsory measures imposed are not referred to the Reporter. We do not, however, see it as the function of social work to divert children from hearings in the sense of trying, by working voluntarily with those children who would otherwise be likely candidates for immediate entry into the Hearings System, to prevent their entering that system: we think that the role of the Reporter as the principal decision maker has to be underlined. Section 37(1A) of the Act requires the local authority to pass information to the Reporter 'if it appears to them that the child may be in need of compulsory measures of care'. It is not possible precisely to delimit the word 'may' as here used. We consider, however, that even when the social worker is inclined to believe that compulsory measures of care may not in fact be necessary for the child then, provided that a good reasoned *prima facie* case can be made for compulsory measures the information should be passed to the Reporter.

15. We believe that clarification of the meaning of Section 37(1A) would be helpful and **recommend** that central government consider the position.

THE VALUE FOR THE CHILD OF THE PROCESS OF THE CHILDREN'S HEARING

16. We think that in particular cases the experience of having his or her case referred to a hearing may be of intrinsic value to the child and play a part in securing the child's rights. For this reason, more fully elaborated in Part H, chapter VIII, paragraphs 12 to 14 we **recommend**:-

Social workers when considering whether or not to refer a case to the Reporter should have regard to the consideration that compulsory measures of care may be in the direct interest of the child, including his interest in having his rights to justice and welfare protected within the context of the Hearings System.

THE REPORTER'S ROLE IN ASSESSING EVIDENCE IN 'FIRST LAWFUL DAY' OR 'WARRANT' HEARINGS—THE WORD 'MAY' AGAIN

17. The Region's Solicitor raised with us the duties of the Reporter in relation to a situation wherein a 'place of safety' order under Section 37(2) of the 1968 Act had been obtained by social workers. Under reference to one of the core cases which we examined he submitted that it was not appropriate for a Reporter at this stage to have regard to the possibility that insufficient evidence might exist 'at this early stage in the process of protecting a child'. The Region's Solicitor contended that in the absence of an *ex facie* deficiency in the place of safety order such as its not having been signed, then the case ought to be taken by the Reporter to a hearing.

18. In our clear view for the reasons set out in Part H, chapter VIII, paragraphs 29-42 the Reporter has an important and distinctive role in assessing evidence even at this stage.

19. We would formulate our view thus:-

The Reporter's task when considering whether or not to take a child's case to a 'first lawful day' hearing is to decide whether a good reasoned *prima facie* case could be made out for compulsory measures of care on one of the grounds set out in Section 37(2)(a)-(e) of the Act.

A COGNATE ISSUE: SECTION 37(2) OF THE 1968 ACT

20. In considering the foregoing issue it came to our notice that a child could come before a 'first lawful day' hearing on the basis of a 'place of safety order' granted in terms of Section 37(2) of the Act which, of course, only embraces some of the grounds of referral. We believe that a Reporter might in a particular case wish, when making submissions to the hearing regarding the continued detention of the child, to make reference to other grounds of referral than those specified in Section 37(2) of the Act.

21. For the reasons more fully set out in Part H, chapter VIII, paragraphs 43 and 44 we **recommend** as follows:-

In any legislation amending Section 37 of the 1968 Act the opportunity should be taken of clarifying whether or not it is appropriate, when the continued detention of a child held under a place of safety order is in question, for the Reporter on the one hand and the hearing on the other hand to have regard to the facts which would be relevant to grounds of referral other than those under which the child may be detained in terms of the existing Section 37(2) of the Act.

THE REPORTER'S ROLE IN
DECIDING ON WHETHER (ON
'WELFARE' GROUNDS)
COMPULSORY MEASURES ARE
NECESSARY

22. The Reporter in addition to requiring (in our view) to apply his mind to the sufficiency of evidence when a 'place of safety order' has been granted must also apply his mind as to whether, on general welfare grounds, the case merits being placed before a hearing. We believe that in general Reporters, if informed by the social worker, that he or she cannot protect the child without the assistance of compulsory measures of care will accept this advice and take the case to a hearing. Some of the cases in the Region's 14 cases of concern suggested that this required clarification and for the reasons more fully set out in Part H, chapter VIII, paragraphs 45-48 we **recommend** as follows:-

When the Social Work Department has reported to the Reporter that they cannot protect the child without compulsory measures of care the Reporter, when considering if the interests of the child require him to take the case to a hearing, should, unless highly exceptional circumstances satisfy him that the safety of the child can otherwise be secure, bring the child to a hearing.

When a Reporter has received a referral from any source and has obtained a report from Social Work he should, unless he decides to bring the child to a hearing, always advise the Social Work Department promptly and in writing of his decision and of the reasons for that decision, stating in particular whether his decision is based upon evidential considerations, or the considerations that compulsory measures of care are unnecessary in the interest of the child, or both.

Any reconsideration of the powers of the Reporter should examine the implication of the Reporter's right to decide not to take a case to a hearing on welfare grounds (as opposed to evidential grounds) when Social Work have advised that compulsory measures are necessary for their work.

THE REPORTER'S ROLE IN
CHILD PROTECTION-
QUALIFICATIONS OF
REPORTERS: STRUCTURE FOR
REPORTERS

23. For the reasons set out in Part H, chapter IX, paragraphs 12-18 we **recommend**:-

That the amendment of primary legislation in relation to the role of the Reporter in child protection be considered;

That the Secretary of State consider exercising his powers under Section 36(2) of the Social Work (Scotland) Act 1968 with a view to introducing, subject to such *interim* arrangements as may be necessary and desirable in relation to presently serving Reporters, Depute Reporters and Assistant Reporters, mandatory minimum qualifications in law and in child care practice for Reporters, Depute Reporters and Assistant Reporters; and

That the Secretary of State examine the present position of Regional Reporters with a view to considering whether any form of central resource, national structure, or system of inspection would be necessary or desirable.

STATING THE GROUNDS OF
REFERRAL TO THE 'FIRST
LAWFUL DAY' HEARING

24. In a case among the Region's 14 cases of concern there was one wherein place of safety orders in respect of 2 young children were taken on the ground of a Schedule 1 offence apparently inflicted by a belt by their stepfather as chastisement in punishment for 'stealing' food. The Reporter took the case to a 'first lawful day' hearing which did not grant a warrant stating as its reasons, *inter alia* that the stepfather had had 'a reason for this' (ie the action of the child in stealing the food) and that the social worker had no reason other than the injury for seeking the place of safety and that the family had agreed to work on a voluntary basis with Social Work and Child Guidance.

25. The Reporter did not thereafter state grounds of referral based on the alleged Schedule 1 offence and stated to us that he had not treated the refusal by the hearing to continue the detention of the child as a reason for not framing grounds of referral. We accepted the Reporter's assertion but thought a Reporter in such a situation was placed invidiously. The Scottish Child Care Law Review recommended that grounds of referral be stated at 'first lawful day' hearings even if this meant recognising that the hearing may have to be delayed for up to 7 days.

26. For the reasons set out in Part H, chapter III, paragraphs 10-22 of our Report we **recommend** as follows:-

The recommendation of the Child Care Law Review that written grounds of referral be laid before 'first lawful day' hearings should be implemented.

STATING THE 'RELEVANT'
GROUND OF REFERRAL

27. The case of the foregoing children also raised a separate issue. This issue also arose in connection with many other cases. The children after the 'chastisement' incident were allegedly subject to abuse by the stepfather. The Reporter promptly stated grounds based upon an old 'Schedule 1' offence being a sexual offence by the same man. The Reporter ultimately justified his department's action in founding on this 'old' offence by averring that it was competent in law and in accord with the ordinary practice of Reporters. While acknowledging this to be so, and noting that in the recent case of *O v Rae* 1992 SCLR 318 the propriety of hearings' taking into account matters not appearing on the grounds of referral is endorsed, we nevertheless think it is good practice for Reporters to aim to state the ground of referral most relevant to the child's needs—if necessary in addition to other stateable grounds. We doubt if legislation could be employed to compel the stating of the 'most relevant' ground but we **recommend**:-

It should be recognised as good practice for Reporters to state when possible the ground of referral most relevant to the child's needs, if appropriate in addition to other grounds.

28. Cases raised in the Region's 14 cases of concern focused attention on the Regional Reporter's practice of deferring decisions with a view to 'monitoring' the case rather than taking the case to a hearing. For the reasons set out in Part H, chapter III, paragraphs 30-38 we concluded that deferring decisions for 'monitoring' while, having regard to the flexibility of hearings procedure, not necessarily contrary to law was a practice which had to be used very carefully. We accordingly **strongly recommend** as follows:-

A deferred decision by a Reporter should only be taken after explicit discussion with the Social Work Department, with the period of deferment and the 'monitoring' arrangements clearly agreed, and the whole arrangements confirmed *in writing*.

29. The issue of stating the 'most relevant ground' of referral recurred from time to time in our Inquiry. It is further discussed in Part H, chapter IV, paragraphs 1-25 in relation to the cases of the children Walter and Philip.

HEARINGS AND THE LONG-TERM
INTERESTS OF THE CHILD

30. One case among our core cases concerned a child in respect of whom the hearing, when dealing with the case, might have wished to have regard to his long-term interests. For the reasons set out in Part H, chapter IV, paragraphs 14-25 we thought this case suggested the possibility that hearings be entitled in appropriate circumstances to consider the long-term interests of the child. We formulated our views thus:-

We are aware that the Child Care Law Review has made recommendations which, if implemented, would involve the hearings in making a positive contribution to the deliberations of the court when applications are made to the court for parental rights orders, freeing for adoption orders or adoption orders when the child is subject to a supervision requirement. Having regard to the fact that any decision of a hearing potentially has implications for the long-term care of the child we **recommend** that consideration be given to conferring upon hearings in appropriate circumstances the right and duty to consider the long-term interests of the child.

NATURE OF PROFESSIONAL
DUTY ON THE SOCIAL WORK
DEPARTMENT AND THE
REPORTER TO BRING TO A
HEARING CASES WHEREIN
THERE IS A REAL RISK OF
ABUSE PHYSICAL OR SEXUAL

31. We encountered a case wherein there appeared to us to be a real risk of sexual abuse of the young sister of a girl (whose case was one of our core cases) who had herself been sexually abused. Neither the Regional Reporter nor the Department favoured introduction of this child to the formal structure of the Hearing System. For the reasons set out in Part H, chapter IV, paragraphs 26-33 we thought it our duty to comment on this situation and formulated our views thus:-

In our view when a situation of this type arises wherein a child faces real risk of abuse, physical or sexual, there will generally be a professional duty on the Social Work Department and the Reporter to bring the child within the ambit of the Children's Hearing System. We believe this view would nowadays be widely accepted but **recommend** that consideration be given to how best to emphasise this view.

EXCHANGING INFORMATION
AMONGST PROFESSIONALS
BEFORE HEARINGS

32. A major criticism formulated by the Region against their Reporter was that he had misdirected himself in law by treating the decision of the Court of Session in *Kennedy v A* 1986 SLT 358 as disentitling him from providing to the social worker a copy of the school report which was to be made available to the children's hearing.

33. While appreciating, as noted by BASW (paragraph 22.1 of their final submission) that the Reporter is the facilitator for other parties involved in the hearing with a duty to ensure that all concerned have necessary information about the child, the referral and the process of the hearing, we came to be clearly of the opinion that once a report had been lodged with the Reporter he held it in trust for the Chairman of the hearing who then had the responsibility of deciding which parts of the report were to be disclosed and to whom. We did not, however, see this as inhibiting in any way the exchange of information between professionals in whatever way they thought fit before a hearing. We set out our views on this in Part H, chapter V, paragraphs 1-24. We formalised our views as follows:-

We consider that a Reporter who has received reports prepared for submission to a children's hearing from agencies including Education, Health and Social Work holds such reports on behalf of the Chairman of the hearing which is to take place and as such should regard himself as bound by Rule 6(3) of the Children's Hearings (Scotland) Rules 1966 which prohibits disclosure to any person of information contained in such documents except as provided in the Rules and, being so bound, is bound to refuse to issue copies of such reports to any other agency.

We consider that social workers should not expect the Reporter to send them copies of reports which other agencies, including Education and Health, have prepared for the hearing: it is, however, imperative that all agencies co-operate as fully as possible, within the limits of professional confidentiality, to share information and discuss plans for work to achieve the best interest of the child. We **recommend** that the Directors of Social Work and Education and all others concerned use their best endeavours to promote such sharing of information in any appropriate way including, if they wish, by exchanging reports.

'HOME' AS A 'PLACE OF
SAFETY'

34. In the circumstances set out in Part H, chapter V, paragraphs 26 and 27 the question arose whether the home from which a child had been removed under a place of safety order could itself, circumstances having changed, be regarded as a 'Place of Safety'. We had no difficulty in answering this question in the negative and formulated our views thus:-

We consider that the place from which a child has been removed under Section 38(2) of the Act cannot be a 'Place of Safety' under Section 37(4) of the Act.

X IMPLEMENTATION OF POLICY: EDUCATION

THE VIEW OF THE EDUCATION DEPARTMENT 1. The view of the Region's Education Department remained substantially unchanged at the end of our Inquiry when Mr Matheson presented to us, at the request of the Director of Education, the 10 points which, the Director considered, represented the main aspects of the evidence given on behalf of the Education Department.¹ These submissions amounted to saying that change had been too rapid and, on behalf of the Social Work Department too unilateral, that the residential option had in practice been removed from the social work agenda and that an unacceptable emphasis on dogma had caused the assessed needs of children to predominate over policy. The Department of Education recognised that changes in such schools as Melville House were required but emphasised the importance of an agreed framework for such changes to be discussed and implemented. Since 1985/86 there had been difficulties in relation to children with social and emotional difficulties and the history of the 2 Departments in that field since that date had been 'undermined by a lack of trust'.

EDUCATION AND SOCIAL WORK: THE ORDINARY TENSIONS 2. We were told from time to time, and of course accepted, that tensions between Social Work Departments and Education Departments are not exceptional. One cause of such tension is the difference in perspective. The educationalist, whether she or he be Director of Education, Headteacher, guidance teacher or class teacher has to, as do all professionals working with children, have regard to the needs of the individual child but the educationalist must also have regard to the needs of the other children in the class or school and these needs may on some occasions conflict, or at least appear to conflict, with the needs of a particular individual child. The social worker, at whatever level, is particularly committed to working with the individual child and having regard to his needs. Moreover the individual child with whom the social worker is dealing will frequently be a child having special educational or emotional difficulties and his or her actions may present problems to the educationalist who, in addition to having to consider the needs of the child who has these difficulties, has also to consider the needs of the rest of the class or the rest of the school.

3. The contention of the Director of Social Work was that the tensions between himself and the Director of Education, and between his Department in general and the Department of Education, were no more than could be expected in the ordinary course of things. It was clear from exchanges of correspondence between the 2 Directors that some very critical remarks had been exchanged. It was also clear from the evidence of the Director of Education, Mr More, his Senior Assistant Director, Mr Macgregor, and his Assistant Director, Mr Hill, that the Education Directorate remained critical of the Department's policies as implemented since the introduction of the 1985 Policy Document. The Director of Social Work, however, maintained in evidence that his disagreements with the Director of Education could be regarded as confined to the 'corridors' of Fife House and did not have consequences at the level of field worker at which level, he said, relations were satisfactory.

THE TENSIONS WITHIN FIFE 4. We examine, in chapter II of Part I of this Report the very extensive evidence we obtained on the relationship between the Departments. We were satisfied that the relationship between the 2 Directorates was unsatisfactory to a degree far beyond that which might ordinarily be expected.

5. One of the focal points, in this as in other aspects of our investigations, was the preparation and presentation of the 'Report on Children in Care in Melville

¹For the full text of these 10 points see Appendix 31

House'. The Director of Social Work constantly emphasised that this was not a report 'on Melville House' but a report 'on children in care in Melville House'. As such, therefore, he did not think it was necessary to take into active consultation either the Directorate of Education or the Principal of Melville or his staff. Melville House was what was described as a joint venture between the Department of Education and the Department of Social Work. In 1985, being the year when the Report was prepared, all but a handful of the residents in Melville were placed there on the recommendation of the Social Work Department. The Report included as one of its 'implications for child care' that 'As the policy takes effect there will be a diminishing need for an establishment of this type'. Against this background we thought the Director of Social Work's insistence, maintained throughout our Inquiry, that the Report was not a report 'on' Melville House was a verbal and pointless one.

6. There was conflict of evidence between the Director of Social Work and the Senior Assistant Director of Education Mr Macgregor as to how much Mr Macgregor had been told about the Report which was in preparation. Mr Macgregor stated that at no time did he receive intimation of what was being prepared beyond casual remarks by Mr Bowman which were incidental to other business. We accepted Mr Macgregor's evidence on this point.

7. There was evidence that the functioning of Melville House had been a focus of disagreement between the 2 Departments before the Report, but we were very satisfied that the preparation and promulgation of the Report seriously worsened the relationship between the 2 Departments and that there was no evidence, at least until the end of our Inquiry up to and including the written submission of Mr Matheson, that the differences had been repaired.

8. The differences between Education and Social Work showed themselves in many ways and were in our view far from confined to the corridors of Fife House.

9. We refer in Part I, chapter II to the changed arrangements whereby the Social Work Department involved itself in nurseries and Family Centres. We also note in the same chapter the changed management structure within Ribleton House whereby the operational accountability of the Headteacher in Ribleton was transferred to the Department of Education as opposed to, as it had been in the past, to the Principal of Ribleton who was himself accountable to the Director of Social Work.

10. We could not comment on the ultimate value of these changes from the point of view of efficient use of resources. Taken together with other indications, however, they seemed to us to display, on the part of Social Work, a tendency to under-value the concept of working together with Education.

THE SCHOOL PSYCHOLOGICAL
SERVICE

11. Educational psychologists, being in day-to-day contact with children with educational, social and emotional difficulties, were able to give us their impressions of how policies were implemented in practice in relation to individual children. They also said something about their experiences with regard to the administration of social work offices where these impinged on other professionals such as themselves. The former head of the Service was able to give an overview. Like many others he welcomed the written Policy Document which he described as 'wholly acceptable' and thought the present Director would give the Department impetus and direction. Once the policy was in operation, however, he began to receive reports that his staff were finding that their previous relationship with social workers was not being maintained, that workers were, apparently on instructions of Head Office, not able to utilise all the options available in the Policy Document and that, while the picture was not completely consistent, there was an impression that when reception into the care of the authority was in question the responsibility for this was being passed to the educational psychologist. Other grades of educational psychologist confirmed this impression giving evidence, in varying degrees of directness, of such inhibitions on workers discretion. One reported apparent difficulties in the Rosyth office in relation to being invited to attend case conferences.

REPORTS TO HEARINGS 12. We have referred in the previous chapter to the Region's Solicitor's criticism of the Regional Reporter for not permitting Social Work to have a sight of education reports which had been lodged with the Reporter. The Director of Education told us that he refused to authorise school reports being sent to social workers; he justified this by reference to his distrust of how they would use the information thereby conveyed. He thought the Social Work Department would be 'in a better position to put their own case rather than the best interests of the child'. Thus the radical reason for the non-provision of education reports to social workers was the Director of Education's distrust of the Social Work Department's policy as implemented.

THE FIFE SECONDARY HEADTEACHERS 13. The belief of the Director of Social Work that differences between himself and the Director of Education were limited to the upper echelons of administration were, we thought, to an extent contradicted by the contents of memoranda prepared by the Fife Secondary Headteachers Association; these were produced by the Director of Education. These memoranda expressed strong criticisms of the attitude of social workers insofar as it had impinged upon the Headteachers. They recorded, for example, their impression that 'education is not greatly valued by social workers' and the tendency they detected in workers 'to aim for re-integration [into mainstream education] at all costs'. We found support for these contentions in some of the cases we analysed.

14. The Director of Social Work, at the end of his oral evidence, rejected the validity of the impressions of the Fife Headteachers and commented that they were typical of the type of complaints which would be made when any collection of Headteachers in the United Kingdom got together but did not accord with his own experience when speaking to guidance teachers and Headteachers in Fife. In our view the impressions of the Headteachers were corroborated by the impressions of other observers and by the evidence contained in our examination of cases.

UNDER-VALUING OF EDUCATION 15. We were satisfied from the opinion evidence and case evidence that social workers either did not sufficiently appreciate the importance of engaging with Education in order to secure education for children or were unable so to do. Case examples suggested that this was not a high priority. We thought it reasonable to regard these instances as causally connected with the extreme and excessive tension between the 2 Departments.

16. We were made aware in the course of evidence that the Department of Education in Fife operated a policy whereby a comparatively high number of pupils were excluded from school. We were also made aware that the provision for special 'day' education and other special educational facilities has greatly improved in Fife since 1985. It has not been suggested to us that the Department of Education was blameworthy in its policy of exclusions nor deficient in its provision of special educational places and we of course can make no finding of fault in these regards. We must recognise that these facts may have contributed to the difficulty which some children who had special needs experienced in obtaining education. We were clear, however, from the evidence that an important contributory factor was the attitude of some social workers towards education as mentioned in the preceding paragraph.

Conclusion

17. Our Terms of Reference directed us to assess how far the Region's policies in exercising their functions under the 1968 Act met the 'best interests of children at risk'. From the beginning we indicated our intention of taking a broad interpretation of the phrase 'children at risk'. We took the phrase to include not only children at risk of being neglected or abused but also to children who were affected by the Social Work Department's policies who were at risk of not obtaining the best opportunity of having their wellbeing adequately secured. We throughout regarded proper educational opportunity as a legitimate interest of all children and we therefore regarded the risk of losing such opportunity as being well within

our remit. In 'Children in the Public Care: A Review of Residential Child Care' by Sir William Utting it is stated, at paragraph 3.23 of the Report, as follows:-

'Children who have experienced disturbance and disruption in their early lives are likely to come into care already educationally disadvantaged. It is even more important, therefore, that educational deficits are identified and given special focus of attention by care staff. Educational attainment is one means by which children will be strengthened to cope with independence.'

18. We thought this constituted a timely reminder of the great importance of educational provision for those who are generally disadvantaged and vulnerable. We thought the situation underlying this quotation justified, if justification were needed, the prominence which we accorded to the educational issues which arose in the course of our Inquiry.

XI IMPLEMENTATION OF POLICY: OTHER AGENCIES

THE HEALTH BOARD 1. At the beginning of the Inquiry we heard evidence in closed session from 2 consultant child psychiatrists and 2 clinical child psychologists. Each of these expressed some dismay at the effect of the new policies on their working relationships with staff of the Department. We regard the evidence of these witnesses as important. This was not only because what they said was to be reflected throughout the Inquiry by many of those who testified in open session; it was also because these were experienced professional people who had specialist knowledge of and skills with the client group under review and whose daily work brought them into face to face contact with vulnerable children and their families. This does not mean that we regarded them as in any sense 'authorities' on social work with children and their families, or that we were not well aware of the differences in perspectives and responsibilities between these 2 professions on the one hand, and social work on the other. Nevertheless we were impressed by their regard for good social work with children and their concern about the impact on this of the implementation of new policies.

2. These 4 witnesses spoke with marked concern about the sharp move away from residential care and the enthusiasm and indeed 'rigidity' with which it was pursued. One of them, in language which recalls the Reporter's phraseology, told us 'too rigid an insistence on the primacy of the policy statement can result in a pre-emptive assessment of certain youngsters' needs'. Once again there was evidence of another professional, in this case a clinical psychologist, saying that she was expected to take responsibility because the social worker did not feel free to express her own opinion giving rise to a feeling of mistrust and a deterioration in professional relationships. There was also evidence in these quarters of a reluctance by social workers to take account of the views of other professionals—a reluctance which these other professionals associated with the Department's over zealous pursuit of a policy which was dogmatically opposed to care within a residential establishment in almost any circumstance and equally dogmatically in favour of care by foster parents or community carers, irrespective of the complexity of the case, in the few cases wherein removal from home would be countenanced. A general reluctance to admit to care was also detected in order to comply with the 'very strange', as one of these witnesses described it, provision in the Policy Document that families should not become 'direct clients' of the Department unless no other source of help is available to them. There was also evidence of residential establishments being treated as the negative and highly undesirable pole of social work intervention and the consequent damage to the morale of those working within such establishments.

3. We heard from these witnesses evidence to the effect that the policy initiative of 1985 had been implemented in such a way as to discourage social work involvement at an early stage in the case and in a way which was unreceptive to the contribution which they, as other child care professionals, could make to the work with a case. The evidence from the child psychiatrists also criticised the Department for having terminated the arrangement whereby a social worker employed by the Department was 'outposted' to the Adolescent Psychiatric Unit of Stratheden Hospital, Playfield House.

4. The Region did not accept the criticisms of these witnesses and went on to argue that there were indications within the case related evidence that the apparent ease with which Health Board professionals could withdraw from cases was unsatisfactory; the Region pointed to the desirability of the role of health professionals in relation to the provision of services for children in care being more clearly defined perhaps in primary legislation. Mr Matheson linked this with one

of the recommendations of the Child Care Law Review and suggested that the necessity for such a recommendation indicated that any tension we might find in Fife could be found elsewhere in Scotland.

5. We concluded that we had found support for the criticisms voiced by the child psychiatrists and child psychologists. We did not think we could disregard these criticisms merely because they had been advanced before us in closed session, nor because they had not been made the subject of a formal submission by the Health Board, nor because they had not been formally raised with the Board by the professionals concerned. We also concluded that the reasons given for the withdrawal of the outposted social worker to Playfield House were inadequate.

6. We are not able usefully to comment on the possibility that the tensions between the Health Board professionals in Fife and the Social Work Department would be found elsewhere in Scotland. We do not think however that, as the Region's Solicitor submitted, this could be inferred from the deliberations and recommendations of the Child Care Law Review. The recommendation concerned¹ deals with the provision of relevant services by Health and Education Authorities. The issue here was not provision by the Health Board—the services were in general available—but the exercise by professionals of their clinical judgments as to how far their particular specialisms could help a child at a particular time. The Health Board professionals were not unable or personally disinclined to provide the 'relevant services' but they believed that the possible usefulness of the work proposed by them had been rendered irrelevant by changes in the social work plan about which they had not been consulted. Moreover they detected an inability or unwillingness on the part of social workers to co-operate with them and to make the best use of their services and identified the 1985/86 period—the period of the social work initiatives—as the time when this commenced.

7. Another Health Board employee, Miss Gillespie, the Manager of the Community Nursing Service, gave evidence; this was in open session and cross-examined by the Region. Unlike the testimonies of the child psychiatrists and clinical psychologists Miss Gillespie's written and oral evidence was not founded on her direct knowledge of individual cases but on her experience of managing, in addition to other nurses, some 110 health visitors throughout the Region. She was also a member of the Area Review Committee and spoke about the Memorandum of October 1985 regarding referrals to the police.

8. Miss Gillespie said that there were many examples of good personal relationships between health visitors and social workers in the Region but she also told us about the concerns of some health visitors that they were denied the right to hold informal discussions with social workers in instances where there was concern about the children but no specific evidence of abuse. She spoke also about the precipitate way in which she, and others including the Region's paediatricians, believed the Director to have launched his 1985 memorandum.

9. We regarded Miss Gillespie as a straightforward and genuine witness who occupied an important professional position in the Region. Her testimony supported what others had told us about the impact of the new policies on co-operation between those working directly with children in Fife. Some of her detailed evidence about cases was successfully contested by Mr Matheson but her opinion at the time she came to the Inquiry was based on discussions through the years with many health visitors and we found no grounds for discounting it. We think that health visitors play an important part in the protection of children, particularly those under 5, and were interested to receive confirmation from Miss Gillespie that those members of her staff were now, on the initiative of the Reporter, providing reports directly to him, and in some instances attending hearings.

THE REGION'S POSITIVE
RESPONSE—EXAMPLES OF CO-
OPERATION WITH OTHER
AGENCIES

10. In response to the suggestion that the Social Work Department was unable or unwilling to co-operate fully with other agencies the Region's Solicitor cited the evidence of the Police; the Royal Scottish Society for the Prevention of Cruelty to Children; and the Director of the Aberlour Child Care Trust, Mr Barlow.

¹Recommendation 35, 'Consideration should be given, paying due regard to the National Health Service (Scotland) Act 1978 and the Education (Scotland) Act 1980, to specify exactly duties on Health and Education Authorities to provide relevant services for children in care'

THE POLICE 11. We examined evidence about the Department's relationships with the Police in the form of a written submission from the Chief Constable and then, at the suggestion of the Region, invited oral evidence from the Depute Chief Constable Mr Wilson, from Inspector Robertson, at the time Administration Inspector for the Sub-Division of Dunfermline, and Sergeant Reid then attached to the Child Protection Unit.

12. The Chief Constable wrote favourably of the initiative taken by the present Director of Social Work in relation to the establishment of the Child Protection Guidelines and the recognition of the vital police role within the framework of child protection. He mentioned examples of 'reticence' and 'reluctance' by the Department in taking children into care when their interests would seem to demand it but said that in general the relationship between the Police and the Department was a positive one with instances such as these tending to lessen the otherwise good relationship by creating frustration and exasperation. He mentioned a number of joint initiatives including multi-agency initiatives with personnel from social work and police undergoing training on child protection matters. He also referred to the pilot scheme involving the joint investigation by social work and police in child protection cases.

13. Depute Chief Constable Wilson explained the origin of the Police Notification Memorandum and, while recognising that this had caused some difficulties and even attracted some opposition from other agencies he believed the changed procedure had on the whole resulted in improved child protection—there having been an increased number of referrals to the Police in the post-1985 period.

14. Inspector Robertson told us of his generally satisfactory relationship with the Department in the Dunfermline (North), and South offices. In child protection matters he thought the publication of the 1985 'Child Abuse: Fife Guidelines' had been a turning point. There had been 'teething problems' following the introduction of these guidelines but the situation had now become easier.

15. Sergeant Reid spoke about the working of the Child Protection Unit which, when she gave evidence, had been running for some 6 weeks, covering 3 out of the 7 Areas in Fife; when it was fully operational it would comprise 3 social work representatives and 3 police officers. She pointed out the advantages of this scheme contrasting with past days when children might have to attend police stations for interview and when unnecessary delays were incurred. She explained that she and her colleagues were actively engaged in explaining the work of the unit to other professionals.

16. In relation to offending children the Chief Constable wrote of concern regarding the number of children who re-offended while in care and about the large amount of police time occupied in dealing with absconders from care. He instanced cases of children committing offences being warned on several occasions by the Reporter and then appearing before a hearing only to be discharged 'to begin the cycle again'. He thought this 'hard core' of juvenile offenders should be placed in secure residential places in order to interrupt the pattern of offending. Both Depute Chief Constable Wilson and Inspector Robertson gave evidence in similar terms regarding juvenile offenders.

THE RSSPCC 17. The Society's General Secretary to whom we had written at an early stage in our inquiries reported a constructive professional relationship between the Society and the Department and had no specific matter of concern to draw to our attention. We also received written, and, at the suggestion of the Region, oral evidence from the Society.

18. Mr Dunning, Divisional Manager, East of Scotland, who reported good personal relationships at most locations in the Region said he did not detect any inclination among the Region's social workers to be unduly rigid in avoiding admitting children to care although emphasising in this connection that his contact with social work staff was 'very limited'. He reported that the Society's investigation of child abuse cases had been facilitated by the Department and that case conferences were always convened if requested. He spoke highly of the written material on child protection including not only the 'Child Protection—Fife Guidelines' booklet of March 1989 but the detailed practical guidance contained within

the 'Child Protection Practice Guidelines'. He thought the social work presence tended to predominate in child abuse case conferences but this was not confined to Fife.

19. The Society's 'Case Worker' Mr Ness in charge of the Fife branch office of the Society had more direct experience of work in the field. He told us that the Society had always enjoyed a good relationship with the Department's Area offices and while they had experienced differences with individual social workers they did not have any great difficulties with regard to the policies or procedures of the Department. He thought inexperienced social workers would tend to do things 'by the book' until they acquired greater experience but that this was an individual characteristic rather than a policy matter: also it was not confined to Fife.

20. Mr Ness told us that he had detected a difference of approach towards analysing the personal problems of clients in that the Department (as opposed to the Society) seemed disinclined to look to a possible root cause of the problem. One such example had caused 'a great deal of furore' between the Society and the Department and, one or two instances of this approach having come to his notice recently, he accepted the possibility that this might be a consequence of central direction rather than the idiosyncrasies of an individual social worker.

21. This witness had some impression, from his own experience and based upon information from his colleagues which gave rise to 'the odd suspicion about the lackadaisical attitude of some social workers but nothing we could put our finger on'. He had been aware of cases which had been passed by the Society to the Department in the expectation that visiting and supervision would follow but it had turned out that the social worker had not gone near the house at all. This had not, however, happened in any serious case.

22. Mr Ness was conscious of and regretted a decrease in recent years of cases worked jointly with the Department and the Society. He was not absolutely certain as to what the cause of this was but agreed that he had no direct evidence to suggest that the cause lay in the Department's desire to pursue an independent line. He believed that social workers were nowadays taking on more responsibility than formerly for work in the child abuse field and were consequently more prepared to do it themselves rather than ask others to do it for them. He thought that the social work presence did tend to dominate case conferences, and believed that parents were not always invited to attend but thought that when they did attend they were given the opportunity to state their point of view which was taken 'very seriously'.

23. Mr Ness, like Mr Dunning spoke highly of the Child Protection Guidelines, the quality of which supported his view that Fife was in many respects among the leaders in the field with regard to the fighting of child abuse.

THE ABERLOUR CHILD CARE
TRUST

24. Mr Barlow, the Director of the Trust, spoke of enjoying a good personal relationship with the Region and its Social Work Department for a considerable period of time going back to the days of Mr Bowman's predecessor Mr Gillespie and also Mr Bowman's predecessor as Depute Mr Edward Thomas. He said that a number of mutual projects had been tackled, citing in particular projects for the intellectually disabled, and described the Region as having a 'very enlightened attitude' towards the voluntary sector—a Region with whom his Trust felt it could 'do business'.

25. The evidence of this witness was, as one would expect from the Director of the Aberlour Trust largely concerned with the Department's attitude towards residential care. The Trust manages the Sycamore project in Kirkcaldy which comprises the small specialist residential unit, Sycamore Cottage, and 2 supporting houses. It was acknowledged that the Department made little or no use of the Sycamore project and indeed the Area Social Work Organiser for Kirkcaldy, within which town the project is situated, had little knowledge of what the project had to offer; there was other case evidence establishing that the resources of the project were not readily considered by the Department's social workers as a resource which they would advise for clients.

26. This witness recognised the general drive of the Department's policies towards replacing residential care whenever this was possible. He thought Fife

was doing much the same as other Regions 'only rather more so' and saw it as taking a 'more positive line about the use of residential care', aiming to use alternatives in the belief that these would work better for the children and young people concerned. He did not see Fife's attitude as symptomatic of any unreasoning aversion to this type of placement but thought it was 'a pity' that Sycamore was not receiving more Fife children, although in principle he welcomed the Region's alternatives and respected the motives which lay behind the change in emphasis. He could not associate himself with any 'disparaging attitude' towards what the Department was trying to do but he remained interested to learn what had happened to those who had been dealt with by way of alternatives to residential care. He was not, however, entirely uncritical of the Region's policy and thought, for example, that the formulation of Clause 4 of the Policy Document, stating as it does a *prima facie* maximum period of 6 months in residential care was arbitrary.

27. Mr Barlow was well aware that the Department's orientation towards residential care was different from that of his Trust but said that there had been no 'acrimony' and that his approach had been that if the Region was trying to do something differently from the Trust then the Trust would not dispute the matter but would find some alternative use for the project—as had turned out to be the case with the project being used more nationally than locally. The Sycamore project was not an example of co-operation over policy.

Conclusion

28. In this and the 2 previous chapters we have considered evidence from other agencies about the impact of Social Work policies on work with children and their families. As we have pointed out in the course of the discussion the testimony of these witnesses was based on differing levels of specialist skills in work with children; differing degrees of direct contact with individual cases and differing amounts of detailed knowledge about the operation of the Department's policies.

29. The combination of a Social Work Department holding an 'over-simplified' view of child care with this view being held to in a dogmatic way might be expected to have some effect on relationships between the social worker and the other child care professionals who become involved in working with disadvantaged children. Such proved in many instances to be the case, and the closer the relationship with the process of working with and advising on individual children the more difficult the relationship tended to become.

30. We appreciate that other agencies, and by no means only those in Fife, may sometimes have seen admission to care as the solution to the particular problems posed by a child to their own organisation. This is likely to be the cause of some disagreement with social workers, who are often in a better position to witness the long term consequences for the children concerned. There may still be some validity in a social work view based on this consideration. However we must state that in the course of the Inquiry we did not find this attitude among those witnesses from other agencies who were in face to face contact with children and their families and we were indeed struck by the extent of agreement in their evidence.

XII IMPLEMENTATION OF POLICY: WITHIN THE DEPARTMENT

Introductory

1. We described in Part F and crystallised in chapter VII of this Part our view that the policy initiatives which followed the introduction of the 1985 Policy Document were characterised by an impetus towards an orthodoxy which oversimplified the definition of what constituted the best interests of children according to the following hierarchy: by placing excessive and inappropriate emphasis on the child remaining at home; the child having social work carried through at home; the child receiving voluntary as opposed to formal or compulsory measures of care; and a refusal seriously to consider the possible usefulness of care within a residential establishment, with the consequence that the small proportion of children for whom such disposal was appropriate would not receive it.
2. The creation of such an orthodoxy could not have been achieved without some erosion of the professional discretion of the social worker. This issue is considered more fully in Part G and will here be only very briefly summarised.
3. Many of the main grade and other social workers who gave evidence at the instance of the Region in relation to the core cases denied that they had been influenced by policy conditions in coming to individual decisions. As set out in Part F of our Report we were satisfied that decisions taken by workers in connection with the core cases demonstrated the influence of the impetus which was given to policy implementation after 1985.
4. Some workers gave explicit acknowledgement that professional discretion was eroded. These included the third social worker named by Mr Narbrough who spoke of his professional judgement being impaired 'to a small extent' and Mr D from the Rosyth Office who spoke of being expected to prepare reports which did not reflect his professional opinion. The erosion of the professional discretion of the social worker was also spoken to by Mr N in his evidence in closed session.
5. The discretion of the individual social worker was eroded by the Department's emphatically negative attitude towards residential care. It was clear that social workers were not encouraged to think constructively about the possibility of residential care. This in itself would inhibit their discretion.
6. There was no evidence that the Department, through its Research and Development Unit or otherwise, engaged in any positive analysis of the benefits of residential care. This was consistent with the Director of Social Work's statement that he could not find evidence that residential care helped children.
7. The discretion of the social worker in relation to considering residential care was also eroded by the absence of a range of such provision. Rimpleton House did not satisfy this need during the period under our review.
8. The social worker's discretion was also eroded in relation to bringing children before children's hearings with a view to compulsory measures of care. We are satisfied there was a strong atmosphere which was inimical to the possibility of compulsory measures of care being imposed.
9. We entirely accept that social workers in child care as in other fields are not independent of all external influences. They must operate within the general policy of the Department and subject to the restraints imposed by resources.
10. Their paramount task, however, is to attempt to understand the needs of individual children and this can only be achieved if critical thought is receptive to the 'messages' being given by the child, the family and other professionals. We are satisfied that the impetus given to policy implementation following the promulgation of the 1985 Policy Document was inimical to such a critical

approach. Not all social workers were affected by this to the same degree but those so affected would be liable to make judgements in relation to individual cases in accordance with the simplistic hierarchy outlined in Part F of this Report and not in accordance with the individual needs of the child with whom the social worker was in contact.

11. The foregoing reflects the criticism by the Regional Reporter at the outset of the Inquiry when he identified the defect in implementation of policy as treating desirable objectives as ends in themselves.

XIII IMPLEMENTATION OF POLICY: THE HEART OF THE MATTER

Introductory

1. At the conclusion of his oral evidence 'in chief' Mr Bowman agreed that he as Director was accountable for everything which went on within the Social Work Department and went on to say that he was 'very happy' to accept that responsibility in the circumstances. He did not say that every single thing which happened had been correct or appropriate but accepted that the ultimate responsibility was his. Later in his evidence we asked the Director to clarify his stance; we observed that a Director cannot necessarily know everything which goes on in his Department and asked him whether he was satisfied that his knowledge was sufficient and that his systems had worked sufficiently well in order to enable him to accept responsibility with some confidence as contrasted with the formal acceptance by an honourable ship's captain for all that is done in his name. The Director replied that the answer lay between the two but 'from the best of my knowledge currently and based on my perceptions throughout the time in post I genuinely accept responsibility as Director for what has happened in my Department'. He said he could not pretend that everything was perfect all the time and he accepted that there were areas wherein he would wish to improve both his own management performance and that of his colleagues. He thought the situation now was almost unrecognisable from the time when he took over and he said that the credit for that development had to go to his senior officers 'across the Department' and not just to him personally.

2. We later questioned Mr Bowman in the context of his complaint that persons such as the former Panel Chair, Mrs Montgomery, had felt it necessary to go to others with her complaints and suggested that the reason for this might be the experience of complainants that the possibility that anything could be seriously wrong was not one which he was prepared to entertain. To this Mr Bowman replied 'but there is no evidence that anything is seriously wrong, if the evidence was there I would entertain it'.

3. In relation to the evidence about the core cases the Director said that his position would be that they might indicate something about child care practice in these 14 cases but that he might have difficulty in going with us all the way in an assertion that they indicated something about child care practice in Fife in a representative sense. He thought that inevitably there would be one or two instances of missed opportunities in the cases and that there might be one or two incidents of bad practice. He also identified some instances where a degree of over-optimism had been displayed but he did not see any lack of effort. He concluded 'with all the criticisms I might have as Director about the handling of the individual cases, I am left with the feeling, and the clear view, that the work being pursued on the cases, the efforts were not out of accord with the principles I would like staff to attain'. He said he would 'not dissociate himself' from the work carried out in the cases and that while he obviously had reservations on individual cases it remained his view 'that the efforts in the cases were good enough and consistent with the kind of practice I would like to see conducted in general terms'.

4. Our own examination of the structures and procedures whereby policies were implemented confirmed that Mr Bowman's acceptance of responsibility could not be regarded as merely formal. We said (Part G, chapter XII):-

'Mr Bowman was responsible at the outset of his career in Fife for putting into operation a new organisational structure for the Department. We heard no criticism of this and it appears usefully to have clarified the lines of accountability in the Department. In reviewing the various points of concern which

have been noted in this Part we were however unable to assign clear management accountability for them at any level lower than the Director.'

5. Towards the end of his oral evidence the Director said that in none of the cases we instanced did he find anything to suggest that social workers or their immediate managers believed themselves to be doing anything other than pursuing courses of action in the child's best interest; and in his written submission he described the work done in the cases as presenting 'a rewarding and encouraging picture'.

MR BOWMAN'S POSITIVE
ACHIEVEMENTS

6. In our view the clarification of management responsibility and accountability within the Department was in principle justified. Not having studied the Department in any detail before 1985 we cannot say how strong was the need for this reorganisation but experience shows that the structure of organisations requires to be examined and modernised from time to time.

7. The creation of the post of Depute Area Social Work Organiser as one having special responsibility for child care was in our view, in principle, a very welcome development recognising as it does the special importance of this type of social work.

8. We also welcome in principle the inauguration of the Research and Development Unit. The collection of statistical information is nowadays an essential instrument in the understanding and management of all fields of social work. We received evidence that he promoted the expansion and development of the Department's Training Section and that in relation to child care their work was focused necessarily on inter-disciplinary work in child protection and the activities of unqualified staff. We believe that this was a valuable resource in the Department.

9. The Department was active in the detection and investigation of child abuse. In 1989 the 'Child Protection—Fife Guidelines' were approved by the Area Review Committee. The terms of these guidelines were in general satisfactory. Their drafting had been co-ordinated by the Department. The associated guidelines in relation to admitting children to care were also satisfactory.

10. In June 1990 the Department, along with the police, in Dunfermline, set up the Child Protection Unit, as a means for investigating incidents of child abuse. On the information available to us this seemed to be a satisfactory and progressive joint venture. In March 1989 the Department inaugurated a Client Relations Officer, in principle, a useful development.

11. We were conscious both in certain of the core cases, which had their origin in the cases causing concern to the Reporter to the Children's Panel, and from the Region's 14 cases of concern, lodged by the Region to illustrate their criticisms of the Reporter, of conscientious voluntary work carried through by social workers in the field of child protection and concluded that the Director would be entitled to be encouraged by some of the work done in connection with these cases.

THE OVER-SIMPLIFIED
APPROACH

12. In oral evidence Mr Bowman stressed the complexity of social work with children and laid emphasis on the importance of treating each child as an individual and approaching each problem as an individual problem. We did not find this reflected in the impetus to the implementation of the Region's policy for which we regard him as responsible. On the contrary this impetus was characterised by over-simplification of the essential issues.

13. We have set out the specific nature of this impetus towards over-simplification in Part F of this Report and will not weary the reader further by attempting a précis of that Part here. One example of what we meant must suffice although, as we shall see, it points to other facets of the problem as we saw it. It is now well recognised that unless a child is in danger at home from physical or sexual abuse or neglect his or her home is usually the best place for social workers to do any work which may be required. There may be problems for the child at home but by working with them in the home the social worker is in immediate contact with the problems and may therefore often have a better chance of addressing them if the child is transferred to a different environment. There is the further consideration that removal of the child from home can itself produce new problems: local authorities, we were reminded, have no uniquely great skills as

parents. As a broad guide, therefore, the view that 'home is best' is a reasonable one in child care practice. But in our view this broad guide came to be exalted to an orthodoxy. The mere retention of the child at home—or return of the child to his or her home—was seen as an intrinsic good. The consideration that social work might be required with the child when he or she was at home was, except in child protection cases, under-estimated. The position of children who were 'beyond control' tended to be regarded as satisfactory provided they were at home. The prime responsibility of the social worker in relation to the child who was away from home was to effect a return home, preferably a 'quick' return home. Any work carried out by either residential or Area based social workers when the child was away from home was regarded as necessarily ineffective in relation to any context other than that in which the work took place.

14. In our view this approach was dangerous and inimical to good social work practice. The social worker's first duty is to ask what are the needs of the child. If the view that home is best unless dangerous is held too firmly then the risk is that this duty may be lost sight of. If this view is elevated to the level of an almost religious orthodoxy then the duty to look to the needs of the particular child is almost certain to be obscured for many workers—perhaps for most—notably (a) for those whose personal philosophy is already inclined uncritically in that direction and (b) for those whose experience is limited and, (c) for those whose training in the complex and difficult field of child care has not been as comprehensive as it might have been. Even experienced and competent workers will not be unaffected by an atmosphere which elevates orthodox belief over critical thought.

CONSEQUENCES OF THE
SIMPLISTIC APPROACH:
GENERALLY

15. The approach which Mr Bowman's impetus imparted to child care work had a number of effects both within the Department and outside of it. It necessarily had an effect on the work done by individual social workers with individual children and generally the effect was related to the imposition of an orthodoxy in a field wherein the importance of critical thought should be emphasised rather than diminished.

THE DISCRETION OF THE
INDIVIDUAL SOCIAL WORKER

16. The most serious and dangerous effect of the impetus towards simplicity was the erosion of the professional discretion of the social worker. As we have noticed, here and elsewhere in this Report, the ability of a social worker to think about and decide on a case on its merits—listening to the child, listening to the parents, listening to what other professionals have to say is central to the social worker's task. In order to accomplish this task and to exercise appropriate professional discretion he or she must be well trained and must receive good supervision. This should be undertaken by a senior who is experienced in child care and trained in the skills of supervision. The senior exercising this function has to enable the social worker to make a clear and critical analysis of the child's situation and the possible interventions, and to do this in the context both of the strong emotions which situations of this kind arouse in the worker and others and also of the accompanying sharp conflicts of interests. Of course the social worker's discretion is not absolute. Social workers must work within various limitations including those of general and particular policies and they are affected by the available resources. But the consideration that such limitations exist must not take away from the essential duty of the social worker to remain alert to the needs and wishes of the individual child in the individual situation and to the most appropriate available means of being able effectively to address these needs. The consideration that these duties must be performed within a structure and that they are subject to the limitations imposed by restricted resource makes it all the more necessary that the importance of professional discretion is clearly acknowledged.

DISCRETION LIMITED BY
RESTRICTION OF RESOURCES

17. Instead of being accentuated this discretion tended to be diminished. The provision of resources such as residential establishments was limited. A range of residential facilities was not either provided by Fife or for the most part accessible beyond Fife. Such a range of facilities as was provided in Fife, Melville House and Sycamore Cottage for example, were for practical purposes 'out of bounds' to the individual worker. The Departmental residential facility which was in

being—Rimbleton House—was reduced in capacity and admission to it was subjected to ‘tight gate-keeping’. There is nothing wrong with ‘gate-keeping’ as such, and even ‘tight’ gatekeeping may have its place, but the emphasis, we are satisfied, was wrong and an atmosphere created which tended to brand as a heretic a social worker who advocated placement in Rimbleton as a first option: such an approach is destructive of the critical thought which is essential for constructive social work. A detailed but significant example of the strength of the orthodoxy in relation to residential accommodation is provided by the short term secure accommodation provision within Rimbleton. The proposal was made that this unit be ‘de-commissioned’. At one stage it was out of action for some months because of fire damage. No-one much likes the thought of placing children in a ‘locked room’ but such a placement may in exceptional circumstances have its place in the care of an individual child. Placement in this kind of accommodation is in any event allowed for in our legal system and for an authority which was proud to have as many facilities as possible within its own boundaries the idea that it should be removed must be regarded as only explicable by a dogged opinion that, whatever anyone else said or whatever the law provided, this form of placement was being treated as ‘out of bounds’, with consequential diminution of the discretion of social workers particularly those based in Rimbleton who might, through their close knowledge of the child’s needs, be inclined to take a different view.

DISCRETION LIMITED BY
OPERATION OF CENTRALLY
MANAGED SPECIALIST TEAMS

18. The worker in close continuing contact with a child is likely to have the best chance of assessing the child’s needs. Of course a specialist team entering a case for a short period may sometimes provide a further insight but we believe that, since the main if not only characteristic of the centrally managed teams was reserved time, intervention by such teams sometimes tended to erode the discretion of the individual Area-based specialist social worker. We think the position is materially different when, as in Glenrothes, a specialised team is based within the Area office. The Area worker and the specialised team worker will then be under the same local manager and are likely to have confidence in each other and be able to share information more readily. We were not confident that this happened as between Area workers and centrally managed teams. The special position of the Glenrothes office in this regard, incidentally, illustrates a point which we have had to refer to from time to time: the impetus given to policy implementation throughout the Region was not uniform. It was filtered by middle managers in a diversity of ways, perhaps nowhere more markedly—in relation to the central teams and also in other ways—than in the Glenrothes office.

DISCRETION AFFECTED BY
RETROSPECTIVE STUDY OF
ADMISSIONS OF CHILDREN TO
CARE

19. The admission of children to care was at one stage ‘monitored’ retrospectively by Headquarters staff. There are obvious advantages in such an exercise. But we were satisfied that this monitoring was itself carried out in a somewhat simplistic way by a rather mechanical application of the ‘care and control test’ and tended to equate success with reduction of numbers in care. The knowledge that such monitoring was being done and that Headquarters were taking such a lively interest, contributed, we believe, to the erosion of the social worker’s discretion.

DISCRETION AFFECTED BY
FEARS OF DISCIPLINARY
ACTION

20. It was pointed out that no case of a worker being disciplined for recommending, say, a residential placement had been drawn to our notice. We accepted this. Nevertheless we were satisfied that there was such a strong atmosphere within the Department that residential care was an unacceptable recommendation that some social workers felt unable to make it for fear of possible consequences for themselves: not necessarily in the form of formal disciplinary action but by attracting to themselves the disfavour of management. Such workers did their best for the children for whom they were responsible, sometimes by acquiescing in recommendations for residential placement advanced by other professionals such as educational psychologists.

OTHER PRESSURES

21. There were other inhibitions on professional discretion. The ‘Guidance on Investigations etc’ was presented as conveying to social workers that they should not go beyond facts directly connected with grounds of referral when reporting to the Reporter or a hearing. The ‘care and control test’ was interpreted in a rather

mechanical way. Counter-signature of reports was prescribed when admission to care was being recommended, although the evidence was that this was implemented in a highly erratic way.

CENTRALITY OF THE EROSION
OF THE SOCIAL WORKER'S
DISCRETION

22. The erosion of the discretion of the main grade worker constituted in our view the single most serious consequence of the simplistic approach to implementation of policy. The consequence of the erosion was that the member of the Department who was, or should have been, in closest contact with the child, and his family was restricted in using his judgement, based on this experience, appropriately. This is why we have emphasised and elaborated it here. There were many consequences of the simplistic approach. We have discussed them throughout this Report. We shall simply recall them here very briefly: but over brevity must not be taken as indicating lack of concern.

THE HEARINGS SYSTEM: THE
PANEL AND THE REPORTER

23. Any orthodoxy is impatient of a competing opinion. Our system, as noticed already, gives Reporter and Panel a locus to provide and impose such an alternative opinion. Hence the confrontation we have noted. Both the Panel and the Reporter identified the problem in terms of 'minimum intervention', but it became clear from early in our proceedings that it was the rigidity with which this policy was pursued which was the true subject of complaint.

OTHER PROFESSIONALS

24. The possibility of different opinions of other professionals also threatened the orthodoxy. As a consequence the opinions of other professionals were sometimes discounted and their participation in cases sometimes discouraged.

25. It was pointed out that relations with some agencies, eg the Police, the Aberlour Trust and the RSSPCC remained good. There was evidence which we accepted supporting that some good relationships did exist with such agencies. But in general they were not suggesting alternative methods of working with children who had been referred to the Department. They did not threaten the orthodoxy.

CHILDREN AND PARENTS

26. Sometimes, however, we regretted to have to note, the views of children and parents themselves were not listened to. A delinquent told of committing serious offences but he was 'fantasising'. A child who warned of danger to her sister was not listened to. Parents reported difficulties in coping with children at home but were not taken seriously.

MODE OF IMPLEMENTATION

27. We discuss this in Part G and cannot summarise that here. We only recall that the arrival of Mr Bowman coincided with considerable staff changes at Headquarters and in some Areas. Staff at all levels reacted differently to the new orthodoxy. In general the newer staff, managerial and main grade, accepted the orthodoxy. Some experienced management and staff were able to maintain their previous standards. Some found this stressful and difficult. New and inexperienced workers accepted the orthodoxy in different degrees. Some experienced staff found the orthodoxy unacceptable and left.

28. We do not want this Report to cast doubt on the professionalism, dedication and skills of many social workers, their seniors and Area managers who were engaged in child care during the period under review.

Conclusion

29. We thought Mr Bowman had an over-simplified view of the complex issues affecting child care social work. In any view he had Mr Bowman was inclined to take what seemed the most direct route. Hence his swift action on insisting on notification to the police and handing over to them the task of investigating child abuse; hence also his pre-emptive strike against Melville House at Tulliallan. The over-simplified approach was also imposed with as much rigidity as could be achieved. Of course the effect was not uniform. Strong minded managers resisted or filtered it. But it was real. That was the heart of the matter.

XIV THE WAY AHEAD: FIFE SOCIAL WORK DEPARTMENT

Introductory

1. Our Terms of Reference required us to inquire into the policies pursued by the Region through its Social Work Department in discharging its functions in relation to the use of voluntary and compulsory measures of care for children and in particular in relation to the advice given to children's hearings before they decide on the disposal of cases. We were also asked to assess the extent to which the Region's current policies in these matters met the best interests of children at risk and to make recommendations for modification of such policies.

2. We shall recall presently some of the detailed matters which were capable of embodiment as formal recommendations. We would say at the outset, however, that we believe the principal value of our investigation into the workings of the Department in relation to implementation of policy and its interaction with the other parts of the Hearings System was to display the difficulties which can be caused when the delicate balance of the system is disturbed by the precipitate introduction of the simplistic and mechanical approach to child care work which we discovered. To understand the nature of this process our whole Report requires to be studied. So long as the simplistic and mechanical approach is maintained we fear that the implementation of our detailed recommendations may have little effect. If the approach is reversed we hope our recommendations will facilitate the work of the Department and improve the quality of social work for children in Fife.

THE CENTRAL IMPETUS

3. As described above the central impetus in implementation of policy which we found to exist was the tendency to over-simplify the approach of the social worker to the intricate and difficult discipline of child care and to impose this simplified approach in a rigid and dogmatic manner which, thus imposed, alienated others involved in child care such as, on the one hand the Children's Panel and the Reporter, parts of the Hearings System and on the other hand, other professionals directly involved in child care such as teachers, guidance teachers, educational psychologists, child psychiatrists, clinical child psychologists and health visitors. It also gravely inhibited the discretion of the professional social worker who worked directly with the child and was in touch with the child's needs.

4. It follows that our principal advice must be that this tendency be reversed and we so **recommend**.

SPECIFIC RECOMMENDATIONS

5. In the course of our Inquiry we have discussed many aspects of the implementation of the Region's policy and expressed views. Many of these views were directly related to individual cases or individual circumstances and we hope they will be attended to. In many instances our observations were so closely related to particular situations that it would be unduly repetitious to rehearse the various instances here.

6. In other instances we formalised our recommendations and can recall them here.

POLICY DOCUMENT

7. Much emphasis was placed on the wording of the Policy Document in the early stages of our Inquiry and the Reporter in his final submission places emphasis on this wording. We came to the view that the wording of this document, whilst important—not least as a means of bringing to the notice of elected members the necessity for appropriate resources to be allocated—did not lie at the heart of the problems which we uncovered in relation to the implementation of policy. Accordingly its re-wording will not, by itself, go very far to implementing

our primary recommendation for the reversal of the impetus which we have recommended *supra*. Nevertheless, particularly in circumstances wherein our Inquiry has focused attention on the wording of the Document, we think its re-wording could play a part in this reversal.

8. We refer to our discussion of the Policy Document culminating in our observations in Part F, chapter I, paragraphs 61-62. We **recommend** as follows:-

1. Consideration be given to re-introducing, as in the Region's 1981 Policy Document, preliminary recitals acknowledging such matters as the right of the child to grow up in an environment which provides him with an opportunity to give and receive love, security and understanding; the right to develop to the fullest extent his capacity for physical, mental, emotional and spiritual growth free from unnecessary pain, hunger, fear, neglect or abuse; his right to access to and benefit from the services and facilities provided by society to promote his wellbeing and development including education, health, recreation, housing and a source of income sufficient to meet his needs. The preliminary recitals should also contain explicit recognition of the principle that in any situation where the rights and interests of the child are in conflict with the rights of any other person, the child's rights are paramount. There should also be explicit recognition that due consideration should be given to the wishes and feelings of the child.
2. There should be explicit acknowledgement of the place in our legal system played by the Children's Hearings System in bringing to children compulsory measures of care including recognition of the special role of the Reporter to the Children's Panel as the decider of whether it appears to him that compulsory measures of care are necessary and that therefore a child's case should be referred to a hearing for their consideration in this regard.
3. Consideration should be given to the possibility that paragraphs 4, 5 and 7 of the 1985 Document may not convey, without further explanation, the meaning that the priorities set out in these Clauses are a list to be applied mechanically rather than a general guide.
4. It should be explicitly acknowledged that for some children placement within a suitable residential establishment may be appropriate as a first step.
5. Consideration should be given to the re-wording of Clause 9 of the Document.

SECTION 15 OF SOCIAL WORK
(SCOTLAND) ACT 1968

9. For the reasons set out in chapter VI of Part F of our Report we believe the Region's Social Work Department adopted an unduly restrictive reading of this Section and hope our observations will be noted. We do not, however, associate the Region's stance on this matter with the impetus in relation to implementation of policy which we have described above. We think the principal cause of the difficulty lies in the lack of clarity in the wording of the statute. Accordingly, for the reasons set out in Part F, chapter VI we **recommend**:-

That central government consider the inter-relationship between Section 15 of the Act and the legislation regulating the Hearings System and consider statutory amendment.

COMMUNITY CARERS

10. While in general impressed by the abilities of the Region's community carers to cope with a wide range of children, we recognised certain aspects of the use of community carers on which we thought we should pronounce very clearly. Against the background referred to in Part F, chapter VII, paragraphs 20-24 and for all the reasons set out in Part F, chapter VIII we **recommend** as follows:-

That where there is reason to believe that a child may be aggressive, sexually or otherwise, towards children, such a child should not be placed with foster parents or community carers.

That the procedures for informing community carers of the history of the children who are placed with them be kept under constant review.

CASE NOTES OF INDIVIDUAL
SOCIAL WORKERS

11. Against the background set out in Part G, chapter VI, paragraphs 32-56 we **recommend** as follows:-

That if a dispute regarding factual matters is noted in the record of the case by the responsible social worker, the alternative version should be entered on the original record and both records should stand together.

That consideration is given to recording in accessible form disagreements about the management of a child care case between a main grade social worker and his or her senior, or other manager.

12. For the reasons set out in Part H, chapter II of this report we **recommend**:-

That workers be advised to address in reports the whole situation of the child and not merely matters directly relevant to the grounds of referral.

13. For the reasons set out in Part H, chapter II, paragraphs 86-94 we **recommend** that social workers should aim to include in reports to hearings an alternative disposal to the main recommendation giving reasons why the main recommendation is preferred.

XV THE DIRECTOR OF SOCIAL WORK'S RESPONSE TO JUDICIAL COMMENT

- BELLAMY V HM ADVOCATE** 1. There was mentioned in the course of evidence the Director's reaction to receipt of the information that in February 1987 the Department's Policy Statement in relation to work with offenders had been the subject of comment by the Lord Justice Clerk in the High Court in the above-named case.
- 1987 SCCR 101
2. Paragraph 4 of the Policy Statement reads, 'Social workers will not recommend custody in their reports but will advise the Court on alternative community-based disposals for which firm recommendations will be made where appropriate'.
 3. In the course of delivering the Opinion of the Court the Lord Justice Clerk mentioned that the Sheriff in the course of his Report had said that he found the social enquiry report and the report from the Community Service Officer helpful but he had not been made to place as much weight on these as he would have liked in view of a directive apparently issued by the Director of Social Work in Fife Region to the effect that no Reporter shall ever recommend that a sentence of imprisonment or detention should not be imposed. The Sheriff had remarked that if such a recommendation were not open to a Reporter then it seemed to him to reduce the value of the report.
 4. The Lord Justice Clerk commented:-
'If indeed such a directive has been issued by the Director of Social Work the inevitable consequence must be that the Court will attach less importance to the reports from social workers in that Region than the Court would hope to be able to do.'
 5. We asked Mr Bowman regarding this in the course of his oral evidence. He told us that he believed the matter had been raised with him at a meeting with Social Work Services Group in May 1987. He said he would have expected to get some form of communication from Social Work Services Group. We asked him why he did not make it his business to find out the precise terms of what the Lord Justice Clerk had said with a view to considering whether this required him to make any modification of his Department's policy. The Director replied that he was leaving that to others to advise him if that was necessary.
 6. The Director returned to this matter in oral evidence 2 days later and told us that on checking through the Social Work Department's files he did note that he had received a memorandum on the matter from the Chief Executive dated 6 August 1987. This memorandum, which formed part of the papers lodged with us on behalf of the Director in response to our request drew the Director's attention, in the words of the Chief Executive, to 'disquiet in the Courts as to the Social Work Department's policy never to recommend custodial sentence'.
 7. The Chief Executive asked if Mr Bowman would indicate the extent to which social workers were bound by the Policy Statement or were permitted to exercise their professional discretion as to recommending custodial sentences in particular cases.
 8. In a reply dated 13 August 1987 the Director responded:-
'It would appear that the major concern centres around the paragraph in the Policy Statement concerning recommendations in Social Enquiry Reports. The precise implications of the statements made by Lord Ross are not clear to me and it would be helpful if our colleagues in the Department of Administration could clarify the significance of them. It would also be helpful if they could indicate whether there is any change in their view concerning the legal competence of this clause in our Policy Statement.
To address your particular considerations, however, the Policy Statement is quite clear and it does not permit Social Workers to recommend custodial sentences. There is no specific detailed guidance or instruction on this matter to Social Workers insofar as the content of Social Enquiry Reports etc is

concerned other than that which has been in existence within the Department for some time.'

9. The Director told us that on checking his records he had received an extract from the law report which did contain the opinion of the Lord Justice Clerk.

10. We found the Director's stance in relation to this matter very puzzling. We thought that a Director of Social Work who had learned that the Lord Justice Clerk had made remarks such as those we have quoted would have taken immediate steps to obtain copies of the Opinion and consider personally the implications of the Court saying that it would attach less importance to the reports from social workers in that Region than the Court would hope to be able to do.

11. We suggested to the Director that his reason for not looking further into the matter was that he was convinced that the directive he had issued was entirely justified and that nothing that the Lord Justice Clerk or anybody else had to say in the matter would change his view.

12. The Director replied that he remained absolutely convinced in professional terms of the validity of the Policy Statement but 'there is no way I would maintain a position in the face of a legal ruling that made that position untenable'. He said his difficulty was 'to know what had been said or what the precise implications of it was and to receive advice on that'. He did not share the interpretation which we placed before him.

13. Having reviewed the evidence on this matter we are still surprised that the Director did not take the observations of the Lord Justice Clerk more seriously and believe that this incident is reasonably quoted as an example of his unreceptiveness to the views of others and lack of concern for the consequences of the rigid way in which policy, in a cognate field, was being implemented.

XVI THE FINAL STANCE OF THE REGION AND ITS DIRECTOR OF SOCIAL WORK

1. The Director of Social Work has consistently refused to acknowledge the existence of any considerable problem. Intimations of the existence of problems have become increasingly known to him from the date of the precipitate introduction of the Police Notification Memorandum in November 1985. These intimations have included the correspondence with the Reporter and the Director of Education following Mr Bowman's presentation to the Children's Panel training week-end at Tulliallan. Intimations of concern were sent to him by Mrs Montgomery for the Children's Panel. The recommendations of the Social Work Services Group Advisers notified substantially similar concerns in December 1988.

2. These and further intimations of unease are more fully set out in Part C of our Report.

3. The Director of Social Work, in his written response to the abstract of the Report on the 20 case study carried out by the Advisers from Social Work Services Group commented as follows:-

'It therefore came as a considerable disappointment to the Department to learn late in 1987 from Social Work Services Group that allegations had been made by Children's Panel Members in Fife that the Department was failing to carry out its statutory responsibilities in relation to the Children's Hearing system. It was further suggested that a serious rift had apparently developed which threatened the hitherto good working relationships between Officers of the Department and Panel Members who have a shared concern for the welfare and best interests of children.

The Department has never been told of the substance of any of these matters.'

4. On 13 October 1989, Mr Matheson, for the Regional Council, indicated that, as at that stage the Council was not aware of what case actually had to be answered in terms of developing a response to come from the Council's senior officials. We thereafter prepared our 2 Notes of Matters of Interest, the second of which, dated 14 May 1990, set out what we thought to be the concerns and named all of those who had up till then expressed concern excepting only the social worker who wished to remain anonymous.

5. The Director of Social Work in his Written Response lodged on 16 August 1990 stated, 'The Director further asks the Inquiry to identify the critics and the specific criticisms made. One of the major difficulties in the past for the Director had been that he had sought to respond to non-specific criticisms by unidentified parties'.

6. In view of the effort we made in our Second Note of Matters of Interest to focus the criticism for the Director and identify his critics we find it difficult to make sense of his position.

7. On the final day of his oral evidence, 24 January 1991, the Director repeated his view that 'nothing has gone seriously wrong that would have merited an Inquiry of some 2 years deliberation'. We thought this sat oddly with his statement in his Written Response of 16 August 1990, 'The Director believes the Inquiry, having prepared and taken evidence for 14 months before producing the Note [our Second Note of Matters of Interest] must exercise a similar patience in allowing the Social Work Department to respond fully through written and oral evidence'. He stated that he would argue that 'in the substantial change that has taken place within Fife Regional Council's Social Work Department we have managed the difficulties, stresses and indeed the conflicts to the best of our ability and we have been sensitive to them'.

8. Towards the conclusion of his oral evidence we asked the Director how it could be that such a range of individuals could have taken the view that something was seriously wrong. At this stage we mentioned in particular the former Area Regional Work Organiser of Cowdenbeath, the former Principal of the Schools Psychological Service, 3 consecutive Chairs of the Children's Panel, the Regional Reporter and the Director of Education. We suggested it might be that his own attitude amounted to not allowing for the possibility that anything could be seriously wrong. We asked what we were to make of the expressions of concern by so many people—were they in a conspiracy, were they party to a vendetta or were they trying to present the picture as it seemed to them on the whole in good faith and honourably and honestly. Mr Bowman replied to this by saying that he had no reason to believe that these persons were not presenting matters to us as they perceived it, honestly and honourably but the issue remained a difficult one for him to respond to 'other than in terms of not being convinced even yet that there is a serious problem'.

9. In giving evidence on the final day of oral evidence we had been told that a small group of people (not, we understood, those mentioned in paragraph 8 *supra*) 'had it in for him'.

10. We cannot rule out the possibility that some individuals may have discussed the Director's policies and their mode of implementation and expressed critical views of him when so doing. We do not think that would necessarily mean that their views were held in bad faith or were unfounded.

11. We found some aspects of the Director's attitude to our Inquiry to be puzzling.

12. We recall his statement in his Written Response in relation to the case of Kenneth that the existence of an Inquiry may have been a contributory cause to the misjudgements which were made in that case and his partial retraction of this in oral evidence.¹

13. We recall the Director's statement in his Written Response that he referred to the most significant difference between his Department and the Department of Education in terms of their respective professional standards and cited as a central issue the 'procedures dealing with allegations of assault relating to children in residential care of the Education and Social Work Departments'. We contrast this with his ultimate acceptance that there was no cause for concern in this field.

14. We recall the Director's dismissal (after a large proportion of our time had been engaged in hearing social workers nominated by the Region speaking to the cases) of the selection of the 14 initial cases which we examined as 'Byzantine'.²

15. We recall the Director's dismissal of the contents of the evidence given in closed session and communicated to the Region in the form of Substances of Evidence as 'secret'. We recall his inability to respond to an important part of this evidence. Ms Q told us of her concerns regarding the effect of changes in Ribleton House on the morale of workers there, and that the Director could not comment and did not know of Ms Q's duties in relation to Ribleton and had not looked into the matter.³

16. We recall the Director's suggestion on the second last day of oral evidence that if anything had gone wrong it might be the fault of his former Assistant Director.⁴ This possibility was not pursued by the Region's Solicitor.

17. We thought that instances such as these, and the Director's reaction to the observations of the Lord Justice Clerk in the case of *Bellamy*, suggested that his position was that any adverse suggestion or serious criticism of him or his Department was not worthy of consideration, and that any attempt—such as ours—to explore such a possibility was almost an irrelevance.

THE STANCE OF THE REGION
IN THE FACE OF CRITICISMS OF
ITS SOCIAL WORK
DEPARTMENT

18. In the course of our Inquiry the Region consistently attacked the credibility and, at times, the integrity of those who voiced criticisms.

¹See Part F, chapter III, paragraph 30

²See Part D, chapter XVI, paragraph 63

³See Part F, chapter X, paragraph 21

⁴See Part G, chapter II, paragraph 3

19. They attacked the credibility and competence of the Regional Reporter. We held that some of the criticisms alleged against the Reporter had some substance but concluded that the influence of the Reporter's stance on the Department's policy as implemented was not the principal contributory factor and that the principal influence came from the Director himself.
20. The Region and the Director of Social Work made criticisms of the Children's Panel which we regarded as unfounded and irrelevant.
21. The Region attacked the credibility and reliability of witnesses such as Mr Narbrough and Mr D who gave evidence in our open forum and we held these witnesses to be credible and reliable for the reasons set out in Annexations D and A.
22. The Region's Solicitor in his final submission, adopting the Director of Social Work's term, described the evidence which we obtained in closed session as 'secret' even although the substance of that evidence had been submitted to the Region with, in all but one case, the names of the witnesses given. In relation to the evidence of the child psychiatrists and child clinical psychologists who gave evidence in private session the Region argues that their views are personal and not those of the Health Board as such. But the Region does not appear to take account of the possibility that those personally held views of such persons, in close touch with children, might have some considerable validity.
23. The Director of Social Work up to the final day of his oral evidence insisted that no serious cause for concern existed and cast doubt on the necessity for our Inquiry. The Region (always excepting the Department of Education) maintained a similar stance in its final written submission.
24. We believe we have demonstrated throughout the course of this Report that very serious cause for concern exists as to the implementation of the Regional Council's Social Work Department's child care policy.
25. We believe that part but not all of the difficulties connected with the implementation of policy in relation to the Children's Hearings System is related to some lack of clarity in the legislation. We have made some recommendations in relation thereto.
26. We have also made some recommendations directed to detailed matters which came to our attention in connection with the implementation of Social Work policy.
27. We do not, however, believe that the implementation of these recommendations will remove the deficiencies which we have detected in the implementation of the Region's Social Work policy by its Social Work Department until and unless the Region and the Director of Social Work are prepared to accept that the deficiencies which we have described exist.

XVII WIDER ISSUES

Introductory

1. We are satisfied that the precipitating cause of the concerns which gave rise to our Inquiry were constituted by the simplistic impetus given to implementation of policy by the present Director of Social Work, his precipitate anxiety to give effect to that impetus and his associated unwillingness to take account of the warning signals which were coming from various directions culminating in the recommendations of the Social Work Services Group Advisers.

2. We are however satisfied that many, although not all, of the problems were made possible or, alternatively, made more acute by, on the one hand, the legal structure of the various elements in the Hearings System—most notably concerning the relationship between a Social Work Department and the rest of the system; and, on the other, some quite widespread misunderstanding as to the role and professional responsibilities of a social worker engaged in the complex field of child care. There were suggestions in evidence that the problems encountered in Fife were encountered elsewhere in Scotland. Even without these indications we would have believed this to be true.

THE HEARINGS SYSTEM 3. The system had its origin in the Kilbrandon Report, which, along with the White Paper, and the 1968 Act, makes clear that the system comprises 3 principal elements, namely, the Children's Panel, the Reporter and the 'matching field organisation', ie, the Social Work Department. As BASW point out to us in their final submission other agencies, notably Education, the Health Board and the Police (and indeed others) also play their part. The main 3 branches are, however, the Panel, the Reporter and the Social Work Department.

4. We have some impression that this tripartite structure is sometimes not fully appreciated and that, in particular, the important role of the Department may be overlooked. We cannot rule out the possibility, if we are correct in this, that this tendency to forget the Department's integral part in the system may contribute to some of the irritation which at least some social workers seemed to display towards the system.

THE ROLE OF THE PANEL:
RESOURCES 5. The Children's Panel, under the legislation, have conferred upon them the power of disposal of the individual child. They are also endowed (in this respect sharply differentiating their position from that of a court) with the power of review—thus giving them the continuing interests in a case. The Department, on the other hand, has the obligation of implementing whatever supervision requirement may be made by the hearing. But the hearing in turn is limited by the resources which the Department, having regard to policy, financial, and no doubt many other considerations, sees fit to provide.

6. The impression may thereby be conveyed that the power ostensibly conferred by the hearing to interest itself in the work with the child over a continuing period may be more apparent than real.

7. It follows from the foregoing that there has to be a particularly high degree of trust between the Department and the Panel. It is therefore easy for this relationship to be disturbed. We suspect it is sometimes disturbed in other Regions although we have no reason to believe that the disruption elsewhere has been so acute as it has been in Fife since the beginning of 1986.

THE ROLE OF THE REPORTER 8. The Reporter is far more than the presenter of cases to hearings: he requires to decide, on both legal grounds (is there evidence amounting to one or more of

the grounds of referral?) and general welfare grounds (does this child require, on welfare grounds, compulsory measures of care?). The Reporter accordingly has important responsibilities in the field of child protection.

9. The Reporter, when considering, for example, whether or not a particular child requires compulsory measures of care on welfare grounds must consider the advice he receives from the Social Work Department and other agencies. But the decision which the Reporter makes must be her or his decision and not merely a rubber stamping of or even a reaction to the opinions of others. Reporters, we know, develop some expertise in the child care issues which necessarily arise. We doubt, however, if the need for such important decision-making on the part of the Reporter is widely appreciated. We do not think that this gaining of some expertise in child care on the part of Reporters should be left to chance or experience—nor, for that matter, do we think that the practical necessity for the Reporter to know the law should be left undefined. It was considerations of this type which led us to recommend that minimum legal and child care qualifications be in the future made mandatory for Reporters.

10. We also believe that the individual Reporter's position, although reinforced to an extent by the provision that he cannot be removed from office except with the consent of the Secretary of State, can sometimes be a vulnerable and exposed one. We also believe that individual Reporters faced with complex and difficult cases would welcome some central resource. Reporters deal with issues at least as important as the most important issues dealt with by Regional Procurators Fiscal and Advocates Depute. They should have some structure which would provide appropriate support when necessary.

THE PANEL AND THE
REPORTER

11. More generally we believe that the Children's Panel on the one hand and the Reporter on the other hand because their concerns are principally with children may sometimes be regarded as less significant in our legal system than they might be. We suspect our equating, in the previous paragraph, of the responsibilities of the Reporter with those of an Advocate Depute or Regional Procurator Fiscal may have struck some readers as *prima facie* surprising; but we feel sure that on reflection our observation will be seen to have some validity. A similar observation might be made of Panel members: they have responsibilities for disposal of cases which present equal difficulties to those facing High Court Judges, Sheriffs and District Justices.

THE DELIBERATIVE ROLE OF
THE CHILDREN'S HEARING

12. As the present Chair of the Fife Children's Panel, Mrs Eadie, reminded us in her final written submission, the forum provided by a Scottish Children's Hearing provides a unique forum wherein all aspects of a child's welfare can be discussed. The child's views and those of his or her parents can be listened to directly and discussed. The experience of attending a hearing should be regarded as positive and not as negative.

13. We believe Mrs Eadie is correct in her assessment of the value of the hearing situation as a means of addressing all aspects of the welfare of the child who has been referred. We have referred to the serious issues which hearings have to consider and have equated their importance with those of our highest courts. But there the analogy with our Courts ends. The hearings represent, and were intended by Kilbrandon to represent, an attempt at a different approach to assessing the needs of the child from that which is possible in the contentious setting of a Court. As pointed out by Lord President Hope in *Sloan v B* 1991 SLT 530 at 548, 'The genius of this reform, which has earned it so much praise ... was that the responsibility for the consideration of the measures to be applied was to lie with what was essentially a lay body while difficult questions of fact as to the allegations made were to be resolved by the sheriff ...'.

14. Mrs Eadie in her submission mentions that members of the public who apply to become panel members initially have a variety of impressions and mis-impressions as to how the system is meant to operate. She cites as not uncommon the view that 'all children need is a lot of old-fashioned discipline'—without there being any clear understanding of what such discipline may entail. As Mrs Eadie says, the pre-service training of panel members clarifies the role of the hearing

for potential panel members but we are sure that the perceptions of a large proportion of the general public as to Panels' functions are as Mrs Eadie described.

15. The system, as Lord President Hope remarked, has earned much praise. The dedication and commitment of panel members is itself suggestive of some success. There are nevertheless large questions still to be explored. As pointed out by Mrs Eadie the system has developed along Regional lines and 'within the law, there are remarkable variations in practice, by Reporters and Children's Panels alike'. This may be a healthy development but there are no obvious methods for resolving major problems.

16. We believe that the principal cause of the stresses which we observed in Fife was the impetus given to the Department's implementation of policy to which we have referred. We also believe, however, that wider issues such as the relationship between allocation of resources by Regions and the Panel's powers of disposal may be present elsewhere in Scotland and dealt with by means of local arrangements and compromises. Local differences may to an extent be healthy but fundamental lack of agreement as to essentials cannot help the long-term credibility of the system.

17. The resolution of these issues is of course far beyond our remit but we believe that the time has come for these areas to be re-examined. We do not think we can make a formal recommendation but we hope that an early opportunity will be taken to study and consider (a) the overall efficacy of the system; (b) the relationship amongst the main elements of the system, viz, Panel, Reporter and Social Work Department; (c) the desirability or otherwise of continuing the Regional basis of the Panel system; and (d) the introduction of mechanisms to rationalise procedural differences which are seen to be dysfunctional.

THE SOCIAL WORK DEPARTMENT AND THE SOCIAL WORKER

18. As we have already made clear we regard that part of a Social Work Department which is concerned with children as an integral part of the Hearings System; its interests and responsibilities are however not bounded by that system. In what follows we are referring to the range of a Department's responsibilities for children as they are exercised by social workers and were demonstrated by the evidence in our Inquiry.

19. The range of cases we investigated and the witnesses we heard strengthened our awareness of the complex and demanding nature of social work with this client group. Social workers must have the ability to work with children and young people of all ages and in a variety of situations; if they are working in a residential context they will need to be able to provide aspects of physical care and control to the individual child in a group. Whatever the context they must have the skills to understand how the child views his past and present experiences and his hopes for the future; they must know how to help children to deal with their feelings about the situation which has led to the referral or admission to care and to enable them to participate in decisions to the best of their ability.

20. The social worker must be able not only to work with a child but also with those adults who are important in his life; these include parents and other people who are acting as carers for the time being. This will expose the worker to many of the sharp conflicts of interests which often surround vulnerable children and may make it difficult to keep in mind that, although much of his or her task involves work with adult family members who have needs of their own, it is the child and not the adults who is the primary focus.

21. Work of this kind requires too an understanding of the complicated legal and organisational contexts in which the child is placed and of the social issues which his situation often reflects.

22. Expertise in the field of child care law is perhaps now even more necessary than ever. The complexly interwoven provisions of Parts II and III of the Social Work (Scotland) Act which we have had to explore in the course of our Inquiry and attempt to explain in the course of our Report do not make this task any easier.

23. The consideration that many social workers in Scotland at all levels from main grade worker to Director have trained and worked in England where, of course, our Hearings System does not operate and is almost completely unknown, must sometimes impede that facilitative working relationship which only long-time use and wont can impart.

24. Most main grade social workers in child care have had much less specialised training and experience with children than the other professionals to whom they relate and who themselves offer important services to the individual child: educational psychologists, class teachers, guidance teachers, clinical child psychologists, consultant child psychiatrists and others. Because of their organisational structure social workers often require to move to work with other client groups in order to enhance their career prospects. This may affect their skills and status in working with colleagues in other professions but more importantly it constitutes a disadvantage for them in their child care work.

25. It will already be obvious to readers of this Report that social workers in child care are working in the strong light of publicity in situations where there is public concern but where important social issues have not been resolved. The requirement to protect children and also to have regard to the rights of parents is an example of this. There are also issues connected with disadvantage, justice and the nature of welfare which are reflected day by day in the caseload of children with which a social worker deals.

26. All the above illustrates in our view the need for social workers who are face to face with children to have specialised training and cumulative experience in this particular field. The importance of their work in the lives of individual children and their families is equal to that of any other profession. If they are to exercise the discretion that their proximity to the most vulnerable children in society demands they must have the requisite professional background to enable them to do so. This is work which requires extensive knowledge of a variety of disciplines; the intellectual capacity for clear thinking and analysis; and skills in relating to and working with children and adults in conditions of stress and uncertainty. Without the critical ability and security of professional expertise that these give social workers will be vulnerable to the dictates of child care fashion. It will also be tempting for a Departmental manager to over-estimate the part which may be played in the care and protection of children by the rigid implementation of rules and procedures. These are important but they are by no means the whole story. We think that vulnerable children require the best possible professional help.

27. We have not made specific recommendations about the training of social workers because we are aware that a new social work qualification is shortly to come into being. We hope, however, that those who are responsible for the training and education of social workers will have regard to the relevant parts of this Report.

XVIII EXPENSES

1. By virtue of Section 210(7) of the Local Government (Scotland) Act, the expenses incurred by the Minister in relation to the Inquiry shall, unless the Minister is of opinion 'having regard to the object and result of the Inquiry that the expenses should be defrayed in whole or in part by him' be paid by such local authority or party to the Inquiry as the Minister shall direct. By Section 210(8) of the same Act it is provided that the Minister causing the Inquiry to be held may 'make an award as to the expenses of the parties at the Inquiry, and as to the parties by whom such expenses shall be paid'.
2. In his final submission Mr Matheson, for the Region, asked us to recommend to the Secretary of State that the whole expenses of the Inquiry should be met by the Secretary of State and that all the expenses which the Council had incurred relating to the Inquiry should also be met in full by the Secretary of State.
3. Mr Matheson supported his view by reference to what he described as the 'role played by Social Work Services Group in the events leading up to this Inquiry'. He stated that in view of this role it would be 'iniquitous' if the Council were required to meet any part of the cost of the Inquiry.
4. Alternatively Mr Matheson argued that we should recommend to the Secretary of State that the whole expenses of the Inquiry should be met by the Secretary of State and that each of the parties should meet their own expenses.
5. Mr Matheson further argued that many of the tensions present in Fife were present elsewhere in Scotland, that he had identified issues and requested guidance thereon and that clarification of these matters would improve the operation of the Hearings System not just in Fife but in Scotland as a whole.
6. We raised this matter with Mr Matheson in correspondence after his written submission and indicated a *prima facie* view that our Terms of Reference did not appear to envisage us making recommendations as to expenses. We observed that the Terms of Reference of the Cleveland Inquiry, which seemed analogous to our Inquiry, had similarly contained no such invitation and that no such recommendation had therein been made.
7. Mr Matheson replied that our Terms were broad enough to allow us to comment on any matter which we thought relevant in relation to our Terms of Reference. He pointed out that the Inquiry had had 'a significant impact on the provision of services to children in Fife' and that this could be mitigated if the Council were reimbursed for its expenses. He also observed that the Inquiry into the death of Jasmine Beckford had made recommendations as to the funding of Inquiries, (*A Child in Trust* pp 36/38).
8. It was our clear view that we should not and could not properly make recommendations as to expenses. The issues leading up to the Inquiry including the interaction between the Region and Social Work Services Group would have involved us in long and detailed investigations of matters which were not central to our remit. In effect a 'proof' on the matter of expenses would have been necessary. In addition a full hearing on expenses would have been necessary with the Secretary of State and other parties represented. We had made clear from the outset that we regarded our Inquiry as wholly separate from earlier events which involved SWSG and did not invite the Scottish Office to be parties to the Inquiry.
9. As we mentioned to Mr Matheson the Cleveland Inquiry made no recommendations as to expenses. It does not seem that the matter was raised before Butler-Sloss, L J. The observations in *A Child in Trust* which was not a statutory inquiry were not in our view relevant.

10. We have completed our investigations and made our Report. The Minister, in the light of our findings, has power to award or not award expenses in the light of the 'object and result' of our Inquiry. Not having been asked by the Minister to advise him on how he should exercise these powers we think it would be quite wrong for us to volunteer a view unasked.

11. The British Association of Social Workers wrote to us on 28 December 1990 inquiring as to the possibility of their expenses being met 'by the Inquiry'. They assessed their expenses at around £20,000 at that time. They told us that they had not received expenses from central government in relation to past child abuse inquiries but told us that in the Kimberley Carlile Inquiry their costs had, they believed, been met by Greenwich County Council.

12. For the reasons stated already we do not think it would be right for us to make any recommendation to the Secretary of State on the question of expenses. We should say that at the outset of our Inquiry we suggested to the Secretary of State that the Children's Panel should be represented at the public expense and this was arranged. We thought it imperative that the Panel, as the quasi-judicial officers responsible for the disposal of children's cases should be legally represented at an Inquiry such as ours.

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