

**Commission for Social Care Inspection**

**INDEPENDENT REVIEW**

**INTO THE HANDLING OF COMPLAINTS BY**

**THE NATIONAL CARE STANDARDS COMMISSION (NCSC)**

**&**

**THE COMMISSION FOR SOCIAL CARE INSPECTION (CSCI)**

**ARISING FROM REPRESENTATIONS MADE BY**

**MS C AND MR C (FOSTER CARERS) ABOUT**

**AN INDEPENDENT FOSTERING AGENCY (THE AGENCY) &**

**NCSC (THE REGULATOR)**

**This report has been written for the Commission for Social Care Inspection (CSCI) for the purposes of this Independent Review**

**The Independent Review was commissioned by CSCI and conducted by an appointed social care consultant**

**The report is available on request under the provisions of the Freedom of Information Act 2000**

**JULY 2006**

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**CSCI Independent Review Report  
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### 1. INTRODUCTION

- 1.1 This independent review has been commissioned by the Chief Inspector of the Commission for Social Care Inspection (CSCI).
- 1.2 The issues under review have their origins in a series of complaints from the foster carers Ms C and Mr C against a fostering agency currently run by Mr H. During the course of this review Mrs H stood down as a director of the agency.
- 1.3 The initial complaint (about not having been notified by the placing social worker of the sexual history of child X) went through the complaints procedures of the relevant local authority social services department. The complaint was upheld and a letter of apology sent on 11<sup>th</sup> April 2002 by the Children's Services Manager.
- 1.4 Before the local authority response was sent to the foster carers, Ms C telephoned ML, Senior Professional Advisor (Children's Rights) of the National Care Standards Commission (NCSC) - the forerunner to the Commission for Social Care Inspection - on 2<sup>nd</sup> April 2002. ML returned the call at 1.15pm that day and confirmed that Mrs C was raising two complaints. The first being about the social worker omitting to tell her about the child X's sexual history. She advised that this had been investigated by an independent person appointed on behalf of the local authority. The second complaint was against an unnamed independent fostering agency, which she alleged was victimising her. ML's written record of that conversation states that the complaint did not directly raise specific concerns or questions about the welfare and protection of children. He goes on to state, *"The outstanding element of Ms C's complaint remains the conduct of a fostering agency toward her and her partner. However, whilst NCSC have formally received a complaint about a regulated setting, the complainant has made it clear that she does not wish NCSC to act upon it at present."*

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The matter was therefore passed to JD (NCSC) Oxford Area Manager and RM, Children's Rights Director.

- 1.5 Ms C and Mr C were therefore including some of the same issues together with new ones. So at this point there was an overlap of events occurring, unknown to NCSC at that time.
- 1.6 The foster carers did not wish NCSC to do anything at that time about their issues as recorded by ML and as later recorded by the NCSC Stage Two investigator CG.
- 1.7 On 9<sup>th</sup> May 2002, the foster carers wrote to the NCSC requesting an investigation.
- 1.8 On 6<sup>th</sup> August 2002 the Oxfordshire Locality Manager (SL) wrote to the foster carers with the outcome of the investigation, which could not uphold the complaints.
- 1.9 The foster carers were dissatisfied with this response and so the investigators met with them on 21<sup>st</sup> August 2002, and additional matters were agreed for consideration by the investigators. SL's letter to Ms C and Mr C of 21<sup>st</sup> August 2002 confirms the outline of the discussion that has taken place that day following her visit. It states, "As I explained to you that it was my understanding that the initial complaint made by you had in fact been investigated, however as stated we are prepared to look into the additional concerns that you are now raising".
- 1.10 The additional issues included (a) the intended involvement of a social care consultant (TW) on behalf of the agency in a review meeting, (b) the refuted claim that Ms C had sought respite for a young person placed with her, and (c) the request by Ms C that NCSC make available a submission provided to it by a local authority

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social services employee (TP) concerning Ms C's fitness as a foster carer.

- 1.11 On 27<sup>th</sup> September 2002, SL gave her second finding on the original complaints. These were unchanged from the first, and therefore the complaints had not been substantiated.
- 1.12 The foster carers were dissatisfied with this response and so a stage two investigation was undertaken in May 2003.
- 1.13 The outcome of this investigation was adjudication by RB, the Regional Director, South East Region of NCSC on 16<sup>th</sup> July 2003. He found one complaint substantiated and the other partially substantiated.
- 1.14 On 10<sup>th</sup> September 2003 the foster carers wrote to the RB asking for the matter to be progressed to the third stage of the complaints procedure. An independent investigator was appointed.
- 1.15 On 31<sup>st</sup> March 2004, RB sent his adjudication on the third stage report to the foster carers. It was the last day of the existence of NCSC and so the findings of the report were sent to the new Regional Director (LH) of the Commission for Social Care Inspection (which came into existence on 1<sup>st</sup> April 2004).
- 1.16 After publication of the report produced at the last stage of the NCSC complaints procedure, the proprietors of the agency made a series of complaints to the CSCI about the handling of the complaints process and its impact on their agency.
- 1.17 On 15<sup>th</sup> September 2004, DC (Member of Parliament for the constituency in which the agency resides) responded to an early day adjournment debate raised by JP (the Member of Parliament for the constituency in which Ms C and Mr C resides). Hansard also records

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that the Minister of State for Children, Young People and Families (Mrs Margaret Hodge) responded to Members enquires.

- 1.18 In response, the Chief Inspector of CSCI decided that an internal management review should be conducted into the handling of the complaints, and Mr and Mrs H from the agency agreed to the suspension of their recent complaints whilst such an independent review was undertaken.
- 1.19 The undertaking of this independent review does not therefore restrict the agency in further pursuing their complaints on the conclusion of these findings. **This independent review is not therefore an investigation into those outstanding complaints,** but the findings that it produces may inform the CSCI in addressing some or all of those remaining issues for the agency.
- 1.20 At the end of 2004, the author was commissioned to undertake this independent review. Significant time was needed to clarify the exact nature of the review, what it would look into (and not look into), whether it was an investigation or a review, and what this specifically meant.

## 2. TERMS OF REFERENCE

- 2.1 The following was agreed as the terms of reference for the independent review:

***"The operational management, investigation and response to the complaint made by Ms C and Mr C concerning the Agency by the National Care Standards Commission.***

***The findings, conclusion and recommendations of the independent review into the Ms C and Mr C complaint commissioned by NCSC and undertaken by Ms D.***

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***The ownership and response of CSCI to the outcome of the independent review and any specific action taken or not taken.***

***Whether or not relevant legislation, policy, procedure and practice were properly and consistently applied, and whether there are lessons for CSCI arising out of the matter.***

***The impact upon, and possible detriment to the Agency and Mr & Mrs H as a consequence of the Commission's consideration of the complaints made by Ms C and Mr C"***

- 2.2 The Head of Complaints and Service Improvement (SC) met with Mr and Mrs H on December 6<sup>th</sup> 2004 informing them of the Commission's intentions to undertake this independent review. Mr & Mrs H were consulted on the above terms of reference.

### **3 METHODOLOGY**

- 3.1 The CSCI made access available to all necessary files and the previous complaints investigation reports that either compose the response or inform the response of the local authority and NCSC under their respective complaints procedures.
- 3.2 In the course of the independent review the following people were interviewed in person:

Mr & Mrs H - The Agency

SL - Locality Manager, Oxford Area NCSC

CG - Regional Professional Advisor, Oxford Area NCSC

RB - Regional Director, South East Region NCSC

RM - Children's Rights Director CSCI

JD (NCSC) - Area Manager Oxford NCSC

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LH - Regional Director, South East region, CSCI (1/4/04)

DV - Business Relationship Manager - Oxford

3.3 The following person was interviewed on video-link:

ML - Senior Professional Advisor, Children's Rights, CSCI

3.4 The following people were interviewed by telephone:

BF - Pan London Contract Manager

SB - Unit Manager, Placement Service, Oxford County Council

RM - Birmingham Social Services Commissioning Manager

RB - Regional Director, South East Region NCSC

3.5 The following person was sent a questionnaire:

Ms D - independent consultant stage three review. Ms D declined to be interviewed unless she was provided with the questions in advance and in writing. After negotiations with CSCI, Ms D was sent a list of questions to which she later responded.

3.6 Since the commencement of the original complaints in 2002, some staff had either moved out of the organisation or moved to other positions within the CSCI. In such circumstances interviews took place at their new workplace e.g. Herefordshire, Hampshire, Sussex or by arrangement at one of the London offices of the Commission. LH had left the organisation and the interview took place at her home.

3.7 The report also took longer to conclude due to the negotiations that took place concerning the terms of reference for this independent review and during the process of addressing the issues arising from Ms D's report between the CSCI and Ms D. This reviewer also took time for sickness and annual leave.

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### **4. TERMS OF REFERENCE ELEMENTS & FINDINGS**

#### **4A. THE OPERATIONAL MANAGEMENT, INVESTIGATION AND RESPONSE TO THE COMPLAINT MADE BY MS C AND MR C.**

##### **4.1 OVERVIEW OF STAGE 1**

In looking into this aspect of the process, by interviewing staff and reading records and correspondence, it is clear that one of the most important issues that impacted on the quality of the work undertaken by the staff at NCSC was the fact that the organisation came into being on 1<sup>st</sup> April 2002. The foster carers made contact with the organisation on the second day of its existence.

4.2 The other significant matter is that there was a decision to investigate this matter at all, considering the fact that the events had taken place **prior** to the Fostering Services Regulations 2002 coming into force, and that the issues were related to the "Fitness" of the Directors of the agency. The issues could have been referred back to the agency to respond to in the first place, and for the regulator (NCSC) to inform their view about the Fitness of the Directors from the response that they provided to the complainants. This would have been in compliance with Regulation 18 of the Fostering Services Regulations. It is acknowledged that the events under debate had originated prior to the adoption of these Regulations, but these Regulations did establish a procedure and expectation of the independent fostering agency, which the NCSC were well within their rights to use as a means of determining fitness, by the monitoring of such a response by the agency. At interview JD (NCSC) acknowledged that a) she was not aware of these Regulations, b) she could have asked the agency to respond anyway or c) considered checking what complaints procedures existed to cover such concerns, or possibly instigate her own management investigation.

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- 4.3 In her response to the draft report of this independent review, JD (NCSC) offers a view that as the complaint was about the fitness of the agency it would not have been referred through the Regulation 18 route. However, NCSC's lack of awareness of the potential use of Regulation 18 meant that it was not in a position to take an informed view about this option.
- 4.4 The local authority had completed an adjudication and response to the findings of their investigation in a letter dated 11<sup>th</sup> April 2002. This upheld the complaints made by the foster carers that the placing social worker failed to notify them that a child placed with them had a history of sexual abuse.
- 4.5 Subsequent complaint to NCSC came as a result of the agency delivering an "Agenda" of concerns to the foster carers. The timing of this was significant as it gave the foster carers a feeling of being victimised for having made their initial complaint to the local authority. They were also upset by its content, and manner of delivery.
- 4.6 The processes used at the stage one of NCSC procedure was for an Inspector (Ms A) to be appointed (supported by her line manager, SL). This became necessary when Ms A found it difficult to handle the continual contacts and faxes from the foster carers.
- 4.7 The investigators stated in interview that their investigation suffered from a difficulty of getting a complete and finally agreed statement of complaint from the foster carers. The terminology used by the foster carers was that *"the agency did not deal appropriately with ourselves or the situation following our discovery of child X's sexual abuse history"*. Whilst a clear complaint as far as Ms C was concerned, the investigator stated at interview that it was not defined clearly enough as a working brief.

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- 4.8 The substance that the investigators were to use was the issues on the agenda of 27<sup>th</sup> February 2002 produced by the agency.
- 4.9 However, their methodology was to make an unannounced visit on 16<sup>th</sup> May 2002 to the agency to gather information. This is more an 'inspectoral' approach than an 'investigative' one.
- 4.10 On 20<sup>th</sup> May 2002 the foster carers visited the NCSC at the Oxford office to "clarify their complaints". This is a most unusual order of doing an investigation. It would be normal for such a meeting to precede the one with the agency, not follow it. The notes taken at this meeting show that the foster carers were very concerned about the potential consequences for them from the agency, and that the sudden arrival of the agenda was a portent of worse things to come. The foster carers were very keen to do everything to clear their name.
- 4.11 The form of the investigation was also very unusual, in that the investigators wrote to a list of people who may have been in a position to comment on a given list of issues about the foster carers, then went ahead and published each person's response as their way of coming to a finding on the issues. This only served to personalise the matter for Ms C and Mr C.
- 4.12 It would have been more normal practice for the views to be gathered together and a response given without naming individual comments from contributors.
- 4.13 A more complex issue also resulted from this process. For although the foster carers were complaining about the conduct of the agency, the people written to for a response to the complaints were asked to give any evidence against the complainants (foster carers) rather than about the person being complained about (the agency). This

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effectively turned the foster carers into the subject of complaint, albeit as a way of eliciting evidence to support their case.

- 4.14 It had become extremely difficult for the investigators to keep the issue concise and the foster carers felt the need to continually move the boundaries by giving more information that, in the end, served to obscure the focus of the investigation. This was confirmed at interview with SL, the Locality Manager.
- 4.15 The completion of the investigation did not meet with the foster carers desires. This would normally be the end of such matters, with a complainant having an option of referring the matter to the next stage of the complaints procedure. However, the investigators were prepared to continue with looking at new issues, as well as asking more people to comment about the issues raised by the agency in their agenda.
- 4.16 Where there is a procedural issue, is that in her letter of 21<sup>st</sup> August 2002, the investigator, SL, confirmed to the foster carers their wish to pursue the matter of the agency's apparent failure to inform them of the sexual abuse history of child X placed with them by the agency.
- 4.17 SL stated at interview, and this had been confirmed in her letter of 21<sup>st</sup> August 2002, that the complainants would not confirm in writing their desired outcome from the complaints.
- 4.18 The second investigation at this stage was concluded in SL's letter of 27<sup>th</sup> September 2002.
- 4.19 It is important to note that at this stage of the investigations by inspectors Ms A and SL that they were not aware that there was a written complaints procedure in place. There was certainly no written guidance for staff about how to undertake an investigation or about

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the way in which a report should have been formatted. Indeed SL wrote to the Regional Director of South East Region expressing her concern that the investigation had been allowed to go ahead, as it revolved around pre-NCSC/foster care registration issues; that she had no experience of working in the field of foster care, that NCSC had not at that time provided clear methodology or guidance for regulating fostering agencies or investigating complaints, and that this left her feeling vulnerable.

- 4.20 The fact that there were continuing changes in the boundaries of the matters to be investigated, that previous issues were inappropriately investigated under incorrect procedures, that the report format used only served to encourage further complaints to be investigated and that the final format continued in the same way, plus the fact there existed no policy, procedure or practice guidance available for staff, was enough to almost guarantee that the foster carers would not to be satisfied with the result.
- 4.21 The decision to have these complaints investigated under NCSC auspices with a view to informing the NCSC about the fitness of the fostering agency prior to their impending Registration was well intentioned, but gave rise to the generation of further complaints being issued at a time when no procedure existed to manage them. It was after all and foremost a registration issue, and there were established procedures that could be used for this purpose. **Using a complaints process to inform a Registration issue was shown not to be helpful.**
- 4.22 Other options that could have been explored included interviews and the exploration of records as part of a registration enquiry, with the outcome being a confidential report that would be used as part of the registration process and to judge the fitness of the directors of the fostering agency.

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4.23 Another option not explored was for the NCSC to ask the agency to respond to issues themselves under their own agency complaints procedure and for that response to inform the registration process for NCSC. This would have required the agency to address the issues raised directly with the foster carers, and copy their findings (including their response to the foster carers) to the Commission. This would have been in accordance with the 'Fostering Service Regulation' Regulation 18. This states the following: "(1) .....the registered person in respect of an independent fostering agency (a) shall establish a written procedure for considering complaints made by or on behalf of children placed by an agency and foster carers approved by it."

### 4.24 FINDINGS IN RELATION TO THE STAGE ONE PROCESS.

- (1) The fact that the NCSC had only been in existence as an organisation for one day at the time that the complaints were referred to them, significantly impacted on the poor practice that followed in the stage one investigation. [4.1] That this lack of preparedness meant that there was no complaints procedure in place, no guidance for staff into investigation skills requirements or guidance about investigation report formatting. [4.19]
- (2) The decision to have this matter investigated under the complaints procedure as a way of informing the organisation about the fitness of the fostering agency, was ill-advised, as it introduced rights of appeal for stages two and three that were not part of the fitness examining process. [4.2]
- (3) The timing of the response to the foster carers by the agency was also ill-advised, and left the foster carers with feelings of victimisation by the agency. [4.5]

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- (4) That the investigation suffered as a result of the investigator team not being able to get a more specific agreed and final signed list of complaints from the complainants to investigate. [4.7] The continual supply of additional information from the complainants could not hope to achieve its objective of informing the inspectors, but rather served to swamp them, and therefore, unfortunately, only served to obfuscate the process. [4.6]
- (5) The method of the investigators undertaking an unannounced visit to the agency to gather information prior to interviewing the foster carers to agree the matters for investigation, is not in line with good investigative practice. [4.9]
- (6) The publication by the investigators of individual comments of the people interviewed, served to only personalise those responses, cause the complainants to discredit their comments and serve for further complaint enquiries to be undertaken. [4.11]
- (7) That by asking people for comment about the abilities of the foster carers, served to make them a subject of complaint rather than the complainants. [4.13]
- (8) That the investigating officers felt out of their depth in handling a complaint of this complexity. [4.19]

### **4.25 OVERVIEW OF STAGE 2**

What has emerged from reading reports, correspondence and interviewing of staff is that there was a crucial difference in the understanding of what the second stage of the complaints procedure really meant.

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- 4.26 The written complaints procedure that was in force at the time of the stage two, makes an ambiguous statement about this next stage, leaving options and interpretations open to question. It stated the following:
- 4.27 "Depending on the nature of the complaint, we may need to conduct a formal investigation". Also "As with the first stage, you [the complainant] will be informed of progress, the outcome of the investigation and any action that has been taken to resolve the complaint. If you are not satisfied with the outcome at this stage, you have the right to go on to the third stage."
- 4.28 This seems to imply in the first statement that there may be an investigation or there may not be, and that some other way of resolving the issue may be employed. In the latter reference it only mentions the option of an investigation. This vagueness was not helpful.
- 4.29 What is clear, however, is that the meaning is to RESOLVE the complaint.
- 4.30 CC was absolutely clear that she was told to REVIEW THE PROCESS (not to investigate). JD (NCSC) also recalls that a review was considered the next step, and that if it identified that a new investigation was required, then one would be started.
- 4.31 In fact Ms C's letter to JD (NCSC) of 29<sup>th</sup> March 2003 starts by accepting the offer of a review.
- 4.32 This letter from Ms C is lengthy, but describes why some of the evidence used in the stage one investigation should be discredited. It could be argued that this should have prompted managers to realise that "reviewing" the previous processes of investigation could not

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achieve the aim of the complaints procedure, which was to RESOLVE the complaint.

- 4.33 JD (NCSC) in interview, stated that it was her understanding that such a review could have identified if a further investigation was warranted. I suggest that there was already sufficient information from Ms C in existence to demonstrate that it was clear that **only** another investigation could address the alleged discrepancies of the stage one investigation.
- 4.34 The confusion about the use of the word "investigation" at stage two is confirmed again in CC's report. In para 2.1 she sets out the boundaries of her role. This states that "*(it) would be restricted to an investigation of the conduct of the complaint, I would not be re-investigating the complaint itself.*"
- 4.35 In other words CC would be reviewing the processes of the previous investigations. This concurs with what JD (NCSC) understood. Unfortunately it contradicts what CC states in para 1.2 of her report when she says, "*The investigation was carried out in accordance with stage two i.e. the formal stage of the NCSC Procedure.*" As it turned out to be a review and not an investigation, it did not conform to that procedure.
- 4.36 By this time Ms C had involved her local Member of Parliament (JP).
- 4.37 Further evidence of the confusion about the purpose of stage two of the complaints procedure was also re-enforced with the MP. On 20<sup>th</sup> January 2003 JD (NCSC) wrote to JP (this was after the stage one investigation had been concluded) stating at the end "*...The concerns raised by Ms C and Mr C will be kept on file and be available to inform any future investigation, should similar concerns ever be raised again.*"

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- 4.38 One month later, on 21<sup>st</sup> February 2003 JD (NCSC) writes again to JP (in response to correspondence) with a letter referring at times to the next stage as a review and at other times as an investigation. The evidence for this includes the following from that letter [referring to the next stage of the complaints procedure] *"...it can then be referred to the Regional Director for the matter to be investigated by an NCSC employee who is independent of the Area office."*
- 4.39 Yet the very next paragraph makes the following statement *"I have referred Ms C's complaint to RB, Regional Director who has asked CC to undertake a review of Ms C's original complaint..."*. And again, the following paragraph commences *"CC will conduct the review by meeting Ms C, reviewing all documentation and meeting the agency personnel as appropriate."*
- 4.40 Following further correspondence JD writes back to JP on 16<sup>th</sup> April 2003, this time stating that the matter will be investigated. This was also confirmed to Ms C on the following day (17<sup>th</sup> April 2003) that CC will *"commence a stage two investigation"*
- 4.41 Once CC had met Ms C and Mr C on 15<sup>th</sup> May 2003, she wrote to them on 16<sup>th</sup> May confirming what she understood the issue to be. She again explained that her brief was *"to look closely at the investigation process to examine whether the inspectors undertook their investigation thoroughly and took into account all the available facts in order to reach their conclusions - it is not to conduct the whole investigation again. Should failures in the process become apparent, this aspect will be reviewed, but this can only take place after my assessment is complete."*
- 4.42 Unfortunately, CC does add further confusion to what it is that she has agreed to do, as a letter to Mrs C dated 22 May 2003 concludes with the statement, *"I will endeavour to complete this second, formal*

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*stage of the investigation within two months in accordance with our complaints procedure." Which of course she has already stated in previous correspondence NOT to be the case.*

- 4.43 In discussion, SL, CC and JD (NCSC) all stated that Ms C found it difficult not to keep adding more detail and issues. In this regard, it is to be noted that CC also mentions in her letter of 16<sup>th</sup> May 2003 to Ms C and Mr C that she notes their concerns that *"... a previous employee of the agency, started working with children prior to police clearance and that the previous investigation failed to address this adequately."*
- 4.44 The stage one investigators did not consider this part of the issues to address at stage one, and without further detailed investigation, it is not clear when this particular matter was introduced by the foster carers. (following the distribution of the draft report arising from this independent review, Ms C stated that this matter was raised with the investigators on 20<sup>th</sup> May 2002. However, the investigators did not specify this in the wording of the complaint that they investigated).
- 4.45 As CC had stated a review of processes would be undertaken, she would not have been empowered to respond to the issue of the employee of the agency and the issue of his police clearance. This was, effectively, a new complaint. This is another indication that the review process was not one that would resolve matters, and again could be considered another indicator that there was already sufficient evidence to substantiate a new investigation, rather than a review to come to the same conclusion.
- 4.46 Despite this, CC still investigates the matter to the point of forming a view (para 6.9) that states, *"I find it likely that this part of the complaint, that a support worker was employed without proper checks, would probably be substantiated"*.

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- 4.47 In the end CC (whilst in the process of undertaking her "review" to which in para 5.13 she refers to as an "investigation") makes a finding of "Partially-substantiating" regarding how the agency dealt with Ms C and Mr C following the discovery of the history of child X.
- 4.48 Another apparent contradiction in this report lies in the reference to para 6.6 which states that JD (NCSC) examined files at the agency in relation to the matter of the worker without proper checks, whereas in para. 7.8 it states that this issue was looked at through the inspection process *"and as such may not have been given sufficient weight"*.
- 4.49 This statement would appear to be contradictory and therefore confusing.
- 4.50 Further confusion was generated for the foster carers about what the next stage of the process would be, when in her "Recommendation" section Para. 9.4 CC recommends that *"Ms C and Mr C be supplied with information concerning the third stage of the NCSC complaints procedure, should they remain dissatisfied with the outcome of the review...."*
- 4.51 As already stated by CC, the purpose of her review was to determine if the findings would indicate that an investigation was warranted. Therefore the next stage of the process was NOT a third stage review, but an INVESTIGATION.
- 4.52 This again was contradictory to previous statements, as was the fact that the review process was already contrary to the written complaints procedure of NCSC at that time.
- 4.53 In the end RB, Regional Director, South East Area, wrote his adjudication letter on 16th July, yet despite the findings of CC's review, did not initiate a re-investigation.