

CLOSING SUBMISSIONS

on behalf of

**HARMENY EDUCATION TRUST
LIMITED**

to the

**SCOTTISH CHILD ABUSE INQUIRY
[PHASE 9 HEARINGS]**

INTRODUCTION

1. These closing submissions are made on behalf of Harmeny Education Trust Limited, which is the organisation responsible for the operation and management of Harmeny School in Balerno, Edinburgh.
2. The governing mission of Harmeny School is to provide therapeutic care and education to help children overcome and recover from trauma and adversity, discover the joy of learning and lead happy, fulfilling lives. Today, the school provides a safe, nurturing and stimulating residential environment for around 30 children aged between 5 and 18¹. Since many of the children at Harmeny live there for 52 weeks of the year, it is also their home throughout their time at the school.
3. At the outset, Harmeny would like to say that it has valued the opportunity to participate in the Inquiry's Phase 9 hearings. Gavin Calder, the Chief Executive and Jennifer Scott, the Chair of the Board and other Trustees, have attended or viewed the evidence sessions concerned with events at the School as well as other hearings of more general relevance to the school. These closing submissions contain Harmeny's reflections and conclusions on the evidence led at the oral hearings, as

¹ The school also offers a day service for around 9 pupils.

well as the evidence which Harmeny has provided to the Inquiry in its responses to the Section 21 Notices.

4. In line with the guidance provided by the Inquiry, the remainder of this submission is set out in 6 broad chapters, as follows:-
 - i. Submissions on factual determinations;
 - ii. Response to evidence led in the Case Study;
 - iii. Failings or deficiencies in systems or in responses to abuse;
 - iv. Changes to practices and policies resulting from engagement with the Inquiry;
 - v. Lessons learned and changes to be made, and
 - vi. Conclusions.

5. As the Inquiry is aware, Harmeny Education Trust Limited took over the running of the school from the previous operator, Save the Children, on 21st December 1995. Accordingly, the primary focus of these submissions is upon the period after that date, when the trust has had sole responsibility for the management of the school.

PART 1: SUBMISSIONS ON FACTUAL DETERMINATIONS

6. For this chapter of the submission, Harmeny has attempted to consider the evidence in relation to matters which appear to it to be of particular importance. An exhaustive account of the period under examination is not attempted, not least to avoid unnecessary repetition of the detailed section 21 responses which have previously been submitted to the Inquiry. The observations which follow are offered to assist the Inquiry in its task of determining such facts as have been established in relation to Harmeny.

Harmeny School

7. It may be that any factual account of events at Harmeny needs to be set in the overall context of its specialist role in education provision in Scotland. In this regard, there are perhaps three features to highlight. First, since its foundation in 1958 Harmeny has always been a relatively small school, if size is measured by the metric of pupil numbers. During the period since 1995, the school has provided residential care and education services to between 24 and 30 children of primary and secondary school age. Secondly, the children who are placed at Harmeny come from all across Scotland, having been referred by their respective Local Authorities. Thirdly, while children come to Harmeny from a diversity of circumstances, all of them have suffered trauma in their early years - whether arising from familial neglect; parental substance use; mental health issues; domestic violence; poverty and disadvantage – and some have been victims of child abuse. Many of the children have experienced complete family breakdown or been in the care system from a young age, followed by multiple residential or foster placement breakdowns, and exclusion from mainstream or specialist education.

8. As a result of this, the children at Harmeny have complex additional support needs, which demand a highly specialist approach to their care and education. In these circumstances, the requirement for the highest standards of teaching, care and child safeguarding is self-evident. That is all the more so because the needs and vulnerabilities of the children who live and are taught at Harmeny mean that the issue of physical intervention, or restraint, arises for consideration as a necessary aspect of its core duty to keep children safe from harm. It is submitted that the events and issues which the Inquiry has examined in relation to Harmeny require to be viewed and considered within that essential context.

Harmeny School in 1995

9. The evidence led at the case study establishes that when the trust took over the running of the school in 1995, these necessary high standards were not being achieved. The original vision of the school as a “*therapeutic community*” appeared to have been lost sight of or, as Barbara Kahan found, “*the reality ...does not support that claim.*”² In their evidence, Dan Paskins and Sarah Carter of Save the Children spoke very thoughtfully of their reflections on the findings of the Kahan review, whose recommendations resulted in the creation of the trust. The Kahan Report identified major problems with the governance and management of the school.³ A lack of management, structure and supervision and support for care staff was found to be the most important single defect in that regard.⁴ It seemed that, at that time, the school saw itself primarily as an educational resource, with care of the children as an adjunct or afterthought. The residential care workers received the least support and guidance despite having the most demanding tasks⁵ There was no evidence that the provision of care and education to children was informed by the voice of the child and what children needed: a “containment” approach was adopted instead.⁶ Corporal punishment continued long after it should have been banned⁷.
10. During the evidence of Dan Paskins and Sarah Carter, Counsel to the Inquiry referred to an incident observed by a member of the review team for the Kahan Report. The reviewer had been spending time with boys who were building a den in the middle of their bedroom. While he was there, a little boy gave him a letter to the adults which he had kept in secret folded up in the den. The letter included a drawing of a weeping child with a caption “*That’s how I feel, but you stupid adults can’t*

² Transcript, day 551, Dan Paskins and Sarah Carter, p64 line 20 - p66, line 6; Transcript, day 552, “George”, p49 line 13 – p50 line 8p55 line 357 line 12; Barbara Kahan, *Save the Children Fund Review Report 1992*, para 9.15 – 9.16 [SCH-000000034]

³ Transcript, day 551, Dan Paskins and Sarah Carter, p57, line 18- p59, line 6; p61 line 2 – 24

⁴ Barbara Kahan, *Save the Children Fund Review Report 1992*, para 5.16 [SCH-000000034]

⁵ Transcript, day 551, Dan Paskins and Sarah Carter, p62, line 15 - p63 line 20

⁶ Transcript, day 551, Dan Paskins and Sarah Carter, p19 line 4-9; p63 line 15 -20

⁷ Transcript, day 551, Dan Paskins and Sarah Carter, p22 line 3 – p25 line 20

see that can you.” But then a member of staff came into the bedroom, saw then den and immediately ordered it to be taken down, curtains opened and chairs to be returned outside the room.⁸ It may be that this melancholy episode very well illustrates⁹ some of the main problems identified in the Kahan Report, which informed its recommendation for an independent trust to run the school.

11. It seems clear from the evidence led at the case study that a major change in management, culture and approach was required. In his oral evidence, “George” recalled arriving to take up his post on the school staff and his impression of *“seeing a wonderful site with so...poor a residential and teaching space (that) was kind of difficult to come to terms with.”*¹⁰ He went on to say that, *“There was quite a negative culture in terms of children not being able to cope and staff not understanding that this was because the children were very damaged young people...they wanted children to behave as if they were in...Eton.”*¹¹ Echoing the findings of the Kahan review, he recalled there was a division between the care and teaching staff, with the care staff being subservient to the teaching staff.¹²

Harmeny Education Trust Limited

12. It is submitted that, overall, the evidence in relation to the period from 1995 onwards tells a story of continuous improvement and progressive change at Harmeny, albeit not without its challenges, difficulties and shortcomings along the way.
13. The evidence from three of Harmeny’s Chief Executives during the period after 1995 has assisted the Inquiry in charting the course of this journey. The issues which led to the creation of the trust could not, and were not, resolved overnight. However, it

⁸ Barbara Kahan, *Save the Children Fund Review Report 1992*, para 6.8 [SCH-000000034]

⁹ Transcript, day 551, Dan Paskins & Sarah Carter, p67 lines 6 – 24]

¹⁰ Transcript, day 552, “George”, p55 line 8-10

¹¹ Transcript, day 552, “George”, p56 line 7-16

¹² Transcript, day 552, “George”, p56 line 21 - p57 line 8

appears that under the new trust Harmeny took action to give effect to the findings and recommendations of the Kahan Report.¹³ A Board of Trustees with multidisciplinary expertise was appointed to enable better governance.¹⁴ A senior management team was developed.¹⁵ The existing Principal was appointed to a new role of Chief Executive, a title better reflecting his overall managerial responsibilities for the organisation.¹⁶ It also appears that, from the start, the school leadership attempted to adopt a more integrated approach in relation to the care and education of children.¹⁷ “George” described how one of the main tasks early on was to find a way to bring the care and education staff together.¹⁸ Whole school meetings were introduced for that purpose.¹⁹ Team leaders were introduced to each of the residential buildings, reporting to the Head of Childcare and Head of Education.²⁰ Extensive improvements were made to the school estate, supported by vigorous fundraising efforts.²¹ In 1999 the school had a *“very positive inspection reflecting the continuing strides the school are making in developing good child care provision.”* This ELRIS inspection report found that *“The “culture” of the school appears to have changed, with much improvement in how staff feel supported, and how care staff support educational colleagues and children during the school day,”*²²

14. The move from a 40 week year to offering year-round provision from around 1999 has been identified as an important and positive development.²³ It led to increased recruitment of staff, higher staffing numbers including, importantly, overnight staff²⁴, an expanded management team and an overall improvement in culture at the

¹³ Transcript, day 551, Gavin Calder, p105, line 9 – p106, line 14; Inspection Report on Harmeny school, May 1996, paras 9.1 – 9.6 [SGV-001033195]

¹⁴ Transcript, day 551, Dan Paskins & Sarah Carter, p39 line 16 – p40 line 20

¹⁵ Transcript, day 552, “George”, p65 line 25 – 66 line 14.

¹⁶ Witness statement “George”, para 35 - 36 [WIT-1-000001646]

¹⁷ Transcript, day 551, Gavin Calder., p111 line 21 – 112, line 19

¹⁸ Transcript, day 552, “George”, p57 line 9 -11

¹⁹ Transcript, day 552, “George”, p67 line 13 – p69 line 20

²⁰ Transcript, day 552, “George”, p72 line 25 – 73 line 20.

²¹ Witness statement “George”, para 43 – 45; 51 [WIT-1-000001646]

²² ELRIS Annual Inspection Report 1998/99 para 9.1 – 9.2 [HET-000000002]

²³ Witness statement, Peter Doran, para 37 – 38 [Wit-1-000001674]

²⁴ Transcript, day 552, “George”, p81 line 5 – 20.

school. The investment in increased staffing resources at the school has continued in the period up to 2014, and beyond, to the present date.²⁵

15. Addressing the potential for child abuse became part of the school's strategic approach.²⁶ Significant work went into policy development. Child Protection Policies were put into place with a system for reporting, recording and internal and external investigation.²⁷ However, and as Peter Doran recognised, "*Policies are useless unless they are embedded in practice...Therefore there was a need for both policies and the right staff to implement them.*"²⁸ So better and more rigorous recruitment policies were developed.²⁹ There were significant efforts in relation to the training of staff, and the school became a SQA centre.³⁰ CALM training was introduced for staff along with a greater emphasis on de-escalation.³¹ It was clearly appreciated that good Learning & Development was essential for the staff to be able to work effectively with the children in their care.³² The school worked on ways to encourage children to talk to staff about anything that they were concerned about.³³ There was also a progressive, and necessary, improvement in approach to behaviour management, towards a model more apposite to the needs of the children at Harmeny.³⁴ In his oral evidence, Gavin Calder acknowledged that the school's *Sanctions and Control Policy* from 1997 included a range of disciplinary sanctions which are no longer considered appropriate by Harmeny today.³⁵ In 2006 a Safe and Positive Practice Policy, which focussed on the promotion of positive behaviour rather than sanctions, albeit that a

²⁵ Staff numbers increased from 61 care staff and 25 education staff in 2005, to 106 care staff and 36 education staff in 2014: Transcript, day 551, Gavin Calder, p135, line 20 – p136, line 21.

²⁶ Transcript, day 552, "George", p76 line 21 – p77 line 22

²⁷ Witness statement, Peter Doran, para 106 – 109 [Wit-1-000001674]

²⁸ Witness statement, Peter Doran, para 103 [Wit-1-000001674]

²⁹ Witness statement, Peter Doran, para 63 – 70 [Wit-1-000001674]

³⁰ Transcript, day 552, "George", p77 line 23 – p78 line 15; Witness statement, Peter Doran para 52 – 60; 85 - 88

³¹ Transcript, day 552, "George", p87 line 1 - p89 line 7; p90 line 7 – p91 line 8; Witness statement, Peter Doran para 81; para 174 – 177 [Wit-1-000001674] ELRIS Annual Inspection Report 1998/99 para 3.6 [HET-000000002]

³² In his statement Peter Doran observed that: "*It may sound very simple but if you are a teacher or member of care staff who has been spat at or bitten by a child, it takes serious support training and development network to help them stand back and not react.*" [para 58] [Wit-1-000001674]

³³ Transcript, day 552, "George", p75 line 17 – p76 line 20

³⁴ *Harmeny Education Trust Limited Response to the Scottish Child Abuse Inquiry*, part A, Para 1.5.viii & x;

³⁴ Witness statement, Peter Doran para 162 – 166 [Wit-1-000001674]

³⁵ Transcript, day 551, Gavin Calder, p114, line 10 – p121, line 25;

number of “consequences” for negative behaviour remained permissible in appropriate circumstances.³⁶

16. Taking all the evidence together it is submitted that during the years since 1995, the aspiration that Harmeny should exist as a therapeutic community, concerned with the wellbeing of the whole child, has been firstly restored, and then progressively realised for the children who came to live at the school .³⁷

Findings in relation to abuse

17. In its Opening Statement at the outset of these hearings, Harmeny publicly acknowledged and accepted that acts of child abuse had been committed against children at Harmeny School, during the period of its management of the school. It was accepted that the abuse included incidents of physical and verbal abuse by members of staff upon children. In particular, it was accepted that a number of such incidents have occurred in the context of what is referred to as “physical interventions”, or restraint procedures. It was also accepted that there have also been incidents of abuse between children at the school. Harmeny adheres to that position, as Gavin Calder expressly confirmed during his oral evidence to the Inquiry.³⁸
18. None of the witnesses who have given evidence during the Phase 9 Hearings were pupils at Harmeny during the period when the Trust was responsible for the school. However, the responses provided by Harmeny to the Inquiry’s Section 21 notices contain details of incidents of abuse which it has identified as having taken place during the relevant period.³⁹ Some of those incidents were spoken to in oral evidence

³⁶ Care Commission, Inspection Report 3 July 2006, p5 [CIS-000010138]

³⁷ In 2012 the school achieved “excellent” care inspection grades in all areas: Care Inspectorate Summary Regulatory History Harmeny School 2002 – 2014 [CIS-000010034] . Transcript, day 552, “George” p66 line 15 – p67 line 12; Witness statement, Peter Doran para 50 [Wit-1-000001674] Care Inspectorate Inspection Report, 20 June 2025. [HET-0000000117]

³⁸ Transcript, day 551, Gavin Calder, Transcript p148, line 12 - 17

³⁹ *Addendum re Parts B and D of Harmeny’s Response*, dated 17 January 2025; and *Addendum re Part B Response*, dated May 2025

by Gavin Calder and his predecessors as Chief Executive. It is submitted that the Inquiry would be entitled to make findings of fact in relation to the occurrence of abusive conduct at the school during this period based upon this evidence, as follows below.

19. Harmeny's response to the section 21 Notice was based on a thorough review of the available records. It identified a number of occasions on which children were, undoubtedly, abused in the period between 21 December 1995 and 17 December 2014. Such incidents of abuse include:

- A child was kicked by a Social Care Worker on 1st September 1996, resulting in his dismissal on 8 September 1996.⁴⁰
- A child was kicked by a different staff member, also a Social Care Worker resulting in a final written warning being issued on 8 October 1997.⁴¹
- That member of staff was involved in two further incidents of verbal and physical abuse against children which resulted in his dismissal on 2nd March 1998.⁴²

It is submitted that the occurrence of these incidents is well documented in the evidence and the Inquiry can make any corresponding factual findings with a high degree of confidence.

20. The Inquiry has also heard evidence about an incident from 7th April 2013 in which a child in Laurel House was taken to a utility room and reception area and made to stay there alone, uncomfortable in the dark and cold.⁴³ The incident resulted in a warning being placed on the staff member's SSSC file and internal disciplinary proceedings were also taken by Harmeny. In his evidence Gavin Calder described

⁴⁰ Transcript, day 552, "George", p95 line 1 -p96 line 22

⁴¹ Transcript, day 552, "George", p96 line 23 – p98 line 10

⁴² *Addendum re Parts B and D of Harmeny's Response*, dated 17 January 2025, [para 5.2]

⁴³ Internal investigation report dated 11th April 2013 [HET-000000092]

the actions of the staff member as *“totally inappropriate.”* It is submitted he was correct to do so.⁴⁴

21. The first addendum response to the Section 21 Notice submitted by Harmeny⁴⁵ also included a spreadsheet [Appendix 2] containing a further 73 incidents where allegations of physical and sexual abuse were made by pupils against both staff and other pupils during the relevant period. A total of 28 of these incidents involved alleged assault during restraints or holds. A further spreadsheet [Appendix 3] has been provided containing incidents of ‘potential’ abuse which it recognised the Inquiry may consider amounted to allegations of child abuse.⁴⁶ It is against this background that Harmeny has also acknowledged that some former pupils may perceive themselves to have been abused, including for example in relation to how they felt about being restrained by staff.⁴⁷ During his oral evidence Gavin Calder explained that *“we know from the studies we’ve done, both with former pupils and with current pupils, that when they talk about Harmeny in particular they talk glowingly about the outdoors, they talk about lots and lots of good experiences they’ve had, but if there is a constant thread through any negativity, it tends to be around restraint.”*⁴⁸

22. It is a matter for the Inquiry to determine whether, and if so to what extent, findings can be made about the matters disclosed in the Appendices to the section 21 Response. For its part, Harmeny does not invite the Inquiry to make determinations upon the precise circumstances of all the individual complaints and allegations. In some cases, it may be there is insufficient information to do so, at this remove of time, in any meaningful way. It is observed that, in most cases, it appears that the recorded allegations were subject to appropriate internal and/ or external investigation at the time when they occurred. [Information in relation to the

⁴⁴ Transcript, day 551, Gavin Calder, p145, line 23 – p146, line 14

⁴⁵ Addendum re Parts B and D of Harmeny’s Response, dated 17 January 2025

⁴⁶ Addendum re Parts B and D of Harmeny’s Response, dated 17 January 2025 [para 5.1 – 5.2]

⁴⁷ Addendum re Part B Response, dated May 2025, para 3.1

⁴⁸ Transcript, day 551, Gavin Calder, p149 line 3 – line 12

response to the individual allegations or complaints provided to the Inquiry in the spreadsheets is found at Column J of Appendices 2 and 3 to the Addendum Part B and D Response.]

23. From Harmeny's perspective, however, the significance of the number and nature of the allegations recorded falls to be considered in light of the very high number of incidents of physical interventions and restraint during the relevant period. For example, in the year 2007 there were 1,217 recorded incidents of physical intervention at Harmeny⁴⁹.
24. In his evidence Gavin Calder described this as "*a staggering figure*" which he thought was "*far too high*."⁵⁰ It is Harmeny's submission that the use of restraint and physical intervention on such a scale must have created - at the very least - an increased risk of children sustaining abuse and harm as a result of inappropriate or unnecessary restraint procedures being carried out.

Reduction in Physical Intervention & Restraint

25. It is submitted that the Inquiry may also find that, since then, significant work has been undertaken by Harmeny to reduce the incidence of physical interventions, and that these measures have been effective over time. For example, in 2008 a group called the Safe and Positive Practice Group was engaged for a specific project to achieve a reduction in physical interventions at the school.⁵¹ In his evidence, Gavin Calder explained that this report was necessary because at that time, in common with other institutions, restraint was being overused at Harmeny. However, the report contained a detailed examination of practice at Harmeny and begun to plan strategies for reducing the level of physical intervention used at the school. For

⁴⁹ Lynne Reid & David Gibson, *The Reduction of Instances in Physical Intervention* [p5] [HET-000000028]

⁵⁰ Transcript, day 551, Gavin Calder, p124, line 18 -p125 line 3

⁵¹ Transcript, day 551, Gavin Calder, p122, line 1 - 123, line 6. A member of the school management team was seconded for 3 months to work on the project

example, it considered the data from Harmeny, as to why there were higher numbers of physical interventions recorded in the late morning than other times of day; on the days from Monday to Thursday during term-time; and during months with school holidays – and considered whether timetable restructuring may be required to address this.⁵²

26. It is submitted that this initiative reflected quite a forward-thinking approach by the management of the school. Indeed, insofar as the report emphasised the need for constant learning by investigation and reflection of what happened, including the importance of the young person’s voice being heard, the report foreshadowed a number of key elements of current practice at the school.⁵³ The report concluded that: *“To truly address the issue of culture we must begin to openly study the differences between cottages, scrutinise the roles and responsibilities of all staff at all levels of the organisation, and ensure that there is a common philosophy, value base and language employed by all staff.”*⁵⁴ In his evidence, Gavin Calder described this as *“almost a precursor...to what we now call the Harmeny Way, which is our therapeutic practice model.”*⁵⁵

27. The table below illustrates at a glance the progress made by Harmeny over the last several years.⁵⁶ By 2014 the annual number had been reduced, at least somewhat, to 875. In 2024, there were 217. While much of this data falls outwith the period before 17 December 2014, it is submitted that it may be considered relevant to the Inquiry’s consideration of current child protection systems within its Term of Reference 6.

⁵² Lynne Reid & David Gibson, *The Reduction of Instances in Physical Intervention* [p5 - 7] [HET-000000028]

⁵³Ibid

⁵⁴ Lynne Reid & David Gibson, *The Reduction of Instances in Physical Intervention* [p21] [HET-000000028]

⁵⁵Transcript, day 551, Gavin Calder, p134, line 1 - 13

⁵⁶ *Addendum re Part B Response*, dated May 2025 [the table as originally submitted had a formatting problem and a corrected version has been provided to the Inquiry]

Total annual restraints 2014 – 2024

Year	Total number of restraints
2014	875
2015	779
2016	613
2017	595
2018	642
2019	450
2020	300
2021	322
2022	343
2023	321
2024	217

28. As to how such progress has been achieved, the Inquiry has heard that the approach taken by Harmeny today emphasises the importance of a holistic approach to achieving reduction in restraint incidents. This involves looking beyond a narrow focus on the immediate circumstances of the incidents to consider how changing the way in which the school operates may help to address the problem. For example, a different holiday calendar has been introduced to minimise the disruptive effect of transitions upon the children.⁵⁷ It is also important to look at what is happening in the child’s life away from the school at that particular moment in time to help identify the reasons for their emotional disturbance.⁵⁸

⁵⁷ Transcript, day 551, Gavin Calder, p126, line 6 – p127 line 3. [The Safe & Positive Practice Group looks at every hold which has taken place and makes reports to the Board in relation to the use of restraint across the year.]

⁵⁸ Transcript, day 551, Gavin Calder, p128 line 7 - 17

29. Maintaining a good programme of Learning and Development for staff members is considered essential to achieving best practice in this area.⁵⁹ Reflective Practice also plays an important role. At Harmeny, this requires a multidisciplinary team (including therapists) working together, all of whom bring specialist skills to the work with individual or groups of children. This approach is embedded in the current procedures and includes both reflection with the young person as well as the staff member who has carried out the hold.⁶⁰ In a similar vein, the training in de-escalation techniques focusses not just on de-escalating the child but emphasises the importance of the adult recognising when they are in a heightened state and not the right person to deal with the situation.⁶¹ This underscores the importance of ensuring sufficient staffing at the cottages at the school to enable this to be put into proper effect.

PART 2: RESPONSE TO EVIDENCE LED IN CASE STUDY

30. Having reflected on the evidence led at the case study, Harmeny wishes to repeat and reaffirm the apology which it offered in the Opening Statement.

31. Harmeny would like to reiterate its deep contrition and regret for all shortcomings and failures on its part, whether in failing to prevent incidents of abuse from occurring, in its response to reports of abuse, or in failing to meet the high standard of professional practice which is rightly expected of it.

32. To all those who have been affected by child abuse at Harmeny School during this period, Harmeny would like to say that it is sorry.⁶²

⁵⁹ *Addendum re Part B Response*, dated May 2025, p5 - 6

⁶⁰ Transcript, day 551, Gavin Calder, p130 line 8 – line 131 line 18

⁶¹ Transcript, day 551, Gavin Calder p131 line19 – 133 line 5

⁶²In his evidence, Gavin Calder provided a necessary clarification to what was said in the s21 response by making clear that it is not suggested those who have suffered abuse at Harmeny have suffered no impact as a result; and he suggested that on the contrary they would have. [Transcript, day 551, Gavin Calder, p147 line 12 – p148 line 8]

33. Harmeny's substantive response to the evidence led at the case study is largely incorporated in at Parts 1, 3, 4 and 5 of this submission. The submissions include acknowledgement of general, specific and systemic failings by Harmeny in relation to its protection of children from the risk of abuse. The apology tendered here by Harmeny is intended to encompass all these shortcomings and failings on its part.

34. Harmeny will try to demonstrate the sincerity of these words of apology through its actions, in the most meaningful way it can, by demonstrating its real and sustained commitment to continuous improvement in its systems for safeguarding of the children entrusted to its care, within its therapeutic practice framework *The Harmeny Way*.

PART 3: FAILINGS OR DEFICIENCIES IN SYSTEMS OR IN RESPONSES TO ABUSE

35. This chapter of the submission considers firstly the question of systemic failures generally, and secondly the question of failure in responses to abuse.

Systemic Failures or Deficiencies

36. In the Opening Statement, it was stated that Harmeny's overriding purpose in appearing in these hearings is to listen to, and learn from, the evidence - both to gain a better understanding of what may have gone wrong in the past, and to help inform continued improvements in its current practice.

37. Having listened and reflected, Harmeny now considers that an overly narrow approach may have been taken in addressing the question about systemic failures in its section 21 response. That response sought to examine the question from the perspective of whether the occurrence of any of the individual instances of abuse

identified could be attributed to “any systemic failure per se”, in addition to the obvious individual and personal failing by the member of staff concerned.⁶³ On that view of matters, Harmeny concluded that those incidents of abuse appeared to have taken place notwithstanding that appropriate systems and processes were in place within the organisation to protect children.⁶⁴

38. In its response, Harmeny described the component parts of those system⁶⁵ and processes which have included: 1. The employment of three school Social Workers; 2. The development of a Child Protection Policy and Procedure, including the provision of lead CPOs, with relevant experience and qualifications was developed and effectively used; 3. Reporting of Child Protection concerns to relevant authorities, with records kept via CP1 Forms and within case files, absconder and bullying records; 4. A robust HR response in relation to investigating any allegations or practice issues regarding staff members; and 5. Access to independent Children's Rights and Advocacy Workers, for children placed within the school, from 1996 onwards. Harmeny also drew attention to the findings of successive care inspection reports which had found that its systems and processes were robust.⁶⁶

39. However, reflecting on the specific issue of physical intervention and restraint, Harmeny is of the view that the number of such interventions was too high, and shows that physical restraint was being over-used at the school. Harmeny considers that this may fairly be said to constitute a systemic defect or failure, insofar as the systems in place at the school resulted in (or at least did not prevent) too many physical interventions from being used over a number of years at the school. As discussed above, Harmeny has worked hard to address this issue by improvement

⁶³ In its Section 21 response Harmeny stated that: “From the records which have been reviewed, it is not considered that HETL or School systems failed to protect children. It is accepted that incidents of abuse took place, notwithstanding the systems that were in place, but those incidents are not considered to be due to any systemic failure per se.” Addendum re Part B Response, dated May 2025, para 3.2

⁶⁴ Transcript, day 551, Gavin Calder p154 line 23 - p157 line 19

⁶⁵ Addendum re Part B Response, dated May 2025, para 3.2

⁶⁶ Harmeny Education Trust Limited Response to the Scottish Child Abuse Inquiry, para 3.2

in all the relevant aspects of its systems, including staffing numbers, training and development and a proactive strategy for further reducing physical interventions.

Deficiencies in Response to Abuse

40. It is submitted that the evidence indicates that, overall, allegations or concerns in relation to abuse during the relevant period were met with an appropriate response. Child Protection Procedures were put in place which required staff to report any allegations made by a child, or issues of concern relating to a child, to a qualified Child Protection Officer (CPO). The records suggest that allegations of abusive conduct by staff or other children were either investigated internally (and reported to the child's social worker) or referred for external investigation to the police or social work department. Where child protection concerns were reported to social work or police, this tended to result in no further action being taken or the allegation being withdrawn.⁶⁷
41. However, it is submitted that the evidence led at the case study has highlighted a number of instances in which Harmeny's response to abuse was deficient.
42. The Inquiry has led evidence of the correspondence between the Chief Executive and an official at the Scottish Office in relation to a member of staff who kicked a child on 8th October 1997.⁶⁸ There was a disciplinary procedure which resulted in him being issued with a final written warning but allowed to remain in post. The staff member then carried out two further incidents of verbal and physical abuse, resulting in his dismissal on 2nd March 1998. While no doubt well-intentioned, and clearly the product of anxious deliberation,⁶⁹ it can now be seen that allowing the staff member to remain in post was not the right decision, given the demonstrated

⁶⁷ *Addendum re Parts B and D of Harmeny's Response*, dated 17 January 2025, Appendix 1,2 & 3

⁶⁸ SGV-001033198

⁶⁹ Transcript, day 552, "George", p98 line 3 – 23; The records from the disciplinary procedure and correspondence with the Scottish office have been produced to the Inquiry [SGV-001033198]

propensity for violence which created unacceptable risk to the vulnerable children at the school. It is submitted that after the first assault the staff member required to be dismissed for gross misconduct. As a result of the failure to dismiss the staff member, two other children suffered abuse at his hands before he was eventually dismissed. Harmeny regrets that this represents both a failure of its systems, and a failure in its response to abuse.

43. In his evidence, Gavin Calder also expressed the view that school's disciplinary response to the incident in April 2013 was deficient, in failing to separately consider the child protection concerns arising from this incident with other disciplinary matters affecting the same staff member [see paragraph 20 above].⁷⁰

44. Harmeny has also acknowledged that here was a deficiency in response to peer to peer sexual behaviour in 1996.⁷¹ While the school's internal procedures were followed by a professionally qualified member of staff with designed CPO role, it does not appear that the allegation was reported externally, which it should have been, given the nature of the conduct involved.⁷²

45. In addition, Harmeny has also identified some examples of practice relating to the recording of child protection issues which might have been dealt with more fully, such as the CP1 form not always containing key individuals' full names, the full date or an explanation of the final/ outcome/ response from external authorities.

PART 4: CHANGES TO PRACTICES AND POLICES RESULTING FROM ENGAGEMENT WITH THE INQUIRY

⁷⁰ Gavin Calder explained that there was a "morass of other investigations" concerning the same staff member which were investigated at the same time such that the incident of abuse "almost got lost in the weeds of it. So on reflection I think this could have been dealt with and handled in a better way than it actually was." [Transcript, day 51, p146 line 24 – [147, line 11] [HET000000092; HET-000000102; HET-000000108; HET-000000112]

⁷¹ *Addendum re Part B Response*, dated May 2025, para 3.3

⁷² Incident report extracted from archived floppy disc [HET-000000032]

46. In May 2025 Harmeny submitted an updated Part B response to the section 21 Notice, which included reference to improvements in policies and practice in restraint and physical intervention, since the original response to the Inquiry was submitted in 2019. The response narrates that the process of reading and analysing records for the purpose of preparing the response has resulted in the development of a number of policies, practices and procedures:⁷³

- A new retention of Records Policy to improve the procedures for retaining records relating to Child Protection issues and allegations;
- Establishment and maintenance of Child Protection and Staff Allegation Logs;
- An enhanced Child Protection Policy with an increase in the number of managers trained in child Protection issues, from 2 to 14;
- Revision of the school's CP1 form; and
- Review of the permitted consequences within the school's Safe & Positive Practice Policy.

47. For Harmeny, its Learning and Development Programme for staff lies at the heart of its work towards continuous improvement in physical interventions and restraint.⁷⁴ In 2023, a one-year Care Action Group (CAG) was formed to consider further interventions and policy changes required in this area, focussing primarily on the learning and development required to ensure best practice based on the principles of the Harmeny Way⁷⁵. In addition, new *Safe and Positive Practice* and *Promoting Positive Behaviour* policies were approved by the Policy and Practice Group (PPG) were introduced and implemented in 2023. Other recent work in this area has encompassed a Children's Voice and Alumni Voice interview project; developing the system for Recording of Restraint; data analysis and external research; sharing of good Practices; staff support and engagement; and responding

⁷³ para 3.4.1

⁷⁴ Care Inspectorate Inspection Report, 20 June 2025. [p4] [HET-000000117]

⁷⁵ Learning and Development (L&D) Commentary about the Harmeny Way (HW) training programme [HET-000000075]

to poor practice. The Inquiry has been provided with further details of this work in the updated Part B Response (May 2025).

PART 5: LESSONS LEARNED & CHANGES TO BE MADE

48. The process of examining historical practices at Harmeny for compiling the organisation's response to the Inquiry has reaffirmed the importance of continuing to focus on the appropriate use of physical interventions at the school. As Gavin Calder explained during his oral evidence, *"Looking at the appropriate use of physical interventions, I think the key word I'd be looking there is 'appropriate'. I think throughout the time...there has been a constant look at how we can make sure that physical interventions are used as minimally as they possibly can be and the real focus - I think throughout but increasingly - has become on de-escalation. Yes, we sometimes have to physically intervene with young people, only of it is absolutely a last resort to keep them safe or keep those around them safe."*⁷⁶ Harmeny takes this opportunity to reaffirm its recognition of that governing principle, and its corresponding obligation as a care provider to ensure that it is given effect in practice.⁷⁷

49. Harmeny is committed to *The Promise*, and making its contribution to achieving a position where all care experienced children and young people in Scotland grow up loved, safe and respected so that they can realise their full potential. *The Promise* highlights that:

"Scotland must ensure that whilst working towards change:

- *The rights of children must be at the forefront of every decision about the use of restraint.*

⁷⁶ Transcript, day 551, Gavin Calder, p103, line 22 – p104, line 7

⁷⁷ The Social Care and Social Work Improvement Scotland (Requirements for Care Services) Regulations 2011 include a specific requirement that: *"A provider must ensure that no service user is subject to restraint, unless it is the only practicable means of securing the welfare and safety of that or any other service user and there are exceptional circumstances."* [Reg 4(1)(c)] Moreover, restraint and other restrictive practices are an interference with a child's right to respect for their private life protected by Article 8 ECHR. Any interference thereof must be necessary and proportionate; see discussion in MacIntyre et al, *The Provision of Education in Residential Settings for Disabled children and young people and Children with Additional support Needs: Key Legislation and Policy Developments from 1974 to 2024* [p47]

- *The practice must only be used to keep people safe and must always follow a model which focuses on co-regulation, so that the workforce reflects on their responses.*⁷⁸

In line with these objectives, Harmeny has, and will continue to, maintain a focus on ensuring that physical restraint is only ever used as a last resort, where necessary for the safety of a child or children.⁷⁹

50. As the Inquiry has heard, in 2024 a former member of staff was convicted of four charges of assault against children at the school, which were committed in 2022.⁸⁰ Some or all of these assaults were carried out during “restraint” of children. These deeply regrettable and disturbing events serve to remind Harmeny that the risk to children at the school from abusive conduct has not been eradicated, notwithstanding all the child protection systems and measures that are now in place. The main lesson for Harmeny is that safeguarding of children from the risk of this, or any other kind, of abuse must remain the single utmost priority for the school.

51. Harmeny will continue to invest in improvements in management and governance to help achieve best practice across all areas of life at the school. In recent years, the senior leadership team has been restructured and enlarged. Annual review of the trustees’ skills matrix, and succession planning to avoid skills and knowledge gaps from arising, will continue to be used to ensure the organisation has the right quality of leadership to enable the organisation to meet its objectives.

⁷⁸ The Promise, 2020, p86

⁷⁹ In 2023, a one-year Care Action Group (CAG) was formed to consider further interventions and policy changes required to continue to ensure that children and young people at Harmeny are subject to restraint only in situations of urgent threat to safety and as an absolute last resort. Discussions at CAG also led to the development of new Safe and Positive Practice and Promoting Positive Behaviour policies, and following approval by the Policy and Practice Group (PPG), a sub-committee of the Board, these were shared with all staff on the 10th of March 2023 to ensure a mutual understanding and consistent practice in all areas of Harmeny life. *Addendum re Part B Response*, dated May 2025, p6 -7

⁸⁰ Extract conviction report [JUS-000000259]

52. Finally, in his oral evidence, Gavin Calder described a current “*anomaly*” in the current reporting regime whereby any seclusion or restraint occurring in a care setting requires to be reported to the Care Inspectorate, but there is no equivalent provision for reporting incidents which occur in an education setting such as in the classroom. While Harmeny keep exactly the same records where an incident happens during care or education, there is no external authority to which it can report in relation to the latter. Harmeny consider that this amounts to a gap in the reporting regime, which should be remedied in some way.⁸¹ Harmeny is aware that the Restraint and Seclusion (Scotland) Bill currently under consideration in the Scottish Parliament⁸² would make provision for independent schools and education authorities to report to the Scottish Government on the *number* of restraints and seclusions. However, it remains to be seen whether there will be any more substantive reporting requirements imposed (for example, in relation to the circumstances of each incident) so as to achieve equivalence with the requirements of the Care Inspectorate.

53. The Inquiry is respectfully invited to consider the question of ensuring effective external reporting and monitoring of restraint practice in education settings, when considering recommendations in due course in relation to its Term of Reference 7.

CONCLUSIONS

54. The experience of participating in these hearings and observing the Inquiry’s examination of the history of the school, has caused Harmeny’s current leadership to reflect on how changing the practice and culture of an organisation takes time to achieve. Since the formation of the trust in 1995, successive Chief

⁸¹ Transcript, day 551, Gavin Calder, p117 line 15 -p118, line 10

⁸² This Private Members Bill was introduced on 17th March 2025 and is currently at Stage 1. On 1st October 2025 Harmeny’s Chief Executive, Gavin Calder, gave [evidence](#) to the Scottish Parliament’s Education, Children and Young People Committee, expressing support for extension of restraint and seclusion notification requirements to the education sector.

Executives have shared a vision for Harmeny which over time has helped to embed its governing mission to provide high quality therapeutic care and education for the children in its community. Harmeny considers that improvements in national legislation, practice standards and regulation over that period have facilitated the development of the organisational ethos that exists today. However, recent experience at Harmeny proves the need for safeguarding children from the risk of harm to remain the organisation's first priority. With that in mind, Harmeny commits itself to ensuring that the learning gained from the testimony of survivors to this Inquiry, and from the report and recommendations which the Inquiry will make in due course, are taken on board and implemented in its approach to the care and safeguarding of children at the school.

55. In conclusion of these submissions, Harmeny would like to record its gratitude to all the survivors of child abuse who have shown such courage in coming forward to share their experiences with this Inquiry. Harmeny also wishes to express once again its sorrow and sympathy to all those who have been the victims of child abuse at residential schools and care establishments in Scotland, including at Harmeny School since it was established in 1958.

56. Those are my submissions on behalf of Harmeny Education Trust Limited.

Barney Ross, Advocate
Advocates Library

13th October 2025