

TYNWALD COMMISSIONER FOR ADMINISTRATION  
Refusal to investigate a Complaint – Statement of Reasons  
TCA 1810

### *Introduction*

1. This is a statement, under section 14 of the Tynwald Commissioner for Administration Act 2011, of my reasons for refusing to investigate a complaint challenging the actions taken by the Children's Centre, as agent for the Department for Health and Social Care ("DHSC") in respect of the removal of foster children from the complainant and her husband and their subsequent de-registration as approved foster parents. The complaint is made by the foster mother and her husband has played no part in the process.
2. For reasons which will become clear, I am laying this statement before Tynwald under section 21(5) of the 2011 Act, and for that reason I am referring to the complainant in anonymous terms as "Mrs J".

### *The complaint*

3. The complaint at issue is, in summary, that Mrs J's human rights were infringed by the refusal to permit her to be legally represented before the foster panel which determined that she should be de-registered, but this was the final step in a chain of events and the earlier events need to be included in order to give the full picture.
4. Mrs J and her husband had been approved as long-term foster parents and two children who had been placed in their care. In every fostering placement there is an overarching Foster Care Agreement, which has to be signed and complied with in order to meet the requirements of the Regulation of Care Act 2013. This was signed by Mr and Mrs J. There was also a statutory care plan, which is a "living document", which changes and evolves to meet the needs of the children. That plan changed with regard to the contact between the children and members of their birth family. Mrs J did not agree that there should be such contact, and refused to co-operate with it.
5. Mrs J also refused to allow the children's social worker, even on a statutory basis to have contact with them, and refused to co-operate with her own supervising social worker who was responsible for her and her role.
6. These failures to co-operate meant Mrs J was non-compliant with the legally required standard for a foster placement, which could not therefore be regulated in compliance with the 2013 Act.
7. It may be sensible at this stage to set out my understanding of the relationship between DHSC and foster carers. A foster carer is not an employee of DHSC and therefore has no cause of action for unfair dismissal. There is, however, a close working relationship between the social workers and the foster carer, who work together in partnership in the best interests of the child. Parental responsibility rests with DHSC which pays the foster carer an allowance to

meet the day to day costs of caring. The foster carer also receives a skills fee for each child but this fee is subject to the carer's receiving training and supervision from the carer's supervising social worker. These payments and are not intended to include a profit element, so it is surprising that in the correspondence Mrs J has referred to her "loss of livelihood". For some time, Mrs J had disputed the level of payments she received for the care of the children and did not accept that she was receiving all of the appropriate payments in accordance with government policy. This dispute led Mrs J to give notice to terminate the placement of one of the children. This would have resulted in splitting two siblings who had been assessed as requiring a joint placement, and who had been placed with Mr and Mrs J precisely because they were willing to take two children. Mrs J was told that this notice was unacceptable, but the Department would accept the notice as ending the placement for both children.

8. As a result of Mrs J's non-compliance with the Foster Care Agreement and as the notice period was running, the Department considered it necessary to remove the children. Normally this would be effected in a carefully planned manner, but because the social workers were prevented from managing the forthcoming move of both children, they felt compelled to remove the children without warning and in a manner which must have been traumatic for the children. There was then a dispute as to the release of the children's possessions, which led to the Children's Centre instituting proceedings for their recovery. The court found against Mrs J and ordered her to pay £1,000 to each child: this has never been paid, but enforcement has not taken place because the Children's Centre itself brought the proceedings and it has ceased to act for the Department in this field. The children have still not had their possessions returned.
9. The placement having broken down in such acrimonious circumstances, the Children's Centre decided that they would be unable to work with Mrs J in future and concluded that she should be de-registered as a foster carer. The decision was made because Mrs J remained non-compliant with the Foster Care Agreement and the standards required under the 2013 Act. The Children's Centre could not work with someone who was non-compliant, nor could the registration and approval of such a person continue. In order to remove her registration and approval, the matter had to be considered by the fostering panel, which makes a recommendation, the final decision being made by the Decision Maker of the Children's Centre. On 29 May 2017, Mrs J was notified that the Fostering Panel would be considering the case on 14 June of that year and she was invited to attend. Mrs J had appeared before the Panel on several previous occasions because foster parents go before the Panel annually to review their continued registration. In response Mrs J sought

confirmation that it would be acceptable for her to be represented. She was informed that she could bring a “supporter”, who could be an advocate, whose role would be to provide support, but who would not be permitted to speak on her behalf. Mrs J responded stating that, as she was being denied the opportunity to have legal representation at the hearing, she was prevented from attending as it was “unsafe” for her to do so. In her absence, the panel made a recommendation and a final decision to de-register was made by the Decision Maker. This was notified to Mrs J on 23 June 2017. Mrs J had a right of appeal against the decision, which she did not exercise.

10. Section 11 of the Tynwald Commissioner for Administration Act 2011 sets out a number of excluded matters which the Commissioner must not investigate. Subsection (2)(k) precludes an investigation of –

“action in respect of which the complainant has a statutory right of appeal, or reference to, or review by, an adjudicator, tribunal or other body”

but this is subject to subsection(3), which permits the Commissioner to investigate if satisfied that “it is neither reasonable nor expedient to expect the complainant to exercise, or have exercised that right, or invoke that remedy” having regard to a number of factors, and primarily to the cost of so doing.

My predecessor considered this provision when considering Mrs J’s complaint, but could find no sufficient reason for admitting the complaint. He informed her of his decision in September 2018, but she has never accepted it despite his having met Mrs J on two or three occasions to explain it to her.

11. Over and above the complaint relating to an excluded matter, I find that there is a further reason why the complaint cannot be entertained. Section 10 provides the Commissioner may investigate a matter only if four conditions in subsection (2) are met, namely -

- (a) a member of the public claims to have sustained injustice or hardship in consequence of –
  - (i) maladministration in connection with an action falling within paragraph (a) of [section 9(1)]<sup>1</sup>; or
  - (ii) a service failure;

[Mrs J meets this condition.]

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<sup>1</sup> So far as relevant s. 9(1) reads:

“(1) The matters which the Commissioner is entitled to investigate are — (a) any action taken by or on behalf of a listed authority in the exercise of administrative functions of the authority;”.

- (b) that member of the public has objected about the action or service failure in writing to the listed authority whom the complainant alleges is responsible for it;

[Mrs J has also met this condition.]

- (c) the listed authority in question —
  - (i) has in its view taken all reasonable steps to deal with the matter to which the allegation relates; or
  - (ii) having been requested to do so by the member of the public has not, within a period of 28 days following the objection, or, in exceptional circumstances, such longer period not exceeding 3 months, as appears to the Commissioner to be reasonable, conducted a proper investigation into the matter and reported its conclusions to the member of the public; and

[I deal with this in paragraphs 12 and 13.]

- (d) the member of the public has complained to the Commissioner within the time limit (see section 13).”.

I deal with this in paragraph 14.

12. My main reason for doubting whether Mrs J satisfies section 10 is that she made a complaint about the actions of the Children’s Centre prior to her de-registration. The Stage 1 response was sent to Mrs J on 27 April 2017 and on 28 April she requested that it be escalated to Stage 2. An independent reviewer was appointed, who unfortunately had to withdraw following a family bereavement. A second reviewer, from outside the Island, was appointed. On 23 June, he wrote to Mrs J to set up a meeting on 5 July. Mrs J replied that she was looking forward to his recommendations in terms of an enquiry, the level of compensation and details of his legal representative with whom she would deal. As the reviewer correctly pointed out, all of this was outside the remit of Stage 2 complaint handling. The reviewer made further attempts to meet Mrs J but eventually, on 11 August 2017, with the agreement of the Children’s Centre, he wrote to Mrs J confirming that he was terminating the Stage 2 complaint, the result of which was inconclusive due to the lack of engagement on Mrs J’s part.
13. In the light of this sequence of events, I conclude that, although Mrs J had complained, her failure to co-operate with the process prevented the Children’s Centre, as the agent of the Department, from being able to conduct its internal complaints procedure and that, as a consequence, section 10 is not satisfied.

14. I also entertain doubts about whether condition (d) in section 10(2) is in fact satisfied, since Mrs J first complained to the Commissioner on 7 March 2018, which was more than 6 months after the acts complained of, but I accept that my predecessor admitted the complaint despite the lapse of time.
15. I should add that since Mrs J was told by my predecessor that he was not able to investigate her complaint, she has written several times with suggestions of what I should be doing. These range from my setting up a public enquiry to investigating two firms of advocates (whom she argues are agents of the Treasury, presumably because of their involvement with legal aid) and the Law Society, equating me with the Legal Services Ombudsman in England and Wales, as well as asking me to investigate (among other things) the failure-
  - a. “to mend a broken system”;
  - b. “to protect citizens from harm”; and
  - c. “to ensure fundamental freedoms, human rights and civil liberties”<sup>2</sup>.

It goes without saying that, as expressed, all of these matters fall outside my statutory remit.

16. I have declined to meet the complainant, because I am satisfied that my predecessor spent some considerable time, both in meetings and in correspondence in explaining why he could not investigate, and that any attempt by me to convince Mrs J that she does not meet the statutory requirements to investigate would be equally fruitless.
17. As it is quite clear that nothing my predecessor or I have said to the complainant has convinced her that the Commissioner cannot assist, I am laying this Report in an attempt to bring closure to this case.

Angela Main Thompson OBE  
Tynwald Commissioner for Administration  
29 October 2019

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<sup>2</sup> I take this to be a reference to the refusal to allow her to be legally represented before the Fostering Panel. There is decided legal authority in England and Wales that an internal disciplinary process, to which this is analogous, does not have to permit legal representation.