

Anonymised Submission re A O'B

It is noted that a question has been raised as to the eligibility of the placement in which A found himself. Kate Astely, in her letter to A on 1 September 2022 states:-

“I have reviewed your application and wanted to draw your attention to some of the eligibility criteria; in particular in that kinship foster care placements are possibly excluded from the redress Scheme. From your statement and records, you were placed with your mother’s sister and her husband. This would be viewed as a kinship placement.”

He was fostered to the T family, and C T was the sister of A’s mother. It is suggested, therefore, that this falls outwith the scope of the Redress Scheme. Again I note that the terms of the Act provide:-

“(2)But a place is not a relevant care setting by virtue of subsection (1)(b) where the child was boarded-out or fostered—

(a)with a relative or guardian of the child, “

It appears that the legislation has been drafted in a way that specifically excludes foster placements, made under a local authority, because the foster carer is a relative. In A’s case there is no suggestion that the he had a connection with the T’s prior to placement, or that he was treated as a family member whilst there. The reason I am writing is to question whether the terminology used in the legislation properly reflects the intention of the Scottish Parliament in setting up the scheme. I would draw attention to the fact that the Scottish Child Abuse Inquiry heard A’s evidence in the Foster care case study, and does not differentiate on the basis set out in the legislation. Further the policy memorandum for the Bill provides:-

"81. In broad terms, the scheme aims to cover two categories of care setting in Scotland. The first category concerns children who were "in care" because their families (including extended families) were unable to look after them on a day to day basis and, in consequence, the children required to be placed in an institutional care setting (for example, residence in a children's home provided by a public authority or voluntary organisation) or other public care setting (for example, residence with foster carers). The second category concerns children who were subject to some form of intervention by a body exercising public functions (for example, where a court order placed a child in an approved school, or arrangements were made by a local or education authority in relation to the boarding of children in schools not managed by that authority and the authority met the costs of that).

82. Consistent with that aim, the scheme is not therefore intended to cover arrangements where a child resided with their family or extended family (such as, for example, kinship care arrangements), nor private arrangements by which a child came to reside somewhere other than with a family or extended family member and which were not instigated primarily as a result of arrangements made in exercise of public functions (such as, for example,

private fostering or private healthcare arrangements). In this context, "public functions" should be understood as including functions exercised by both public authorities and voluntary organisations exercising functions in relation to the safeguarding or promotion of the welfare of the child or the protection or furthering of the child's interests. The inclusion of such voluntary organisations reflects the evolution of "the state" over the period in question".

The reference here is to "kinship care" as opposed to kinship foster care. That is a significant distinction, and one which the legislation seems to miss. Under kinship care the family member takes over responsibility for the child, and whilst there may be some social work oversight there is not the level of local authority intervention regulation and supervision that exists in a foster care situation. There seems to be no rationale for excluding applicants such as A, simply because the person that the local authority placed them with for fostering was related to them.

I would ask that, if the Redress Team feel that the legislation does in fact exclude those fostered with members of family, the matter is raised with the relevant ministers to seek an amendment to the legislation to give effect to its intentions.

Simon Collins

Solicitor