

# Scottish Government submission of 24 May 2022

## PE1933/A – Allow the Fornethy Survivors to access Scotland’s redress scheme

Thank you for your correspondence of 21 April 2022 seeking views on the action called for in the above petition. I am responding as Deputy Director for the Redress, Relations and Response Division with responsibility for Scotland’s Redress Scheme.

The scheme opened for applications on 8 December 2021 and offers financial redress to survivors of historical child abuse in relevant care settings in Scotland, and, in some circumstances, their next of kin. Survivors also have access to some non-financial elements of redress such as acknowledgement, apology and emotional support.

I have provided information below on a number of the issues raised which I hope is helpful to the Committee in its consideration of Petition PE1933.

### Eligibility criteria for Scotland’s Redress Scheme

The Scottish Government recognises that the abuse of children in all circumstances and settings is wrong and harmful. It should never have happened, regardless of where it occurred. The Scottish Government takes the abuse of children in all circumstances very seriously.

However, the exclusion of those abused in short-term respite or holiday care, such as those survivors who experienced abuse at Fornethy House Residential School, is in keeping with the core purpose of the redress scheme, which is primarily for those vulnerable children who were in long-term care, often isolated with limited or no contact with their families.

Because of the complexity of the care landscape over the decades and the wide range of different care arrangements, the primary legislation provides in Section 23 of the Redress for Survivors Act 2021 (‘the 2021 Act’) the power to create exceptions to eligibility requirements of the scheme, for example, in relation to the circumstances in which a person came to be resident in a relevant care setting. Given the broad and inclusive terms in which the eligibility requirements for the scheme are framed, this power was intended to allow for further refinement, where

creating such exceptions would be in keeping with the overall purpose of the scheme.

This was exercised through the laying of the Redress for Survivors (Historical Child Abuse in Care)(Exceptions to Eligibility)(Scotland) Regulations 2021 on 23 September 2021 which excluded abuse which occurred when a person was resident in a relevant care setting for the purpose of short-term respite or holiday care because it is consistent with the underlying purpose of the scheme. As the Committee may be aware, the secondary legislation regarding exceptions to eligibility was approved by Parliament in October 2021.

It should be noted that the intention to exclude short term respite and holiday placements has always been the Scottish Government's position in respect of the eligibility criteria for Scotland's Redress Scheme. This was referenced within the material published with the draft legislation in August 2020 (in the Explanatory Notes<sup>1</sup> and the Policy Memorandum to the Bill<sup>2</sup>), where short-term private respite care in a children's home was given by way of an example of a possible exclusion. This legislation was unanimously passed by the Scottish Parliament in March 2021.

The eligibility criteria for Scotland's Redress Scheme recognises the acute vulnerability and distinct circumstances of children who were cared for in the residential settings covered by the scheme. Some children were placed "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 others, the intervention by a body exercising public functions (this would of course include the state but also others such as care providers), meant that children were accommodated away from the family home. In both circumstances, children were vulnerable to abuse and did not have the protection of their families and, therefore, this protection should have been provided by the care provider.

While the abuse of children in all circumstances and settings is wrong and harmful, those children resident in a care establishment on a short term respite or holiday basis, such as those survivors who were resident in Fornethy House Residential School, were not in that position. Such arrangements were generally intended to be temporary, and there was no intention at the time of the placement that responsibility for the day-to-day

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<sup>1</sup> [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Act 2021 - Explanatory Notes \(legislation.gov.uk\)](https://legislation.gov.uk)

<sup>2</sup> [policy-memorandum-redress-for-survivors-historical-child-abuse-in-care-scotland-bill.pdf \(parliament.scot\)](https://parliament.scot)

care of the child would be taken over on a long-term basis by another carer, rather than the child's family. Based on the above criteria, therefore, exclusion of those in short-term respite or holiday care is in keeping with the core purpose of the scheme.

Importantly, the eligibility for the scheme is not based on how long a child was in care, nor the length of time over which they were abused. Instead, it is based on how the child came to be in care and the type of care setting. The scheme requires that the purpose of the stay and the individual's circumstances and experience be taken into consideration when making an assessment on eligibility, not simply the duration of the stay.<sup>3</sup> As the circumstances in which individuals came to be in short term respite or holiday care vary with each case, it is not possible to determine eligibility for any group as a whole, such as the request from the Fornethy survivors. It will be for the independent decision-making body Redress Scotland to determine whether an individual applicant is eligible. They will take into account all of the facts and circumstances of each applicant to determine if they are eligible.

The Scottish Government recognises this is a challenging issue, however, taking what has been outlined above into account, it is crucial in order to provide clarity to applicants to Scotland's Redress Scheme that the scope of the eligibility criteria is clearly defined and we believe an appropriate limit has been set which is in line with the core purpose of the scheme.

### Civil litigation for historical abuse

In relation to the issues raised in the petition regarding civil litigation for historical abuse, the Scottish Government acknowledges that historically, survivors have faced a number of barriers to access damages through the civil courts and that this may not be a preferable route for some survivors.

However, in recognition of these challenges, the Scottish Government have brought forward changes in legislation to make litigation more accessible to survivors of historical child abuse. This includes the Limitation (Childhood Abuse) (Scotland) Act (2017) ("the 2017 Act")<sup>4</sup>, which provided the option of civil court action for significantly more survivors by removing the time bar on personal injury claims for damages in respect of childhood abuse.<sup>5</sup>

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<sup>3</sup> [Supporting documents - Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance - eligibility - gov.scot \(www.gov.scot\)](#)

<sup>4</sup> [Limitation \(Childhood Abuse\) \(Scotland\) Act 2017 \(legislation.gov.uk\)](#)

<sup>5</sup> Prior to 2017, a claim for personal injuries for childhood abuse generally had to be made within three years from the time of the injury or the survivor's 16th birthday.

Scotland's Redress Scheme has been designed as an alternative to civil litigation, not to replicate it; therefore, some survivors may find civil action offers specific outcomes that the redress scheme does not. For example, redress payments are not intended to be compensatory in the same way as an award of damages made by a civil court, nor will they make an assessment of the lifelong impact of abuse or any potential loss of opportunity that arose. Moreover, the redress scheme is not about establishing legal liability for the consequences of the abuse as a court would, nor does it determine any issue of fault or negligence arising from any matter to which an application for a payment under the scheme relates.

The Scottish Government does recognise that the 2017 Act only applies to abuse which occurred after 26 September 1964 and those survivors from Fornethy House Residential School who experienced abuse before 1964 remain affected by the law on prescription which prevents survivors from perusing civil claims for that abuse. The Scottish Government has immense sympathy for survivors who will still be unable to raise an action and acknowledge that this is a very difficult issue.

#### Engagement with third-party organisations

Turning to the comments in the petition in relation to the Fornethy Survivors Groups engagement with Police Scotland and the Scottish Child Abuse Inquiry (SCAI), a number of survivors have told us they have given statements to Police and the SCAI regarding the abuse they experienced. Whilst the SCAI and Scotland's Redress Scheme are both important steps in Scotland's journey as a nation to acknowledge and face up to the harms of the past, each is entirely separate and serve a different purpose.

With regards to the SCAI, its' primary purpose is to raise public awareness of the abuse of children in care, therefore it is for the Chair to interpret the Inquiry's Terms of Reference (ToR) and they can take evidence from anyone with information relevant to the ToR whether it is part of an announced investigation or not, which may include those who attended Fornethy House Residential School. Redress, by contrast, is set up to provide recognition for the historical abuse of children in care in residential settings where children often had limited or no contact with their families and therefore is necessarily more focused in its scope.

#### Support for Fornethy House Survivors

Finally, I would like to highlight that the Scottish Government is committed to supporting all survivors of childhood abuse, regardless of the setting in which the abuse occurred. In September 2019, the Scottish Government launched the £10 million Survivors of Childhood Abuse Support (SOCAS) Fund, which aims to support the recovery and improve the resilience of survivors of abuse, tackling inequalities that survivors often face by enhancing capacity and capability of third sector and community-based organisations providing dedicated support. 29 organisations across Scotland are receiving funding to provide support to adult survivors of childhood abuse including (but not exclusive to) those who have been abused in care.<sup>6</sup>

In addition, Future Pathways<sup>7</sup> provides support to people who experienced childhood abuse or neglect while living in care in Scotland to achieve their own personal outcomes. These outcomes may be related to their time in care e.g. access to their own personal records, or they could be related to matters such as access to further education or training courses. Future Pathways is fully funded by Scottish Government as part of a wider strategy developed by the Scottish Government to address the legacy of historical abuse in Scotland. A diverse range of survivors are currently receiving support through Future Pathways, including some who attended Fornethy House Residential School.

I hope that the information I have set out in this letter is helpful to the Committee.

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<sup>6</sup> <https://www.gov.scot/publications/survivors-of-childhood-abuse-support-fund-2020-2021/>

<sup>7</sup> [Future Pathways: Scotland's In Care Survivor Support Fund \(future-pathways.co.uk\)](http://future-pathways.co.uk)