

Deputy First Minister submission of 8 September 2022

PE1933/G: Allow the Fornethy Survivors to access Scotland's redress scheme

Thank you for the opportunity to respond to the above petition following the Committee's consideration at its meeting on 15 June 2022, and my apologies for the delay in providing you with a response.

Rationale for the eligibility criteria for Scotland's Redress Scheme

The Committee have asked for a further explanation regarding why the eligibility criteria for the scheme is based on how an individual came to be in care, as opposed to their experiences when in care.

I welcome the opportunity to clarify this position with the Committee. The focus of Redress Scotland decision-making panels when making a determination about the relevant payment level to award is on the nature, severity, frequency and duration of the abuse.¹ However, in line with Part 3 of the Redress for Survivors (Historical Abuse in Care) (Scotland) Act 2021 ("the 2021 Act"), alongside the individual's experience in care, consideration must be given as to whether eligible abuse occurred within a 'relevant care setting' in Scotland.

As I highlighted in the evidence I gave during the Education, Children and Young People Committee's consideration of the secondary legislation in relation to exceptions to eligibility², the purpose of the scheme from the outset has always been to respond to survivors who, when they were placed in care, lost the oversight and protection of their parents and families.

This has been reflected on by some survivors whose parents had their rights removed, referring to themselves as being 'children of the state' – the state being charged with their care and protection when they were often isolated and stripped of access to their families.

This definition of 'in care' was widely supported by respondents to the 2019 pre-legislative consultation which sought views on the core

¹ [Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance - assessment framework - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/redress-for-survivors-historical-child-abuse-in-care-scotland-act-2021-statutory-guidance-assessment-framework/pages/20)

² [Meeting of the Parliament: ECYP/27/10/2021 | Scottish Parliament Website](https://www.parliament.scot/parliamentary-business/2021/10/27/2021-10-27-ecyp-27-10-2021)

principles for the scheme, where 79% of respondents agreed with the approach to limit eligibility for financial redress to situations in which institutions and bodies had ‘long term responsibility for the child in place of the parent’.³

Consistent with this underlying purpose, it has always been the Scottish Government’s intention to exclude arrangements where there was no exercise of public functions involved in either the provision of the accommodation or the reason for the child being there. In most cases, the parental rights and responsibilities were not affected for children resident on a short term respite or holiday basis.

We know from survivors that the ways in which children found themselves in residential settings were many and varied in the past.⁴ Similarly, some residential institutions offered more than one type of care, or changed what they offered over the period covered by the scheme. This is reflected in the broad and inclusive terms in which the meaning of ‘relevant care setting’ under section 20 of the 2021 Act is framed. Therefore, in setting the scope for the scheme, in order to adhere to its core principles, it was essential to link eligibility to the purpose of these stays, rather than the nature of the institution which provided them, or the experience of those survivors while at the relevant care establishment.

In addition, the regulation-making power under section 23 of the 2021 Act, which gives Scottish Ministers the power to create exceptions to eligibility, such as short term holiday or respite care, only extends insofar as such exceptions are consistent with the underlying purpose of the scheme. If we sought to set aside consideration of how the child came to be in care, this would potentially exclude the requirement for public function in the provision of the accommodation or the reason for the child being there.

³ [Financial redress for historical child abuse in care: consultation analysis - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/04/Financial_redress_for_historical_child_abuse_in_care_consultation_analysis_-_gov.scot.pdf)

⁴ Examples might include situations where families were unable to provide sufficient care for their children at a point in time, often because of the death or serious illness of one or both parents, or because a court order or other legal process placed the child in a setting.

Adjusting the eligibility criteria for Scotland's Redress Scheme

The Committee also asked that further consideration be given to adjusting the eligibility criteria for Scotland's Redress Scheme to allow Fornethy survivors, and others who had similar experiences of short-term respite or holiday care to access the scheme.

I would like to emphasise to the Committee that the eligibility requirements for the scheme in no way seek to diminish the experience of those survivors who came to be in care outwith the scope of the scheme.

Since the Committee met in June, I have had the opportunity to meet with a number of survivors of Fornethy House Residential School to hear their accounts of the abuse they suffered in childhood and I have heard the concerns they raised regarding the eligibility criteria for the scheme first hand. This abuse should never have happened and I would like to note my deepest gratitude to these women for finding the strength to share their experiences.

I would highlight to the Committee that in line with the approach outlined above, the exceptions to the eligibility do not represent a blanket exclusion against those who were abused in short-term holiday or respite care settings, such as Fornethy House, from making an application to Scotland's Redress Scheme.

It was clear from my discussions with survivors of Fornethy House that the circumstances in which individuals came to be in short term respite or holiday care vary with each case, therefore it is not possible to determine the eligibility for the group as a whole. The independent decision makers Redress Scotland will take into account all of the facts and circumstances of each applicant to determine if they are eligible.

As the Committee may be aware, I had previously given consideration to the scope of the eligibility criteria for the scheme during Parliament's scrutiny of the primary legislation, in which the rationale behind the definition of 'relevant care setting' included in the bill, and in particular the focus in the eligibility criteria on the circumstances in which a child came to be in care, was scrutinised.

In their Stage 1 report⁵, the Education and Skills Committee had recognised the need to clearly define the limits of the redress scheme.

⁵ [Education and Skills Committee, Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Bill – Stage 1 Report, 9 December 2020](#)

However, the Committee also called for Redress Scotland to be able to consider some cases on an exceptional basis where, save for the requirement to have been placed in a setting by the state, victims/survivors would otherwise have been eligible for redress.

I concluded in the Scottish Government's response to the Committee's Stage 1 report that if provision was created for exceptional cases then it would leave the eligibility criteria open-ended and non-transparent for applicants, and may create further uncertainty or inconsistency in the treatment of potential cases arising, thereby potentially undermining the scheme and being inconsistent with its purpose.⁶

I also considered that it was necessary that powers under section 23 of the 2021 Act to exclude care arrangements which were temporary in nature should remain so the scheme can meet its core purpose, given the broad and inclusive terms in which the eligibility requirements for the scheme are framed. This provision was to be used before the scheme was live to avoid an inconsistent approach for applicants.

I remain of the view that, in line with the Education and Skills Committee's recommendations, 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. I believe that an appropriate limit has been set which is in line with the core purpose of the scheme, therefore I do not consider it appropriate to adjust the eligibility criteria at this time.

I hope that the Committee and the petitioner find the information above helpful.

⁶ [Redress for Survivors \(Historical Child Abuse in Care\) \(Scotland\) Bill, Scottish Government response to the Education and Skills Committee's Stage 1 Report, 16 December 2020](#)