

# Citizen Participation and Public Petitions Committee

7th Meeting, 2023 (Session 6), Wednesday 3  
May 2023

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

<b>Lodged on</b>	19 April 2022
<b>Petitioner</b>	Iris Tinto on behalf of Fornethy Survivors Group
<b>Petition summary</b>	Calling on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's Redress Scheme to allow Fornethy Survivors to seek redress.
<b>Webpage</b>	<a href="https://petitions.parliament.scot/petitions/PE1933">https://petitions.parliament.scot/petitions/PE1933</a>

### Introduction

1. The Committee last considered this petition at its meeting on [23 November 2022](#). At that meeting, the Committee agreed to write to the Scottish Government.
2. The petition summary is included in **Annexe A** and the Official Report of the Committee's last consideration of this petition is at **Annexe B**.
3. The Committee has received new responses from Martin Whitfield MSP, the then Deputy First Minister (John Swinney) and the Petitioner, which are set out in **Annexe C**.
4. Written submissions received prior to the Committee's last consideration can be found on the petition's [webpage](#).
5. Further background information about this petition can be found in the [SPICe briefing](#) for this petition.
6. The Scottish Government's initial position on this petition can be found on the petition's [webpage](#).

## Action

The Committee is invited to consider what action it wishes to take.

### **Clerk to the Committee**

## Annexe A

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

## Petitioner

Iris Tinto on behalf of Fornethy Survivors Group

## Date lodged

19 April 2022

## Petition summary

Calling on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's Redress Scheme to allow Fornethy Survivors to seek redress.

## Previous action

Written to Nicola Sturgeon.

The group members have written to their MSPs.

Protest in September and new protest due.

A great deal of research into the background and looking for records over the last two years including seeking information from Glasgow Council.

We did protests in Glasgow and Edinburgh.

## Background information

Survivors need acknowledgement, closure and compensation. The young girls were "in care" of Glasgow Corporation who provided the in care setting for these vulnerable, helpless and isolated children. The decision to make us exempt from the redress scheme has magnified that suffering. We want to be treated equally to other abuse survivors.

Redress is an important part.

Going down the legal route incurs great costs and mental resilience which abused victims will mostly find untenable due to the effects the abuse has had on them. We know that childhood abuse affects many socio-economic factors as well as inter-personal and mental health conditions. Why should they have to? If the government recognises the validity of child abuse and its long term effects, why make them exempt?

Fornethy children were in the care of Glasgow Corporation and they are not being held to account but passing survivors onto agencies to deal with them. Many victims have already spent great sums of money and effort in therapeutic interventions, preparing themselves, being interviewed, giving statements to the Police and the Scottish Child Abuse Inquiry . They are now wondering to what purpose given they are not being taken seriously in the Redress scheme. We know there are records in the Mitchell Library but are being met with silence again. We have no access to justice.

## Annexe B

### Extract from Official Report of last consideration of PE1933 on 23 November 2022

**The Convener:** Our next petition is PE1933, which has been lodged by Iris Tinto, on behalf of the Fornethy survivors group, is on allowing the Fornethy survivors to access Scotland's redress scheme.

The petition calls on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's redress scheme to allow Fornethy survivors to seek redress. We were going to be joined by Martin Whitfield MSP, who has unfortunately had to go to a meeting elsewhere. However, we are joined by Brian Whittle MSP, who has an interest in the petition. I welcome him to the committee.

We previously considered the petition on 15 June. At that time, we agreed to write to the Deputy First Minister, Glasgow City Council and bodies representing victims and survivors of abuse. Since then, the committee has received responses from the Deputy First Minister, Glasgow City Council, Victim Support Scotland, the Moira Anderson Foundation, the National Association for People Abused in Childhood, Future Pathways and the petitioner. Copies of those responses are included in the papers for today's meeting. Our meeting papers summarise some of the issues that have been raised.

Members will also be aware that representatives of the Fornethy survivors group visited the Scottish Parliament very recently, on 27 October, and the matter of their exclusion from the redress scheme was raised directly with the First Minister at First Minister's question time on that day.

The written evidence that we have received from organisations that represent and support victims and survivors of abuse suggests that there is support for widening the scheme's eligibility criteria to include survivors who experienced abuse during short-term respite or holiday care.

The Deputy First Minister has stated that it was always the Scottish Government's intention to exclude arrangements where there was no exercise of public function in either the provision of accommodation or the reason for the child being resident in the care setting.

The responses from both the petitioner and Glasgow City Council highlight that records relating to Fornethy house are limited. It strikes me that it may not be possible to establish, one way or another, the reason for a child's stay at Fornethy, in order to meet the proviso that the Deputy First Minister has stipulated is to form the basis of their exclusion.

Before I open up the matter to committee members to see how we might proceed, would Brian Whittle like to say anything in support of the petition?

**Brian Whittle (South Scotland) (Con):** Thank you, convener—I am happy to have the opportunity to speak once again on this issue. At the outset, I note that the former Education and Skills Committee produced an in-depth and comprehensive report—I do not know whether members have seen it—as the bill that became the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 progressed through Parliament in the previous session of Parliament. I recommend reading that report.

Sexual abuse, and specifically child sexual abuse, has been swept under the carpet for too long, and victims have been left without the support that they desperately need. As several colleagues will be aware, I have been working on the issue with constituents for a number of years. I think that it is fair to say that my understanding of the trauma that they have suffered over a prolonged period, as they seek justice and redress, and my discomfort and disquiet at the way in which victims are re-traumatised and left open to suffering secondary abuse, continues to deepen.

The redress scheme was designed to make it easier to access redress than taking a case to the civil court. However, the Criminal Injuries Compensation Authority already has a similar redress scheme in which the decision is based on the balance of probabilities. That is different from a criminal court, which decides on the basis of “beyond reasonable doubt”, and the victim does not need to wait for the outcome of a criminal trial if there is already enough information to make a decision on a case. Crucially, however, the 2021 act suggests that the victim would waive their right to take future civil action and any subsequent payment from civil action, and if there had previously been a criminal injuries compensation scheme payment, the act would require that it be reimbursed.

I welcome the redress scheme, but I think that it is flawed. Most important, the 2021 act was designed to provide financial redress to survivors of historical sexual abuse while in care in Scotland. Welcome though the legislation is, it is too narrow in scope. When I questioned the Deputy First Minister on the eligibility criteria for the scheme, and on whether victims of sexual abuse in a school setting, for example, should also be included, he responded by saying that the scheme is designed to compensate those in situations where the state—a care home, in this case—had undertaken parental responsibilities.

However, the bill that led to the Education (Scotland) Act 1980 used the term “in loco parentis”, which has the effect of transferring parental responsibilities to schools temporarily. There are many allowances as to where that can be true, including specifically for the Forneithy survivors. That being the case, the 2021 act is flawed and could, I believe, leave the Government open to a challenge in the European Court of Human Rights and from the Equality and Human Rights Commission,

because of its inequality of approach to the victims of a crime, especially such a heinous crime.

Members may be aware that there was a related case in which the judge found that the Irish Government had misrepresented a ruling by the European Court of Human Rights by excluding children who were abused in Irish schools from a redress scheme. Although I accept that the issues in that ruling are not exactly the same, it suggests that the 2021 act could be open to a similar legal challenge. Again, the Fornethy survivors sit directly in that path.

As I said, the 2021 act was and is very welcome, but it is incumbent on us to ensure that it is the very best that it can be for all those who have been victims of such a heinous crime and have to carry that burden throughout their lives. Financial redress will not heal their wounds, but it will at least perhaps give them comfort that their voices have been heard, and in the acceptance that they have been victims.

However, I think that more needs to be done on understanding the journey of those victims—both those who speak out and those who initially cannot do so. The repeated trauma of retelling their story to multiple agencies, and the lack of accessibility and adequate support, are all part of the jigsaw.

I have absolutely no doubt that the Government has a commitment to those who have suffered such a crime, but I think that it needs to be braver. It will need to look beyond the limitations of how the 2021 act is currently deployed for those who have suffered in similar ways but are currently excluded, including the Fornethy survivors. If the Government does not do that, it will require the legislation to be amended further down the road. We need to make the act everything that it could be. I speak on behalf of the Fornethy survivors and all those other child abuse victims who are yet to have similar redress.

**The Convener:** The Deputy First Minister, in identifying that the intention was to exclude arrangements where there was no exercise of public function, is compromised slightly when it is clear that it simply may not be possible to establish one way or another the reason for a child's stay at Fornethy. In the light of what Mr Whittle says and the further evidence that we have received, do colleagues have any suggestions as to how we might proceed?

**Fergus Ewing:** The Deputy First Minister in his reply said that it would be open to the Fornethy sufferers of non-recent abuse to apply to the existing scheme; in other words, he did not say that they were ineligible. In fact, I think that the implication of his reply to the committee was that they may be eligible. The difficulty is, as you have said, convener, how that can be proven if the records are not there.

I wonder whether we might suggest a solution for the Fornethy victims that, given that it is not possible for them to demonstrate how they came to be in care, they should be given the benefit of the doubt. Would that be possible? If someone is

denied the opportunity to provide evidence because of the fact that public authorities have not kept that evidence properly—they have mislaid it or cannot find it—that is not the fault of the survivors. I know that that is not an in-principle answer, because if one has suffered in care, the explanation of how you came to be in care is not relevant. A victim is a victim, and as Victim Support Scotland argues in its submission, all victims should be entitled to redress.

That principle is easy to expound but more difficult to put into practice. I know that it has been considered by the previous Education and Skills Committee in far more detail, but I confess that I have not studied that, so I should put that on the record. Perhaps there are other arguments that I have not considered, but, in order to get a solution for the petitioners, I wonder whether we might make the point that it is simply not possible for those victims to provide evidence that they came to be in care because of a decision that was taken by a public authority. It appears that that is almost certainly the explanation for most cases of children who found themselves at that unfortunate place.

**The Convener:** I am very supportive of that suggestion.

**Alexander Stewart:** I concur with Mr Ewing. He identifies an area that requires to be considered. As Mr Whittle said, it is difficult not to include those individuals because of the circumstances that they found themselves in, so I am very supportive of Mr Ewing's proposal that we attempt to move the issue into that area. Doing that will give some redress to those individuals.

**The Convener:** Do members agree to take that forward? We would invite the clerks to draft a response for us to consider along those lines based on the evidence that we have gathered from a number of sources on that point.

It would be unusual, but I will let Mr Whittle back in; you are not here to assist us in our deliberations but merely to lobby us as we consider them.

**Brian Whittle:** I know that it is unusual to be brought back in. On Mr Ewing's point, I have highlighted the lack of record keeping across all local authorities, which seems to hamper things. The key here is that you only have to have probability; you do not have to have proof. I also underline the phrase "in loco parentis"—it is key to your deliberations. Thank you for allowing me back in.

**The Convener:** Your points have been noted. We will keep the petition open and proceed on that basis.

*Members indicated agreement.*

## Annexe C

### Martin Whitfield MSP submission of 23 November 2022

#### PE1933/J: Allow Fornethy Survivors to access Scotland's redress scheme

I was anxious to attend the Citizen Participation and Public Petitions Committee today, (23 November 2022), to support the petitioner and signatories regarding their call on the Scottish Parliament to urge the Scottish Government to widen access to Scotland's Redress Scheme to allow Fornethy Survivors to seek redress.

The facts of this petition are incredibly distressing and the background is set out in the [group's letter](#) to the Petitions Committee dated 6 June.

There is, I believe, an unanswered anomaly in the way survivors are treated under the scheme which continues to exist and is unexplained. The anomaly is that a survivor of a short stay falls outside the scheme automatically, whereas a long-term survivor is included. There have been suggestions a cut off is needed but no weight is given to the severity of the experience irrespective of the period of actual abuse. This approach fails to give weight to the serious long-term consequences the current petitioners have experienced.

I apologise for being unable to attend the Committee and ask that you accept this submission in support of the petition.

### Deputy First Minister submission of 6 February 2023

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

Thank you for your letter dated 10 January 2023. I am grateful to the Committee for its careful consideration of the issues raised by the Fornethy survivors.

As I hope the Committee recognises, I acknowledge the suffering endured by many of those who spent time at Fornethy and the

seriousness of the issues raised in this Petition. I am anxious to satisfactorily address these concerns.

Scotland's Redress Scheme was designed primarily for those vulnerable children who were in long-term care, often isolated with limited or no contact with their families. Whilst the reason for the stay in a relevant care setting may be a relevant consideration for Redress Scotland when making an assessment on eligibility, the duration of abuse is not.

As I stated during my recent appearance before the Education, Children and Young People Committee, I do not believe that Fornethy survivors are precluded from applying for redress under the current eligibility criteria. The decision as to whether a redress payment is made is quite rightly a matter for Redress Scotland as the independent decision makers. In making a decision, and as further reinforced in the scheme guidance, Redress Scotland take into account the individual facts and circumstances of each application.

However, I want to be absolutely satisfied the existing eligibility criteria operate in this way and would be grateful if the Committee would allow me some more time to complete this analysis. I have instructed my officials to conduct further enquiries with Glasgow City Council to establish the circumstances in which children came to be placed in Fornethy House and to investigate the limited records and information relating to Fornethy House. I also want to test further the existing eligibility criteria and the guidance in relation to Fornethy. These enquiries are central to enabling me to fully address the issues raised in the Petition.

I hope the Committee will understand the necessity for this additional work to be undertaken and I will provide the Committee with a further update once these enquiries have concluded.

Should the Committee wish me to appear to give evidence on the steps I am taking to consider the Petition, I would, of course, be very happy to do so.

I hope that you find this response to be helpful.

**JOHN SWINNEY MSP**

## Petitioner submission of 7 March 2023

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

Thank you for your email dated 14<sup>th</sup> February 2023 concerning the DFM's response, dated 6<sup>th</sup> February 2023, to the Convener's letter dated 10<sup>th</sup> January 2023 in relation to our petition.

We were delighted to read that the Petitions Committee responded so favourably to our calls for equality and fairness and agreeing that the evidence was unanimously "compelling and indicates support for widening the eligibility criteria". The Committee recommends that action is taken. Thank you to each and every one who supported us; it is greatly appreciated.

The DFM has asked for more time to conduct further investigations and to then come back to the Committee with a further update. Again, we are pleased that this is happening but since no indication of a deadline was given, we have concerns that our case will go into "the long grass" as well as the news that the DFM is to step down from his position. We want to keep the momentum going and not let our plight be pushed back further and further and having to bear such long delays in gaining justice. It is damaging to us. Children at Fornethy were failed over a thirty-year period of abuse (which may just be the longest standing abuse scandal in Scotland's history?) and here we are having to wait and wait.

We noted Brian Whittle MSP's [contribution to the Committee](#), outlining the potential of taking our case to the European Court of Human Rights, and this is something we would consider. The DFM does not believe that Fornethy Survivors are precluded from applying for redress yet the Committee acknowledge in their deliberations that the criteria does need to be widened to give all a fair and equal opportunity to apply if they so wish. Those victims pre-the 1964 criteria certainly do not have that equal opportunity. This is at the heart of our petition. We are doubtful

many would succeed given the criteria. The action needed is what the Committee recommend.

We find the responses from the DFM confusing and potentially inaccurate, with one saying it is the *length* of the abuse that matters, since our respite care was short term and yet in the most recent response, the *duration* of abuse is not? It is confusing given that other Redress Schemes ignore the length of abuse in care which is not a qualifying factor. We would also further challenge the Terms of Reference (6) in the knowledge that ‘respite’ is included for victims of childhood abuse. Clarification is needed.

We would like to request once more what the timescale actually is for someone in care to access the Redress Scheme? What is the cut-off date please? This was raised in our June letter (PE1933/B) but remains unanswered.

### **New Information**

The Fresh Start Foundation (sponsored by the UK Column) have organised two conferences for the Fornethy Survivors, the first of which took place on the 22<sup>nd</sup> January 2023 and a further one was held on the 4<sup>th</sup> March 2023, gaining more press momentum. See:

<https://www.ukcolumn.org/video/fornethy-residential-school-childhood-memories-and-survivor-testimonies-from-scotland>

The purpose was “a waypoint on the journey towards recognition for the Fornethy survivors.” These meet ups have been very helpful where various professional speakers offered their support to the Survivors. They outlined that children are the most vulnerable, exploited and abused members of society who are still not being protected sufficiently. Indeed, this is now being borne out by longitudinal research studies into the profiles of abusers and how they target those who cannot protect themselves.

We also noted from the conference that the Glasgow City Council have now admitted that case files relating to Fornethy do exist. It isn’t a surprise then that the Survivors often feel that there are potentially cover

ups preventing them from gaining full and rightful access to the records in existence.

Efforts will continue to raise the public profile of the Fornethy Survivors be that through the press, protests or television coverage. We are united in our determination to succeed. We want to be listened to and actions taken. We deserve this.

**Please move this damaging legacy of 30 years of abuse forward and bring it to a conclusion which brings justice and peace!**

Mutuality and trust are sacred in moving forward.

Iris Tinto & Caroline Harris  
On behalf of the Fornethy Survivors