

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

## **Deputy First Minister written submission, 16 August 2024**

I write to you in response to your letter of 24 July which recommended that the Scottish Government review and consult on expanding the eligibility criteria for Scotland's Redress Scheme ("the Scheme").

I welcome the ongoing scrutiny of the Citizens Participation and Public Petitions Committee ("the Committee") and their work in relation to this petition. As the Scheme approaches the third anniversary of its operation it is vital to ensure that the Scheme continues to deliver for survivors in keeping with its core principles of dignity, compassion and respect. I am grateful to the Committee for providing an opportunity to my predecessor, Shona Robison, to give evidence as part of the Committee's consideration of these important matters.

I would like to convey my thanks to the Fornethy survivors for their bravery in sharing their experiences with the Committee and with the former First Minister and Deputy First Minister as these sensitive matters were carefully considered. I also wish to associate myself with the remarks made by the former Deputy First Minister during her session before the Committee on 20 March 2024:

"I will begin by putting on formal record my acknowledgement of the abhorrent abuse that some children suffered while resident in Fornethy house. It should not have happened, and I am sorry to hear about what they had to endure as children and the impact that the abuse has had on their lives"

In drafting this response I have carefully considered the written submissions received by the Committee, including from the Fornethy survivors themselves, the Law Society of Scotland and Thompson Solicitors as well as the evidence provided by Redress Scotland.

I will now consider each of issues raised by the Committee in turn:

### **Eligibility**

As the former Deputy First Minister set out to the Committee the existing eligibility criteria reflect the core purpose of the Scheme which was designed primarily for those vulnerable children who were in long-term care, often isolated with limited or no contact with their families. Children who were resident on a short-term respite or holiday basis under arrangements involving their parents, such as those who attended Fornethy House, were not in that position. In setting this out, I am in no way seeking to diminish the experience of those survivors, who suffered horrendous abuse.

Prior to the Bill's introduction to Parliament, there was a full public consultation on the establishment of a redress scheme. 79% of respondents, the majority of whom were survivors, agreed with the proposal 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”.

The eligibility criteria for the Scheme were extensively debated during the passage of the legislation and the intention to exclude short term respite and holiday placements was considered by the lead Committee at the time. The final legislation was unanimously supported by Parliament.

The later Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021 (the ‘exceptions SSI’), provide that an application for redress may not be made:

“by or in respect of a person to the extent that it relates to abuse that occurred when that person was resident in a relevant care setting (a) for the purpose of being provided with short-term respite or holiday care, and (b) under arrangements made between a parent or guardian of that person and another person”.

This is in keeping with the core purpose of the scheme and recognised that in the case of short-term respite or holiday care such arrangements were intended to be temporary. The duration of the stay of itself is not a relevant consideration, rather it is the intended purpose of the stay which is of relevance. The exceptions SSI was also approved by Parliament under the affirmative procedure. Moreover, as further reflected in the statutory scheme guidance on eligibility;

“In the case of short-term respite or holiday care, such arrangements were intended to be temporary in nature, and there was no intention at the time of the placement that responsibility for the day-to-day care of the child would be taken over on a long-term basis by another carer, rather than the child’s family. In assessing whether a placement was “short-term” or not, the focus should be on the underlying purpose of the placement at the time it came about, and all relevant factual information will need to be taken into account”.

The independent report commissioned by the former Deputy First Minister, Shona Robison, to investigate the circumstances by which children came to be placed in Fornethy House is clear that children attended Fornethy House primarily on a short-term basis for convalescence or a recuperative holiday under arrangements involving their parent or guardian and another person. Without more definitive evidence we cannot say with certainty that parents or guardians gave full and informed consent to the placement of every survivor. However, we can say that such evidence as exists indicates that the placements were made under arrangements involving their parent or guardian and as such fall within the circumstances set out in the exceptions SSI. Consent is not a relevant consideration in determining eligibility, rather, as noted above, it is the intended purpose of the stay and whether the stay was made under arrangements involving the parent or guardian and another person which is of relevance.

In their written submission to the Committee the Law Society acknowledge that this restriction to the eligibility criteria reflects a deliberate policy choice of the Government consistent with the underlying purpose of the redress scheme. The change to the eligibility criteria recommended by the Committee, would therefore be

in direct contrast to the policy intention of the scheme and would, if implemented, have substantial consequences for survivors, contributors, and the administration of the Scheme. The potential risks of implementing such a change are acknowledged by the Law Society who note that it would have “wider implications beyond this individual group of survivors, and this would seem to potentially extend the scope of the Redress Scheme beyond its original intended aim”.

After careful consideration of these issues, I have decided not to amend the eligibility criteria for Scotland’s Redress Scheme. I am content that the existing eligibility criteria both in the Act itself and as set out in the exceptions SSI, continue to reflect the intended purpose of the scheme, as approved by Parliament following the earlier public consultation and the views set out by survivors and stakeholders.

### **Evidential requirements and the operation of the Scheme**

As the Committee has heard, under Section 36(3) of the Act, in determining an application, Redress Scotland panel members must start with the presumption that any information provided by the applicant in respect of their application is true and accurate to the best of the applicant’s knowledge and belief. This aligns to the fundamental principle on which the Scheme is based to treat all applicants with dignity, respect, and compassion.

However, it is vital that the Scheme ensures that survivors, and others, have confidence that the appropriate levels of redress payments are being paid to those eligible to receive them. As such, in order to apply for a redress payment, applicants to the Scheme must provide a supporting document which confirms that they were resident in a relevant care setting as a child before 1 December 2004. A requirement to provide evidence of an in-care placement does not cut across the presumption of truth but is a crucial element in fraud prevention and ensuring robustness of the scheme. As set out in section 36(1) of the Act, Redress Scotland must determine whether, on the balance of probabilities, an applicant is eligible for a redress payment.

I understand that survivors may face challenges in obtaining evidence of being in care and of abuse which occurred decades ago. Record keeping in some care settings, including Fornethy House, was inconsistent and inadequate. In recognition of this difficulty, the evidential requirements for the Scheme as set out in statutory guidance issued under section 106 of the Act, were designed to provide applicants with flexibility in providing supporting documentation. Working closely with Redress Scotland, [the Scottish Government recently developed revised guidance on the evidentiary requirements](#) to clarify the wide range of supporting documents an applicant may use to evidence their in-care placement.

It is ultimately for Redress Scotland, the independent decision-maker established by the Act, to determine the eligibility of an applicant and the level of redress payment to be offered in accordance with the framework set out in the Act, and having regard to the statutory guidance. As noted by the Committee in light of Redress Scotland’s evidence to them, and as set out in the revised statutory guidance, in exceptional circumstances Redress Scotland have discretion to be satisfied that the applicant was resident in a relevant care setting as a child without the production of supporting documents, or the verification of an in-care placement. However, Redress Scotland

must be satisfied that all reasonable endeavours have been made to obtain the documentary evidence generally required to support an application. Every application to the Scheme is considered on its own merits and ultimately the value and weight to be attached to any piece of evidence is a matter for Redress Scotland.

I and my officials regularly meet with Redress Scotland and we have well established feedback mechanisms to support close and collaborative working.

Finally, may I take the opportunity again to thank the Committee for their careful consideration of this petition and for their interest in Scotland's Redress Scheme.

Yours sincerely,

**KATE FORBES**