

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

Thompsons Solicitors written submission, 28 May 2024

Survivors of the residential setting, Fornethy, have been denied compensation from The Scottish Government's Redress Scheme on the basis that the stays at this residential home were 'short-term' and therefore excluded from the scheme.

The Petition has our support for the reasons set out.

The legislative background

The relevant legislation for the scheme is Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 (the Act). There is no mention of a 'short term' placement within the legislation. On the basis of the legislation, Fornethy Survivors are eligible for compensation. Please refer to sections 18-22 of Part 3 of the Act.

- Section 18 – Eligibility to apply; *Fornethy Survivors meet specified criteria*
- Section 19 – Meaning of “abuse”; *Fornethy Survivors meet specified criteria*
- Sections 20-22 – Meaning of “relevant care setting” and “resident”; *Fornethy Survivors meet specified criteria*

As there is no reference to any relevant exclusion within the legislation, there was no opportunity for Parliament to consider the point in any detail. It is accepted that there was a mechanism for exclusions at s23 (which is entirely inconsistent with s20(5)) but this near blanket approach to so many otherwise eligible individuals was surely never envisaged by those charged with the public scrutiny of this legislation. There was no opportunity for public response in consultation. This exclusion has been brought about by entirely undemocratic means.

The principles underpinning this legislation, and indeed enshrined in law at s13 of the Act, are that every applicant is treated with dignity, respect and compassion. The way in which the exclusions leading to this Petition before the committee have been introduced and applied, are entirely inconsistent with such principles. The Scottish Government has avoided Parliament and their obligations.

The relevant exclusion

The Guidance is complex and difficult to navigate. [A link to one page shows a clear example of this - Scotland's Redress Scheme.](#)

[The exemption can be found here, specifically at s32 - s39 - Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance – eligibility.](#)

In addition to this website, [there is also the Redress Scotland website – Applying for redress – Redress Scotland.](#) Whilst not directly relevant here, this gives a further example of the complexities of this scheme, guidance and legislation.

The reliance on the unspecified 'short-term' and 'long-term' periods of care has caused unfairness and confusion. The guidance appears to specifically exclude those attending Fornethy for a number of consecutive weeks, even recurring over a number of years. Those children were removed for a period from the care of their parents; many parents felt they had no choice in this. There were no means of contact between parents and children during this time. The state, in the form of the statutory predecessors of Glasgow City Council, were in loco parentis for the periods of placement. As per s20(1)(a), such a situation satisfies the most basic scheme requirement for eligibility.

In stark contrast, awards are being made to residents of locations such as Larchgrove and Cardross, who were placed there for only a number of weeks. Perhaps ironically, such examples no doubt infer that being an offender places an applicant in a more favourable position in terms of this scheme.

A focus of the Bill and consultation was the impact that abuse can have on an individual rather than duration being the focus to attract a level of award. An entirely reverse approach has been taken in relation to so called short-term placements.

The hopes of Survivors of Fornethy and similar institutions were raised through the Bill and Consultation process. Survivors quite rightly feel abandoned and let down. Their experiences have been categorised and inference that abuse they suffered lacked sufficient severity, despite their circumstances meeting the legislative criteria.

We urge the Scottish Government to make the necessary amendments to the scheme's guidance to ensure all survivors of abuse which occurred whilst they were in the care of the state are treated fairly, respectfully, and equally.