

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

Law Society of Scotland written submission, 30 May 2024

We thank you for the opportunity to comment on [Petition PE1933: Allow the Fornethy Survivors to access Scotland's redress scheme](#).

Please note that our comments below are made in general terms, and do not relate to the specific group mentioned in the petition.

Our view is that all survivors of abuse should have access to appropriate redress.

We understand that the core purpose of the Redress Scheme is to offer a non-adversarial, less intrusive route to compensation than litigation, for those survivors who suffered abuse in a long-term care setting. It is clear that the Scottish Government did, as a matter of policy, intend to exclude short term residential care settings from the Redress Scheme - [Redress For Survivors \(Historical Child Abuse In Care\) \(Scotland\) Act 2021: statutory guidance – evidential requirements and determinations by Redress Scotland](#).

We are therefore not dealing with a situation where there is a gap in the policy considerations or where the policy has not been fully implemented in the legislation.

It is unfortunate for this particular group that access to the Scheme is based on who decided to place the child into care, in the short or longer term, and does not take into account whether the abuse took place at an emanation of the state and/or whether the abuser was under the control of an emanation of the state.

The Scottish Government guidance acknowledges that restrictions to the Redress Scheme are in no way intended as any moral judgment of worthiness of a survivor's claim. The question considered by the Scottish Government and Ministers in preparing regulations was one of identifying an appropriate threshold to obtain compensation through the Scheme. From the consultations which took place before its commencement, this seemed to relate to policy concerns about the potential breadth of the Scheme.

If a recommendation is made in line with what is asked for in the petition, there would likely be 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. That said, we note that this is a relatively new scheme and it may therefore be a time to reflect on how the scheme is operating in practice and review whether it is achieving its intended aims. Such a review could take into account the number of applications which are being rejected on the grounds of eligibility, and representations made on behalf of those not covered by the scheme, such as this group of survivors.

If the Committee are of the view that eligibility criteria should be wider than the Scheme's current remit, it would be more appropriate to formally consult on expanding the Scheme more widely. Such a review could include the points made in the current petition.

