

Citizen Participation and Public Petitions Committee
Wednesday 26 June 2024
12th Meeting, 2024 (Session 6)

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

Introduction

Petitioner Iris Tinto on behalf of Fornethy Survivors Group

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.

Webpage <https://petitions.parliament.scot/petitions/PE1933>

1. [The Committee last considered this petition at its meeting on 12 June 2024.](#) At that meeting, the Committee took evidence from –
 - Kirsty Darwent, Chair, Redress Scotland
 - Joanna McCreadie, Chief Executive, Redress Scotland.
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 two new written submissions from the Petitioner which are set out in **Annexe C**.
4. Every petition collects signatures while it remains under consideration. At the time of writing, 376 signatures have been received on this petition.
5. [The Committee has received 23 written submissions during its consideration of the petition.](#)
6. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
7. [The Scottish Government gave its initial position on this petition on 24 May 2022.](#)

Background

8. The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, establishing a financial redress scheme for survivors of historical child abuse in certain residential care settings in Scotland, was passed by the Scottish Parliament in March 2021.
9. The Act makes gives powers to Scottish Ministers to create exceptions to the eligibility requirements of the scheme. This power has been used to introduce regulations to exclude applications where a person was resident in a relevant care setting –
 - for the purpose for the purpose of being provided with short-term respite or holiday care

and

 - this was due to arrangements made between the parent or guardian of that person and another person.

The regulations were approved by the Education, Children and Young People Committee on 27 October 2021.

10. Written evidence the Committee received from organisations representing victims and survivors of abuse indicated support for removing these restrictions to allow those who experienced abuse during short-term respite or holiday care but would otherwise be eligible to access the Redress Scheme.
11. [On 23 January 2023, the Committee wrote to the then Deputy First Minister, John Swinney MSP](#), highlighting the evidence it had gathered to that point, and recommended that the Scottish Government take action to widen the eligibility criteria of Scotland's Redress Scheme.
12. Responding to the Committee's recommendation, [the then Deputy First Minister indicated that officials had been instructed to conduct further enquiries to establish the circumstances in which children came to be placed in Fornethy House](#).
13. [In March 2024, the Committee took evidence from then Deputy First Minister, Shona Robison MSP](#), on the outcome of enquiries into Fornethy House. During this evidence session, the Deputy First Minister stated that she did not intend to change the eligibility criteria.
14. Following this evidence session, the Committee agreed to write to John Swinney MSP, who at time of writing was a backbench MSP. [The Committee has since received a response from him in his capacity as First Minister](#).
15. [The Committee has also received written evidence from the Law Society of Scotland](#) suggesting that a review of the scope of the Redress Scheme would seem appropriate.

16. Members may also wish to note that [the Education, Children and Young People Committee has received correspondence from the Scottish Human Rights Commission](#), which recommends that the definitions governing eligibility of the redress scheme should be kept under review.

Action

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

Clerks to the Committee
June 2024

Annexe A: Summary of petition

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

CPPP/S6/24/12/3

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 12 June 2024

The Convener: The second item on our agenda is consideration of continued petitions. We have spent a considerable amount of time discussing and taking evidence on the first of them. PE1933, which was lodged by Iris Tinto on behalf of the Fornethy Survivors Group, is on allowing Fornethy survivors to access Scotland's redress scheme. Some of the survivors who have been following the petition as it has made its way through the Scottish Parliament are with us in the public gallery this morning, and I welcome them.

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 last considered the petition at our meeting on 17 April 2024, when we agreed to write to the Law Society of Scotland, Thompsons Solicitors and John Swinney, who was at that point a back-bench MSP. Members will recall that, when we wrote to him in his back-bench capacity, we asked him to comment on submissions that he had made previously as Deputy First Minister. Of course, he has now replied to our request in his capacity as First Minister—which is my way of saying that the reply is not as candid as it might have been in different circumstances.

As well as the response from the First Minister, we have received responses from the organisations that we wrote to, as well as from our petitioner. All those responses are set out in our papers for today. Members might wish to draw on the content of those submissions during today's meeting.

At that previous consideration, we also agreed to invite Redress Scotland to give evidence. I am pleased to welcome to this morning's meeting Joanna McCreadie, who is the chief executive of Redress Scotland, and Kirsty Darwent, who is the chair of Redress Scotland. I do not know whether our witnesses wish to say anything before we go to questions. Have you prepared opening remarks, or are you happy just to answer members' questions? You may do whatever suits you.

Kirsty Darwent (Redress Scotland): I think that it would be helpful if I made a few opening comments.

I thank the committee for inviting us along today, so that we can tell you a little more about the Redress Scotland scheme and let you understand better our position within that overall scheme.

I will start by mentioning the Fornethy survivors and clearly stating that abuse of children is abhorrent and wrong in all circumstances. I recognise that a single incident of abuse over a short period can have a lifelong impact. I want it to be clearly noted that that is the position not just of Redress Scotland, but of Joanna McCreadie and me personally.

It might be helpful to say that, as an organisation, we apply the legislation as it is, and the legislation guidance in all its forms, in our panel decision making. Those panels take great care in considering all the information that is submitted to us. We

treat all survivors with compassion, dignity and respect, and we consider each application on its facts as they stand.

I am very happy to answer any further questions.

The Convener: Thank you very much. One of the reasons why we thought it would be useful to have you along is that we have kept hearing these two words, “Redress Scotland”, throughout the process, without having any particular understanding of the organisation. Also, I have felt at times that people have said, possibly unfairly to you, “That’s nothing to do with us. That’s for Redress Scotland”, and we have not been clear about where authority actually lies. It has also been suggested that you have no discretion to act, but at other times it has been suggested almost that you have all the discretion that you would care for to act.

In the first instance, I would like to understand what your role is and what the Scottish Government’s role is. What is the distinction between the two and where are the respective authorities in all that? You now have a chance to make plain what your role and the Scottish Government’s role actually are.

Kirsty Darwent: Thank you. I think that it would be helpful to outline that. The redress scheme is complex in its set-up, which means that sometimes it is difficult to understand where the individual responsibilities lie.

The redress scheme was set up by Scottish ministers. The redress division, which is within the Scottish Government, receives applications from survivors. Caseworkers gather together the information to support the survivor and, when the survivor is content that the information has been gathered together, they send it to Redress Scotland.

Redress Scotland is independent of Government: we sit separate from it, and we are constituted of independent panel members who are selected because of their skills and experience. They have backgrounds including social work, law and clinical psychology, and there are some former police officers. They are able to make independent decisions on each application that we receive from a survivor. We do that with dignity, compassion and respect for the survivors, and we consider each and every individual application very carefully at a panel hearing to make our decision.

That decision is made on the basis of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, the associated regulations, which are particularly significant in the case of Farnethy survivors, and the statutory guidance, which was agreed by Parliament. We have to apply that legislation in our decision making. Within that decision making, there is some discretion, but it is limited in scope. We would be happy to take you through that decision-making process, if that would be helpful, so that we can tell you when discretion can be used.

We would first consider eligibility under the provisions that are outlined in the act, then eligibility on the basis of the regulations, which is particularly relevant because of the exclusion of people who have been in short-term care. We would apply the guidance after that; we would use it to decide whether, for example, we could make a decision without supporting information.

Once we have made a decision, we write a letter to the survivor allocating an award of redress and we send that information back to the Scottish Government, which carries out further work to pay the redress and send information back out.

We are the middle bit of a larger and more complex process; in effect, we are the decision makers. We apply the legislation in an independent way.

The Convener: Okay. At this point, I welcome Fergus Ewing, who has joined us. I explained earlier why you would be a little bit late to join us. It is good to see you now.

Fergus Ewing (Inverness and Nairn) (SNP): I apologise.

The Convener: No—that is fine.

Fergus Ewing: You pointed to the different skill sets that there are on the panel. Do you decide collectively? Is there a small quorum of people who are available in respect of particular cases, or is there a round-table discussion among the panel? How many people are on the panel?

Kirsty Darwent: Our panel members—we have 38 at the moment—are appointed by Scottish ministers through the public appointments process. We are involved in that process; our deputy chair—from our sponsor unit—was involved in the interviews in the most recent round.

Ministers appoint on the basis of criteria that include skills. The appropriate skills can be found in a number of different backgrounds. Because we are looking for independent decision makers, quite often members have legal, social work, psychology and police backgrounds. Panel members are individually allocated from that pool to panel hearing days. We typically hear three or four individual applications in one day.

The panels are constituted of two or three panel members, who are chosen because of their differences: for example, we might have a lawyer, a clinical psychologist and a social worker, or two lawyers and a police officer. Different compositions are put in place, and the panel comes together to consider an application in detail.

We receive the information several days, or even weeks, beforehand and we undertake careful individual consideration before panel members come together to spend time very carefully thinking about what decision they will make on the basis of all the information that has been submitted.

The Convener: If an application bounces about a bit, would the same core panel consider it?

Kirsty Darwent: Applications would not normally bounce about.

The Convener: So the application normally comes in, and that is it.

Kirsty Darwent: We are very thoughtful of the facts that some information in applications is incredibly sensitive, and that survivors might never have spoken

about it before. We therefore use absolute confidentiality and the minimum number of people would see that information.

The Convener: Given what you have just articulated, I am trying to understand why the First Minister would publicly pronounce that individuals were not eligible. As you have described the process, the application comes to Redress Scotland and you make the decision. Should that more appropriately have been understood to be a decision of Redress Scotland and not, as it appeared from the way that the matter has unfolded, a determination of the First Minister, which was left to appear as being of a higher standard than any consideration that you might have given?

Kirsty Darwent: There is no blanket rule to say that Fornethy survivors cannot apply to the redress scheme and be considered within Redress Scotland. There are circumstances in which that could be possible.

The primary challenge around eligibility and the potential for Fornethy survivors to get an award are the eligibility requirements. Under the 2021 act, there are four criteria that need to be met for someone to be considered for redress—they must, for example, have been a child who experienced abuse in a residential or other care setting before 2004.

There is, however, regulation that was approved by Parliament that specifically excludes those who were in short-term care and cases where it was considered that parents had made arrangements for short-term holiday respite care. Eligibility is the primary challenge for Fornethy survivors who wish to receive redress. Redress Scotland has to apply the 2021 act and the regulations; otherwise we can be challenged in our independent decision making—

The Convener: By whom?

Kirsty Darwent: We could be challenged by Scottish ministers. We have to follow the 2021 act. It is clearly laid down in the act that we need to follow the rules that are laid down by Parliament. If, for example, we made a decision that was not based on the act, we could be considered to have made a material error, and the decision could be sent back to us for reconsideration and, potentially, judicial review.

The Convener: Here we have, slightly, the nub. I will allow other colleagues to come in after this.

You have identified a number of criteria, the last one of which appeared to be that there could be discretion of consideration in respect of parents not having given proper consent. We have been unable to understand why, given that these survivors were sent to Fornethy without true consent from their parents, the criteria did not allow for their applications to be considered.

However—this is the bit that we are finding tricky—the Scottish Government has said, “That’s your decision, not ours,” which almost suggests that it would not have held you to account if you had come to a decision that you wanted to give consideration to Fornethy survivors. If consideration cannot be given, we seem to be circling round, but not quite landing on, who would validate that.

Given that the survivors were sent to Fornethy without demonstrable parental consent, why is that criterion not sufficient to allow them to be considered to be within the scheme's scope?

Kirsty Darwent: Joanna, do you want to come in on that?

Joanna McCreadie (Redress Scotland): It might be helpful to think through how decisions are made and what panel members work through. Each application is considered on the basis of the individual facts and circumstances in that application. It is for the survivor who is making the application to set out within it the abuse that happened to them and the circumstances, and to give as much information as they can. The panel members then look at that and take into account everything that they have been told in that application. If that includes information about the circumstances whereby the applicant came to be in that placement, whatever type of placement it was, panel members will take that into account, particularly when they are looking at eligibility. They work through all aspects of eligibility, then use the assessment framework to assess the application, if it is for an individually assessed application.

That means that it is open to a survivor of abuse to make the choice to apply to the scheme. As far as we at Redress Scotland are concerned, there is not a blanket statement on any particular group of survivors or on any particular set of circumstances. We look at every application and make a decision for that individual on the basis of their experience in care and what happened there.

The Convener: Okay. I will let David Torrance pursue that point.

David Torrance (Kirkcaldy) (SNP): I will ask about something that was mentioned earlier. Will you explain what evidence the Fornethy survivors must show to Redress Scotland to establish that the exclusion for short-term respite or holiday care does not apply to their cases?

Kirsty Darwent: That is a difficult question to answer. Each individual application would be considered on the basis of all the information that was supplied, so it would be difficult to give a tick-box answer about what information you would need to have in order to demonstrate that.

Joanna McCreadie made a point about people providing an explanation of the circumstances in which they experienced short-term care. The panel members could consider that and make an independent decision on the information that was sent.

Joanna McCreadie: I will add a bit to that. Panel members work from the presumption of truth. They start with a presumption that every applicant has been as honest and as accurate as they are capable of being in their application. That is a really important principle of the scheme and of the legislation. They then work on the balance of probabilities—that is, whether something is more likely to have happened than not—and with whatever supporting information is available.

We see a range of different supporting information in applications. That is highly dependent on the individual circumstances that the person has experienced. You will appreciate that it has been very challenging and difficult for many survivors to find

information about what happened to them, the care settings that they were in and what happened in those care settings.

Records can be missing or limited. Provision is made for that in the statutory guidance, and panel members can assess what information the survivor has been able to provide and look at the efforts that have been made to obtain that. Many survivors go to considerable effort to try to work out what has happened to the records. At that point, the panel members can use their discretion to make a determination on the application, on eligibility and on whether any redress is to be made.

David Torrance: I will come in on the point about statutory guidance and documentation to show that the individual was at Fornethy or any other establishment. What would they have to show to say that they were there, if there were no legal documents to show that they were?

Joanna McCreadie: In those circumstances, a survivor would explain in their application the efforts they have made to try to get that information. They might show evidence of subject access requests, a letter they have written or the responses they have had from different organisations, and they would then be able to say that they have made every effort but they have not been able to locate records. In those circumstances, the panel members would apply the presumption of truth, look at the balance of probabilities, read the survivor's statement of abuse and reach a determination on the eligibility of that applicant.

David Torrance: Can you explain how the balance of truth and probabilities is applied? I know that some of the survivors are here today. How would you go through that process?

Joanna McCreadie: Redress Scotland has designed a process for the way in which the panels run. That is important, because that is where we bake in the presumption of truth and the balance of probabilities, and we work from our values of dignity, compassion and respect.

Every application is considered on its individual merits. Panel members do not reach across into other applications or experiences. The process is absolutely focused on that individual. Panel members will talk about trying to keep the survivor in the room, so they are really thinking about that person. They start the panel with a statement about the values of dignity, respect and compassion and talk about how they will be applied in the particular case. They remind each other of the balance of probabilities and the presumption of truth, and they use those as touchstones as they go through the process of determining the application.

They work through the different aspects of eligibility that they have to consider. They lean into whether they have to use their discretion and apply those principles, depending on the application. They then work through the four categories of abuse, using the assessment framework to individually assess the application.

The process is continuous through all that discussion and the determination of the application. It is not a check-in at the end of a panel sitting, and the panel members are not just filling in a bit of a form in advance. It is something that they do in practice

throughout the session and they apply the process on an individual basis through the application.

Redress Scotland has a quality assurance and improvement framework in place and, as part of that, a small number of us within the team and the non-executives observe the panels working to quality assure and check that the process that I have just described is actually happening in practice. I can give an absolute assurance that it is what happens in practice, and it is very much the focus of panel members because of the quality assurance work that we have done around it.

David Torrance: Thank you. I have no further questions, convener.

The Convener: I do not want to lose sight of the issue of consent. The research that Dr Fossey put together came to the view that there was no evidence of parental consent—at least, no documented evidence. Have you come to the conclusion that there is such evidence?

Kirsty Darwent: I am not sure that we can answer that, because we would not necessarily have access to that information. Could you ask your question again in a different way, so that we can understand?

The Convener: One of the criteria that you identified was the issue of parental consent. In the absence of anything to demonstrate that there was parental consent—and in her report, Dr Fossey demonstrates that there does not appear to be—there is no evidence that parental consent was given. How do you determine that parental consent was given, in order not to apply the criterion of parental consent as being a legitimate reason for consideration?

Kirsty Darwent: We would understand each individual application on the basis of the information that was given to us. We have read the reports and keep ourselves abreast of developments and changes in the area, so we are aware of that document but, much as we might be aware, it would be for the panel to consider the information that was supplied by the applicant—the survivor—on the presumption of truth. If we are hearing from someone that “That is what happened,” then that is the information that we would understand, and we would consider making a decision using our values and the balance of probabilities.

The presumption of truth is very important for us. Although it is a rebuttable presumption, if an individual survivor tells us something, that is the basis on which we act. Any applicant coming to us would be considered on that basis.

The Convener: That is why I am genuinely confused. If there is a presumption of truth and no evidence to suggest that there was parental consent, and they are saying that there was no parental consent, then why are they not believed, since that criterion would have made them eligible?

Kirsty Darwent: We absolutely would want to believe applicants who came to us. If a Fornethy survivor, or any other survivor, comes to us and has information that means that we can make a decision based on the legislation, we will do so. The regulations make it more difficult, because of the specific exclusion, but both aspects of that regulation need to be met for there to be a denial.

Fergus Ewing: How many cases have been turned down by Redress Scotland, and why?

Kirsty Darwent: Only 4 per cent of the applications that we have received in the past two and a half years have been denied. Although we make those decisions with sadness, it is a very low proportion. I could not tell you the reasons why. We do not collate that information, because of the nature of the work that we do.

Fergus Ewing: We want to try to find out the facts, so it would be helpful—if you are not prevented from telling us—if you could write to us, without naming names, to explain for what reason the 4 per cent were turned down. I am pleased to hear that it is a small number.

I want to focus on material that we have received from the Law Society of Scotland and from Thompsons Solicitors. The problems arise from the guidance—perhaps from the act itself—and the exceptions from eligibility. The Law Society has put it quite clearly that

“It is unfortunate”

—that is a sort of lawyerly euphemism; in my opinion, it is a bloody disgrace—

“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”.

That question of whether the placement was voluntary or involuntary seems to me to be completely irrelevant. Would you not agree? If a child was placed in the care of the state, in loco parentis, and that child was abused, the intention of the person who put the child there does not really matter, surely. I do not want to put you on the spot, but, as a human being, would you not agree with the proposition that that criterion is just insupportable?

Kirsty Darwent: I might well have a personal position on that.

Fergus Ewing: What is it?

Kirsty Darwent: As the chair of Redress Scotland, it would be inappropriate for me to express a personal view. A human view would be that I absolutely understand your proposition that the individual survivor had no say in who put them in and might not even know what the circumstances were, given that they were a child at the time. In our decision making, we must decide on the basis of the information that is supplied and in relevance to the legislation.

Fergus Ewing: I am pleased that you have been candid. I understand that Redress Scotland is a creature of statute, which governs how you behave, so it is not a personal criticism at all.

That really gets to the nub of it, as far as I can see, convener. Whereas we have had evidence from Professor McAdie that, in some cases, parents did not have any choice about whether their children were placed in the school, it seems to me that that should be irrelevant. If a child is abused at the hands of an institution that is

effectively in loco parentis and under control of the state, the state must compensate. Since the witnesses agree with that, it seems to me that the case for recommending that the guidance be altered in accordance with advice from the Law Society and Thompsons Solicitors is a no-brainer, so I do not think that there is a need for me to ask any more questions.

Foyso Choudhury (Lothian) (Lab): Good morning. I seek clarification on one point concerning cases being refused or not heard. Do you have a list of the evidence that can be accepted?

Kirsty Darwent: The supporting information that we can consider is laid out in legislation—Joanna McCreadie mentioned some of the things that are on that list. The information that we would consider is broad and expansive. It could be a formal record, or it might be something that is less formal than that, because we are aware that large numbers of survivors have difficulty getting supporting information about the circumstances around their being in care and how those processes took place.

Joanna McCreadie: The application that the survivor makes is very much their application: they finalise it and write their own statement of abuse, which can be in any form that suits them—for example, they can record a film of themselves talking as their statement of abuse and send that as part of their application. It is open for any survivor who applies to the scheme to put together their application in the way that they see fit and proper and that works for them. That is an important point.

What that means for us at Redress Scotland is that we will accept whatever information we are sent as part of that survivor's application. The panel members will read every line and go through every page that they are supplied with, whether that is 50 pages or 1,500 pages—that is actually the range that we see in applications.

On supporting information, where a survivor is applying for an individually assessed payment, they also have to provide information to support their statement of abuse and what happened to them. What constitutes that information is very open. The things that we tend to see, which are also listed in the statutory guidance, are statements from family and friends, and information from people who were in the same institution at the same time, medical professionals and people in the helping professions. Again, panel members have some discretion in respect of what they take into account, so the process is open with regard to what applicants decide that they want to include, and we take a very open, value-based view on that.

Part of the reason for our approach is that we accept that it is difficult for survivors to get that kind of information. Regular records of what happened at the time were not kept. We have to recognise that, and there has to be an openness with regard to what can be realistically provided, and an acceptance that that has to be looked at and weighed with everything else in the application.

Foyso Choudhury: My colleagues touched on that issue. My final question is this: does Redress Scotland agree with the former Deputy First Minister that the Fornethy survivors would not meet the evidential requirement, even if the scheme was extended?

Kirsty Darwent: Our view is that there is a wide range of information that could be sent to help to meet the evidential requirements. We also have the ability to use discretion, because there is a recognition that it can be incredibly difficult to get information in the form of records, because of their historical nature and because of poor record keeping. That discretion can be used, for example, if survivors have gone to extensive efforts, made subject access requests and tried to find other information to support their application.

The guidance on evidentiary requirements is quite broad, so there is some flexibility for independent decision makers. According to the legislation, discretion can be used only in exceptional circumstances. We would keep that in mind, but we can use discretion.

The Convener: If you watch one of those television dramas that reconstruct some great injustice that took place decades ago, it usually involves somebody going to a warehouse in the middle of nowhere and turning on a light bulb, and there are a whole lot of boxes that have fallen apart, containing paper records that belong to a bygone era. Is poor record keeping and evidence availability an issue in all claims of an historical nature that come before you? When the digital age arrived, a lot of people just put away everything that was historical. It was a long time before anybody thought that maybe we should be transcribing such records in a format that would make them available in the future. Is that a commonplace occurrence?

Kirsty Darwent: It might be worth saying that the case workers in the redress division in the Scottish Government would support a survivor to try to get hold of the information that they wanted to put in their application. That would take place through subject access requests, contacting councils and so on. Because of the requirement that as few people as possible see individual applications, I do not see that information. Joanna McCreadie might be able to tell you more.

Joanna McCreadie: There is wide variation. Some people are able to make a subject access request and retrieve extensive care records; some people are able to retrieve very little. In some circumstances, there is perhaps just a line saying that somebody has been admitted to a particular institution. In other cases, records are simply not available in the present day. The range is wide. Panel members have developed a lot of skill and experience in working with that range, and they will work with what is in front of them as much as they can.

Record keeping has progressed considerably over the decades. The record keeping that is being carried out now by local authorities and voluntary organisations is of a very different standard from what it was 20, 40, 60 or 80 years ago. We recognise that in the way that we work at Redress Scotland, and we recognise the difficulties facing survivors, particularly when we go further back in time.

Maurice Golden (North East Scotland) (Con): Dignity, respect and compassion appear to be severely lacking in this case. The committee is trying to determine why, who is ultimately responsible and whether we can put right what once went wrong through the redress scheme. I am interested in the system for assessing individual cases. I am a bit confused about some aspects that you have mentioned. For example, you have spoken about exceptional circumstances, about people in the same institution at a similar time acting as corroboration and about ultimately

applying the presumption of truth and looking at the balance of probabilities. Does the system allow for such cross corroboration, particularly where no records exist? By contrast, in the standard system, there is an individual case and there are no similar cases. I accept everything that you have said, but it seems as if, in this particular case, either there should be a slightly different system or some of the flexibilities that have been mentioned should be brought in. I am unclear about that.

Kirsty Darwent: Those flexibilities absolutely would be brought in, and they are brought in. We use discretion and, first and foremost, we use the principle of truth. We use our values in all aspects of our decision making and in the organisation more widely. That is fundamental to what we do.

Joanna McCreadie: When panel members make decisions, they look at the facts and circumstances of that individual case and work through the eligibility requirements. If it is for an individually assessed payment rather than a fixed payment, they will work through the assessment framework to assess the correct level. In doing that, panel members can consider whatever is presented to them by the survivor, including in relation to supporting information or records that are not available. They do that based on the facts and circumstances of each case.

In their statement of abuse, a survivor is able to set out why they were in care, what happened and any other information that they think is relevant for the panel members to consider. That leaves it open for the survivor to put together the application that they believe is correct for them and best represents their experience, which can then be considered fully by the panel members.

I will pick up on your point about corroboration. It is important to emphasise that the redress scheme is not litigation. It does not have the same parameters as civil or criminal action. In fact, it is specifically designed to provide a very different alternative to those actions.

Panel members are not looking for corroboration in the sense that it might be meant in other settings. They are looking for supporting information that helps them reach the right decision for that particular application, which means that they will accept a wide range of supporting information. That could be from a spouse of a survivor, where the survivor has told them about what happened to them but the spouse did not witness it. Panel members would accept that as supporting information for an individually assessed application. They then have the ability to take a wide view, based on our values and on the presumption of truth.

Maurice Golden: I want to be clear on the issue of panel assessments of individual cases. In the case of Fornethy—although this could also apply to other cases—a number of individuals are coming forward, and, due to the constraints of the guidance or the act, panel members feel that they cannot provide redress in those cases. However, on the basis of humanity and doing what is right, they think that something should be done.

Is there a process for flagging to the Scottish Government and the Scottish ministers that there is a problem and that Redress Scotland would like to resolve the issue but that you cannot do so? Are conversations taking place on that to ensure that victims get the justice and redress that they deserve?

Kirsty Darwent: It is difficult for us as an independent organisation that makes decisions to recommend a change in legislation to Government. We apply the legislation and the regulations in the most compassionate and humane way that we possibly can, and our panel members make the individual decisions. It is rare for us to deny a redress payment, and we give feedback to the Scottish Government through our sponsor unit, but I am not sure that it is our formal place to make recommendations on legislation. That feels more appropriate for a committee such as this.

Maurice Golden: I do not think that it is for Redress Scotland to rewrite the rules or make recommendations, but I think that it is your role to flag concerns in this case or in others. It is up to the civil service and the Scottish ministers to say, “These are the recommendations and they are based on that,” or, “We don’t think that”. However, unless there is a feedback loop, how will Scottish ministers know that there are potential issues or flaws in the legislation or the guidance?

Joanna McCreadie: When a determination is made on an application, the panel writes a letter in which it sets out its decision, the reasons for it and a reflection of the abuse that the individual experienced. Whether it is a deny decision or an award-redress decision, all that is contained in the letter, which is then sent to the Scottish Government. The Government sees and handles those letters as part of its case management and gets information through those means.

We also produce an annual report and accounts, in which we report on our work. We talk about what we have done throughout the year and highlight particular areas of work. In our first annual report, which was published late last year, we tried to provide information that is useful and helpful for survivors, as well as for other people who have an interest in our work.

We have the ability to make recommendations in the annual report, but that would be within the parameters that we have as an independent public body. As Kirsty Darwent said, that makes it difficult for us to take a position and say that the legislation and regulation should be changed.

Maurice Golden: I have a final question. The Deputy First Minister suggested in evidence to the committee that a precedent could be set in the case of Fornethy survivors that might lead to a number of other cases. I want to get on the record from Redress Scotland that it does not matter to you, as an independent body, whether a precedent is set in an individual case, even if that would mean that hundreds or, heaven forbid, thousands of more cases would then be set against that bar. In each individual case, if there is wrongdoing, it needs to be redressed. I would like to get confirmation of that from you, if you can give it.

Kirsty Darwent: Yes, we absolutely would hear each individual case. We would not use the term “precedent” in our decision making at all—it is about the individual application and the individual survivor. Increases in applications have happened and continue to happen. In the past few months, the number of applications to use has increased by more than a third. It is not unusual for us to experience an uplift in the number of applications. Inevitably, that presents challenges to the organisation’s capacity to make decisions, and survivors might need to wait longer for decisions.

If there were to be a further increase, we would report back to our sponsor unit and the minister to explain and report on the length of time that people are waiting. We would request more capacity and more funding to enable us to consider the applications in what we consider to be a reasonable length of time. There would be implications for the scheme if we received many more applications, and we would need to feed back on that so that funding decisions could be made.

Maurice Golden: Thank you.

The Convener: I have two quick final questions. Given the attendant publicity that is associated with the scandal at Fornethy, and given your independent status, has the Scottish Government endeavoured to engage with you directly on the issues that have arisen in relation to Fornethy? You have talked about what I would call formal reporting mechanisms. Is that the chain of communication that has existed, or has any other communication taken place as a consequence of the attendant concern and publicity that are attached to Fornethy?

Kirsty Darwent: I have not had any formal conversations with the Scottish ministers or our sponsor unit about Fornethy survivors.

Joanna McCreadie: There are discussions at operational level about all aspects of the scheme, but those tend to be on the basis of sharing information with each other. As you will have seen from the legislation, there is a responsibility for both of us to collaborate, so the discussion is more in line with that rather than anything else.

The Convener: Notwithstanding everything that we have heard, I will try to encapsulate the issue in my mind. If I was a Fornethy survivor and I believed that the circumstances that had placed me there were not freely determined by my parents, is that the basis for me to make a claim?

Kirsty Darwent: Each individual survivor needs to make that decision for themselves. The process of applying for redress, putting the information in a form and sending it in can be difficult and traumatising, so it would need to be each individual survivor's decision. However, if a Fornethy survivor or any other survivor wanted to apply for redress and believed that they were potentially eligible—you have given an example of where that might be the case—we would consider their application with great care, treat it with our values of dignity, compassion and respect, allocate a panel, hear the case and make a decision on that basis.

The Convener: I will just say in conclusion that your empathy with the position that people find themselves in is apparent from the evidence that you have given. I am very grateful to you for everything that you have volunteered to us. As Mr Ewing said, and as you have almost said, the responsibility maybe lies with the committee to be much more directional with the Scottish Government in our findings on these matters. However, I am grateful to you for everything that you have volunteered this morning.

Is there anything further that you would like to say that you feel has not emerged during our conversation?

Kirsty Darwent: No, I do not think so.

The Convener: In that case, thank you both very much. We agreed to consider the evidence that we have heard later. In the meantime, I suspend the meeting briefly to allow everyone to settle.

Annexe C: Written submissions

Petitioner written submission, 16 June 2024

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

Thank you once again to the Committee for progressing with our cause. We also record thanks to Thompsons Solicitors and the Law Society of Scotland for their input. We have noted with interest your excellent questions made to the Redress Scotland witnesses and their responses.

Redress Scotland evidence – we would like to make our comments in regards to this.

1. We do not know of any survivor who has been successful in gaining redress and was surprised to hear that only 4% were denied access in 2.5 years. The Committee asked the reasons why applications were turned down, but this wasn't answered meaning we are still no further forward in whether other applications would be turned down.

Secondly, we are in receipt of a letter which the Panel sent to a survivor in 2023 which states:

“As you may be aware, the terms of the Redress Scheme restrict the types of placements which are considered relevant. They exclude short-term placements (ie for holiday or respite) and those involving family members ...” and further that “the placement listed above (Fornethy) will likely be disregarded by the Panel who make a decision on your application ..”

This goes completely against the Panel's explanations around who might be eligible since they said that decisions were made around the “balance of probability and truth” and **based on their circumstances** – in other words if Fornethy was indeed a holiday or respite placement then that would automatically bar their application? In this we feel we have been misled. Fornethy Survivors were not aware of their circumstances in how they came to be there – they are the victims.

2. In Dr Fossey's report she stated that there was **no evidence that parental consent was given**, and the Chair of Redress Scotland said that **they do “not necessarily have access to that information” either**, yet the Fornethy Survivors in their applications are expected to provide this evidence in support of their applications? How can this be? So, the information about the circumstances in which we came to be at Fornethy is a non-starter. How can the Redress Panel offer discretion therefore to some – who have been successful – when the basic need for evidence is missing? It's baffling to us. If you are ticking the criteria boxes in the application forms, then why was one of our applicants turned down saying that Fornethy did not meet the criteria?

It cannot be both ways surely. The Chair of Redress Scotland said that discretion can only be used in exceptional circumstances – that rules out the majority.

3. We now know, according to the archive records, that Fornethy was not a respite or holiday placement but was indeed a school. This surely changes everything about our eligibility to apply for redress and is not being taken into consideration.

Parents may or may not have agreed to send children, but the School Welfare Department were involved in making the referrals and children were entrusted into their care the same as they are when going to school daily – “in loco parentis”.

4. We find it difficult to digest that the independent organisation Redress Scotland, knowing the flaws of the scheme, did not fulfil due diligence in flagging up or making recommendations that the scheme was unfair and was unjust to abuse survivors, regardless of their circumstances. No concerns were flagged up.
5. Recent initiatives such as the “Me Too” and other institutional abuses from schools are taken seriously and believed – why not Fornethy? Why are we being treated unequally? The balance of probability is based on us all coming together sharing the same collective story. We have evidence too of discussions held on Glasgow Forums which corroborate our stories (years before the Survivors Group was formed) but without the basic criteria, how can we be successful? Our trust in the process is hampered by the injustice of the Redress Scheme.

Thompsons Solicitors

We are in complete favour of the submission urging the “Scottish Government to make the necessary amendments to the scheme’s guidance to ensure all survivors of abuse which occurred whilst in the care of the state are treated fairly, respectfully and equally”.

Law Society of Scotland

We welcome the Law Society’s view that “... all survivors of abuse should have access to appropriate redress” and its suggestion for a review to reflect on how the scheme is operating; whether it is achieving it’s intended aims; and taking into account the number of applications which are being rejected on the grounds of eligibility.

First Minister

The First Minister’s response states that the independent researcher concluded that records exist suggesting children were placed in Fornethy with agreement of parents for the purposes of a convalescent/recuperative holiday. This research is not supported by the research of the Survivors, nor have we seen the evidence that

resulted in the independent researcher's findings. This may have been the case just prior to 1945, after which the school was repurposed as a Residential School.

Petitioner written submission, 16 June 2024

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

Fornethy House was a residential school and not a respite or holiday placement.

We have now ascertained without any doubt that Fornethy was a school. We are now in receipt of hard evidence from the archives which prove this –

- a) If Fornethy wasn't a school then why was the Glasgow Education Department advertising for teachers?
- b) The archives, kept by Glasgow City Council (GCC) until recently, were locked and we were denied access. The archives show that Strathclyde Education Department took over from the Glasgow Corporation and were in charge of Fornethy until it closed. Yet there were no formal inspections or regulatory practices in place, allowing our plight to slip through the net.
- c) Fornethy was listed as a Pilot Project as a Work Experience where people were invited to take part.
- d) GCC stated that all schools must be registered with the Scottish Education Department (SEED), and as such were issued with a unique identifier SEED code for each school – SEED numbers were not issued until that scheme evolved in 1999 before devolution in 1999. So, SEED was not in place at the time of Fornethy Residential School existing. Moreover, Fornethy appeared in the Education Committee Handbook from 1960-1961.
- e) Archives about Residential Schools' set ups are seen in a document provided by GCC via Freedom of Information request, which state:

“Fornethy Residential School ... caters for girls of primary school age from all areas of Strathclyde. Pupils are referred via the School Welfare Department and tend to come from one parent families or from areas of deprivation. They stay at Fornethy ... and receive outdoor education”.

“The school can accommodate 52 pupils and they can come from 20 schools at any one time. They are not accompanied by any of their own teachers and the teaching staff (4 posts) at Fornethy have sole charge of the pupils. There are no resident domestic staff, and the teachers are on duty/on call during the evening and nights as well. The teachers are currently undertaking duties which would normally be done by an auxiliary – similarly clerical work is undertaken by the Head Teacher. It is recommended that a post of clerical assistant/auxiliary (GS1) be appointed”.

Therefore, we know:

- We were all girls who went to Fornethy of primary age.
- They were “referred” by their School’s Welfare system (not a social services department)
- The school accommodated “pupils” (i.e. learners)
- Pupils came from schools in the Glasgow/Strathclyde area
- Teaching staff appointed
- There was a Head Teacher
- Teaching staff were on duty at night
- There is no mention of medical staff

f) Minutes of meetings and communications about Fornethy reveal:

- References made to additional grants and bursaries
- Fuel requests
- Requests that schools be placed on the official code list
- No reference needed to be made to “schemes of work” and “it must be assumed that these will be submitted to HMI [HM Inspectorate]”
- Residential Schools existed to give children the benefits of a residential education which cannot be given in day schools.
- Prior to the war there were three schools (Fornethy not named) where children went for convalescence but after 1948 the need for schools must have been recognised by Glasgow’s Education Department at some time between 1944 and 1948 and were presumably approved by them.
- (Correspondence from 24/05/56) – “One of the main reasons why Glasgow prefer to have the management of these Residential Schools in their own hands, is the advantage to adapt to their own requirements ...”.
- In 1954, Fornethy was gifted to Glasgow for adaptation as a Residential School, prior to this it was used as a convalescent school for mentally handicapped children.
- Archives (GCC) show that five files were destroyed and listed in a table showing:
 - Glasgow Contracts Department for Fire filed in 01/12/1979 and destroyed in May 1993

- Bursaries from the Glasgow Education Department for Fornethy 05/1961 to 04/1991 and destroyed on 14/04/2009
 - Bursaries from the Glasgow Education Department for Fornethy – general correspondence files dated 03/1975 to 05/1990 destroyed on 14/09/2009
 - Bursaries from Glasgow Education Department – Maps and Plans – filed in 1975 and destroyed on 14/04/2009
 - Glasgow City Council Legal Contracts for Fornethy School filed in 04/1997 - 03/1998 and destroyed on 17/03/1999.
- What is to be noted here is that these files all existed during the time the Fornethy Survivors were there. All files were listed under the Glasgow Education Department – NOT welfare or social services?
 - Since these all relate to formal government institutions – i.e. Glasgow Education Department and later Strathclyde Education Department – the state must include Fornethy in the Redress Scheme.

In conclusion, we reiterate once more that the Redress Scheme does not go far enough. What do we want? We want acceptance of responsibility; an offer of repair or corrective action; a full public apology of the wrongdoing and assurances that this won't happen to any other child. Please put this right. No more delays, we seek action. We were made vulnerable – there was no safety or even a safety net for us at Fornethy and bad people hurt us – if we don't have justice, they have got away with it again. We were failed and we hold this legacy of abuse. It was not our fault. It is not about believing us; it is about taking action now.

Trust is sacred. It is about the essence of our identity. Having the deepest respect for what we went through and still go through. Liberation in our freedom, wholeness, and justness. (Paraphrased from Waldegrave, 2003).