

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

## **Redress Scotland written submission, 3 July 2024**

### **Background**

The Citizen Participation and Public Petitions Committee invited Redress Scotland to give evidence to the committee in relation to Petition PE1933 "Allow the Fornethy Survivors to access Scotland's redress scheme".

Kirsty Darwent (Chair) and Joanna McCreadie (Chief Executive) attended the meeting of the committee on the 12th of June. This submission provides further information on the legislation, regulations and statutory guidance referred to during the meeting with the Committee and information on the reasons that applicants to the scheme receive deny decisions from Redress Scotland.

### **Eligibility**

Panel members have to make a decision on whether a survivor's application is eligible by determining whether the applicant was abused, as a child, while resident in a relevant care setting prior to December 2004.

The eligibility to apply for a Redress Payment is contained in section 18 of the 2021 Act. This has four parts:

1. the applicant or the applicant's next of kin must have suffered abuse;
2. the abuse must have occurred while the applicant or their next of kin was a child (under 18);
3. the applicant or the applicant's next of kin must have been abused while resident in a relevant care setting; and
4. the abuse must have occurred before 1 December 2004.

Regulation 2 of the 2021 Regulations states that:

"An application may not be made under section 18 of the Act 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."

Panel members must also take into consideration the relevant statutory guidance on eligibility. Paragraphs 32 and 39 are particularly relevant to the considerations of the Committee.

“32. Regulations have been made by the Scottish Ministers under section 23 of the Act to exclude certain situations from the scheme, to the extent that they were intended to be temporary in nature. They provide that an application for a redress payment may not be made in respect of abuse that occurred when a person was resident in a relevant care setting for the purpose of being provided with short-term respite or holiday care. This must have been under arrangements made between their parent or guardian and another person. Whilst the abuse of children in all circumstances and settings is wrong and harmful, the exclusion of those abused in short-term respite or holiday care is in-keeping with the core purpose of the redress scheme, which is primarily for those vulnerable children who were in long-term care, often isolated with limited or no contact with their families.”

“39. As a final point it should be noted that a person who experienced abuse in these circumstances is not precluded from applying to the scheme if they also experienced abuse whilst resident in a relevant care setting in circumstances which are eligible for the scheme.”

## **Evidence**

Survivors applying to the scheme are expected to provide evidence that they were resident in a relevant care setting for both fixed and individually assessed payments. For an individually assessed payment, survivors also have to provide supporting information in relation to their experience of abuse. The statutory guidance recognises that survivors may experience challenges in providing this evidence.

“7. Survivors may face challenges in obtaining evidence both of being in care in the settings covered by the redress scheme, and of abuse that happened a long time ago. Many survivors will not have told anyone what happened to them at the time, or if they did, that it may not have been recorded or acted upon.

8. It is also understood that record keeping was often inconsistent or inadequate in the past, and that for a variety of reasons, records which were kept may no longer be available.

9. This understanding and knowledge has been applied in setting, evidential requirements and care has been taken not to create barriers or burdens which are simply too high, or unachievable.”

All applicants are required to provide evidence of being in a relevant care setting as a child.

“41. Applicants are required to provide a supporting document, to show that they were resident in a relevant care setting when they were under 18 years of age and that this was before 1 December 2004.

42. Given the varying nature of the care settings that are eligible under the redress scheme and the arrangements by which children were placed in them, a great deal of flexibility is required as to what might constitute satisfactory documentary evidence or supporting information. It is well documented that in some care settings, record keeping was inconsistent or inadequate and there are a number of relevant care settings which no longer

exist. A pragmatic approach must be taken to identifying potential sources of information.”

Panel members can make a decision that an applicant is eligible for redress in the circumstances where the survivor has not been able to find documentary evidence.

“55. In exceptional circumstances, Redress Scotland may use its discretion as to whether the panel can be satisfied that the applicant was resident in a relevant care setting as a child without the production of supporting documents, or where case workers have been unable to verify the documents submitted. Redress Scotland may also use its discretion where, in an application for an Individually Assessed Payment, supporting documents have been produced for some but not all of the relevant care settings to which the application relates.

56. Redress Scotland may exercise its discretion in cases where it is satisfied that all reasonable endeavours have been made to obtain the documentary evidence generally required to support an application, that further inquiries are unlikely to be productive and that this is consistent with any other information or evidence in respect of the particular care setting or arrangements in question.”

Panel members may also invite a survivor applying for redress to give oral testimony. There has been a very small number of applications where this has happened, with 12 in person meetings since the scheme opened to March 2024.

“58. Redress Scotland may also, if it considers it necessary to do so, invite the applicant to provide oral evidence on this aspect of their application in order to be satisfied, in the absence of supporting documentation, that the applicant was resident in a relevant care setting as a child.”

### **Decisions to deny redress**

The Committee asked for more information about applications from survivors where the decision made was to deny redress.

From the opening of Scotland’s Redress Scheme to March 31st 2024, there have been a total of 56 decisions to deny redress to individuals. These 56 decisions to deny redress were made on 46 applications. There are more deny decisions than individual applications because 21 applicants requested a review of their deny decision. Of these 21 requests for review, 10 were upheld and 11 had a decision where redress was awarded. This means there have been a total of 35 applicants that have been denied redress. It should be noted here that requests for review are usually accompanied with more supporting information from the survivor.

When making a decision on an application the panel members do so on the basis of the facts and circumstances of each individual application, following the legislation, regulations, and with due regard to the statutory guidance. This means that there can be a number of different reasons to deny redress, and there may be more than one reason for an individual application.

An analysis of the 56 decisions to deny redress found there was a combined total of 75 reasons for these decisions. Of these 75, 18 deny decisions were on the basis of

insufficient supporting information. 57 deny decisions were on the basis of eligibility. Of these 57 reasons, 34 were on the basis the care setting was not relevant as it was short term, was providing respite or was providing a holiday. This aspect of eligibility therefore accounted for just under half of the reasons to deny redress.