



T: 0300 244 4000  
E: dfmcscr@gov.scot

Sue Webber MSP  
Convener  
Education Children and Young People Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

[ecyp.committee@parliament.scot](mailto:ecyp.committee@parliament.scot)

16 February 2023

Dear Convener,

### **Scotland's Redress Scheme**

Thank you for your letter of 30 January, following the evidence session on 12 January 2023. I too found the session to be constructive and helpful, and I am encouraged by the ongoing commitment we share regarding successful delivery of a scheme that is robust, credible and delivered in accordance with the core principles of dignity, respect and compassion.

You have specifically followed up on four matters and I am grateful for the opportunity to provide further information on these points.

#### Fornethy Survivors

As I set out to Committee members during the evidence session, I do not believe that there is, or ever was, a blanket preclusion to Fornethy Survivors applying for redress under the current eligibility criteria. Whilst the reason for the stay in a relevant care setting may be a relevant consideration for Redress Scotland when making an assessment on eligibility, the duration of abuse is not. In making a decision, and as further reinforced in the scheme guidance, Redress Scotland take into account the individual facts and circumstances of each application.

As the Committee are aware, at the time of my appearance I was considering my response to a letter from the Citizen Participation and Public Petition Committee regarding a [Petition](#) raised on behalf of the Fornethy Survivors Group. My response has now been issued, and is available on the [Scottish Parliament website](#). In summary I have reiterated my position, but

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)



explained that I want to be absolutely satisfied the existing eligibility criteria operate in the way I have set out above, and want to further test the existing eligibility criteria and guidance in this regard. It is important that the independence of Redress Scotland, as decision makers applying the existing guidance, is maintained and respected throughout this process. I have also instructed my officials to conduct further enquiries with Glasgow City Council to establish the circumstances in which children came to be in Fornethy House and to investigate the issue of limited records.

The outcome of the work I have instructed will be available through my continuing engagement with the CPPP Committee.

### Prioritisation of Cases

I am grateful to the Committee for their consideration of the prioritisation of applications to the redress scheme. As you are aware prioritisation is already in place for those applicants aged 68 and over and those with a terminal illness. I informed the Committee during the evidence session that the number of case workers is now at the full complement of 23. We will begin to see the benefit of this additional capacity in the coming months as applications will be progressed more quickly which will be of benefit to applicants who fall into the circumstances described by the Committee, which were those with life limiting or serious health problems. There are potential implications to the scheme as a whole if the prioritisation criteria is expanded. There would be an additional burden on applicants to provide evidence that may be required to achieve such priority, and resourcing a further prioritisation may negatively impact on progression of cases already underway. At this time I do not intend to further prioritise applications to the scheme.

### 18-month Review

I am grateful to the Committee for the helpful list of areas they would like to see included in the report regarding the effectiveness of the waiver which will be published in the summer. My officials will carefully consider these matters further when they are preparing the report.

The Survivor Forum will be an important source for the type of information the Committee has asked to be included in the report. The Forum provides a mechanism by which survivors can provide feedback on the delivery and operation of the scheme and this feedback is used to ensure the scheme's continuous improvement. Everyone who applies to the scheme is invited to join the forum and there are currently 168 members of the Survivor Forum. Survivors and organisations which support and represent applicants are also offered the opportunity to join.

### Testimony to the Scottish Child Abuse Inquiry

During the evidence session I stated that I would prefer if survivors were able to use the statements that they gave to the inquiry and can confirm that this related to the [General Restriction Order](#) (GRO) imposed upon the Inquiry by Lady Smith in her capacity as Chair. The GRO restricts the disclosure or publication of certain types of evidence or documents given, produced or provided to the Scottish Child Abuse Inquiry. To date, the position remains that only applicants to the redress scheme who have waived their right to anonymity prior to giving evidence to the Inquiry are able to use their statement in support of an application for redress, and there is no verification route between Scotland's Redress Scheme and the Scottish Child Abuse Inquiry.

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

The Committee have asked for sight of the representations made to Lady Smith to request a change that would allow survivors to use their inquiry statements as supporting information for their redress application. I have raised the issue about access to statements with Lady Smith during meetings I have had with her about the Inquiry and through senior officials (see Annexes A and B). I fully accept that it is entirely a matter for Lady Smith to determine.

I hope that you find this response to be helpful.

**JOHN SWINNEY**

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



INVESTORS  
IN PEOPLE

Accredited  
Until 2020



α

## Annex A – Email from DG Communities Paul Johnston to Lady Smith

**Subject:** SCOTTISH CHILD ABUSE INQUIRY – SURVIVOR STATEMENTS

**Date:** 14 February 2022 13:19:26

---

Dear Lady Smith

I hope this note finds you well.

I would be grateful if we could meet to discuss the use of survivor statements in relation to applications for redress, following discussions with Scottish Government Redress team to explore solutions.

My understanding is that the Deputy First Minister would wish survivors to be able to use their Child Abuse Inquiry statements, in the context of their redress application. How that is achieved is a matter which it will be helpful to discuss, in particular whether changing the Inquiry Terms of Reference is the most effective way to clarify the matter.

Clearly there are vitally important considerations, including the redactions of third party details, which need to be fully covered.

I would be keen to hear your views on the way ahead. If you are happy to meet, my office will be in touch to arrange a suitable time.

Best wishes Paul

Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



INVESTORS  
IN PEOPLE

Accredited  
Until 2020



α

## Annex B – Letter from DG Communities Paul Johnston to Lady Smith

Director-General Communities  
Paul Johnston



T: 0131 244 2814  
E: [dgcommunities@gov.scot](mailto:dgcommunities@gov.scot)

Lady Smith  
Scottish Child Abuse Inquiry  
PO Box 24085  
Edinburgh  
EH7 9EA

27 May 2022

Dear Lady Smith,

### **SCOTLAND'S REDRESS SCHEME – FOLLOW UP TO MEETING ON WEDNESDAY 16 MARCH**

I would like to thank you and your colleagues for meeting with me on 16 March to discuss the current restrictions surrounding the use of survivor statements given to the Inquiry in applications to Scotland's Redress Scheme.

As you are aware, the Deputy First Minister has been clear in his desire to ensure that those survivors who have not waived their anonymity in Inquiry proceedings can access a copy of their statement, in which they could be identified, to support an application for redress. Therefore, I appreciated the opportunity our meeting provided to gain a greater understanding of the Inquiry's position in relation to this matter.

I have reflected further on the discussion, and would like to take this opportunity to set out some comments on a number of the points made during the meeting.

#### **Amendment to the ToR of the Inquiry**

During our meeting, we discussed a suggested resolution to the current restrictions facing survivors, which is for Ministers to change the Terms of Reference (ToR) of the Inquiry to place the issue of *vires* beyond doubt. You raised concerns regarding the legality of this proposed action, highlighting the requirement under section 5(3) of the Inquiries Act 2005 ('the 2005 Act') for Ministers to demonstrate that any change to an Inquiry's ToR would be in the public interest, which you considered would not be met in this case.

Having considered this position further, the Scottish Government remains of the view that amending the ToR to allow applicants for redress to utilise their evidence to the Inquiry in their applications would indeed meet the public interest test as required under the 2005 Act.

In this case, this applies to survivors of historical in-care abuse and their next of kin, who are witnesses to the abuse in the SCAI and subsequently applicants to Scotland's Redress

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



α

Scheme. Their interest and the wider public interest in their obtaining redress is hard to dispute.

This same cohort are central to the 'national public record and commentary on abuse of children in care in Scotland' which the Inquiry was established to create.<sup>1</sup> If this cohort are subsequently unable to access this record and instead are required to narrate the abuse they suffered again, which for some may be re-traumatising, this appears to be at odds with the central purpose of the Inquiry.

A change to the ToR for the purposes of supporting applicants to redress therefore seeks to assist this group of survivors, rather than assist Scotland's Redress Scheme itself, to access, in a trauma-informed way, their right to redress. This is in the context that the scheme forms part of the broader, national narrative about an appropriate response to historic abuse, of which the Inquiry also plays a key role.

### **Independence of the Inquiry**

I appreciate the concerns you raised regarding the impact a change to the Inquiry's ToR may have on the independence of the Inquiry and your ability to make recommendations in the future about redress. However, the Scottish Government does not consider that what is proposed is contrary to those principles, as we believe that allowing applicants, at their request, to access a copy of their statement with their own details on it, in no way impinges on the public interest of the inquiry conducting its business and reporting on matters within its ToR.

none of the information being requested to support applications (i.e. the name and date of birth of the person who gave the statement) would be made public. Indeed, section 87 of the Redress for Survivors (Historical Child Abuse in Care)(Scotland) Act 2021 protects the confidentiality of such information. We do not consider that the use of statements in which survivors can be identified for the purpose of a redress application, given that some published redacted statements already can be used in this way, would of itself interfere in the ongoing nature and functions of the Inquiry.

Furthermore, drawing on examples from other redress schemes, we understand the Hart Inquiry allowed statements to be used for subsequent applications to the NI Redress Scheme, however acknowledge that this Inquiry had concluded prior to the statements being used in applications.<sup>2</sup> As any statements provided must stay confidential, we remain keen to explore if opportunities for co-operation of this type can be found in relation to Scotland's Redress Scheme.

### **Resource Implications**

I appreciate the concerns you raised regarding the resourcing implications should the Inquiry be required to un-redact parts of a statement (name and date of birth of the person who gave the statement) to assist redress, as this currently does not form part of your powers under the ToR. Should a change to the Inquiry's ToR be pursued, the Scottish Government could engage in further discussion to scope any requirement for additional resources that may be required by the Inquiry to support this purpose.

<sup>1</sup> SCAI, [Terms of Reference](#) (as amended on 21<sup>st</sup> June 2018)

<sup>2</sup> See paragraph 11 of [HIA Redress Board Procedural Guidance](#)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



## Conclusion

Finally, I want to emphasise that, while we are very mindful of the Inquiry's concerns when considering available options and how best to proceed, our overriding focus is to minimise any potential for re-traumatising survivors should they have to narrate the abuse they suffered again for the purposes of redress.

Survivors continue to raise concerns about the distress caused by having to repeatedly re-tell accounts of abuse suffered in childhood. As was discussed during our meeting, I am aware of the measures the Inquiry has put in place to minimise and mitigate against this potential adverse impact and likewise, Scotland Redress Scheme also provides sensitive, trauma-informed support to survivors. Nevertheless, despite the current mitigations in place, we believe the risk to survivors remains substantial and if more can be done to minimise, or remove the risk altogether, then the Deputy First Minister has been clear that these are steps that must be fully explored.

Looking ahead, I have briefed the Deputy First Minister on the outcome of our meeting and he is keen to continue the dialogue on this important issue. He would welcome the opportunity to meet with you to further discuss the points raised above to ensure a suitable resolution can be achieved.

I am grateful for your consideration of the information provided and look forward to receiving your response.

Yours sincerely



**PAUL JOHNSTON**

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)



Scottish Ministers, special advisers and the Permanent Secretary are covered by the terms of the Lobbying (Scotland) Act 2016. See [www.lobbying.scot](http://www.lobbying.scot)

St Andrew's House, Regent Road, Edinburgh EH1 3DG  
[www.gov.scot](http://www.gov.scot)

