

Citizen Participation and Public Petitions Committee
Wednesday 17 April 2024
6th 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 20 March 2024](#). At that meeting, the Committee heard evidence from –
 - Shona Robison, Deputy First Minister and Cabinet Secretary for Finance
 - Lyndsay Wilson, Unit Head - Policy and Communications, Redress, Relations and Response Division
 - Barry McCaffrey, Lawyer, Scottish Government Legal Directorate, Children, Education, Rights Incorporation and Disclosure Division
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 a new written submission from the Petitioner which is set out in Annexe C.
4. [Written submissions received prior to the Committee's last consideration can be found on the petition's webpage](#). This includes a link to the [report compiled by an independent researcher on enquiries into Fornethy House](#), and [a submission from the researcher appointed by the Fornethy Survivors Group](#).
5. [Further background information about this petition can be found in the SPICe briefing](#) for this petition.
6. [The Scottish Government gave its initial position on this petition on 24 May 2022](#).
7. Every petition collects signatures while it remains under consideration. At the time of writing, 333 signatures have been received on this petition.
8. Members will recall 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

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

Clerks to the Committee

CPPP/S6/24/6/6

April 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

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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 20 March 2024

The Deputy Convener: The next item is the consideration of continued petitions. First, we have an evidence session on PE1933, on allowing Fornethy survivors to access Scotland's redress scheme, which was lodged by Iris Tinto, on behalf of the Fornethy Survivors Group.

I understand that members of the survivors group have joined us in the public gallery this morning—a warm welcome to you all. As we have a very busy public gallery, I remind all those joining us this morning that you are welcome to observe the proceedings. However, you are asked to keep the noise to a minimum and not to seek to interrupt the consideration of the petition.

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 3 May 2023, when we agreed to invite the Deputy First Minister to give evidence, and I am pleased to welcome the Deputy First Minister, Shona Robison, to the committee this morning. We are also joined by Scottish Government officials Lyndsay Wilson, unit head of policy and communications, redress relations and response division; and Barry McCaffrey, lawyer, Scottish Government legal directorate, children, education, rights incorporation and disclosure division.

Before I invite the Deputy First Minister to make some brief opening remarks, I note that, since we last considered the petition, there has been a members' business debate on justice for Fornethy survivors. The Scottish Government also appointed an independent researcher to make inquiries in respect of Fornethy house. The committee has been provided with a copy of the researcher's report, which is now available on the petition webpage.

The committee has also received two new submissions from the petitioner commenting on the parliamentary debate and detailing on-going challenges in engaging with the redress scheme, highlighting the response that one survivor received that the decision panel would likely disregard their placement at Fornethy when considering the application for redress. We have also received a submission from Professor Diane McAdie, the researcher who was appointed by the Fornethy Survivors Group, providing further information on the operation of Fornethy house and potential options for amending the existing eligibility criteria for the redress scheme.

Having provided that update on where we are, I now invite the Deputy First Minister to give a brief statement.

The Deputy First Minister and Cabinet Secretary for Finance (Shona Robison): Thank you, convener, and good morning to the committee and those in the gallery. I am grateful for the opportunity to provide evidence to the committee on PE1993.

Before I get into redress matters, I will begin by putting on formal record my acknowledgement of the abhorrent abuse that some children suffered while resident

in Fornethy house. It should not have happened, and I am sorry to hear about what they had to endure as children and the impact that the abuse has had on their lives. The First Minister and I have met the Fornethy survivors, and I recognise and commend their courage in sharing their experiences.

Turning to the matters that are outlined in the petition, as the committee is aware, I instructed the appointment of an independent researcher to make inquiries into Fornethy house. Dr Fossey took up post on 1 August last year with a remit to investigate the circumstances by which a child would be placed in Fornethy house and to establish what records exist relating to Fornethy house. Dr Fossey has concluded her inquiries, and her full report has been shared with the committee.

As the committee has had the opportunity to consider the report ahead of today's evidence session, I will not repeat the findings, but I want to turn to how they affect the eligibility of Fornethy survivors to access Scotland's redress scheme. Part 3 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021 sets out the eligibility for the scheme, which includes residence in a relevant care setting in Scotland.

Section 20 of the act defines "relevant care setting" to include residence in

"a residential institution in which the day-to-day care of children was provided by or on behalf of a person other than a parent or guardian of the children".

Moreover, "residential institution" refers to a variety of different care settings such as children's homes, residential care facilities and school-related accommodation, which are as further defined in section 21 of the act.

Section 23 of the act, however, allows the Scottish ministers to make regulations to create exceptions to eligibility. The Redress for Survivors (Historical Child Abuse in Care) (Exceptions to Eligibility) (Scotland) Regulations 2021, as approved by Parliament before the scheme opened, provide that an application for redress may not be made

"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."

Where the exceptions apply, a key point in assessing eligibility is the purpose of the stay in the relevant care setting and whether it had been made under arrangements with a child's parent or guardian. Although records from the period are limited, the report is clear that children attended Fornethy house primarily short term for convalescence or a recuperative holiday under arrangements involving their parent or guardian and another person. Those circumstances, as agreed by Parliament, are excluded from the scheme.

It is important to acknowledge at this point that, in the absence of individual records, it is not possible to say with certainty that parents gave their informed consent to their child attending Fornethy house. We can only speak to what was supposed to happen. The legislation speaks of arrangements made with a child's parent or guardian, and that is what is relevant for redress purposes.

The redress scheme is primarily designed for those children who were in long-term care and the exceptions are in keeping with that purpose. That rationale was supported by 79 per cent of respondents to a public consultation that was issued in advance of the legislation being drafted. In addition, there is the key issue of the absence of records relating to Fornethy house. Every applicant to the redress scheme is required to provide evidence that they were in a relevant care setting at a particular time. Unfortunately, the absence of records means that, even if the eligibility criteria were to be changed, Fornethy survivors are unlikely to meet the evidential requirements of the scheme.

For all those reasons, I do not intend to change the eligibility criteria for the scheme. I recognise that the outcome of the inquiries will be disappointing to the survivors who seek redress. The report's findings are in no way intended to diminish the experiences of the survivors or to suggest that the parents of those children were in any way responsible for the experiences that their children had during their time in Fornethy house.

I am very grateful to the committee for its on-going support of the Fornethy survivors and Scotland's redress scheme. I am happy to answer any questions that you have.

The Deputy Convener: Thank you, Deputy First Minister. We will move to questions now, and I am happy to open. Can you expand on the aims and findings of the research into Fornethy house?

Shona Robison: Yes, I can, convener. We set out the requirement for a six-month piece of independent research. Dr Fossey was asked to find out why and by whom girls were sent to Fornethy and what Glasgow City Council has done to find records from Fornethy. I emphasise again, and Dr Fossey has made this point, that what she has said in her report is what was supposed to happen and does not diminish the experiences of what actually happened to Fornethy survivors.

The headline findings in the executive summary summarise why the girls were sent to Fornethy. The findings are that primary school girls from Glasgow were sent for convalescence after an illness and so that they might benefit from what was termed a recuperative holiday. The school was one of a number of schemes of residential education that were aimed at improving the health of pupils. Headteachers and school medical staff could put forward girls who they thought might benefit from a stay. However, it was the school or principal medical officer who took the final decision. Even then, only girls whose parent or guardian agreed to them going and who passed two medical examinations were allowed to go.

The regulations at the time obliged education authorities to keep school registers, pupil progress records and health records only until the end of the fifth year, or in some cases the second year, after the year for which they were held or the pupil had left. After that time, the records were to be destroyed. Therefore, it is not surprising

that Glasgow City Council has found no such records in the city archives. That said, as Dr Fossey has noted, a question remains over the lack of Fornethy's logbooks. The regulations required those to be preserved. It should be noted, though, that Fornethy is not unique in having no surviving logbooks.

On the records and information on Fornethy that Glasgow City Council holds, Dr Fossey found that the council holds no school records for Fornethy. The city archives hold various series of council education committee minutes, papers, reports and handbooks that talk of Fornethy and other schools in the scheme but not individual records.

On what action Glasgow City Council has taken to find existing records, it has run its own internal searches in response to freedom of information and subject access requests. Dr Fossey and Diane McAdie had access to records in the archives. Glasgow's chief archivist has also carried out proactive searches for information on Fornethy.

I hope that that gives you a sense of the remit and the key findings.

Oliver Mundell (Dumfriesshire) (Con): To be honest, I am appalled by that answer. I understand why the report was commissioned, but I do not think that it is consistent with what the then Deputy First Minister and Cabinet Secretary for Education and Skills said as the bill went through Parliament. I was on and off the Education and Skills Committee throughout that time. He acknowledged that it was unlikely that documentary evidence would be available in every circumstance. He did not talk about certainty; he talked about the balance of probabilities. He offered repeated reassurances that people would be believed and that the principle would be that, where survivors came forward and offered testimony, it would be taken as fact, not that it would be questioned.

The second thing that I find pretty hard to swallow, given that it was discussed during the passage of the bill, is the relationship between parents and the local authority that has been presented. It is not true; it was not factually correct then and it is still not correct to this day. Local authorities, through social work and education, wield a huge amount of authority over families. When they suggest things and direct things, vulnerable families feel under pressure to accept them. It is not a relationship of equals and it is wrong to categorise it in that way. Given what we hear from survivors, I had hoped that we would be looking to find a way to say yes rather than finding reasons to say no.

I am interested in what the Deputy First Minister has to say on the commitments that were given through the bill and on the relationship between parents and local authorities that she has set out. Even now in 2024, that is not my experience of what it is like for many families in my constituency.

Shona Robison: I recognise very much the point that you make about the unequal nature of that relationship. I am not disputing that at all. The point that I am making is that, when the bill was taken through by my predecessor, the distinction that was made was that the scheme would be for those who were in long-term care and who had essentially been removed from their parents through, primarily, social work legislation. Fornethy was established through education legislation. I am not

disputing the opaqueness over whether parental consent was given. I am saying what was supposed to happen, rather than necessarily what the individual experiences were.

Oliver Mundell: Surely we should be responding to what did happen rather than what should have happened. It is another example of the system failing that people have come up against. The system has not been working as it should, so we would not expect you to dismiss that and say that it should have been done differently. That is what it sounds like.

Shona Robison: I am certainly not dismissing that. I am saying that the lack of records means that there is no evidence of what the parental involvement was or was not. I am saying that the legislation underpinning the setting up of the redress scheme was for children who had been removed from parents through social work legislation, where there was no contact and parental responsibility had been entirely removed.

My predecessor made an apology prior to the redress scheme being established and it was made to all survivors in all settings, and I absolutely want to reiterate it fully. On the point about the evidential requirements for Redress Scotland, Scotland's redress scheme is more broadly drawn than any other redress scheme anywhere in the world at the moment. Most of the redress schemes that have been established are far more tightly drawn than the one in Scotland. However, evidence is required for an application to be brought in front of Redress Scotland, so there have to be records showing where someone—

Oliver Mundell: There do not have to be records. I know that from my own constituents. What someone has to prove is that, on the balance of probability, something was more likely to have happened than not. I am aware of payments being made to people who have not been able to find records but who have been able to put together other circumstantial evidence to support an application. In this case, we have a great many people from various parts of Scotland, particularly in the Glasgow area, who are able to corroborate and confirm that the experiences that other people are talking about are the same as theirs.

That starts to look to me like something that would meet that test or certainly that should get far enough through the process to allow Redress Scotland to make an analysis of the evidence. However, because of the individual nature of the applications going forward, we are not looking at that collective picture. To me, that is not consistent with what your predecessor meant when he recognised that this is a grey area, that these issues are very difficult and that they would have to be looked at in detail. If they cannot even be looked at in detail, how do you work out whether they meet the balance of probabilities test?

Shona Robison: I am going to ask Lyndsay Wilson to come in on the guidance that Redress Scotland uses for the evidential requirements, if that would be helpful.

Lyndsay Wilson (Scottish Government): It depends on whether the application that is submitted to Redress Scotland is a fixed-rate application or an application for an individually assessed payment. With a fixed-rate payment, you will have to provide some evidence of being in care at a particular time. The statutory guidance

gives you a list of things. I can give you some examples or I can send the list on separately to the committee, but what we are looking for is some evidence or some supporting document that confirms that a child was in care at a particular time before 1 December 2004. We recognise that some individuals do not have that evidence, as you say. There are exceptional circumstances that Redress Scotland is allowed to consider, and I am assuming that that was the case in the example that you refer to.

The difficulty for the Fornethy survivors is that, as Dr Fossey has said in her report, they are not unique in having no records at all. Some people might be able to provide social work records, education records, general practitioner records or a letter from an archivist. There is a range of different things available for survivors to use to apply to the redress scheme but, unfortunately, the difficulty for some of these ladies—I am sure not all—is proving that they were in care in the first place. That is the starting point for any redress application.

Oliver Mundell: Then we go back to what the previous Deputy First Minister said, which was that people would be believed and that that was going to be the core of this whole process. Now we are hearing that that is not the case, and that cannot be right. I cannot sign up to that—I am sorry.

Shona Robison: No one is disbelieving anyone—let me be clear about that—but the core aim of the scheme, as set up by my predecessor, was very clear in that it was to focus on those who had been in long-term care who had been removed from parental responsibility. That was the core purpose of the scheme. It was unanimously agreed by Parliament and a line was drawn in recognition of the priority given to those children.

That is not to deny the experience of anyone else, whether it was in short-term convalescent care or in a boarding school, for that matter, but that was the core aim of the scheme, as my predecessor was very clear about and as was agreed by Parliament—and, of course, in the public consultation, 79 per cent of people agreed with that being the purpose of the scheme. That is absolutely not to question the experience of anyone else, and I will be really clear that everyone should be believed. However, that was the core purpose of the redress scheme, for all the reasons that my predecessor set out, and that was accepted and agreed by Parliament for all the reasons that were debated at the time.

Oliver Mundell: I am going to get into trouble for going on, so I will not say anything further.

Fergus Ewing (Inverness and Nairn) (SNP): We are indebted to Professor Diane McArdie for her submission of 11 March 2024. She stated in that submission:

“The purpose of redress for historic institutional child abuse should be to benefit survivors. Currently, the eligibility guidelines specifically exclude survivors of short-term residential school abuse. This is unjust”.

Surely that is correct, and surely your statement today perpetrates a manifest injustice, Deputy First Minister.

Shona Robison: As I said in my opening remarks, I very much recognise the harm and experience of those who were in Fornethy. I have put on record my views about that. I have also reiterated the former Deputy First Minister's apology, which predated the scheme, to anyone who had suffered abuse. I reiterate that apology and absolutely support it. However, the scheme that was agreed unanimously by the Parliament is designed for vulnerable children who were in long-term care and isolated, with limited or no contact with their family. The eligibility criteria for the scheme reflect that core purpose. Those criteria were, of course, supported by survivors who responded to the public consultation and, as I have said, they were unanimously agreed by Parliament. It was necessary at the time, as the former Deputy First Minister said, to establish clear expectations of the parameters to enable clarity to be available to people from the start of the scheme.

The scheme is very broad—it is much broader than most other schemes. Other schemes elsewhere in the world and, indeed, the one that is being developed for England and Wales are far more tightly drawn than Scotland's redress scheme. A line had to be drawn somewhere, and a line was drawn to focus on the vulnerable children who were in long-term care and had parental responsibility removed.

Fergus Ewing: I hear what you say, Deputy First Minister, but, with respect, it does not really answer the question that I asked. Surely it is unjust to deny people who have been subject to abuse, albeit for a shorter period, redress and compensation. I am just asking you to give a direct answer on a matter of principle, please. Surely denying that is unjust. It is a manifest and patent injustice. Surely that is indisputable.

Shona Robison: The same principle was looked at when the former Deputy First Minister was in front of the Education, Children and Young People Committee. I think that you and Oliver Mundell were members of that committee. Those were exactly the issues that were debated.

Fergus Ewing: I do not think that I was a member of that committee at that time.

Shona Robison: I have the record here, and you were. I have the record of the debate that took place. The very same issues that I am articulating today were articulated by my predecessor. They were debated, and the decision to support the scheme as established was unanimous. I have the committee record here. These matters were debated at length on 27 October 2021. Exactly the same issues about eligibility for the scheme and the exceptions were debated. Due to the same reasons that I am giving to the committee today, those conclusions were made on a unanimous basis.

Fergus Ewing: I have a final question, Deputy First Minister. Even if we accept for a moment that all that you say is true—we do not accept it, but let us just assume that that is the case—that does not mean that we cannot put things right now. Professor McAdie recommended three very clear and practical options. Can we not be big enough to admit that we got it wrong and that we should put it right? Is that not what the Parliament is for?

Shona Robison: You can go back and look at the record yourself, Mr Ewing.

On the situation now, I have outlined why the eligibility criteria were established as they were. The scheme is far broader than any other scheme. I have said that it is focused and is working hard to deliver for those who were in long-term care and removed from parental responsibility. I have also outlined the difficulties of Redress Scotland's evidential requirements.

There are no records not just for Fornethy but for the many other schools that people were in for very short terms—for a number of weeks. There are no records for them because the system at the time, rightly or wrongly, did not require those records to be retained. It would be very difficult to ask Redress Scotland to take on thousands of cases in which no evidential material exists and to try to work through those cases when it is focused on the core purpose of the scheme.

As I said at the beginning, Scotland's redress scheme is far broader than any other scheme anywhere else in the world that I am aware of.

The Deputy Convener: Are you aware of the reasons why the Fornethy survivors did not engage with the independent researcher? Do you have a sense of whether that has impacted on the findings and the research?

Shona Robison: I understand that Dr Fossey tried to engage with survivors, but I do not know why that was the case. Obviously, I know that Diane McAdie was instructed by the Fornethy survivors to do her own research. That might be one of the reasons, but both looked at the same material. I have looked at Diane McAdie's report in detail as well. However, the fundamental issues that I have put in front of the committee this morning are the core purpose of the scheme, as agreed unanimously, the need for it to be allowed to get on to support people in the many hundreds of cases that it is dealing with, and the evidential requirements.

We cannot get beyond the fact that we could potentially be looking at thousands of people who had a few weeks at an institution—[Interruption.] People who were placed in Fornethy and many other institutions for a few weeks would not meet the evidential requirements to come in front of the scheme. The expectations of thousands of people who would not be able to bring evidence in front of the scheme could be raised. I am afraid that we cannot get beyond the fact that those records for people at Fornethy and many other similar institutions at the time do not exist.

Maurice Golden (North East Scotland) (Con): I am quite shocked by what I have heard. In my view, it is completely irrelevant for the victims whether there was unanimity in the Scottish Parliament, whether the scheme in Scotland is far broader than schemes elsewhere, and whether thousands of cases need to be addressed. In my view, one victim is one too many. If we park all the parliamentary protocol, do you think that the way that those victims have been treated is acceptable?

Shona Robison: As I said in my opening statement, I think that what happened to Fornethy survivors was appalling. I reiterated the recognition of that. I also reiterated the former Deputy First Minister's apology to people in any setting, no matter the redress scheme that came after that. He was very clear that it was an apology to people in any setting whatsoever, whether or not the redress scheme was set up to cover those areas. I absolutely reiterate that apology—every word of it. However, that matter is different from the redress scheme and who is eligible for it, and from

the redress scheme's evidential requirements. As the Deputy First Minister, and on behalf of the First Minister, we absolutely recognise and believe what happened and absolutely recognise the harm to not only those in Fornethy but elsewhere.

Maurice Golden: What are you going to do about it?

Shona Robison: I am aware that some litigation cases with Glasgow City Council are going on. I am also aware that a criminal case is on-going. Obviously, I cannot comment on that because it is a live case. I have reiterated the apology that my predecessor gave. To be honest, I know that that recognition is sometimes the most important thing for people who are in that position.

On other supports, there are support networks for survivors who have been through absolutely appalling experiences. I know that some Fornethy survivors have accessed some of that support. Support is provided through Future Pathways. That support was established recognising that people will need it. Some people will want to access such support.

I cannot comment on the litigation cases. I wrote to Glasgow City Council this morning to bring to its attention the fact that the two reports exist. I know that the Fornethy survivors have made a number of demands of Glasgow City Council. Obviously, I cannot instruct Glasgow City Council on those matters, but I have drawn the reports to its attention.

Maurice Golden: What action has been taken to support those who were abused in short-term holiday care and to enable them to access some form of redress?

Shona Robison: We have established the research project. That was my way of trying to get to the bottom of whether records exist. That could look at the barriers around parental connections and consent, and existing records that show that someone was in an establishment at a particular time. The purpose is to get to the bottom of what may or may not exist in the archives.

Beyond that, as I have said, support networks that are provided by the likes of Future Pathways can support people who have experienced abuse in any setting. They were established for that purpose. Such support might not be for everyone. Not everyone would want to access such support, but it was established so that people can provide it.

The Deputy Convener: Fergus Ewing, do you have any further questions?

Fergus Ewing: No.

Oliver Mundell: The Deputy First Minister said that she had records from when Fergus Ewing and I were on the education committee. I wonder whether she has the Official Report from Thursday 12 January 2023 in that bundle. I can read to you what your predecessor said at that meeting. He said:

“I have listened carefully to the group that has made representations to me, all the members of which are Fornethy survivors and are part of the wider group. I do not believe that, as things stand, there is an inherent impediment to applications to the redress scheme coming forward from people who spent time at Fornethy. I

acknowledge that the nature of the environment in which individuals were spending time at Fornethy could be considered to fall within the ambit of the scheme, so I do not think that there is an inherent impediment to applications coming forward and being considered. To put it slightly more bluntly, I reject the idea that the scheme is not for Fornethy survivors; I think that it is possible for Fornethy survivors to be successful in applying under the scheme.”

The former Deputy First Minister went on to say, looking at the issue of whether the local authority was acting in loco parentis, if you want to put it that way, that he did not believe that the situation at Fornethy matched up with what you say. He said:

“If a young person was at a holiday camp and was dropped off and picked up by their parents, it would be difficult to substantiate the view that the state was exercising responsibility. However, I do not think that the situation at Fornethy ticks that rather neat middle-class box—if I may say so—that I have just outlined to the committee. The more I understand about the situation at Fornethy, the more I find it difficult to reconcile it with the idea of some form of voluntary endeavour, and I think that the matter hinges on that point.”—[Official Report, Education, Children and Young People Committee, 12 January 2023; c 14,]

You have come here today and have told us repeatedly that you are following what your predecessor, who introduced the legislation, intended. There it is, in black and white. It is something quite different from what you have suggested today.

Shona Robison: The former Deputy First Minister had met Fornethy survivors, as have I. He said, in essence, what I said at the beginning today: that Fornethy survivors could apply to the redress scheme but the issue was likely to be what evidence there was before the redress scheme—the panel who have to make decisions on the basis of the evidence in front of them.

That is why I instructed Dr Fossey to do the research to establish whether the survivors could access the scheme or whether there were impediments to accessing the scheme on the basis of the parental consent issue and the lack of records to provide the evidential base for someone to submit their claim.

Oliver Mundell: With due respect, at the point at which this matter was being considered, the second most senior person in the Scottish Government believed that these people would be eligible to apply. Also, the more they found out about the situation, the less credible they found the outcome of the report that you are now pushing as providing closure.

John Swinney—his words are there, and I am sure that he will correct them if he has changed his mind since—did not accept the argument that parents had chosen to take their children there as if it were a holiday camp.

Shona Robison: I have never said that either.

Oliver Mundell: He said that people were effectively directed and put there and that the state was involved in facilitating that and probably, in a lot of cases, a little bit more. You are here now and could push the envelope a little bit—open this up

again—so that some of these people would stand a better chance of getting justice. I do not know why that is hard.

Shona Robison: I said earlier—I want to emphasise it again—that I accept that the issue of parental consent was an issue of power and relationships. I accept that whether or not someone was clear about it, was given a consent form and gave their consent explicitly is opaque, to say the least, and that the experiences of the women and their recollections make it clear that parents may have been encouraged—you said coerced. The evidence is not there either way, but I do not for a second dispute what the women have said about that matter.

The issue comes down to this. In terms of what the former Deputy First Minister said and what I am saying, in looking at applications, the redress panel would need to have some level of evidential requirement in order to process a case. That might be possible. If someone from Fornethy had various placements in other settings as well, they could potentially bring a case—

Oliver Mundell: Do you accept that there is a point at which the evidence is sitting here today—formed by this group? If you have lots of people saying that the same thing happened to them, it is quite unlikely that something different happened.

Shona Robison: I am not for a second disputing what the women are saying. Let me be really clear. I believe what they are saying, but I am saying to you that Redress Scotland requires some evidence of someone having been placed in a setting, and there is no record for anybody. Potentially, thousands of people could have been placed in Fornethy-type institutions, and what we would be saying to the Redress Scotland panel? That there does not need to be any record of a person having been in a Fornethy-type institution?

Oliver Mundell: We would be saying to the Redress Scotland panel exactly what Parliament, the previous Deputy First Minister and several individual MSPs said repeatedly throughout the bill process—that, if those people come forward, their testimony will be believed. It will be taken as fact. We would be saying that there is provision for exceptional circumstances and that, if the testimony and evidence from those thousands of people is joined together, we can start to build a pretty accurate picture.

Some of the people involved have spoken to medical professionals and other people over the years. These concerns existed before the redress scheme came into being. People did not just appear and join survivor groups—they did not just appear and interact with services across the country when they thought redress was on offer. There are historical records. They might not be as good as the official records but, frankly, it is not the people's fault that the organisations did not keep good records and destroyed those that they had.

Shona Robison: I totally accept that it is nobody's fault—certainly not the survivors' fault—that those records do not exist. I also absolutely accept what you are saying about survivors coming together. However, the way Redress Scotland operates requires someone who has—

Oliver Mundell: Redress Scotland works for you. Redress Scotland works for the Government.

Shona Robison: It has guidance—

Oliver Mundell: The guidance can change.

Shona Robison: People need to have confidence in the scheme. Someone who has been in institutional care for many years and brings a claim to Redress Scotland must provide a level of evidence. Survivors find that quite difficult. I acknowledge their difficulty, but they have to provide that level of evidence.

Oliver Mundell: How can I have confidence in the scheme, though, if the people that those who introduced the scheme thought would not face a barrier to accessing it cannot access it? Confidence works both ways. It is a challenge that the records do not exist, but to say that, on the balance of probabilities, there is insufficient evidence that people were somewhere they say they were—when lots of other people say they were there and seem to understand that as being how those things worked at the time—is also a challenge.

Shona Robison: Redress Scotland is independent of the Government—that is enshrined in the legislation. People must have confidence in the scheme, and there is no scheme anywhere in the world that operates on the basis of not requiring evidence to be presented. No scheme operates like that. The process can be quite difficult for survivors. I have had direct representation from survivors saying that the process is quite difficult. However, in order for people to have confidence in the scheme, evidence must be required and records have to be produced. There are exceptions, but exceptions are decided on a case-by-case basis.

Oliver Mundell: If you block people from even getting past “Go”, they do not get to the case-by-case decision. That is what is happening at the moment. The guidance and the things that you are saying are stopping people from getting to the case-by-case decision.

Shona Robison: You would be raising expectations in people who do not have records—because the records do not exist.

Oliver Mundell: I do not think that people have any expectations—

The Deputy Convener: Mr Mundell, let the Deputy First Minister finish. Other members would like to ask questions.

Shona Robison: As I said, Redress Scotland is independent of the Government. It has guidance, which means that it can fairly assess every application that comes to it. It asks for a degree of evidence, which survivors have told me can be quite intrusive, difficult, upsetting and triggering—I understand that. However, in order for people to have confidence in the scheme, that is the level of evidence required.

The point that I am making is that, in the absence of any records for survivors of Fornethy or any of the other many Fornethy-type institutions, there is no evidential basis for an application. I have to be honest about that.

Foyso! Choudhury (Lothian) (Lab): Good morning, Deputy First Minister. Could you change the regulation, even though the current position is not to change it?

Shona Robison: Technically, yes. However, the point that I am making is that the core purpose of the scheme that has been set up—my predecessor was very clear about this—is to support those who were in long-term care because parental responsibility had been removed through social work legislation. That is the focus of the scheme, and I have tried to set out the reasons why confidence in the scheme, as established, is important. I have set out why the evidential requirements are there and the reasons why they are important. Changing the scheme is technically possible, but I have set out the reasons why it would be very difficult.

Foyso! Choudhury: If the Scottish Government is not planning to amend the current legislation to allow survivors to claim redress, will it provide funding to allow the Fornethy survivors to pursue justice via legal means?

Shona Robison: Obviously, any legal advice that anyone receives needs to be independent legal advice about potential litigation. There are some on-going litigation cases against Glasgow City Council, which I cannot comment on because they are live. Similarly, there is a live criminal case that I cannot comment on either. That route is open.

On the support that the Government provides, I have talked about the support that is provided through Future Pathways to help survivors, and I have talked about the support that is given in looking for case records. The Government provides about £2.4 million, I think, to help survivors to get records. One of the reasons we did the piece of research was to address that issue, because of the importance of records for Redress Scotland. So, there is support available to help survivors who have been in long-term care and have had difficulty in accessing records, because of the importance of having that evidence to present to Redress Scotland. That is the situation.

The Deputy Convener: Maurice Golden has a short supplementary question.

Maurice Golden: I am genuinely shocked by the argument around Redress Scotland being independent of Government. I worked for a Scottish Government-funded organisation, and, even though it was a private company, we could do literally nothing without approval from the Scottish Government. It seems that the relationship with Redress Scotland is peculiarly different. Is the Deputy First Minister seriously saying that there is nothing that she can do with regard to Redress Scotland standing up for the victims of Fornethy?

Shona Robison: I am not saying that at all. I am saying that the eligibility criteria have been set with the exceptions clearly set out. Technically, those exceptions could be changed, but I have said why I do not think that it would be the right approach. As was laid out in Parliament at the time and agreed unanimously, the focus is on those who were in long-term care having been removed from parental responsibility.

The point that I am making about the independence of Redress Scotland is that it is quite right that decision making around awards is independent of the Government. It

would not be right for us to interfere in Redress Scotland's determination in individual cases. As a panel, Redress Scotland looks at individual cases on the basis of the evidence that is required, which is set out in guidance. That is the relationship.

Barry McCaffrey, do you want to come in?

Barry McCaffrey (Scottish Government): Under section 6 of the Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021, it is clearly stated that, in performing its functions, Redress Scotland is not subject to the direction or control of any member of the Scottish Government. That was deliberate and was seen at the time as being an important safeguard against undue interference from the Government.

The Deputy Convener: I call Martin Whitfield to make a short statement. We are really pushed for time.

Martin Whitfield (South Scotland) (Lab): I thank the committee and the convener for allowing me to make this statement. It will be very short.

With the greatest respect, I suggest that a lot of the discussion is mixing two elements. One is whether the survivors who lodged the petition can enter the redress scheme. The second is whether, if they do enter the redress scheme, they can produce the evidence that is required. I think it would be helpful to separate those things.

I understand, from the Deputy First Minister's answer to Foyso Choudhury, that it sits within her power to change the regulations and allow entry to the redress scheme. As, I think, Oliver Mundell pointed out, once the petitioners were in the redress scheme, it would be for the evidence to be balanced.

The First Minister gave the figure of 79 per cent for all those across Scotland who were in agreement with the remit of the redress scheme. Does the Deputy First Minister think that, if the people of Scotland understood this petition in the way that this committee does and in the way that the people who have attended today do, those 79 per cent would say they do not deserve redress?

Shona Robison: I understand that people would have enormous empathy for anyone who has suffered abuse in any setting. Of course, there are a number of settings that are outwith the eligibility, and I would have empathy for every single one of those who have suffered abuse in any of the settings, no matter whether they meet the eligibility criteria.

In the consultation, 91 per cent of respondents identified as survivors of abuse in care. The focus at the time was very much—as was set out by the former Deputy First Minister—to get a scheme up and running to address those who had been in long-term care having been taken away from parental responsibility. Parliament looked at these matters and debated them at the time. There was quite a difficult debate about where to draw the line and about which institutions and areas would be included in the scheme and which would not be included. Difficult decisions were made at the time, and a number of settings were excluded, as members around this

table will be aware. However, the Redress Scotland scheme is far broader and far more inclusive than many other schemes that I am aware of.

I very much adhere to the apology that the then Deputy First Minister made prior to the redress scheme being set up—before the debates happened, lines were drawn and eligibility criteria were set. It was a fundamental recognition that what had happened to anybody, in any setting, was absolutely wrong, and it recognised the harm that abuse had caused to every single individual, leaving aside eligibility. I put on record again my belief in the truth of what people are saying and my recognition of the harm that has been done. The Government absolutely recognises all of that, and we have huge sympathy and empathy for every single person.

The Deputy Convener: Before we bring this session to a close, Deputy First Minister, is there anything that we have not covered that you would like to put on record?

Shona Robison: I do not think so, convener. However, if there is anything that the committee wants to follow up on in any detail, once you have had your discussion afterwards, I would be happy to write to the committee with further evidence.

The Deputy Convener: Thank you for your evidence.

Members *indicated agreement.*

Annexe C: Written submission

Petitioner submission of 10 April 2024

PE1933/T: Allow the Fornethy Survivors to access Scotland's redress scheme

Thank you for the invitation to respond to the evidence provided by Shona Robison (DFM) on the 20th March 2024.

“A Primal Scream”

is our response.

Whilst we are very grateful to those in the meeting who supported the Survivors, we cannot underestimate the agonising and depth of angry and hurt feelings to what we heard from the DFM. This early, horrific abuse suffered, broke the early trusting frame and attachments that we were developing as growing children. **It only takes one event, one day to change your world view of life forever** and the lasting trauma that brought. Not only were we victims of that abuse and violence, witnessing other little girls being abused was further traumatising. This abuse is central to our communications with you, of which redress is a part of. Are we not worthy because we were only abused for a short period? How can the DFM claim that Scotland has a world-renowned redress scheme but clearly makes us unworthy of it by being excluded? Such a renowned scheme, **and yet it allows this? It is hard to swallow.**

Trust is sacred. Our trust was broken as little girls and now again our very trust in the justice system that is there to help us and **has the power to do the right thing by us**, has been shattered. That primal scream and rage was felt so powerfully hearing the DFM's comments.

The horrific abuse suffered at Fornethy, is absolutely relevant in keeping with the **essence** of the Redress Scheme and within the Act which **“puts survivors at the heart”**. Fornethy should not be excluded for the many reasons outlined in our previous submissions, since the DFM “could technically” change the parameters be they contrary to her view.

We would therefore raise some further matters for the DFM. We feel that the DFM not only changed the goalposts of the essence of the scheme and the opinions of the previous DFM but stonewalled us into silence again. The DFM's personal opinions contradict the previous submissions made by the outgoing DFM – and are a subjective decision at that. Had we been little girls standing in front of the DFM, naked and vulnerable, would that have changed anything? How does a 5, 8 or a 10-year-old prove themselves? We are the true “ghost” children – nothing to prove that we were there from school records to medical records. A brick wall wherever we looked.

Would the DFM please elucidate on what is an acceptable amount of abuse as in a long-term abuse and compensatory situation versus a short-term abuse and compensatory situation? For example, would a single rape victim in a long-term care home be allowed redress whereas survivors in a shorter-term facility enduring many horrors over a six-eight week stay, not be? It just doesn't make sense. **How does the DFM arrive at the conclusion that short term means no redress?** Abuse is abuse. It harms, it hurts, and it is a life sentence. It should not be dependent upon how we came to be there and can be seen as a deliberate way to not be faced with too many cases seeking redress.

Any apology made without action is words. Apology equals an action; a change in something or a behaviour. We wanted to be seen and heard at the meeting but were directed to be silent, to cover up.

- **The Researcher's Report of Dr Fossey vs the expert evidence of Professor McAdie**

Dr Fossey's research report was brought to the meeting and referred to by the DFM whilst at the same time ignoring the research report of Professor Diane McAdie who, with the same material, came to very different conclusions which were factual and produced hard evidence. An example of this was the inaccurate reference to "Fornethy House" being shown as rehabilitation/respite home/holiday camp but the evidence in McAdie's report shows it was a **Residential School**. Why wasn't Professor McAdie's research brought out as further evidence? We had been in the care of GCC – it was a transfer of school role to an educational establishment and where we were taught in classrooms, and therefore in **loco parentis**, and therefore held **legal responsibilities** taking on that role within the school in the absence of parents. We were then put back on school roll when we returned. As Dr McAdie states in her findings from the archives, "**there were no medical professionals at Fornethy**". It was an educational facility where teachers were advertised and hired to teach. Also, many of us were not ill when we went to Fornethy but came out mentally scarred as a result of it. Dr McAdie's report states that as such it should have been under regular mandatory inspections and was advised, but not one piece of material can be found to show any inspection or children being interviewed. Parents had no way of knowing what was going on either. The DFM declared that parents signed for us to go to Fornethy – they did not sign for us to be abused!

- **The DFM stated many times during the meeting that everything depends on the records to prove our attendance at Fornethy to apply for Redress – without that evidence nothing can be done.**

The onus should not be on the Fornethy Survivors to access their historical records (although we have tried) and provide records but on the Scottish Government who effectively put in the legislation to authorise its destruction. The essence of the scheme was survivors at the heart but if we cannot get past the starting point without

evidence, the scheme is useless. We wonder how many children in long-term care can access records from their historical past?

- **Police and The Scottish Child Abuse Inquiry**

We have provided many lengthy statements to the above organisations, independently, and which corroborates our stories – many of us were in therapeutic treatments and internet forums long before the Survivors came together, and well before Redress Scotland came into being. There is evidence that these things are true. Police investigations are on-going and there is an on-going legal case to be answered.

They believe us! We have co-operated with them.

The essence of the Redress Scheme was that it would be easier for survivors to come forward and make their application, not to make it harder – the process was to be a simpler and fairer one? If we cannot get pass the start line with a piece of paper or a list of names, then it is a futile process.

In conclusion, the decision of the DFM to not allow redress is felt to be based on financial considerations rather than a true justice system. Much more could be done.

We would ask that Dr McAdie's recommendations to amend the existing eligibility criteria for the Redress Scheme be considered before any further actions are made to close our petition down. We will not stop there, we are in this together and will fight for justice for those who want redress and for all to be seen, heard, and listened to.

We need that recognition and justice to give us peace and closure on our terrifying early childhood memories of physical and mental cruelty, beatings, and sexual assault that we carry in our minds every day.

- **New information**

A second Fornethy conference, with a number of Survivors present, was held in Glasgow in February 2024. We continue to raise awareness through the media; engagement with Scottish Human Rights Commission; protests and other projects.