

# Scottish Child Abuse Inquiry

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## **Factsheet – for witnesses who are not applicants and are not the subject of allegations of abuse**

*If you want to tell us you were abused there is a different [factsheet](#) for you. Please refer to that factsheet for information.*

This factsheet is for *other* witnesses to this Inquiry. This covers a wide range of people including staff members of care providers, managers of care providers, policy officials, social workers, police, doctors, inspectors, academics, and counsellors.

### **What is a public inquiry?**

A government minister can establish a public inquiry to investigate and report on a matter of public concern.

A public inquiry is impartial and completely independent of government. Its conduct and procedures are determined by the Chair but they usually include recovering relevant documentary and other evidence, taking statements, holding public hearings where oral evidence is given, analysing the outcome of its investigations and evidence gathering, and making recommendations in its report(s).

### **What is this Inquiry about?**

The tasks of the Scottish Child Abuse Inquiry (SCAI) tasks are determined by a Scottish government Minister and are set out in its wide Terms of Reference (ToR).

SCAI's ToR direct it to investigate the abuse of children in care in Scotland. That includes identifying the nature and extent of that abuse, its impact on children and their families, whether those responsible for the provision of care failed in their duties, whether any failures have been rectified, and whether changes to the law, policies, or procedures are required.

SCAI's procedures include case studies in the course of which the provision of care by a particular organisation or of a particular type is investigated and examined. They are usually presented at public hearings. Case study findings are usually published following the close of a case study.

When SCAI has completed its work, it will present a final report to the Scottish Parliament.

### **What powers does SCAI have?**

The Chair of SCAI has various powers. They include the power to require individuals and organisations to provide relevant documentary and oral evidence.

Whilst the Chair of SCAI, The Right Honourable Lady Smith KC PC, is a retired senior judge, SCAI is not a court. It is a public inquiry. The Chair does not have the power to make any finding of civil liability, she does not have the power to award compensation, and she does not have the power to find anyone guilty of having committed a crime.

### **What does the Inquiry do?**

We collect evidence and information about abuse of children in care. We do this, among other ways, by speaking to witnesses at interviews.

Interviews can cover a wide range of topics, depending on the type of evidence being offered by the witness. Examples of topics are:

- allegations of abuse
- the general treatment of children in care
- the recruitment of staff and foster carers
- relevant national and local government policies about children in care
- inspection of care providers
- systems for reporting of abuse
- reports of particular abuse and actions taken
- the long term effect of abuse on those who have been abused
- changes in the law in the past, and in the future

What the Inquiry asks you about may depend on what type of evidence you have to offer and/or what role you had or have.

The Inquiry also collects documents from people and organisations. The documents include records about the care of children and reports of abuse, and documents about procedures, policies, the law and other investigations.

The Inquiry holds public hearings where evidence is heard.

The Inquiry publishes all its witness statements. For more information on when identities are kept confidential see our [protocol on restriction orders](#). You may, for example, be a “whistle-blower” – someone who wants to reveal the internal operations or secrets of an organisation. We understand that, in such circumstances, you may wish to apply for anonymity in relation to any involvement you have with the Inquiry.

### **How will you know we want your evidence?**

We may come across your name in the course of our investigations. For example, it may be mentioned in a document we have recovered, or it may have been given to us by an organisation which provided residential care for children.

If we need your evidence, we will contact you. Whilst the Chair has the power to compel you to provide evidence, we hope you will agree to provide it voluntarily. If you are agreeable to providing evidence, we will either ask you to respond in writing to specific questions or, alternatively, arrange for you to be interviewed.

If we need your evidence and you do not agree to provide it voluntarily the Chair is likely to issue a formal notice. It would be issued under **section 21 of the Inquiries Act 2005**. Failure to comply with such a notice may be a criminal offence.

You may want to offer to give evidence to us. If you do, please contact the Inquiry's witness support team to let us know you would like to talk to us.

You can contact our witness support team by:

- phone: on 0800 0929 300
- email at: [talktous@childabuseinquiry.scot](mailto:talktous@childabuseinquiry.scot)
- write to: SCAI, PO Box 24202, Edinburgh, EH3 1JN

Make sure you let us know if:

- you have any questions about the process of giving evidence
- you have a disability that may affect the way you can provide us with your evidence
- English is not your first language
- you need special arrangements because you are in a hospital, hospice, prison or something similar

## **Interviews and section 21 notices**

If we need your evidence, we will either arrange for you to be interviewed or we may serve a section 21 notice for you to respond to in writing.

### **Interviews**

Interviews are conducted by members of the Inquiry team. You will normally meet two statement takers from the Inquiry team at the interview. They will ask you questions and your answers will be recorded. A written statement will be drafted for you to review after the interview.

A member of SCAI's witness support team will normally be present at the interview. You can bring someone to support you in a personal capacity if you feel that would help. It's important that you feel able to speak freely to us during the interview.

An interview usually takes a few hours.

We will normally give you notice in advance of the topics we would like to ask you about.

At the interview, you will be reminded of SCAI's obligation to pass information to the police to allow them to carry out risk assessments.

We may want to discuss particular documents with you. Where possible, we will ensure you receive copies of these documents before the interview.

Attendance at such an interview would be on a voluntary basis; we would like anyone who can help us to cooperate with our work. Please be aware, however, that the Chair

has the power to order someone to give us a written statement. Failure to comply with such an order may be a criminal offence.

## **Section 21 notices**

A section 21 notice is a formal notice. As it is a statutory notice, it is in formal legal terms.

The notice will contain a list of questions. Often, the same questions are asked of all witnesses involved with the same case study. However, we may need you to answer questions in relation to some specific matters which we believe are likely to be within your knowledge.

It is important that you respond to all the questions, even if that means telling us that you can't answer or that a particular question is not applicable in your circumstances.

Where you have provided a written response, members of the Inquiry team may produce a draft witness statement based on your response to the section 21 notice. We may also ask you follow up questions if there is anything in your response that we need to explore further.

The notice will contain a deadline by which you must respond in writing. If you don't think you will be able to respond on time, you can apply for the notice to be 'varied' by having the deadline extended. These applications are considered by the Chair, and it is helpful to her to have as much information as possible about why more time is required (including, where you have been asked to respond in writing, information about how much progress you have been able to make so far).

## **Witness statements**

A draft witness statement will usually be prepared for you.

We will ask you to review your draft witness statement, and to sign it once you are content with its terms. The Inquiry will consider carefully all witness statements and other evidence it obtains.

The witness statement will be evidence before the Inquiry. It will be a formal, permanent record of what you have told us.

It is not possible to withdraw or amend your statement once you have signed it. But you can make a further statement if you want to say something more or different.

All statements are evidence and the Inquiry may use an unsigned statement if, for some reason, you are not able to sign it.

## **Publishing witness statements**

Most witness statements will be published on the Inquiry website. Published statements will be appropriately redacted where identities are protected.

For more information, see our [Protocol on Redaction](#).

## **Public hearings**

Some witnesses will be asked to give evidence at a public hearing. Not everyone who has given a witness statement to the Inquiry will be asked to do so. The whole or parts of statements of some witnesses who do not give oral evidence may be read aloud by counsel to the Inquiry at public hearings in whole or in part. You can find out more about hearings in our [guidelines in relation to hearings](#).

Whilst many witnesses agree to give oral evidence voluntarily, the Chair can order a witness to give evidence at a public hearing. This would be done by issuing a different type of section 21 notice. Failure to comply with such an order may be a criminal offence.

A section 21 notice of this sort will probably cover several dates, but will make clear what the likely date of your attendance is. However, you must make yourself available on all the dates mentioned in the notice. If you cannot attend on the dates mentioned, you can apply for the notice to be 'varied' by having the dates changed and the Chair will decide whether it is reasonable to permit you to attend on a different date. You can also apply for the notice to be 'revoked' if you cannot attend at all. In either event, when applying to change the date or for revocation of the order, you will need to explain the reasons why you are asking the Chair to do so.

Whilst we will try to accommodate requests for a change of date, that may not be possible and you should note that the Chair has the power to compel witnesses to attend even if they feel they should not have to do so, or would prefer alternative dates.

Inquiry hearings are more formal than interviews. They take place in public. The Chair of the Inquiry will preside over the hearing and she may ask questions. Counsel to the Inquiry will be present and they will question the witnesses. Others who have an interest in the hearing and/or their lawyers may be in the room or may have the Chair's permission to follow the proceedings remotely. Members of the public and the media may also be present. Normally, all the questions are asked by Counsel to the Inquiry.

Those who have leave to appear at hearings may submit questions they would like witnesses to be asked, to the Inquiry, and counsel to the Inquiry will decide whether or not it is appropriate to explore any such questions with the witness.

If you would like to propose any questions to be asked of witnesses other than yourself, you can only do that if you have been granted leave to appear. You can discuss how to apply for leave to appear with your witness support officer, and/or read our [protocol on pre-hearing procedures](#).

Witnesses who feel they need special measures to be taken in order to support them giving evidence, such as giving evidence from behind a screen or in private (with only key people in the hearings room), should raise their concerns with their witness support officer. The Chair will then decide whether it would be appropriate to make

arrangements to accommodate their concerns. She may require further information before making a decision.

Every witness, when giving evidence, must promise to tell the truth. To do that the Chair will put each witness on oath or will ask them to affirm.

The Chair will not allow any witnesses to be questioned aggressively. What you say may, however, be tested in questioning, as a matter of fairness to others. For example, you may be asked for your response to evidence given by other witnesses, or to what appears in documents.

You may be able to claim expenses, including travel expenses, for giving evidence at a public hearing.

### **Will my identity be made public?**

The Chair of the Inquiry has made a decision known as a [general restriction order](#) (“GRO”). The effect of this order is that the identity of any applicant or anyone named as an abuser will not generally be revealed by the Inquiry before we publish any findings or reports. **This order does not protect your identity.**

It may be possible for your identity to be kept private. If that is something you would wish to explore, you would need to apply to the Chair for a restriction order. You can find out how to do this in our [protocol on restriction orders](#). You would need to provide a full explanation of why you wish to keep your identity private.

If you are not sure whether you are protected by the GRO, or if you have any other questions, you can speak to your witness support officer.

### **Do I need a lawyer?**

You don’t need a lawyer to make contact with the Inquiry.

You need to be aware of your rights – including the right against self-incrimination – when you speak to us. Our lawyers can’t give you advice, but you can get advice from your own lawyer before you come to an interview, sign your statement or give evidence at a public hearing.

Lawyers are not permitted to attend interviews with the Inquiry for any purpose other than in relation to representing you when providing your evidence to the Inquiry at the interview. They are not, for example, allowed to attend because they are your representative in a court case or to assist you in relation to a court case.

If you want to be represented by a lawyer when providing oral evidence at an inquiry hearing, that is only allowed if you have made a successful application for leave to appear.

If you decide you need a lawyer you can arrange this at any stage. The Inquiry may be able to help you pay for a lawyer if you can’t afford the fees (see our [protocol on](#)

[funding for legal representation of witnesses](#)).. If you want your lawyer to come to your interview please discuss this with our witness support team.

**For more information you can contact our witness support team:**

- by phone on: 0800 0929 300
- write to: SCAI, PO Box 24202, Edinburgh, EH3 1JN
- email at: [talktous@childabuseinquiry.scot](mailto:talktous@childabuseinquiry.scot)
- look at our website at: [www.childabuseinquiry.scot](http://www.childabuseinquiry.scot)
- follow us on Twitter: @ScottishCAI

**For general enquiries:**

- email at: [information@childabuseinquiry.scot](mailto:information@childabuseinquiry.scot)

## **Privacy Notice**

This notice explains our approach to collecting and handling your personal data.

We are an independent public inquiry and we exercise statutory functions under the Inquiries Act 2005, in the public interest. We investigate the nature and extent of abuse of children whilst in care in Scotland. We publish various documents relating to our investigations and findings, and sometimes this may include some personal data. We need to process personal data to enable us to carry out our work.

We explain in this notice in general terms how we collect and handle personal data.

### **Why we process your personal data**

We process your personal data for a number of reasons, all of which help us to fulfil our [Terms of Reference](#).

## **How we collect personal data**

When a person visits our website we collect information to measure the use of the website. We do not collect information that identifies anyone but we do track how many individuals have viewed different pages so we know what information appears to be of most interest. Further information is provided on our [Terms & Conditions page](#).

If you contact us by telephone, email or letter, or if you use the contact form on our website, we will retain any personal data you provide to us in doing so, and we may use it to contact you about the work of the Inquiry. We may also use it to help us with our investigations and to help us decide which institutions or organisations need to be investigated.

We may approach you to ask you to give evidence to the Inquiry, in which case we will retain any additional personal data you provide to us and we may use it to contact you about the work of the Inquiry.

If you provide us with evidence, whether by giving a statement, or in response to a statutory notice under section 21 of the Inquiries Act 2005 requiring you to submit written evidence, or by attending the Inquiry to give evidence in person, or in any other way, we will retain any personal data you provide in doing so. Also we will retain any personal data which you provide in any communications we have with you in relation to your evidence. We will use any such personal data to help us with our investigations and/or otherwise fulfil our Terms of Reference.

We also recover records from a range of sources, including providers of residential care for children, local authorities, Police Scotland, the Crown and Procurator Fiscal Service, and the Scottish Government.

## **What sort of data we collect**

We collect data about children in care, data about the abuse of children in care and data about the impact of such abuse. We collect and retain contact details, data known as special category data and information about criminal convictions.

The records we recover might include personal data including sensitive personal data such as data relating to a person's criminal convictions, offences, private life or sexual orientation.

## **How personal data is held**

We keep your personal data secure and only share it with those who need to see it. Personal data is held in secure encrypted electronic storage systems that are only accessible by individuals working for or on behalf of the Inquiry. Any hard copy information is held in secure conditions within premises to which members of the public do not have access.

All personal data we receive is handled fairly and lawfully in line with data protection legislation.



## **Who will personal data be shared with**

We may have to disclose personal data, on a strictly confidential basis, to organisations which provide(d) or arranged residential care for children, to people who are alleged to have abused children in care, to organisations which hold records which could assist the Inquiry with its investigations, to experts or to the police.

In some cases, we may publicise your data to allow us to fulfil our Terms of Reference. However, we are extremely careful about what data is made public and only publish it where we are satisfied, having had regard to data protection and inquiries legislation and any restriction orders issued by the Chair, that it is appropriate to do so.

Some people are entitled to be anonymous and, unless they have expressly waived their anonymity, their identities will be protected by appropriate redaction before publication. Details of those who are entitled to anonymity are set out in the Chair's General Restriction Order, [which you can see here](#).

If you are concerned or unsure about whether your personal information may be made public, you can ask our witness support team about whether you are entitled to anonymity.

## **Data controller**

The Chief Executive of the Inquiry is our "data controller". As data controller, she is obliged by law to determine the purposes for and means by which we process all and any data including how it is held, how it is used, and when and/or how it is destroyed.

Each year the Inquiry registers with the Information Commissioner – who supervises compliance with Data Protection legislation in the UK. A copy of our current registration [certificate is available here](#).

## **Data retention**

If you contact us by telephone, email or letter during the Inquiry, or if we contact you, we will retain any personal data which, in doing so, you provide to us. We will do so solely to enable us to carry out our work. We will generally retain the data for the duration of the Inquiry.

Under our Terms of Reference we are required to create a national public record, and the Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007 require the Chair to keep a comprehensive record of the Inquiry. That means we must, at the end of the Inquiry, transmit certain records we hold, including personal and sensitive personal data, to the Keeper of the Records of Scotland.

## **The legal basis for processing personal data**

We process personal data lawfully in compliance with the General Data Protection Regulation ('GDPR') and all other UK data protection legislation.

Our 'lawful basis', as defined by the GDPR, is usually the need to comply with a legal obligation; the obligation relied on will usually be that we are carrying out a task we require, in the public interest, to perform and/or that we are pursuing our legitimate interest in fulfilling our Terms of Reference.

Complying with our legal obligation means we process your personal data because it is necessary for us to comply with the law that applies to us. In our case our legal obligations as a public inquiry are set out in the Inquiries Act 2005 and the Inquiries (Scotland) Rules 2007. The Inquiries Act empowers a government minister to set up a public inquiry; it sets out what we, as a public inquiry, must do and what we have the power to do. The Inquiries Rules set out certain procedures we must follow.

Under data protection laws, the processing we carry out must be necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the Chair of the Inquiry. In our case, all we do is for the benefit of the public, the Inquiry having been established because the Scottish Ministers were satisfied it was appropriate to do so, given the extent to which there was public concern about the abuse of children in care dating back over many years, the need to understand what happened in the past and the need to seek recommendations for the protection of children in care in the future.

We also use personal data in pursuit of our legitimate interests, meaning that we carry out necessary processing for the purpose of our interests in fully carrying out our investigations, in creating a clear public record of the nature and extent of abuse of children in care, in making findings, in issuing reports and in deciding on and drafting appropriate recommendations.

We rely on these bases for processing only when we believe our interests are not overridden by your fundamental rights and freedoms.

### **Your rights in respect of your personal data**

Sometimes the processing we carry out allows us to rely on one or more of the exemptions set down in the Data Protection Act 2018. If it does we then have to decide whether or not it is appropriate to provide information in response to any request you make to assert your rights under the GDPR. Sometimes we will do so even if there is an exemption that we can rely upon. Sometimes we will conclude that it is not appropriate for us to provide you with the information you have requested - this will, for example, be the case if complying with your request would make it more difficult for us to fulfil our Terms of Reference or if it puts another person's personal data at risk of being revealed.

You have the right to request:

- access to the personal data we hold about you
- that incorrect information we hold about you be corrected
- that we stop or limit the processing of data we hold about you
- that we erase the information we hold about you

In all cases we will consider your request very carefully. In some cases, if we consider that your information falls within one of the exemptions set down in the Data Protection Act 2018 and that agreeing to your request could hinder our ability to fulfil our Terms of Reference, we may have to decline your request.

### **Contact and complaints**

If you wish to contact us about the terms of this privacy notice, please write to [SCAIdataprotection@childabuseinquiry.scot](mailto:SCAIdataprotection@childabuseinquiry.scot)

If you wish to make a complaint about how the Inquiry has handled your personal data, in the first instance please contact [SCAIdataprotection@childabuseinquiry.scot](mailto:SCAIdataprotection@childabuseinquiry.scot)

If you are unhappy with the outcome of discussions with us you are entitled to contact the Information Commissioner's Office online [here](#), by calling their helpline on **0303 123 1113** or by writing to them:

UK Information Commissioner's Office  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire