

# Scottish Child Abuse Inquiry

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## Factsheet – confidential sharing of applicants’ evidence, including allegations

This factsheet applies to evidence provided by applicants.

It also applies to evidence provided by any persons who were not children in care but who have told the Inquiry about experiencing or witnessing abuse of children in a residential care setting when they themselves were children (referred to as ‘relevant witnesses’), for example a person who was a day pupil at a boarding school or was the child of parents who fostered other children or was a visitor to a residential establishment as a child.

It explains when the Inquiry might share evidence obtained from applicants and relevant witnesses with an organisation that provided residential care for children or with any person named by an applicant or relevant witness as an abuser.

If your application to give evidence was made before 1 October 2018, there is a different version of this factsheet that applies to you. If you are unsure about which factsheet applies to you, your witness support officer will let you know.

An ‘applicant’ is a person who applies to give evidence to the Inquiry about having been abused (as defined in the Inquiry’s [Terms of Reference](#)) when they were in care as a child.

### Fairness and evidence

The Inquiry is committed to being fair.

Sometimes, being fair means that the Inquiry must share what an applicant or relevant witness has told us with the organisation which was responsible for their care when they were a child. That includes any allegations that a particular person abused children, in which case we may also have to share the allegations with that person. Where we do this, we share an appropriately redacted (blacked-out) version of your statement.

This only happens where an organisation and/or abuser has a legitimate interest in knowing that one or more allegations have been made and/or to allow us to carry out our investigations.

The Chair has a legal obligation to allow the public reasonable access to evidence given to the Inquiry. She does so in a way which protects the identities of applicants and relevant witnesses where appropriate; this is why statements published on the Inquiry website have been redacted.

Where we have to share what an applicant or relevant witness has told us with an organisation and/or a person alleged to have abused children, it is shared in confidence and cannot be made public.

### **When we may share what an applicant has told us**

If you are an applicant or a relevant witness we will not always share what you have told us. There is no blanket rule. We will assess each case carefully to decide whether we need, for fairness or to progress our investigations, to share your redacted statement. If we share it, we will also need to share your name but nobody is allowed to publicise your identity.

We may need to share what you have told us:

- in order to be fair when investigating allegations of abuse at an establishment run by an organisation that had responsibility for your care
- in order to be fair when investigating allegations that a person named by you abused children.

### **Advance notice of sharing what an applicant has told us**

We realise that some applicants and relevant witnesses will be anxious at the prospect of what they have told us being shared with the organisation that was responsible for their care or with a person they have named as an abuser.

If we are intending to share your redacted statement we will try to get in touch with you to let you know. We will normally tell you at least 14 days before the date we are intending to share the information. Please note, however, that notice will **not** be given where we are only sharing your name and not what you have told us, for example where we need to recover records in order to progress our investigations. Further information about sharing names is provided later in this factsheet.

If you do **not** want us to share your redacted statement, you need to apply to us for a restriction order **as soon as possible**, explaining why you do not want us to share it.

More information on restriction orders, including the application form, is in our [Protocol on restriction orders](#). Our witness support team can post or email you a copy if you prefer. Please explain in your application form the reasons why you are asking us not to share your evidence and/or any information you have provided to us, and who your concerns relate to, that is the organisation that was responsible for your care and/or any person you have named as having been an abuser.

The Chair will consider your application and make a decision. If you apply for a restriction order, no sharing will take place until your application has been decided.

Please note that you **do not need to apply for a restriction order to be anonymous when giving evidence or when your statement is published**, where that is already provided for by the Chair's General Restriction Order.

## **The effect of a restriction order**

A restriction order must be obeyed by everyone, including the Inquiry team.

Breaching a restriction order is a very serious matter. The Chair may decide that an organisation or person that has breached such an order should take no further part in the Inquiry or should be prevented from attending public hearings. She may also refer the breach to the Court of Session.

## **Sharing on a confidential basis**

If we **do** share what you have told us with an organisation or person, we require that organisation or person to keep the information confidential. They cannot make it public or tell anyone else about it. They will have to sign a confidentiality undertaking before we share the information. If they refuse to sign a confidentiality undertaking we will not share any information with them.

Breaching a confidentiality undertaking is a very serious matter. In the event of such a breach, the Chair may decide that the organisation or person should take no further part in the Inquiry or should be prevented from attending public hearings. She may also refer the breach of a confidentiality undertaking to the Court of Session.

## **Sharing an applicant's/relevant witness's name**

We may also need to share the name of an applicant or relevant witness with a person or organisation where we believe that that organisation or person holds information we need in order to progress our investigations.

If we share your name with an organisation or person in these circumstances, we require that organisation or person to keep the information confidential. They cannot make it public or tell anyone else about it. We will require them to sign a confidentiality undertaking before we share the information. If they refuse to sign a confidentiality undertaking we will not share any information with them.

## **Sharing information with the police**

The arrangements set out in this factsheet do not apply to our sharing of information, including the names of applicants or relevant witnesses, with Police Scotland. We share information with the police to allow them to assess whether there is a current risk of harm to children and vulnerable adults. For more information about how and when we share information with the police see our [Protocol on restriction orders](#).

## 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. Our [Terms of Reference](#) require us to investigate the nature and extent of abuse of children in residential care in Scotland.

We publish various documents relating to our investigations and findings, and sometimes these 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 perform our duty under the law.

### How we collect personal data

If you contact us by telephone, email, or letter, using the contact form on our website, or in any other way, 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 SCAI. 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 provide evidence to SCAI, in which case we will retain any personal data in the evidence you provide to us and we may use it to contact you about the work of the Inquiry.

If you provide us with evidence, for example by meeting with us to provide a statement, or in writing in response to a statutory notice under section 21 of the Inquiries Act 2005, or by attending an Inquiry hearing to give evidence in person at a hearing, or in any other way, we will retain any personal data you provide in doing so. We will also retain any personal data you provide in any communications we have with you. We will use any such personal data to help us do the work we need to do to fulfil our [Terms of Reference](#).

The law also allows us to recover records and information and we regularly require to do so. These can include personal data from a range of sources, including providers of residential care for children, local authorities, Police Scotland, the Crown Office and Procurator Fiscal Service, and the Scottish Government.

When someone 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 in our [Terms and conditions](#).

### 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 contain personal data which could include sensitive data ('special category data') such as data relating to a person's racial or ethnic origin, health, or sexual orientation. Personal data might also include data relating to a person's criminal convictions ('criminal offence data').

### **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 which are only accessible by individuals working for or on behalf of SCAI. 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 personal data will be shared with**

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

In some cases, we may publish 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 necessary and appropriate to do so.

Some people's identities are protected by the Chair's [General Restriction Order](#) and, unless they have expressly waived their anonymity, their identities will usually be protected by appropriate redaction (blacking out of certain words in evidence that could identify that person to the general public) before publication. Details of those who are entitled to such protection are set out in the Chair's [General Restriction Order](#).

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 protected by the [General Restriction Order](#).

### **Data controller**

The Chief Executive of the Inquiry is our 'data controller'. As data controller, (s)he 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 SCAI 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, or if we contact you, we will retain any personal data that, 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. 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, special category, and criminal offence data, to the Keeper of the Records of Scotland.

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

We process personal data because, as a public inquiry established under statute, we require to do so. 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, for the majority of personal data we process, is that it is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the data controller (Article 6(1)(e) UK GDPR). In this case that is the work which SCAI is required to do to fulfil its [Terms of Reference](#).

In relation to some other data we process, for example data protection requests from individuals, the lawful basis for processing your personal data is that it is necessary to comply with a legal obligation placed on us as the data controller (Article 6(1)(c) UK GDPR).

Under data protection laws, the processing we carry out must be necessary for the performance of a task in the public interest or in the exercise of official authority vested in the Chair of the Inquiry. In our case, all that we do is for the benefit of the public, SCAI having been established because the Scottish Ministers were satisfied it was appropriate to do so, given public concerns about the long-term and continuing abuse of children in residential care in Scotland or whose care was arranged in Scotland, and the need to seek recommendations for the protection of children in care in the future.

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 make further detailed provisions that we must follow.

We also process 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 comprehensive public record of the work of the Inquiry

including of the nature and extent of abuse of children in care in Scotland, in writing findings and reports, in issuing findings and 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.

### **The lawful basis for processing sensitive personal data**

Sensitive personal data (also known as special category data) is personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health, or data concerning a natural person's sex life or sexual orientation.

The legal basis for processing any sensitive personal data, or data about criminal convictions, where we receive it, is that it is necessary for reasons of substantial public interest for the exercise of a function conferred on a person by an enactment, or the exercise of a function of a Minister of the Crown (para 6, schedule 1, Data Protection Act 2018). The function is the work SCAI requires to do to fulfil its [Terms of Reference](#).

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

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.

Your rights may be subject to exemptions or limitations. Requests are dealt with on a case-by-case basis.

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, 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 SCAI 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 at [Make a complaint | ICO](#), by calling their helpline on **0303 123 1113**, or by writing to them at:

UK Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire SK9 5AF