

Scottish Child Abuse Inquiry

PO Box 24202 | Edinburgh | EH3 1JN
e-mail: talktous@childabuseinquiry.scot

Factsheet – for witnesses who are 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 witnesses who are alleged to have abused children ‘in care’ (as defined in our [Terms of Reference](#)).

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, or the Inquiry) 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 the Inquiry has various powers. They include the power to require individuals and organisations to provide relevant documentary and oral evidence.

Whilst the Chair of the Inquiry, 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.

How does SCAI obtain evidence from witnesses?

Evidence is gathered from witnesses at interviews, or by serving formal notices. Such notices contain lists of questions and require the witness to respond to them in writing. Witnesses may also be asked or required to give evidence at an oral hearing.

SCAI also serves formal notices requiring individuals and/or organisations to deliver relevant documents to it. Those documents may include children's records, reports of abuse, documents about an organisation's procedures and policies, and documents about investigations into allegations of abuse.

SCAI normally publishes witness statements and transcripts of evidence given at hearings but applies appropriate redactions to protect the identities of those who are entitled to anonymity. For more information about protection of identities see our [Protocol on restriction orders](#).

How will you know we want your evidence?

We may come across your name in the course of our investigations. For example, it may have been given to us by a person who alleges you abused them when they were in care as a child or it may have been given to us by an organisation that provided residential care for children.

If we need your evidence, we will contact you. Whilst the Chair has the power to compel you to give 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, the Chair is likely to issue a formal notice requiring you to provide evidence if you do not agree to do so voluntarily. The notice 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
- by email at: talktous@childabuseinquiry.scot
- by writing 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 SCAI team. You will normally meet two statement takers from the SCAI 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 also be present at the interview. You can bring someone to support you in a personal capacity if you feel that would help. It is 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, and you will be given notice of the allegations relating to you.

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. You will also be told about your right not to self-incriminate.

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

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 include information about your rights not to self-incriminate.

The notice will contain a list of general 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. The notice will also contain details of the allegations to which we need your response.

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 SCAI 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. SCAI 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 in your written response or what you told us at interview.

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 SCAI may use an unsigned statement if, for some reason, you are not able to sign it.

Anonymity

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 alleged abuser will not normally be revealed by SCAI before the publication of any findings or reports. There are important exceptions to this general position which are set out in the paragraphs below.

The Chair may decide she requires to disclose a person's identity where she considers it appropriate in all the circumstances to do so, for example where the person has admitted abusing children in care (and is, accordingly, no longer an *alleged* abuser), or if the fact that they have been the subject of allegations is in the public domain. If the Chair decides that your identity should be not be protected by her GRO, we will let you know.

The Chair's GRO does not apply in the case of anyone who has been convicted of abusing children in care.

Otherwise, when we reach the stage of publishing any SCAI findings or reports the Chair will decide whether we should make public the identities of people named as abusers.

Publishing witness statements

Most witness statements will be published on the SCAI 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 SCAI 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. 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 to SCAI questions they would like witnesses to be asked, 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](#).

If you are giving evidence at a SCAI hearing, your identity will normally be kept private (unless you decide that you do not want that). More information about anonymity is provided earlier in this factsheet.

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 hearing 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.

Do I need a lawyer?

You do not need a lawyer to make contact with SCAI.

You need to be aware of your rights – including the right against self-incrimination – when you speak to us. Our lawyers cannot 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.

You will be asked to provide a confidentiality undertaking before details of allegations are shared with you, and if you do want to take advice from your own lawyer then they will be asked to provide their own undertaking. We have to receive this before you share any information with them.

Lawyers are not permitted to attend interviews with SCAI 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 instruct one at any stage. SCAI may be able to help you pay for a lawyer if you cannot 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
- by writing to: SCAI, PO Box 24202, Edinburgh, EH3 1JN
- by email at: talktous@childabuseinquiry.scot
- by looking at our website at: www.childabuseinquiry.scot

For general enquiries:

- email at: 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. 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

If you wish to make a complaint about how SCAI has handled your personal data, in the first instance please contact 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