

# Mental Welfare Commission for Scotland

## Privacy Notice

September 2021

The Mental Welfare Commission for Scotland fully respects your right to privacy. This policy tells you how we at the Commission deal with any information we receive about you. We will always make sure that your information is protected and treated securely. Any information about you that we hold, will be held in accordance with the Data Protection Act 2018 and the UK General Data Protection Regulation (GDPR).

### Data Controller & Data Protection Officer (DPO)

We are the data controller for all of the data we hold and our contact details can be found on our website at; <https://www.mwcscot.org.uk/contact-us/>

Under UK GDPR we have to appoint someone who has special responsibility to make sure that we are handling your data properly. This person is known as the Data Protection Officer or DPO. At the Commission, the DPO role is held by our Information Governance Manager. If you have any questions about how the Commission handles your data, you can send a message to them via email at; [mwc.enquiries@nhs.scot](mailto:mwc.enquiries@nhs.scot)

You can also write to:

DPO  
Mental Welfare Commission for Scotland  
Thistle House  
91 Haymarket Terrace  
Edinburgh  
EH12 5HE

### Purpose and lawful basis for the processing

The Mental Welfare Commission, as data controller, is required to have a legal basis when using personal information. Our legal basis is usually that its use is necessary for the performance of a task carried out in the public interest, or in the exercise of official authority vested in us. In some situations we may rely on a different legal basis. We have listed below the most relevant ones.

- i. **For the exercise of a function conferred to the Commission in the legislation. Substantial public interest, article 6 (1) (e) of the UK GDPR and 9 (2) (g) for special categories of data.**

The Commission processes personal and special categories of data for a number of purposes. Most of our processing is necessary so we can carry out our statutory duties set out in the Mental Health (Care and Treatment) (Scotland) Act 2003 and Adults with Incapacity (Scotland) Act 2000.

You can also visit our film about the Commission's roles and what we do for more information <https://www.mwcscot.org.uk/about-us/who-we-are-and-what-we-do>

This is how we process personal data when performing our functions and duties:

### **1. Visiting people**

We visit people to check that they are getting the care and treatment they need and that it is in line with the law.

When we visit people in care settings or in their home, we make notes about what we find and this information is stored in our secure database.

Sometimes, depending on the type of visit we have made, we publish what we have found. We always make sure that individuals cannot be recognised in the report.

### **2. Monitoring use of mental health and incapacity legislation**

Health Boards, local authorities, the Mental Health Tribunal Service (MHTS) and some other public agencies are legally obliged to disclose some personal information to the Commission, for example when someone is subject to measures under mental health or incapacity legislation. The health board, local authority or the tribunal send us forms and some other information about this. This enables the Commission to monitor use of the legislation in Scotland, to publish reports on the use of mental health and incapacity law and to challenge when we feel the law has not or is not being applied properly. This information is kept on our secure database.

### **3. Providing advice via our telephone advice line and enquiries email account**

Another legal duty of the Commission is to provide advice to people who write, call or email us. When people call our advice line, we take details of the person who is calling and the person they are calling about. We make notes about what was discussed. The information is held on our secure database.

We keep this information:

- o To be sure we are giving the best possible advice we refer to the information we have on file. This helps us give better advice based on a more complete history.

- Because we need to have a clear record of what was discussed and the advice we have given.
- Because sometimes the notes from a call are passed, via our secure database, to a member of our staff. They may make further enquiries so that we can give better advice and/or to discuss with the people providing care whether the care and treatment being given is legal and appropriate.
- It is also used for our internal audit on the accuracy of the advice that we provide.

#### **4. Investigating and carrying out casework**

All of our practitioner staff visit people, answer email enquiries and letters and staff our advice line regularly. Matters will come to their attention during the course of these activities and as a result they may decide to make some enquiries about a case. These enquiries may include talking to other professionals outwith the Commission, writing letters to other relevant public bodies and/or discussing the situation with other Commission colleagues who have special expertise. Not all of these discussions will be formally recorded but if the staff member makes notes of these exchanges they will be stored in a personal file in our secure database.

#### **5. Consultation responses and engagement activities**

We carry out consultation exercises and engagement activities to help with our influencing and good practice activities. We collect responses from people who use services, care professionals and other organisations.

We have a lawful basis to process personal data collected from consultation responses as processing is necessary to meet our legal obligations and to carry out our role.

We will store personal information securely and use it strictly for analysis only. Once a consultation ends, we store responses according to our retention and destruction schedule.

For some consultations we engage a specialist company to analyse results. Our agreement with such companies covers information security and data protection. We also use third party providers like Smart Survey to gather feedback regarding our work, events and publications.

To read more about our consultations please visit  
<https://www.mwcscot.org.uk/policy-research/consultations>

## **ii. For managing complaints about the Commission**

Where someone is unhappy about something that the Commission has done, they can make a formal complaint. More information about how you can do this is available from our website at: <https://www.mwcscot.org.uk/contact-us/complaints/>

We may ask you for information in order to fully investigate your complaint and this information, along with our investigation notes, will be held in our records. If you decide to refer your complaint to the Scottish Public Service Ombudsman (SPSO), we are legally obliged to send them your information so that they can investigate what we have done and decide whether we handled your complaint properly.

The Commission is not a complaint handling body. Where someone has a complaint about care and treatment they have received from a service, in most circumstances the Commission can offer advice but will refer people back to the service that provided the care and treatment if they wish to make a formal complaint.

## **iii. For keeping people informed via our mailing list**

We provide people with updates about the Commission. We do this only when they have asked us to do so and given us consent to contact them.

Our Communications Team maintain a separate mailing list database which holds contact details of individuals who have asked to be kept informed about the work of the Commission. We use these details to send email alerts/newsletters, for example when we publish new reports.

You can sign up to our mailing list at <https://www.mwcscot.org.uk/mailling-list/>

You can opt out of this mailing list at any time, by using the 'unsubscribe' link in one of our emails or by emailing [mwc.enquiries@nhs.scot](mailto:mwc.enquiries@nhs.scot). If you do this, your details will be removed from our mailing list database.

## **iv. Other purposes and legal grounds for processing personal data**

We also process sensitive types of personal information, when its use is necessary:

- for the management of health or social care systems and services; or
- for reasons of public interest in the area of public health; or
- for reasons of substantial public interest for aims that are proportionate and respect people's rights; or
- for archiving purposes, scientific or historical research purposes or statistical purposes, subject to appropriate safeguards; or
- in order to protect the vital interests of an individual; or
- for the establishment, exercise or defence of legal claims or in the case of a court order.

For more information about the Commission's current work, please read our annual business plan available on the website. The document summaries the ongoing and planned projects under each of the main functions of the Commission (Influencing and empowering, visiting individuals, monitoring the law, investigations, and information and advice), their main purposes and how do we plan to achieve them.

## Sharing your information

We are sometimes legally obliged to share information, for example under a court order or if we believe that there is serious risk of you harming yourself or somebody else. We might also share information with other regulatory bodies in order to fulfill their, or our, regulatory duties.

Examples of organisations and people we may share information with are:

Local authority staff (e.g. mental health officers)

Health professionals (eg psychiatrists)

The Mental Health Tribunal for Scotland.

In some circumstances, we might share information about you with other regulatory authorities such the Health and Safety Executive (HSE), Care Inspectorate (CI) or the Scottish Public Service Ombudsman (SPSO). You can review our agreements with these authorities on our [website](#).

We sometimes use third parties to provide us with services and they may need to process personal information to do so. This may include people or organisations who provide us with IT services, legal services, survey management etc. This means they are data processors for information about you which they have access to. We have contracts in place with our data processors. This means that they cannot do anything with your personal information unless we have instructed them to do it. They will not share your personal information with any organisation apart from us. They will hold it securely and retain it for the period we instruct.

We may also share appropriate, relevant and proportionate information in compliance with the law with other professional bodies, for example research organisations. We will always satisfy ourselves that we have a lawful basis on which to share the information and document our decision making. When suitable, the Commission uses the Scottish Government Information Sharing Agreement toolkit to ensure that is processed following the data protection principles.

## **Publishing information**

As required by the Mental Health Act 2003, we bring matters to the attention of Scottish Ministers and others, we also publish our conclusions in relation to investigations or inquiries, visits undertaken, advice provided etc. as they can lead to improvements in the public services as a whole. Our public reports do not name individuals.

## **Your rights**

If we hold personal data about you, you have some rights over your data.

The Information Commissioner's Office, or the ICO for short, lists each of these rights and explains what these mean for you. Please use the link below to read more.

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/individual-rights/>

We have listed some of these rights below with a short explanation about what they mean if the Commission holds data about you.

### **Right to be informed and right to access the information,**

You can ask us if we hold information about you, what we hold and for a copy of that information. We will ask you for proof of identity before we process your request. This is so that we don't give information to someone who doesn't have a right to see it. It's helpful for us if you are able to specify what you are looking for, such as information between certain dates. This will help us give you your information more quickly.

You can access and download a copy of our Subject Access Request form or SAR [here](#)

In certain circumstances, you can ask for information where you are not the data subject (the person the information is about). This could be because you are a

welfare guardian or hold a welfare power of attorney, and have a legal power to access someone else's personal data. Other circumstances include where a data subject has given their permission for someone else to apply for their personal data. This could be a solicitor or another person. These individuals have to provide us with a signed, valid mandate from you, the data subject, clearly stating that you are granting this power to them.

Under UK GDPR, we have 1 month to supply you with your data from receiving details of your request and proof of your identity and/or proof that you are entitled to ask for the data.

Sometimes there are exemptions (legal reasons) why we can't disclose the data to you. These exemptions include where:

- An appropriate professional person involved in your care decides that disclosing the data would cause you or someone else serious harm.
- Other people are identifiable in the data and they have not given us permission to disclose it to you.
- We are only processing the data for statistical purposes.

Wherever possible, we will release all of your information. Where there is a valid exemption, we will still try to release as much information as we can.

Where we are the "secondary" holders of your data (e.g. a mental health act form where we were sent this by a health board), we suggest that you approach the medical records department of that health board directly to get a copy of this document. See our [SAR form](#) for more information.

### **Asking to access the medical records of deceased person**

The Data Protection Act 2018 and the UK GDPR only applies to personal data about living individuals. However, an individual's death does not terminate the duty of confidentiality owed to that individual.

Access to the medical records of deceased persons is governed by the Access to Health Records Act 1990. This says in Section 3(1)(f) that application for access to health records may be made to the holder of the record by the patient's personal representative and any person who may have a claim arising out of the patient's death. However, access is precluded if the patient indicated that he or she did not wish or expect disclosure to be made to the person making the application (Section 4(3) and Section 5(3)(a)&(b)). Section 5 (4) also requires that access shall not be given to any part of a record, which, in the opinion of the holder of the record, would disclose information which is not relevant to any claim which may arise out of the patient's death.

### **Right to rectification**

A lot of the personal information the Commission holds is supplied by other authorities. If you feel that the information we hold is wrong but this information was supplied to us by a health board, local authority or the Mental Health Tribunal, we can't change it. We would refer you back to the relevant body. If they make changes to the data in response to your request, they should let us know so that we can change our records accordingly.

If you feel that the Commission has written something about you that is wrong, you can make a complaint to us. We will investigate your concerns. If we agree that our information is wrong, we will change it and let you know. If we don't think the information is wrong and you don't agree, we will place a note in your file stating that you think this information is not correct, but our original notes will still be kept on file.

### **Right to erasure**

Under UK GDPR, individuals have the right to have their personal data erased, however, this right is not absolute and only applies to certain circumstances. For example, when the processing is based in your own consent, this will be the case if your details are in our distribution list, you can ask us to stop processing this data at any time, and your personal data destroyed.

The right to erasure does not apply when the Commission has obtained your personal data for carrying out its statutory duties listed under section 1 to 4 above, in which case, we will retain the data for as long as necessary in order to fulfill our functions.

### **Data outwith the EAA (European Economic Area)**

We do not transfer or process any personal data outside the EEA.

### **The right to lodge a complaint with a supervisory authority**

If you ask the Commission questions about your data or ask for copies of your personal data and are unhappy with our response you can contact the UK Information Commissioner to complain. You can read more and get contact details from their website at: <https://ico.org.uk/concerns/>

### **Keeping your data & keeping it up to date**

We will retain your personal data for as long as is necessary for the purpose it was collected. At the end of the retention period, your personal data will be disposed of securely. In most cases, where this relates to people who have been subject to measures under mental health or incapacity legislation, we will keep this data for 30 years since the last entry in your file.



The retention criterion have been adopted in line with the Guidance produced by NHS Scotland (Scottish Government Records Management: NHS Code of Practice (Scotland) Version 2.1 January 2012

<https://www.gov.scot/publications/scottish-government-records-management-nhs-code-practice-scotland-version-2-1-january-2012/>)

This will guarantee that relevant information is kept to protect individuals' rights in case they want to raise concerns about the service received while under the scope of these Acts, and will allow the Commission to fulfil its statutory duties.

Other personal information collated during our visits, engagement events, or other activities are kept for much shorter periods. For example, between 2 and 3 years for identifiable data collected during our visits.

We have many records management rules relating to different records which we hold for different reasons, so if you have any questions relating to how long we keep records, please email us at: [mwc.enquiries@nhs.scot](mailto:mwc.enquiries@nhs.scot)

It's important that you let us know if your contact details change so that we can keep our records up to date.

## **Caldicott Guardian**

Our Caldicott Guardian is the person responsible for ensuring that appropriate and effective controls are in place to protect the confidentiality of health information that we hold.

Any queries about how we manage personal information within the organisation can be sent in the first instance to our Data Protection Officer who will discuss your query with the Caldicott Guardian before responding to you.

## **Useful links**

- [Information Commissioner's Office](#)
- [Health Rights Information Scotland](#)