

# Scottish Child Abuse Inquiry

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## **Factsheet – for witnesses in the Scottish Child Abuse Inquiry (“SCAI”) 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’s 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 their investigations and evidence gathering, and making recommendations in its report(s).

### **What’s this Inquiry about?**

SCAI’s tasks are determined by a 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.

In the course of its work, SCAI’s procedures include case studies in the course of which the provision of care by a particular organisation or of a particular type are 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 is a senior Scottish judge, SCAI is not a court. SCAI's purposes do not include determining whether any person or organisation is liable to pay compensation or whether any crimes have been committed. The Chair does not have power to award compensation nor does she have the power find anyone guilty of having committed an offence.

## 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, written reports of abuse, documents about an organisation's procedures and policies, and any 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: [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 in writing or orally or both, we hope you will agree to provide it voluntarily.

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
- 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 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 also 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 give you notice in advance of the general topics we will ask you about, and you will be given notice of the allegations relating to you so that you have time to think about them before attending the interview.

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, which tend to be the same questions asked of all witnesses involved with the same case study, and will 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 Inquiry team will 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**

We will ask you to review your draft witness statement, and to sign it once you are content with its terms.

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. Your statement will be published by the Inquiry – your identity and the identity of others you name or refer to in the statement may be redacted.

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 have to 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](#). The effect of this order is that the identity of anyone named as an abuser will not normally be revealed by the Inquiry 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 to reveal a person's identity where she considers it necessary 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 not be protected by her general restriction order, we will let you know.

The Chair's order 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 Inquiry findings or reports the Chair will decide whether we should make public the identities of people named as abusers.

## **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 statements of some witnesses who do not give oral evidence may be read aloud by counsel to the Inquiry at public 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.

You should note that the Chair does have the power to compel witnesses to attend even if they feel they should not have to do so, or would prefer alternative dates.

Public hearings are more formal than interviews. They are not, however, as formal as court proceedings. Counsel to the Inquiry, core participants and/or their lawyers, and any others who have leave to appear and/or their lawyers may be in the room. Members of the public and the media may also be present. Normally, all the questions are asked by counsel to the Inquiry.

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 what you have to say about evidence given by other witnesses, or about what appears in records.

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

### **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.

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.

If you decide you need a lawyer you can instruct one 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 website:

<https://www.childabuseinquiry.scot/terms-and-conditions/>

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: <https://www.childabuseinquiry.scot/procedures/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 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: <https://www.childabuseinquiry.scot/key-documents/ico-registration/>

## **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 [kathleen.wilson@childabuseinquiry.scot](mailto:kathleen.wilson@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: [Your personal information concerns | ICO](#), by calling their helpline on 0303 123 1113 or by writing to them:

UK Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire