

Privacy statement

The Mental Welfare Commission for Scotland fully respects your right to privacy. New European legislation is being introduced in May 2018. This is often referred to as the General Data Protection Regulations or GDPR.

In the UK there is also a new Data Protection Act to make sure that UK organisations comply with GDPR. A lot of things will stay the same under this new legislation and we will continue to look after your personal information and make sure it is secure.

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 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 and IT Manager. If you have any questions about how the Commission handles your data, you can send a message to them via email at; enquiries@mwscot.org.uk.

You can also write to:

DPO

Mental Welfare Commission for Scotland

Thistle House

91 Haymarket Terrace

Edinburgh

EH12 5HE

Purpose of the processing and the lawful basis for the processing

The Commission processes data for a number of purposes. Most of our processing is necessary so that we can carry out our statutory duties. Our functions and duties are set out in legislation under:

The Mental Health (Care and Treatment) (Scotland) Act 2003

The Adults with Incapacity (Scotland) Act 2000

We do not rely on consent in relation to any of the duties listed under 1 to 5 below. We process personal data and sometimes personal, sensitive data to enable us to carry out these functions and this is the legal basis of the processing.

Our functions and duties include:

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. Proving 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 because:

- 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.
- We need to have a clear record of what was discussed and the advice we have given.
- 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.

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. 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.mwscot.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.

6. 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/mailing-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 enquiries@mwcscot.org.uk. If you do this, your details will be removed from our mailing list database.

Your rights

If we hold personal data about you, you have rights.

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 an explanation about what they mean if the Commission holds data about you.

These rights apply to data about you. This means that if you object about how we handle your data or about whether we hold it and process it at all, your objection must be related specifically to data we hold about you. Your right to make an objection is not about how we process personal data generally. If we investigate and establish that there are compelling, legitimate grounds for the processing, we can continue to process the data. We will let you know that we are doing this.

Data erasure

The Commission cannot erase the personal data we hold about you where this would stop us being able carry out our legal duties. This means we cannot erase the personal data we hold about you if it comes from carrying out the duties listed under 1 to 5 above.

Where we hold your data based on your consent, for example distribution of our email notifications or publications, you can ask us to stop at any time and you can ask to have your personal data destroyed.

Data 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.

Asking about the personal data we hold and asking for a copy of 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 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;

- An appropriate professional person involved in your care decides that disclosing the data would cause you or someone else serious harm
- where other people are identifiable in the data and they have not given us permission to disclose it to you

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 as this will be a much quicker way to get a copy of this document.

Data outwith the EEA (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 periodically delete data where there is no reason for us to hold it any longer. In most cases, where this relates to people who have been subject to legislation, we will keep this data for 3 years after we are notified of their death or where our systems indicate that the person is over 100 years old and there has been no activity on their record for 3 years.

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; enquiries@mwscot.org.uk

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 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](#)