

# Regulation of independent health care services - Privacy Notice

## The General Data Protection Regulation (GDPR) (EU) 2016/679 and Data Protection Act 2018

The *General Data Protection Regulation (GDPR) (EU) 2016/679* and *Data Protection Act 2018* came into force on 25 May 2018. All organisations that process personal data are required to comply with the requirements of this legislation.

### Whose personal data do we process and why?

We process the personal data of a number of different groups of people for a range of explicit purposes. This section provides a summary of whose personal data we process and why. It is not an exhaustive list but provides an indication of key groups and purposes.

#### Health care service providers, managers and workers

As the independent regulator of independent health care services across Scotland, we have powers under the *National Health Service (Scotland) Act 1978* <http://www.legislation.gov.uk/asp/2010/8/part/5> to collect and process personal information about people who provide, manage and work for independent health care services. This can include their name, address and other contact details, date of birth, qualifications, training and experience, data relevant to disclosure and Protecting Vulnerable Groups (PVG) checks, employment history including any disciplinary action and outcome.

When exercising these and other powers we are required to comply with all aspects of *The General Data Protection Regulation (GDPR) (EU) 2016/679* and *Data Protection Act 2018*.

We process this personal information for a number of purposes:

- processing applications for the registration of new independent health care services
- maintaining a public register of regulated independent health care services
- administering regulatory notifications and annual returns

- inspecting registered independent health care services to support improvement in the quality of care experienced by people and their relatives or carers
- investigating any complaint raised against an independent health care service or Healthcare Improvement Scotland itself, including making any necessary publications about the investigation
- taking formal enforcement action to require independent health care services to improve the quality of their care
- providing information and advice to people who provide independent health care services, or who are considering becoming independent health care service providers
- sending communications connected with independent health care service registration or notifications
- dealing with any calls to our independent health care enquiry line, and
- policy development, research and engagement activities to improve independent health care quality standards.

## People experiencing care

Access to personal information about people experiencing independent health care plays an essential role in Healthcare Improvement Scotland's inspections and the wider regulation of independent health care services in Scotland.

Our statutory powers under *The National Health Service (Scotland) Act 1978* <http://www.legislation.gov.uk/asp/2010/8/part/5> allow us to obtain and review the personal details of individual people experiencing health care. This includes information from medical and care records, where it is necessary to do so as part of our regulatory inspections and when undertaking investigations related to complaints and enforcement action. When exercising these powers we are required to comply with all aspects of data protection law. In this case, our statutory obligations mean we do not need a person's consent to process personal data.

We may need to access personal and sensitive personal information of people experiencing care to allow our inspectors to assess whether:

- providers of health care are using care plans to ensure that people experience person-led care that meets their clinical and personal needs
- lessons have been learned from complaints and serious incidents to improve safety and care, and whether independent health care providers have met their duty of candour obligations to explain and apologise for serious mistakes
- the rights of people who have been detained under the Mental Health Act are being respected and protected
- medication records are kept properly
- information has been shared properly (lawfully, effectively and appropriately) between care services
- people are properly involved in decisions about their care, they are asked to give their consent about their care, and their decisions are respected, and

- adult/child protection concerns are being appropriately acted on to ensure that people who may be vulnerable are being protected from abuse and harm.

We also obtain information in a number of other ways, outwith our inspections, to help us to monitor the quality of care, prioritise our work, and identify problems with services that may require us to take regulatory action. We do this in a number of ways, for example:

- we invite people who use independent health care services to share their experiences with us, and
- we share information locally and nationally with other organisations involved in commissioning, providing and regulating care, for example, local authorities, the Care Inspectorate, and professional regulators like the General Medical Council, General Dental Council and the Nursing and Midwifery Council.

Where possible, we will use anonymised information or information other than personal information to carry out our work, but looking at, and using, personal information is often the only practical way in which we can carry out our work effectively. For example, it may be difficult and time consuming for an independent health care provider to make anonymised copies of any records we need to see as we request them during an inspection. In other cases, we may need to know whose records we are looking at because we are trying to understand how that person's needs have been met.

When we receive a complaint from a person we make up a file containing the details of the complaint. This normally contains the identity of the complainant and any other individuals involved in the complaint.

We will only use the personal information we collect to process the complaint and to check on the level of service we provide.

We usually have to disclose the complainant's identity to whoever the complaint is about. This is inevitable where, for example, the complaint is in relation to the care of an individual. If a complainant doesn't want information identifying him or her to be disclosed, we will try to respect that. However, it may not be possible to handle each complaint on an anonymous basis.

Similarly, where enquiries are submitted to us in relation to independent health care services or our own operations, we will only use the information supplied to us to deal with the enquiry and any subsequent issues and to check on the level of service we provide.

## Participants in our research and policy work

We may ask whether you wish to take part in a research project, consultation or survey. Participation is entirely voluntary and any information is collected with your consent.

Where possible we will avoid collecting personal information about you, when collecting this information. Where this cannot be avoided, we delete your personal data as soon as we have collated the information into an anonymised format.

We will inform you that research-related information may be held by external researchers with whom we are working.

If you choose to provide us with information that identifies you, this will not be published in any reports.

## Sharing your information

We regularly need to share personal information with other organisations when fulfilling our statutory functions and obligations. Where this is necessary we are required to comply with all aspects of the *General Data Protection Regulation (GDPR) (EU) 2016/679 and Data Protection Act 2018*. We will only disclose or share confidential personal information with your consent or where it is necessary to do so to perform our regulatory functions or for another legitimate and lawful purpose such as complying with employment or health and safety legislation.

We work closely with other organisations that manage and oversee the health and social care system. We will share information with these organisations for example where we are carrying out joint inspections with partner agencies, investigating complaints or taking enforcement action.

We have memoranda of understanding with partner agencies with whom we regularly share personal information to ensure that this information is properly protected and appropriately, fairly and lawfully handled and disposed of. These include, but are not limited to:

- Disclosure Scotland
- The Care Inspectorate
- Mental Welfare Commission
- Nursing and Midwifery Council (NMC)
- General Medical Council (GMC)
- General Dental Council (GDC)

We may share any information that you provide to us, including information about your identity and the identities of others, with Police Scotland and other agencies involved in the prevention and detection of crime, the apprehension or prosecution of offenders or other unlawful activities. We will only do so when it is considered necessary and proportionate to do so.

## How long we keep your personal data

We will only retain your information for as long as we need to support the purposes for which it was collected. Records are maintained in line with Healthcare Improvement Scotland's retention schedule which determines the length of time records should be kept. At the end of this period the information is destroyed or deleted in line with our confidential destruction procedures.

## Your rights regarding the personal data we hold about you

The *General Data Protection Regulation (GDPR) (EU) 2016/679 and Data Protection Act 2018* give you a number of rights relating to the personal data we hold about you.

You can ask us for a copy of the information we hold about you, and to ask us to delete it or correct it if you think it is inaccurate. You can ask for data you have given us under contract or consent and that is processed automatically to be sent to you in an electronic format. You can ask us to stop or limit the processing of your personal data at any time.

It should be noted that where we process personal data for law enforcement purposes this is done so under Part 3 of the *Data Protection Act 2018*. Part 3 generally follows the requirements found in The *General Data Protection Regulation (GDPR) (EU) 2016/679*. However, it takes also into account the operational needs of law enforcement agencies. Certain rights under the *General Data Protection Regulation (GDPR) (EU) 2016/679*, such as the right to object and the right to data portability, do not exist in Part 3 of the *Data Protection Act 2018*. Further, there are exemptions and restrictions that can, in some circumstances, be legitimately applied to prevent individuals from exercising rights. It is important to note that subject access rights and the rights to rectification, erasure and restriction do not apply to the processing of 'relevant personal data' in the course of a criminal investigation or criminal proceedings.

## Complaints or queries about how we process your personal information

If you have any complaints or queries about how we process your personal information you should contact Healthcare Improvement Scotland's Data Protection Officer by using the details below:

**Data Protection Officer**  
**Healthcare Improvement Scotland**  
**Gyle Square**  
**1 South Gyle Crescent**  
**Edinburgh**  
**EH12 9EB**

**Telephone 0131 623 4605**  
**Email: [his.foi@nhs.scot](mailto:his.foi@nhs.scot)**

We try to meet the highest standards when collecting and using personal information. For this reason, we take any complaints we receive about this very seriously. We encourage people to bring it to our attention if they think that our collection or use of information is unfair, misleading or inappropriate. We would also welcome any suggestions for improving our procedures.

If you are dissatisfied with our response to a complaint you send us, or have any concerns about our handling of your personal data, you can complain to the Information Commissioner's Office by using the details below:

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

**Telephone: 0303 123 1113**

<https://ico.org.uk/concerns/handling/>

To find out more about how we use your personal data, please go to:  
[www.healthcareimprovementscotland.org/footer/nav/respecting\\_your\\_privacy.aspx](http://www.healthcareimprovementscotland.org/footer/nav/respecting_your_privacy.aspx)

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