



**Data Processing Agreement**  
**between**  
**The Scottish Social Services Council**  
**and**  
**The Care Inspectorate**

## **DATA PROCESSING AGREEMENT**

**between**

**The Scottish Social Services Council** having its headquarters at Compass House, 11 Riverside Drive, Dundee, DD1 4NY ("the SSSC") (the Data Controller)

and

**Social Care and Social Work Improvement Scotland, commonly known as "the Care Inspectorate"** having its headquarters at Compass House, 11 Riverside Drive, Dundee, DD1 4NY ("the Care Inspectorate") (the Data Processor)

### **BACKGROUND**

- A. The SSSC Processes Personal Data (each as defined below) in connection with its own statutory functions.
- B. The SSSC wishes to engage the Services of the Care Inspectorate (as defined below) to Process certain Personal Data on its behalf. No fees are payable to or by either party in respect of this Agreement.
- C. The Personal Data that will be Processed by the Care Inspectorate as part of such Services is listed below and more particularly described in the Schedule to this Agreement ('the Schedule').
  - Gender
  - Date of birth
  - Ethnicity
  - Disability
- D. The Care Inspectorate will process Personal Data on all those employed as social service workers on behalf of the SSSC, with the exception of data on the date of birth, ethnicity and gender of childminders which is processed under the Data Sharing Agreement between the parties. For the avoidance of doubt, personal data on the disability of child minders is processed under this Data Processing Agreement.

**THE PARTIES HEREBY MUTUALLY AGREE AS FOLLOWS:**

**1. DEFINITIONS AND INTERPRETATION**

1.1 The following words and phrases used in this Agreement and the Schedule shall have the following meanings:

| <b>DEFINITION</b>      | <b>INTERPRETATION</b>  |
|------------------------|--|
| "Agreement"            | means this agreement and any variations made in accordance with Clause 5 hereof  |
| "Annual Returns"       | Means the process whereby the Care Inspectorate collects certain Data (including Personal Data) from registered Care Services in Scotland on an annual basis to help the Care Inspectorate plan, inform and carry out inspections. The Data collected relates to data about registered Care Services in Scotland and about individuals who work in registered Care Services in Scotland  |
| "Basic Cleaning"       | has the meaning as set out in the data specification provided to the SSSC along with the data  |
| "Care Service"         | has the meaning given in the Public Services Reform (Scotland) Act 2010 and "Care Services" shall be construed accordingly   |
| "Data Controller"      | has the meaning given in the Data protection Laws  |
| "Data Processor"       | has the meaning given in the Data Protection Laws  |
| "Data Protection Laws" | means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory |

|                        |   |
|------------------------|---|
|                        | modification or re-enactment thereof and the GDPR   |
| "Data Subject"         | has the meaning given in the Data Protection Laws   |
| "Default"              | means any breach of the obligations of a Party (including material breach) or any negligent act, omission or statement of a Party in connection with or in relation to the Agreement  |
| Final Data Collection  | means the last date that the Care Inspectorate collect data for the purposes of complying with the terms of this Agreement  |
| "UK GDPR"              | means the UK General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC                          |
| "Personal Data"        | has the meaning given in the Data Protection Laws and includes Personal Data provided to or otherwise made available to the SSSC by or on behalf of the Care Inspectorate for the purposes of providing Services and in respect of which, the SSSC is Data Controller and the Care Inspectorate is Data Processor |
| "Personal Data Breach" | has the meaning given in the Data Protection Laws   |
| "Pseudonymisation"     | has the meaning given in the Data Protection Laws   |
| "Processing"           | has the meaning given in the Data Protection Laws (and "Process", and "Processes" shall be construed accordingly)   |
| "Services"             | means any of the following services provided by the Care Inspectorate: <ul style="list-style-type: none"> <li>a. the annual collection of certain Personal Data, as more particularly described in the Schedule to this Agreement, from registered Care Services in Scotland in</li> </ul>                        |

|   |   |
|---|---|
|   | <p>the course of the Care Inspectorate's Annual Returns</p> <p>b. the basic cleaning, secure storage and anonymisation of certain Personal Data, as more particularly described in the Schedule to this Agreement</p> <p>c. the secure transfer of certain Personal Data, as more particularly described in the Schedule to this Agreement, to the Workforce Intelligence Team of the SSSC following completion of the data collection, using an agreed method.</p> |
| "Sub-Data Processor"                    | means a third party whom either party has subcontracted to carry out its obligations under this Agreement   |
| "Supervisory Authority"                 | has the meaning given in the Data Protection Laws   |
| "Technical and Organisational Measures" | means measures to ensure appropriate security of Personal Data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage   |
| "the 2001 Act"                          | means the Regulation of Care (Scotland) Act 2001  |
| "the 2007 Act"                          | means the Statistics and Registration Service Act 2007  |
| "the 2010 Act"                          | means the Equality Act 2010.  |

## **2. TERM**

- 2.1 This Agreement shall commence from the last date of signature.
- 2.2 This Agreement shall continue in full force and effect for so long as the Care Inspectorate is Processing Personal Data on behalf of the SSSC or until terminated in accordance with Clause 6 below.
- 2.3 The "Authorised Person" for each Party is as listed in Part 2 of the Schedule attached to and forming part of this Agreement ("Schedule"). The Schedule is intended to be contractual in nature. It forms part of the Agreement and should be construed accordingly.

### **3. DATA PROCESSING OBLIGATIONS**

- 3.1 The Care Inspectorate acknowledges that any Personal Data described in the scope of the Schedule will be Processed in connection with the Services under this Agreement. For the purposes of any such Processing, parties agree that the Care Inspectorate acts as the Data Processor and the SSSC acts as the Data Controller. Both Parties agree to negotiate in good faith any such amendments to this Agreement that may be required to ensure that both Parties meet all their obligations under the Data Protection Laws. The provisions of this clause 3.1 are without prejudice to any obligations and duties imposed directly on the Care Inspectorate under the Data Protection Laws and the Care Inspectorate hereby agrees to comply with those obligations and duties.
- 3.2 The Care Inspectorate will, in respect of the Services, make all necessary preparations to ensure it will be compliant with the Data Protection Laws.
- 3.3 The Care Inspectorate will provide the SSSC with the contact details of its Data Protection Officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.
- 3.4 The Care Inspectorate must:
- a. agree and comply with the terms of the data processing provisions set out in the Agreement and the Schedule
  - b. process Personal Data only as necessary in accordance with obligations under the Agreement and any lawful written instructions given by the SSSC (which may be specific or of a general nature), including with regard to transfers of Personal Data to a third country or an international organisation unless required to do so by Union or Member State law to which the Care Inspectorate is subject; in such a case the Care Inspectorate shall inform the SSSC of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest
  - c. subject to clause 3.4.b, only Process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with the SSSC's prior written consent
  - d. take all reasonable steps to ensure that any Care Inspectorate employees or other persons authorised to Process the Personal Data are subject to a duty of confidentiality and comply with the Care Inspectorate's internal policies and procedures relating to information governance and data protection.

- 3.5 The Care Inspectorate shall not engage a Sub-Data Processor to carry out Processing in connection with the Services without prior specific or general written authorisation from the SSSC. In the case of general written authorisation, the Care Inspectorate must inform the SSSC of any intended changes concerning the addition or replacement of any other Sub-Data Processors and give the SSSC an opportunity to object to such changes.
- 3.6 If the Care Inspectorate engages a Sub-Data Processor for carrying out Processing activities on behalf of the SSSC, the Care Inspectorate must ensure that the same data protection obligations as set out in this Agreement are imposed on the Sub-Data Processor by way of a written and legally binding contract. The Care Inspectorate shall remain fully liable to the SSSC for the performance of the Sub-Data Processor's obligations.
- 3.7 The Care Inspectorate must notify the SSSC if, in relation to any Personal Data Processed in respect of the provision of the Services under this Agreement, it:
- a. receives a request exercising any of the rights of the Data Subject as laid down in Chapter III of the GDPR
  - b. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws
  - c. receives any communication from the Supervisory Authority or any other regulatory authority
  - d. receives a request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulatory order
- within **10 days** of receipt of the request or any other period as agreed in writing with the SSSC from time to time.
- 3.8 The Care Inspectorate must, in relation to any Personal Data Processed in respect of the provision of the Services under this Agreement:
- a. taking into account the nature of the Processing, assist the SSSC by appropriate Technical and Organisational Measures, insofar as this is possible, to fulfil the SSSC's obligation to respond to requests exercising the Data Subject's rights laid down in the Data Protection Laws
  - b. assist the SSSC in complying with the obligations pursuant to Articles 32 to 36 GDPR taking into account the nature of the Processing and the information available to the Care Inspectorate and in particular:

- notify the SSSC of any Personal Data Breach without undue delay after becoming aware of it
  - where possible provide the SSSC with any information it requires in order to notify the Supervisory Authority of any Personal Data Breach
  - support and assist the SSSC with the communication of any Personal Data Breach to a Data Subject
  - support and assist the SSSC in the preparation of any data protection impact assessments
  - support and assist the SSSC with regard to any prior consultation of the Supervisory Authority and any subsequent advice from the Supervisory Authority.
- c. delete any and all copies of the Personal Data relating to the Processing at the same time as the remainder of the data collected as part of the Annual Returns process for the year in which the Personal Data was collected unless Data Protection Laws require otherwise
- d. make available to the SSSC all information necessary to demonstrate compliance with the obligations laid down in Article 28 GDPR and allow for and contribute to audits, including inspections, conducted by the SSSC or another auditor mandated by the SSSC.
- 3.9 The Care Inspectorate must immediately inform the SSSC, if in its opinion, an instruction from the SSSC infringes any obligation under the Data Protection Laws.
- 3.10 The Care Inspectorate must maintain written records including in electronic form of all Processing activities carried out in respect of the provision of the Services under this Agreement or otherwise on behalf of the SSSC and such records shall contain the information set out in Article 30(2) GDPR.
- 3.11 If requested, the Care Inspectorate must make such records referred to in clause 3.10 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 3.12 The Care Inspectorate shall comply in all respects and shall at all times act in such a manner to assist the SSSC to comply, with the following:
- a. the Data Protection Laws and all codes and guidance issued pursuant thereto



- b. the Human Rights Act 1998
  - c. the common law duty of confidentiality
  - d. the Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004
  - e. the Statistics and Registration Service Act 2007.
- 3.13 The Care Inspectorate shall not seek to gain commercial advantage from its access to Personal Data processed in respect of the provision of the Services under this Agreement.
- 3.14 Without prejudice to Articles 82, 83 and 84 GDPR, if the Care Inspectorate infringes the terms of the GDPR by determining the purposes and means of Processing of the Personal Data, the Care Inspectorate shall be considered to be a Data Controller in respect of that Processing.

#### **4. SECURITY**

- 4.1 The Care Inspectorate must evaluate the risks inherent in the Processing and implement the measures required pursuant to Article 32 GDPR to mitigate those risks. In particular, the Care Inspectorate will employ such appropriate Technical and Organisational Measures as in its sole discretion it thinks fit to ensure the security of any Personal Data, including keeping it safe from unauthorised use or access, alteration, transmission, publication, loss, destruction, theft or disclosure.
- 4.2 Without prejudice to the requirements of clause 3.8, the Care Inspectorate shall notify the SSSC without undue delay if it becomes aware of any accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed including if such Personal Data becomes damaged, corrupted or unusable.
- 4.3 All Personal Data shall be stored securely until the Care Inspectorate deletes it. If Union or Member State law requires storage of the Personal Data, the Care Inspectorate shall store the Personal Data securely.

#### **5. DISPUTE RESOLUTION AND VARIATION**

- 5.1 Any disputes arising will be referred first to the Authorised Persons and if not resolved within 10 working days, will then be escalated to the signatories to this Agreement.

5.2 No variation of this Agreement shall be effective unless it is in writing and signed by authorised signatories of both parties.

## **6. TERMINATION**

6.1 Either party shall be entitled to terminate this Agreement by giving written notice no less than eight months before Final Data Collection in the last year in which the agreement will remain in force or on such shorter period as the parties may agree.

## **7. GOVERNING LAW**

7.1 This Agreement shall be governed by and construed in accordance with Scots law.

IN WITNESS WHEREOF this Agreement consisting of this and the 10 preceding pages are executed as follows:

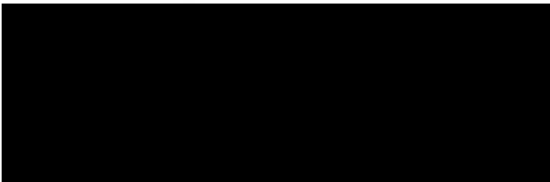
**SIGNED** by **Maree Catherine Allison, Acting Chief Executive, Scottish Social Services Council**

for and on behalf of the **Scottish Social Services Council (Data Controller)**

Signed: 

Date: 5 August 2022

Place of signing c/o SSSC, Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

Signed (witness) 

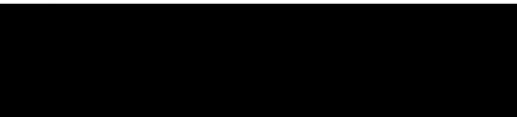
Witness name: 

Address: c/o SSSC, Compass House, 11 Riverside Drive, Dundee, DD1 4NY.

Date: 5 August 2022

Place of signing: As Above

**SIGNED** by **Edith Macintosh, Interim Chief Executive, Care Inspectorate**  
for and on behalf of **Social Care and Social Work Improvement Scotland, commonly known as "the Care Inspectorate" (Data Processor)**

Signed 

Date 18.8.22

Place of signing Compass House, Dundee

Signed (witness) 

Witness name 

Address 10 CARE INSPECTORATE, COMPASS HOUSE, 11 RIVERSIDE DRIVE, DUNDEE, DD1 4NY.

Date .....

Place of signing .....

## **SCHEDULE**

The following is the Schedule referred to in the foregoing Agreement between the SSSC and the Care Inspectorate.

### **Part 1**

#### **Data Processing provision as required by Article 28(3) UK GDPR.**

This Schedule includes certain details of the Processing of Personal Data in connection with the provision of Services under the Agreement. The obligations of the Care Inspectorate as the Data Processor and the rights of the SSSC as the Data Controller are set out in the Agreement.

#### **1. Subject matter and duration of the Processing of Personal Data**

The Care Inspectorate will collect certain Personal Data on behalf of the SSSC from registered Care Services in Scotland for the purposes of informing the SSSC about the Gender, Date of Birth, Ethnicity and Disability status of individuals who have worked in registered Care Services over the course of the year (namely, members of staff who were on the payroll of the Care Service at any point in the last calendar year up to 31 December). This Personal Data will be collected annually in the course of the Care Inspectorate's collection of 'Annual Returns' information from providers of Care Services. For the avoidance of doubt, the Care Inspectorate remains Data Controller with respect to all other Personal Data collected as part of the Annual Returns process.

The Personal Data collected as part of the Services under this Agreement will be held by the Care Inspectorate on behalf of the SSSC until the Care Inspectorate anonymises and transfers it securely to the Workforce Intelligence Team of the SSSC following completion of the data collection and using an agreed method. When creating the dataset for the SSSC the Care Inspectorate will use its operational systems and appropriate statistical techniques to carry out basic cleaning of the Data guided by the standard set out in the Code of Practice for Statistics where in the Care Inspectorate's sole discretion it determines it is relevant and appropriate to do so.

After the end of each annual provision of the Services under this Agreement the Care Inspectorate will within 24 months delete any and

all copies of the Personal Data collected on behalf of the SSSC under the Services unless Union or Member State law requires storage of the Personal Data.

## **2. The nature and purpose of the Processing of Personal Data**

The nature of the Processing of the Personal Data is:

- its collection, basic cleaning, secure storage and anonymisation by the Care Inspectorate on behalf of the SSSC
- its secure transfer from and by the Care Inspectorate to the SSSC using an agreed method
- its inclusion in an anonymised and suppressed format within the annually produced and published Scottish Social Service Sector: Report on Workforce Data by the SSSC.

The SSSC has a delegated statutory function in terms of section 58 of the 2001 Act to ascertain what numbers of social workers and social service workers of other descriptions are required in Scotland. To carry this out the SSSC produces data on the Scottish social service sector's workforce and in particular produces and publishes annually the Scottish Social Service Sector: Report on Workforce Data.

The SSSC also has a delegated statutory function in terms of section 58 of the 2001 Act to ascertain what education or training is required by persons who are, or wish to become, social service workers.

The purpose of the Processing of the Personal Data is to use it along with other Data and Personal Data (provided to the SSSC by the Care Inspectorate and with Personal Data collected by the SSSC directly from local authorities in Scotland), to inform and be included within the Scottish Social Service Sector: Report on Workforce Data which the SSSC produces and publishes annually. The Report is produced by the SSSC as official statistics for the purposes of the 2007 Act.

Any Data and Personal Data used in the SSSC's publications that concern registered Care Services will refer to the Care Inspectorate data source or publication used (eg Care Inspectorate Care Service register at 31 December 2018 or Care Inspectorate, Childcare Statistics, 31 December 2018). Where the Care Inspectorate includes in a publication workforce information which is published in the SSSC's statistical releases, the Care Inspectorate will include the following reference "SSSC Workforce Statistics December YY – an official statistics product".

The SSSC will consult with the Care Inspectorate regarding the timing of publication and content of data to be published on the workforce and

services arising from the data shared under this Agreement. The Care Inspectorate will consult with the SSSC regarding the publication of workforce information.

Production and publication of the Scottish Social Service Sector: Report on Workforce Data assists the SSSC to fulfil its delegated statutory functions in terms of section 58 of the 2001 Act and in terms of the 2007 Act. It also assists the SSSC, in the exercise of its functions, to meet the public sector equality duty in terms of section 149 of the 2010 Act.

The Personal Data will be used for statistics and research purposes to support planning only.

### **3. The type of Personal Data to be Processed**

The Personal Data that will be Processed by the Care Inspectorate on behalf of the SSSC is:

- Gender
- Date of birth
- Ethnicity
- Disability

### **4. The categories of Data Subject to whom Personal Data relates**

The Data Subjects are individuals who worked (were members of staff on the payroll) in the preceding calendar year within registered Care Services in Scotland (with the exception of child minders).

**Part 2**

Any further information, including documents referred to, or any questions or comments relating to this Agreement should be directed to the following Authorised Persons, who may change from time to time in accordance with instructions from an Authorised Person in writing (including e-mail):

|                                  | Name and contact details |
|----------------------------------|--------------------------|
| Scottish Social Services Council | [REDACTED]               |
| Authorised Person                |                          |
| Care Inspectorate                | [REDACTED]               |
| Authorised Person                |                          |

