

Public Records (Scotland) Act 2011

**Mental Welfare Commission for Scotland
Assessment Report**

The Keeper of the Records of Scotland

20 August 2014

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1. Public Records (Scotland) Act 2011

The Public Records (Scotland) Act 2011 (the Act) received Royal assent on 20 April 2011. It is the first new public records legislation in Scotland since 1937 and came fully into force on 1 January 2013. Its primary aim is to promote efficient and accountable record keeping by named Scottish public authorities.

The Act has its origins in *The Historical Abuse Systemic Review: Residential Schools and Children's Homes in Scotland 1950-1995* (The Shaw Report) published in 2007. The Shaw Report recorded how its investigations were hampered by poor record keeping and found that thousands of records had been created, but were then lost due to an inadequate legislative framework and poor records management. Crucially, it demonstrated how former residents of children's homes were denied access to information about their formative years. The Shaw Report demonstrated that management of records in all formats (paper and electronic) is not just a bureaucratic process, but central to good governance and should not be ignored. A follow-up review of public records legislation by the Keeper of the Records of Scotland (the Keeper) found further evidence of poor records management across the public sector. This resulted in the passage of the Act by the Scottish Parliament in March 2011.

The Act requires a named authority to prepare and implement a records management plan (RMP) which must set out proper arrangements for the management of its records. A plan must clearly describe the way the authority cares for the records that it creates, in any format, whilst carrying out its business activities. The RMP must be agreed with the Keeper and regularly reviewed.

2. Executive Summary

This report sets out the findings of the Keeper's assessment of the RMP of Mental Welfare Commission for Scotland by the Public Records (Scotland) Act 2011 Assessment Team following its resubmission to the Keeper on 30 June 2014.

The assessment considered whether the RMP of Mental Welfare Commission for Scotland was developed with proper regard to the 14 elements of the Keeper's statutory Model Records Management Plan (the Model Plan) under section 8(3) of the Act, and whether in this respect it complies with it and the specific requirements of the Act.

The outcome of the assessment and the Keeper's decision on whether the RMP of Mental Welfare Commission for Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Commission's aim is to ensure that care, treatment and support are lawful and respect the rights and promote the welfare of individuals with mental illness, learning disability and related conditions. Their duties are set out in the Mental Health (Care and Treatment) (Scotland) Act 2003.

The Adults with Incapacity (Scotland) Act 2000 provides a framework for safeguarding the welfare and managing the finances of adults (people aged 16 or over) who lack capacity due to mental illness, learning disability and related conditions.

They have supervisory, investigative and advisory duties under this Act in relation to welfare guardianship and welfare powers of attorney.

4. Keeper’s Assessment Process

The RMP was assessed by the Public Records (Scotland) Act Assessment Team on behalf of the Keeper. Assessors used the checklist elements listed in section 5, to establish whether Mental Welfare Commission for Scotland’s RMP was developed with proper regard to the elements of the Model Plan and is compliant with the Act. The assessment also considered whether there was sufficient supporting evidence of such compliance.

Key:

G	The Keeper agrees this element of an authority’s plan.		A	The Keeper agrees this element of an authority’s plan as an ‘improvement model’. This means that he is convinced of the authority’s commitment to closing a gap in provision. He will request that he is updated as work on this element progresses.		R	There is a serious gap in provision for this element with no clear explanation of how this will be addressed. The Keeper may choose to return the RMP on this basis.
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5. Model Plan Elements: Checklist

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	G	G	<p>Since the original submission the Chief Executive of the Mental Welfare Commission for Scotland (MWC) has changed. The Records Management Plan (RMP) of MWC is accompanied by a letter from the new Chief Executive (Appendix 1), Colin McKay. Mr McKay, who is Data Controller for MWC, has delegated responsibility for the RMP to Ms Alison McRae, Head of Corporate Services. Ms McRae will report directly to Mr McKay. Ms McRae will also provide support to the Information Manager in the day-to-day management of MWC's records management provisions.</p> <p>The Keeper agrees that this is an appropriate individual to take senior management responsibility for records management within MWC.</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>Alison Aiton, Information Manager, has been identified in the RMP as the individual with operational responsibility for records management within MWC.</p> <p>In addition to the development and implementation of the RMP, Ms Aiton is responsible for ensuring compliance with the RMP and best practice records management, and providing records management training to all MWC staff.</p> <p>The Keeper agrees that this is an appropriate individual to have day-to-day responsibility for records management.</p>
3. Policy <i>Compulsory element</i>	G	G	<p>MWC has provided their Records Management Policy (Appendix 2) as evidence towards this element.</p> <p>The Policy highlights the importance which MWC places on effective records management. The policy applies to all MWC staff, Board members and third parties</p>

			<p>who are provided with access to MWC data.</p> <p>The Policy defines MWC’s interpretation of records management and why it is important. It also shows a commitment to identifying and closing gaps in provision.</p> <p>The Policy also clearly sets out the roles and responsibilities that staff have in ensuring compliance with the RMP.</p> <p>The Policy also sets out the legislative and policy framework within which MWC operates.</p> <p>The Policy also shows a commitment to the training of staff on information governance issues, including records management. The Keeper commends this and would be interested to see examples of the training provided to staff.</p> <p>The Policy has been approved by the Board of MWC and will be reviewed annually. This policy is published on MWC’s website which the Keeper commends.</p> <p>The Keeper agrees that MWC has a robust records management policy in place which clearly demonstrates their corporate approach to records management and which shows a welcome commitment to staff training.</p>
4. Business Classification	A	A	<p>MWC has provided a copy of its Business Classification Scheme (Appendix 3). This appears to comprehensively cover the record creating activities of MWC. Most of the BCS has retention information added to it (apart from the section dealing with Visits and Teams), which is to be commended as this creates a central document which details the types of records being created and the retention actions to be applied to these.</p> <p>The BCS is not yet operational as it requires further work and is currently in draft, but MWC intends to roll out the BCS in 2014-15, which will coincide with their move</p>

			<p>to new server. The BCS structure will be the basis for MWC's folder structure. It will also be used within the Commission Central repository which holds final, approved versions of corporate records. This is situated within MWC's case management system IIMP (Integrated Information Management Portal).</p> <p>Also provided as evidence is a letter from the person named in Element 1 (Appendix 4) as having senior responsibility for records management. The letter provides a commitment to MWC's proposed programme of work on implementing its BCS. This is welcomed by the Keeper.</p> <p>The Keeper can agree on an improvement model basis that MWC's proposals for implementing a BCS on its records seem robust, provided he is kept informed of this work as it progresses.</p>
5. Retention schedule	A	A	<p>Similar to the work currently taking place on the BCS, the retention schedules are also being developed. In order to undertake the work on the BCS and retention schedules, MWC have established a series of working groups to create a BCS and retention schedules for each functional area within the organisation. These consist of records 'owners' or Records Management Champions from each business area. Templates have been created in order to ensure consistency within across business areas. The Information Manager (see Element 2) is overseeing this project. The Keeper commends the idea of involving staff in business areas to contribute towards the development of the BCS and retention schedules.</p> <p>Progress on this project will be reported through a newly constituted Records Management Review Group (RMRG). The RMRG will meet twice a year and will be responsible for ensuring the RMP is implemented across MWC and will also undertake to assess and review the RMP once implemented. The Group will include the individuals named in Elements 1 and 2 as well as other members of the executive team and will report annually to the Board.</p>

			The Keeper can agree on an improvement model basis that MWC's proposals for implementing retention schedules on its records seem robust, provided that he is kept informed of this work as it progresses.
6. Destruction Arrangements <i>Compulsory element</i>	G	G	<p>MWC has provided details of its destruction arrangements.</p> <p><u>Paper</u> MWC has a contract in place with Shred-It, who provide a confidential shredding service. There are secure waste bins within MWC's premises. MWC has provided details of the contract as well as a sample destruction certificate (Appendix 5).</p> <p><u>Hardware</u> MWC has a contract in place with CCL North Ltd for the secure destruction of hardware. MWC has provided copies of an audit report showing that the secure destruction of hardware takes place as and when required (Appendix 6).</p> <p><u>Back-ups</u> MWC has provided details of its electronic records back-up systems. Data back-ups are done using two electronic drives, which are overwritten on a fortnightly basis, meaning that deleted electronic records/emails are kept for a maximum of 4 weeks before being overwritten. This has been confirmed by MWC's IT Security Policy (Appendix 7), which was approved by the Operational Management Group (Appendix 8).</p> <p>The Keeper agrees that there are appropriate measures in place to ensure that records at the end of their life cycle are destroyed appropriately.</p>
7. Archiving and Transfer <i>Compulsory element</i>	G	A	MWC has been in contact with client managers at National Records of Scotland (NRS) in order to create a Memorandum of Understanding (MoU) for the transfer of records selected for permanent preservation. A draft MoU (Appendix 11) has been created and submitted as evidence. The draft MoU will be supplied to MWC's

			<p>Operational Management Group for approval before going before the Board in September 2014 for final approval.</p> <p>The Keeper agrees that MWC are taking steps to ensure that records selected for permanent preservation are transferred to a suitable archive. The Keeper requests that once the MoU is signed off by MWC's Board it is then submitted to the assessment team for inclusion in MWC's evidence package.</p>
<p>8. Information Security <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p>MWC has supplied details of its physical and electronic security measures.</p> <p>The RMP itself sets out the arrangements in place for safeguarding MWC's premises and server rooms against unauthorised access.</p> <p>MWC has also provided its IT Security Policy (Appendix 7). This sets out MWC's approach to protecting the information it creates/holds. This is supported by the IT Code of Conduct (Appendix 12) which sets out the practices to be followed by staff. This includes where MWC staff have access to sensitive patient data and they require to follow the NHS Scotland eHealth Policy. All staff are required to sign the policy to show that they agree to abide with its contents.</p> <p>Also supplied as evidence is the Information Risk Management Policy (Appendix 14). This again sets out the physical and electronic measures in place to protect MWC's information, including issues such as working remotely. This policy is published on MWC's website which the Keeper commends.</p> <p>A Data Protection Policy (Appendix 13) has also been supplied as evidence setting out MWC's approach to protecting personal and sensitive information. This policy is published on MWC's website which the Keeper commends.</p> <p>The IT Security Policy, IT Code of Conduct and Information Risk Management Policy have all been approved by the Operational Management Group. The Data</p>

			<p>Protection Policy has been approved by the Board. All these documents are subject to regular review.</p> <p>The Keeper agrees that robust measures are in place to ensure that information created and held by MWC is done so securely.</p>
9. Data Protection	G	G	<p>MWC is registered as a data controller with the Information Commissioner’s Office (registration number Z9097121).</p> <p>MWC has also submitted its Data Protection Policy (Appendix 13-see Element 8 above).</p> <p>The Keeper agrees that MWC takes its Data Protection responsibilities seriously and, combined with the measures outlined in Element 8, has put in place procedures to protect personal and sensitive information.</p>
10. Business Continuity and Vital Records	G	G	<p>MWC has submitted its Business Continuity Management (BCM) Policy (Appendix 15) as evidence towards this element. It sets out who has responsibility for BCM within MWC, the scope of the policy and how it will be developed. Responsibility for BCM lies with the Risk Management Group, which meets twice a year.</p> <p>The RMP and Policy set out the arrangements for protecting Vital Records. A list of MWC’s Vital Records is provided (Appendix 16).</p> <p>MWC maintains a disaster recovery server on Scottish Government premises.</p> <p>Commitment to make relevant changes to the Policy has been provided by the Head of Corporate Services (Appendix 18).</p> <p>MWC has set out its current arrangements for the protection of its Vital Records. There is however, no indication as to what steps they would take to recover these</p>

			<p>Records or what would happen in the event of a disaster. It may be the case that this is set out in the BCM Strategy, which is mentioned in the policy. If so, the Keeper would like to see this document (redacted if necessary).</p> <p>MWC has also submitted a document which details their server back-up recovery procedures in the event of an interruption to their business.</p> <p>The Keeper agrees that procedures are in place to protect the Vital Records of MWC and that practical arrangements are in place to help restore business in the event of an interruption to business.</p>
11. Audit trail	A	A	<p>MWC at present is able to track actions taken on records using its IIMP system. For records sitting outside this system MWC intends to impose its BCS on to electronic records once it has migrated to a new server in 2014-2015.</p> <p>In order to support the move to a new server, MWC has submitted its draft naming conventions and version control guidance document (Appendix 19). This document is currently available to MWC staff on their intranet.</p> <p>The Keeper agrees that MWC has recognised a need for improvement in this area and he is assured that MWC has shown a commitment to closing the gap in provision in this area. The Keeper requests that he is kept informed of progress in implementing the BCS on MWC's new server.</p>
12. Competency Framework for records management staff	G	G	<p>MWC has submitted the Information Manager's (named in Element 2) job description (Appendix 20) which shows that she has responsibility for records management within the organisation. MWC will endeavour to ensure that the Information Manager receives any appropriate training.</p> <p>A draft Information and Records Management Competencies document (Appendix 21), drawn up by an external consultant, has been submitted. The Keeper would like</p>

			<p>to know whether this document forms the basis of further work in incorporating these competencies into all staff job descriptions, and if so, how this will be done and the timescale involved.</p> <p>Also submitted as evidence is the documentation supporting a mandatory half-day training session which took place in May 2013 (Appendix 22). This includes PowerPoint slides highlighting the importance of records management in the work of MWC and an Information Management Practices Issues and Needs Questionnaire for staff that attended the training event.</p> <p>The Records Management Policy also sets out the Information Manager's responsibilities, particularly with regard to MWC's RMP.</p> <p>The Keeper agrees that the Information Manager has the necessary skills to implement the requirements of MWC's RMP and is responsible for ensuring that MWC staff have access to the relevant training that will allow them to effectively manage the records they are responsible for.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>MWC has established a Records Management Review Group (RMRG) in order to implement the RMP and monitor its effectiveness. The Group will meet twice a year and will comprise the executive team and the Information Manager and will be chaired by the Head of Corporate Services. The Group will report annually to MWC's Board.</p> <p>As evidence MWC has submitted a document seeking approval of the Operational Management Group for the establishment of the RMRG (Appendix 23). The document sets out the remit and constitution of the group. It doesn't confirm if agreement was given to establish the Group, but Appendix 4 refers to the RMRG as being 'newly established' so it is assumed that the establishment of the RMRG was approved.</p>

			<p>MWC has also supplied a paper created by the Information Manager which shows that the RMRG has indeed been established and had its first meeting on 28 July 2014. This paper also sets out MWC’s plans for dealing with ‘legacy’ older records, as well as changes to the way MWC deal with records stored on personal drives and also with emails. Additionally, it sets out a commitment to going ahead with the move to the new server, in which a new structure for records will be created. The paper is also encouraging the buy-in of ‘folder owners’ to help populate the new structure. The action points were approved by the OMG on 18 August 2014.</p> <p>The Keeper agrees that MWC has put in place a mechanism to monitor the implementation of their RMP.</p>
<p>14. Shared Information</p>	<p>G</p>	<p>G</p>	<p>MWC is registered as a Data Controller with the Information Commissioner’s Office. MWC will abide by the requirements of the Data Protection Act when sharing information and will also conduct a risk assessment before doing so.</p> <p>MWC has entered into a number of MoUs with other bodies with whom they share records. These can be found on MWC’s website and includes MoUs with the Scottish Social Services Council and the Mental Health Tribunal.</p> <p>Under the Mental Health (Care and Treatment) (Scotland) Act 2003 and the Adults with Incapacity Act 2000, MWC is obliged to share some information with other bodies.</p> <p>Bodies who wish MWC to share data with them have to fill out a Data Sharing Protocol Form (Appendix 24).</p> <p>The Keeper agrees that MWC takes the protection of shared information seriously and has procedures in place to ensure that this is done securely.</p>

6. Keeper's Summary

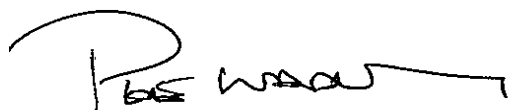
Elements 1 to 14 that the Keeper considers should be in a public authority records management plan have been properly considered by Mental Welfare Commission for Scotland. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper agrees the RMP of Mental Welfare Commission for Scotland.

The Keeper recommends that Mental Welfare Commission for Scotland should publish its agreed RMP as an example of good practice within the authority and the sector.

This report follows the Keeper's assessment carried out by,



.....
Pete Wadley

.....
Robert Fotheringham

Public Records Officer

Public Records Officer

8. Endorsement of Report by the Keeper of the Records of Scotland

The report has been examined and is endorsed under the signature of the Keeper of the Records of Scotland as proof of compliance under section 1 of the Public Records (Scotland) Act 2011, and confirms formal agreement by the Keeper of the RMP as submitted by Mental Welfare Commission for Scotland. In agreeing this RMP, the Keeper expects Mental Welfare Commission for Scotland to fully implement the agreed RMP and meet its obligations under the Act.



.....
Tim Ellis
Keeper of the Records of Scotland