

Public Records (Scotland) Act 2011

**Mental Health Tribunal for Scotland
Assessment Report**

The Keeper of the Records of Scotland

16th January 2015

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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 the **Mental Health Tribunal for Scotland** by the Public Records (Scotland) Act 2011 Assessment Team following its submission to the Keeper on **2nd December 2014**.

The assessment considered whether the RMP of the Mental Health Tribunal 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 the Mental Health Tribunal for Scotland complies with the Act can be found under section 7 of this report with relevant recommendations.

3. Authority Background

The Mental Health Tribunal for Scotland was created on 5 October 2005 by virtue of section 21 of the Mental Health (Care and Treatment) (Scotland) Act 2003. The Tribunal's headquarters are located in Hamilton. It has staff throughout Scotland.

The Tribunal discharges its functions through panels of three members: a legal member (who acts as Convener), a medical member and a general member. The judicial arm of the Tribunal is supported in its functions by the staff of the Scottish Tribunals Service. The President of the Tribunal presides over the discharge of the Tribunal's functions.

The primary role of the Tribunal is to consider and determine applications for compulsory treatment orders under the 2003 Act and to operate in an appellate role to consider appeals against compulsory measures made under the Act. The Tribunal also plays a monitoring role by periodic review of compulsory measures.

<http://www.mhtscotland.gov.uk/mhts/index>

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 *[named public authority’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

Mental Health Tribunal for Scotland (Referred to in the Assessment below as 'The Tribunal')

Element	Present	Evidence	Notes
1. Senior Officer <i>Compulsory element</i>	G	G	<p>The Tribunal has identified Dr J. J. Morrow, President of the Mental Health Tribunal for Scotland, as the individual with overall responsibility for records management in the authority.</p> <p>This is confirmed by a letter from Dr Morrow, dated January 2015, submitted as Annex A to the plan. In this letter Dr Morrow accepts his 'accountability' for the plan and <i>Policy (see element 3)</i>.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland have identified an appropriate senior officer as required by the Act.</p>
2. Records Manager <i>Compulsory element</i>	G	G	<p>The Mental Health (Care and Treatment) (Scotland) Act 2003 provides a mechanism by which the President of the Mental Health Tribunal for Scotland can delegate certain functions to an administrative body.</p> <p>Under these arrangements, The President of The Tribunal, Dr Morrow, has identified Greg Routledge – ICT Systems Analyst with the Scottish Tribunals Service, as the individual with the responsibility for implementing the submitted plan. The Scottish Tribunal Service is a division of the Learning and Justice Directorate of the Scottish Government.</p>

			<p>This is confirmed by a letter from Dr Morrow submitted as Annex A to the plan. In this letter Dr Morrow specifically names Mr Routledge as the senior manager responsible for records management issues.</p> <p>Mr Routledge is not a full time records manager. This is acceptable for a ‘small’ organisation like The Tribunal.</p> <p>A sample from Mr Routledge’s annual objectives, supplied as Annex D to the plan, also supports his appointment. His responsibility for ensuring the review of the RMP is clearly stated in the <i>Policy</i> (Annex 1) (see element 3).</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland have identified an appropriate individual to be responsible of implementing the records management plan as required by the Act.</p>
<p>3. Policy <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p>The Tribunal have provided the Keeper with their <i>Records Management Policy</i> as Annex B to the submitted plan. This is a detailed policy in line with that of the Scottish Government.</p> <p>The <i>Policy</i> makes it clear that The Tribunal considers records as an asset or ‘corporate resource’ (paragraph 3 of the <i>Policy</i>). The Keeper commends this recognition. The <i>Policy</i> also gives good examples of how robust records management can specifically benefit The Tribunal (paragraphs 14 and 17).</p> <p>This policy has no control sheet, so it is impossible to determine the version supplied or who the author of the policy was. However, the Keeper is willing to accept that this is the current version operational in the Tribunal as the covering letter (Annex A) from the President of the Tribunal (see element 1) endorses the <i>Policy</i>. This letter is dated January 2015.</p>

			<p>Records management can be an agenda item in the monthly liaison meetings between the Mental Health Tribunal for Scotland and the Scottish Tribunal Service.</p> <p>It is the responsibility of the Scottish Tribunal Service’s IT Manager to ensure that the <i>Records Management Policy</i> is properly adhered to.</p> <p>The RMP states that the <i>Policy</i> is ‘under constant review’.</p> <p>The <i>Policy</i> mentions the Public Records (Scotland) Act (paragraph 2).</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has an approved and operational records management policy as required by the Act and that this is available for appropriate staff.</p>
<p>4. Business Classification</p>	<p>G</p>	<p>G</p>	<p>The Tribunal have provided the Keeper with a full business classification showing the activities they undertake when carrying out their function. This appears in the RMP itself (and, as this is the case, can be considered to have been approved by the President of the Tribunal – see element 1).</p> <p>The business classification section is divided into those parts of the business which are subject to Data Protection and Freedom of Information legislation and those which are not. These could be divided as ‘case work’ (not subject) and ‘corporate’ (subject) (see element 9). Examples of corporate records would include contracts and other financial records; minutes of meetings and office procedural manuals.</p> <p>The Tribunal principally holds records electronically on a Case Management System (linked to SharePoint) and with the Scottish Government on their EDRM (Objective). However, they also hold a limited number of hard copy records. The RMP states “MHTS holds very few persistent paper files”.</p>

			<p>The <i>Records Management Policy</i> (see element 3) acknowledges that records must be captured in the filing structure (paragraph 7 of the <i>Policy</i>).</p> <p>For each part The Tribunal have laid out the activity, under the heading ‘class’ and record type ‘Description’.</p> <p>No function of the Mental Health Tribunal for Scotland is carried out by a third party.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has a full business classification detailing the major record series produced by their activities.</p>
5. Retention schedule	G	G	<p>The Tribunal have provided the Keeper with a full retention schedule matching the activities described in the business classification (see element 4).</p> <p>The retention schedule appears as part of the submitted RMP as therefore can be considered to have the approval of the President of the Tribunal (see element 1).</p> <p>The retention schedule provides a clear explanation of the actions required for each record type.</p> <p>The Keeper notes that The Tribunal is in discussion with his Client Managers (see element 7) and that, as a result of this dialogue, retention decisions may alter. The Tribunal has committed to provide the Keeper with an updated version of the retention schedule when appropriate.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has a retention schedule appropriate for their business classification.</p>
6. Destruction	G	G	<p>The Tribunal have provided the Keeper with an explanation of how they irretrievably</p>

<p>Arrangements <i>Compulsory element</i></p>		<p>and securely destroy:</p> <p>Electronic Records: The Tribunal principally holds records electronically on a Case Management System and with the Scottish Government on their EDRM (Objective). Both systems provide an auto-delete function which is controlled by the Scottish Tribunal Service under instruction of the Tribunal. This is clearly explained.</p> <p>The RMP states that electronic records, once deleted, can only be recovered by forensic recovery tools. The Keeper acknowledges this equates to ‘irretrievable destruction’ for his purposes.</p> <p>Paper Records (all held internally – no third party storage used). Paper records are destroyed under contract by Shred-It (contract supplied as Annex G).</p> <p>Hardware at the end of its operational use is destroyed by the Scottish Government. A destruction certificate has been provided (Annex E) as evidence that these arrangements are in operation.</p> <p>Back-Ups taken by the Scottish Government for business continuity purposes (see element 10). They are destroyed under Scottish Government back-up procedures (provided as Annex F).</p> <p>The Tribunal’s <i>Records Management Policy Annex 1</i>(see element 3) recognises the importance of destroying working copies once the task is complete. The Keeper commends this guidance.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has arrangements in place for the irretrievable destruction of its records when appropriate, as required by the Act.</p>
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<p>7. Archiving and Transfer <i>Compulsory element</i></p>	<p>A</p>	<p>G</p>	<p>The Tribunal is currently in negotiation with the Keeper regarding the provision of an archive facility for those records appraised as suitable for permanent preservation. A records survey is underway.</p> <p>The above has been confirmed by the Keeper’s Client Managers.</p> <p>These negotiations should result in a formal MOU being created between the Tribunal and the Keeper.</p> <p>The <i>Records Management Policy</i> (see element 3) acknowledges that NRS Client Managers may be able to advise on retention periods (paragraph 4 of the <i>Policy</i>).</p> <p>The Scottish Tribunal Service ICT Manager’s responsibilities (as one of the Scottish Tribunal Service Document Records Managers) are explained in the <i>Records Management Policy Annex 1</i>(see element 3). These include review prior to archiving.</p> <p>The Keeper is happy to agree this element of the Mental Health Tribunal for Scotland’s plan under ‘improvement model’ terms. This means that he is confident that the authority intends to close a gap in provision but requires to be updated as the process continues.</p>
<p>8. Information Security <i>Compulsory element</i></p>	<p>G</p>	<p>G</p>	<p>The Tribunal ‘subscribes and adheres’ to the <i>Scottish Government IT Security Policy</i> a copy of which has been provided to the Keeper as Annex H to the plan. This detailed (105 page) document can be considered best practice and the Keeper commends The Tribunal for adopting it.</p> <p>The Tribunal also subscribe to the Scottish Government IT Code of Conduct</p>

			<p>(provided as part of Annex H).</p> <p>The <i>SG IT Security Policy</i> and Standards has no expiry date, but is reviewed: (a) Annually on the anniversary of its first approval. (b) Where there any proposals for significant organisational, supported service or customer base change.</p> <p>Shortly before the submission of the RMP the Tribunal, supported by the Scottish Tribunal Service, inaugurated an Information Assurance Group which will meet quarterly. The President of The Tribunal (see element 1) sits on this group. The Keeper would be interested in the work of this group going forward.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has an approved and operational information security policy as required by the Act.</p>
<p>9. Data Protection</p>			<p>The Mental Health Tribunal for Scotland is not fully subject to the Data protection Act 1998 due to its judicial function. It is not registered with the Information Commissioner (see element 4).*</p> <p>As the bulk of the records created by the authority (those on the Case Management System) are not subject to the legislation, the Keeper has not Assessed this element for the purposes of his agreement.</p> <p>However, the Keeper notes that the Tribunal has voluntarily adopted the principles of the Scottish Government Data Protection Policy (copy supplied as Annex I) for corporate business purposes. This policy does not appear to feature on The Tribunal’s website but can be found at: http://www.scotland.gov.uk/About/Review/kerelaw/About/Review/data-protection</p> <p>The <i>Records Management Policy</i> (see element 3) acknowledges that reliable</p>

			<p>records management is fundamental to ensuring The Tribunal fulfils its data protection responsibilities (paragraph 6 of the <i>Policy</i>). It also alerts staff to the importance of only keeping sensitive personal information as long as there is a clear business need for it – Data Protection Principle 5 (paragraph 15)</p> <p>*See Data Protection (notification and Notification Fees) regulations 2000, as amended by SI2009/1677.</p>
10. Business Continuity and Vital Records	G	G	<p>The Tribunal Service has a <i>Risk and Business Continuity Plan</i>, which covers all tribunals supported by the service, including the Mental Health Tribunal for Scotland. This full plan has been provided to the Keeper embedded in the submitted RMP. This is version 1.1 dated November 2012.</p> <p>The Keeper would like to assure The Tribunal that all documents submitted in evidence are held securely by NRS and access is strictly limited to the PRSA Assessment Team, the Head of Government Records and himself.</p> <p>This <i>Business Continuity Plan</i> considers the recovery of records.</p> <p>This <i>Plan</i> considers the prioritisation of recovery indicating an understanding of the vital records of the business.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has an approved and operational business continuity plan that appropriately considers the importance of records.</p>
11. Audit trail	G	G	<p>The Tribunal have explained in their RMP the processes for locating records held in their Case Management System, and in the SG EDRM. Both these impose version control on the user. The Tribunal has also indicated the controls in place to properly track their paper records. A sample index for paper files has been provided (as</p>

			<p>Annex J) which the RMP suggests is used for ‘auditing’ purposes.</p> <p>The <i>Records Management Policy</i> (see element 3) acknowledges that records must be captured in the filing structure (paragraph 7 of the <i>Policy</i>).</p> <p>Naming Conventions appear in the <i>Records Management Policy</i> (section 15).</p> <p>The Tribunal has version control structures placed on all records. The RMP states “the local policy is to ensure that documents stored on network file storage have a file history table maintained within them”.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has procedures in place that will allow them to locate their records and assure themselves that the located record is the correct version.</p>
<p>12. Competency Framework for records management staff</p>			<p>The Tribunal have provided the Keeper with evidence that Greg Routledge, ICT Systems Analyst with the Scottish Tribunals Service (see element 2), has ‘significant records management responsibilities’ including for that of the plan.</p> <p>Mr Routledge’s responsibility for ensuring the review of the RMP is clearly stated in the <i>Policy</i> (Annex 1) (see element 3).</p> <p>The <i>Scottish Government IT Security Policy</i> (see element 8) states that “All employees must be given security awareness training and have access to these standards.”</p> <p>Members of the Tribunal and their staff complete yearly courses on data and security. These are e-learning courses. Screen shots of these have been provided to the Keeper as evidence of this training (Annex K).</p>

			<p>All Tribunal staff are recruited through the Scottish Government whose competencies include those touching on records management. Examples of these are given in the RMP.</p> <p>The Keeper agrees that the individual who will have day-to-day responsibility for implementing the RMP will have appropriate skills for the role. Furthermore, the Keeper acknowledges that the Mental Health Tribunal for Scotland considers records management training for appropriate staff.</p>
<p>13. Assessment and Review</p>	<p>G</p>	<p>G</p>	<p>It is a requirement of the Public Records (Scotland) Act 2011 that “An authority must— (a) keep its records management plan under review” (PRSA Part 1 5.1.a.)</p> <p>The RMP commits The Tribunal to review the RMP every other year.</p> <p>This will be done by the IT Manager of the Scottish Tribunal Service using the Scottish Council on Archives ‘ARMS’ self-assessment tool. The Keeper has previously endorsed the ARMS tool. The IT Manager’s responsibility for ensuring the review of the RMP is clearly stated in the <i>Policy</i> (Annex 1) (see element 3)</p> <p>The results of this assessment are reported to the Tribunal. Records management can be an agenda item in the monthly liaison meetings between the Mental Health Tribunal for Scotland and the Scottish Tribunal Service.</p> <p>The <i>SG IT Security Policy</i> and Standards (see element 8) has no expiry date, but is reviewed: (a) Annually on the anniversary of its first approval. (b) Where there any proposals for significant organisational, supported service or customer base change.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland have made a firm</p>

			commitment to review their RMP as required by the Act and have explained who will carry out this review and by what methodology.
14. Shared Information	G	G	<p>The Tribunal shares information with other public authorities as required by legislation. These data sharing processes are heavily regulated and controlled due to the sensitive nature of the case files that The Tribunal holds.</p> <p>Occasionally the Tribunal shares information with other parties. When this is done a data sharing agreement is completed. The template agreement has been provided to the Keeper as Annex C to the plan. This template features records governance clauses at (d) privacy and (g) destruction.</p> <p>Section 7.6.1 of the <i>Scottish Government IT Security Policy</i> which The Tribunal has adopted (see element 8), sets out the requirements of data ‘exchange’ agreements and refers to the governance of data.</p> <p>The Keeper agrees that the Mental Health Tribunal for Scotland has considered the records management implications of information sharing as is appropriate.</p>

Mental Health Tribunal for Scotland
(Referred to in the Assessment below as ‘The Tribunal’)

Version

This assessment was based on the Mental Health Tribunal for Scotland Records Management Plan received by the Keeper on 12th January 2015. Annex A of the plan is a letter from Dr J J Morrow, President of the Tribunal dated 8th January 2015 approving the plan. The RMP itself is not dated nor is there an author or version number apparent. This seems to be business practice for the

Tribunal as some other documents provided as evidence are similarly without this control information. A review date appears in the text of the plan.

The submitted plan is based on the 14 elements of the Keeper's Model Plan. However due to the judicial function of the authority parts of the Data Protection Act 1998 (such as registration) do not apply. Element 9 has therefore not been fully assessed.

The RMP features an introduction explaining the Public Records (Scotland) Act 2011.

6. Keeper's Summary

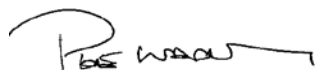
Elements **1- 14 (except 9)** that the Keeper considers should be in a public authority records management plan have been properly considered by the Mental Health Tribunal for Scotland. Policies and governance structures are in place to implement the actions required by the plan.

7. Keeper's Determination

Based on the assessment process detailed above, the Keeper **agrees** the RMP of the **Mental Health Tribunal for Scotland**.

- The Keeper recommends that the Mental Health Tribunal 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
Public Records Officer

.....
Robert Fotheringham
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 the Mental Health Tribunal for Scotland. In agreeing this RMP, the Keeper expects the Mental Health Tribunal for Scotland to fully implement the agreed RMP and meet its obligations under the Act.



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