

IN THE MATTER OF INFORMATION SHARING ARRANGEMENTS ACROSS THE FRIMLEY ICS AND THE BUCKINGHAMSHIRE, OXFORDSHIRE AND BERKSHIRE WEST ICSS

On behalf of the subscribing members of the Regional Health and Social Care Information Sharing Agreement (**Agreement**), Solicitors DAC Beachcroft were asked by NHS Frimley ICB to: (i) review and give an assessment of the continued effectiveness of the communication and engagement strategy (**Strategy**) for the shared care records and joint processing activities prescribed by the Agreement; (ii) to assess whether aspects of Timothy Pitt-Payne KC's advice given in 2019 require reconsideration; and (iii) to assess whether the UK GDPR should be applied to processing where the records of deceased individuals occurs in a system that also holds data regarding living data subjects.

This document explains the issues on which Solicitors were asked to advise, and provides a summary of Solicitors' opinion. The sections in italics summarise Solicitors' view. This document has been reviewed and approved by Solicitors.

The continued effectiveness of the Strategy

In a 2019 review by Solicitors and Counsel, the Strategy employed by NHS Frimley ICB's local partner organisations was found to be "robust and wide-ranging" and sufficient to satisfy the requirements of the common law duty of confidentiality and the requirements of data protection legislation.

Solicitors advise that the paper-based, electronic and public engagement actions continue to be fit for purpose.

Solicitors further advise that because the COVID-19 pandemic has materially changed the way in which health and social care services are delivered, with the consequential reduction in physical interaction, controllers need to give increased attention to the electronic provision of information in order to continue to satisfy the requirements of the common law duty of confidentiality and of UK GDPR art.13 and art.14.

Whether other aspects of advice given in 2019 require reconsideration

NHS Frimley ICB considers that Counsel's and Solicitors' advice given in 2019 remains current and continues to be applicable to the Regional ISA arrangements regarding the legal bases relied upon, the use of repository-based joint processing and sharing solutions, satisfying joint controller transparency requirements and satisfying art.28(3).

https://regisa.uk/documents/02aQCopinionSummary136472122_1.pdf

Other than as set out under "The continued effectiveness of the Strategy" above, Solicitors advise that the advice given by Counsel and Solicitors in 2019 continues to apply.

The application of UK GDPR to the processing of data regarding deceased individuals

NHS Frimley ICB recognises that UK GDPR does not apply to the processing of data about deceased individuals.

However, it is normally the case that the data about deceased individuals is stored and processed together with data regarding living data subjects in the same data repository. As a consequence, in NHS Frimley ICB's view UK GDPR must be applied to all processing using the repository concerned. This will also ensure both that the data of living data subjects and any third party data within the deceased individuals record is appropriately protected.

Solicitors advise that where a single repository holds information regarding deceased and living persons, and that information cannot be easily separated, UK GDPR must be applied to ensure that the rights of the living data subjects are properly protected.

Solicitors do not see any compliance issues arising from applying UK GDPR to the repository as a whole, on the basis that it ensures equal protections are applied to all individuals' information.

This summary has been reviewed and approved by DAC Beachcroft LLP

13 March 2023