

**SUMMARY NOTE OF COUNSEL'S ADVICE ON INFORMATION SHARING ARRANGEMENTS**

We have been instructed by NHS East Berkshire Clinical Commissioning Group ("the CCG") to advise, and seek Counsel's opinion on, the information sharing framework ("the Framework") in use across the Frimley ICS and Berkshire West areas. Counsel's opinion was obtained from Timothy Pitt-Payne QC, and provided by way of a detailed advice note dated 2 August 2019. We have now been asked to prepare a summary of that note, which has been considered and approved by Counsel.

Please note that this is not a comprehensive summary of every point considered in Counsel's advice, but instead a high-level statement of the key findings.

In broad terms, and subject to specific areas noted further below, Counsel was satisfied that the Framework and the approach it supports are fit for purpose. In particular, he reached the following conclusions.

1. Appropriate and robust lawful bases have been identified under the General Data Protection Regulation ("GDPR") to legitimately process personal data under the Framework:
  - a. for the purpose of providing direct care and treatment; and
  - b. for the creation of databases of pseudonymised and anonymised information, to be used for a range of purposes, including (i) commissioning and related purposes, and (ii) research.
2. The proposed communications strategy is "*robust and wide-ranging*" and, critically, will satisfy the requirement of the common law duty of confidentiality to ensure that patients are made aware of the proposed uses of their data, so that patients' implied consent can be relied upon in respect of the proposed uses. It will also be necessary for each of the parties to the Information Sharing Agreement to satisfy the requirements of GDPR Article 13 and 14, in respect of all of their own processing of personal data (including, but not confined to, any processing that takes place under the Framework).
3. The responsibility for, and participation in, specific data flows are made sufficiently clear in the Framework. The participant sharing organisations are clearly defined, as are their obligations in respect of creating, editing, archiving and deleting the data.
4. To the extent that the Framework requires personal data to be held in one or more central repositories:
  - a. This approach is compatible with the requirement for the processing of personal data to be 'necessary' under the GDPR. In particular, the Framework clearly defines the user organisations in respect of data in each central repository, and the purposes for which such data will be held and used.
  - b. Lead Controllers hold responsibility for the security of the data within each repository. This is an appropriate way of ensuring that the data is kept secure, provided that the Lead Controllers are made fully aware of their responsibilities in respect of information security, and that they are willing and able to carry them out.
5. The Contracts (Rights of Third Parties) Act 1999 is a legitimate and appropriate means by which to extend the benefit of a data processing agreement to multiple data controllers without them each having to individually sign the agreement.
6. The arrangements for the Regional Information Governance Steering Group (IGSG) are appropriate to its role in respect of the Framework.