

## Buckinghamshire My Care Record – tasks and legal bases for processing of GP data



**Note:** Data is explicitly not collected and processed for the purposes of research or for any purpose requiring ethics committee approval.

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### Data Processing Tasks:

- Provision, delivery, management and tracking of Health, Social Care
- Urgent and Emergency Care (UEC) wherever and however delivered (for example Ambulance)
- Enabling, managing and evaluating discharges from one organisation to another (for example from an acute bed to a social care bed)
- Safeguarding and implementing Digital Healthy Child (including but not limited to Child Health Information Service, CHIS)
- Supporting safe care where people receive care across multiple geographical regions – at present Thames Valley and Surrey

Purpose of data processing	Legal basis – common law duty of confidentiality	Legal basis - GDPR
Direct Care	<p><b>Consent</b> of the data subject (Explicit, Informed or Implied).</p> <p>It is deemed as <b>implied</b> with a <b>Reasonable expectation</b> of the Data Subject – that their data shall be shared for direct care purposes without specifically informing them, i.e. provide their data into a shared care record accessible to other NHS organisations which provide direct care to the patient.</p> <p>Explicit “permission to view” is also implied as a result of the above. However, records access would be available only where a care professional has an existing or anticipated legitimate relationship with the patient.</p> <p>No Section 251 (NHS Act 2006) for public interest is deemed to apply</p>	<p>Article 6, 1 (e) Performance of a task in the public interest or the exercise of official authority</p> <p>This “official authority” is where a clear legal basis under UK law can be pointed to – in this circumstance the NHS Act 2006.</p> <p>It is important to note that an individual power or duty does NOT have to be identified within the law in order to prove the legal basis exists</p> <p>9, 2 (h) Medical and Health diagnosis, treatment or management of health or social care systems and services</p>

### Data Processing Tasks:

- Population Health management – i.e. forecasting, planning and targeting care using de-identified data

(The data shall need to continue to be processed for direct care purposes by Graphnet/Care centric software through My Care Record, a part of the process for which shall to pseudonymise and/or anonymise the data for any future secondary use purposes.)

Purpose of data processing	Legal basis – common law duty of confidentiality	Legal basis - GDPR
<p>Population Health Management (use of data to design new models of proactive care and deliver improvements in health and wellbeing – a by-product as a result of data sharing for direct care)</p>	<p><b>Consent</b> of the data subject (Explicit, Informed or Implied).</p> <p>It is deemed as <b>implied</b> with a <b>Reasonable expectation</b> of the Data Subject – that their data shall be shared with a data processor to be pseudonymised or anonymised for <b>secondary use</b> (rather than the GP practice as data controller performing this function).</p> <p>Any pseudonymised data then flowing out to organisations for PHM could only be re-identified on request by the GP practice which owns it or by other system partner provider organisations which can already access it for direct care purposes.</p> <p>Commissioners have no rights to re-identify the data and are unable to do so, either for purposes of population health management for commissioning or for performance management of primary care of partner providers.</p>	<p>Article 6, 1 (e) Performance of a task in the public interest or the exercise of official authority</p> <p>This “official authority” is where a clear legal basis under UK law can be pointed to – in this circumstance the NHS Act 2006.</p> <p>It is important to note that an individual power or duty does NOT have to be identified within the law in order to prove the legal basis exists</p> <p>9, 2 (h) Medical and Health diagnosis, treatment or management of health or social care systems and services</p>

### Supporting notes – Opt Out:

- Processing of data may be restricted by opting out, preferences for which are notified to and recorded by the patient’s GP practice. The national data opt-out was introduced on 25 May 2018, enabling patients to opt out from the use of their data for research or planning purposes, which in this case applies to Population Health Management and Risk Stratification.
- If data subjects have objected to the processing of their data, an organisation can consider (within one month) whether their legitimate grounds (and pre-existing legal basis) override those of the individual.
- Patients cannot opt-out of their data being shared for legitimate direct care purposes.