

IN THE MATTER OF INFORMATION SHARING ARRANGEMENTS ACROSS THE FRIMLEY AND BERKSHIRE WEST ICS AREAS

Counsel's Advice to the CCG – Executive Summary

This document provides an overview of the questions posed to Tim Pitt-Payne, Queen's Counsel together with Counsel's responses. The document highlights the consequential actions we believe are necessary to address Counsel's responses.

Counsel was posed a broad range of questions with the two most critical questions for Connected Care and for the wider Frimley ICS and Berkshire West ICS sharing arrangements relating to **the lawfulness of:**

1. The **repository-based sharing arrangements** (in particular for Connected Care) ... In this respect:
 - a. Given our circumstances the processing would be "necessary" provided that data with a negligible or remote possibility of use is **not** included in the repository
 - b. Governance of the central repository should be appropriate provided the lead controller's responsibility for ensuring that jointly controlled information is kept in a safe and secure manner is explicitly defined; and
2. The **ISA framework** ... In this respect, Counsel confirmed that the framework represents a lawful approach to managing information sharing and processing arrangements. **The framework can be considered fit for its purpose.** Counsel's review covered the:
 - a. Makeup and function of the IG Steering Group and the associated powers of delegation
 - b. Proposed joint controllership arrangements
 - c. Powers of CCGs in respect of practice data, data processing contracts and information governance
 - d. Levels of detail contained within processing and sharing specifications
 - e. The approach to the risk sharing and indemnity arrangements
 - f. Use of pre-existing DPIA documentation to satisfy the requirement for a DPIA to have been conducted
 - g. Use of the Contracts (Rights of Third Parties) Act 1999 to establish a data processing contract between a single processor and multiple controllers. In this respect, it is Counsel's opinion that the wording in the Graphnet contract is sufficiently precise for our purposes.

In addition to the ISA framework and the repository-based sharing Counsel's review also covered the lawfulness of:

3. Our use of **processing and sharing purposes** ... In this respect, Counsel was asked whether GDPR Articles 6(1)e and 9(2)g-j provide a robust legal foundation for each of the three main types of processing:
 - a. Counsel's opinion for much of the processing is that our uses of GDPR art.6(1)e and GDPR art.9(2)h are appropriate including where data is shared with commissioned independent sector (non-statutory) organisations
 - b. In Counsel's opinion we should use GDPR art.9(2)g as a legal basis for commissioning and related uses
 - c. Counsel confirms that GDPR art.9(2)j is an appropriate legal basis for qualifying research purposes;
4. The proposed **communications and engagement** strategy. In Counsel's opinion there are no obvious omissions and provided that we follow-through on the strategy we can reasonably rely on "implied consent" for the common law duties of confidentiality; and
5. The **integrated care confidentiality, sharing and processing** requirements. We explored this topic in some detail with Counsel and in his opinion there is value in the use of the confidentiality agreement. However, beyond the sharing framework itself Counsel has highlighted some information security risks associated with providing paper (and by implication email) copies of case records to attendees who do not work for signatory organisations.

Counsel was also asked about the lawfulness of an alternative approach that is based on general sharing and processing purposes instead of the current approach (which is based on explicit definitions of processing and sharing flows). Counsel has indicated that such an alternative arrangement would also be lawful.

In conclusion, it's fair to say that the totality of Counsel's feedback is confirmation that **we have appropriate framework and contractual arrangements to support our regional sharing and processing ambitions.**