

# Regional Health and Social Care Information Sharing Agreement

Data Protection Impact Assessment – Frimley ICS Staff COVID-19 Antibody Testing

For approval by:

<b>DPO – Data Protection Officer Berkshire</b>	<b>(signature required)</b>
<b>DPO – Data Protection Officer Surrey Heath</b>	<b>(signature required)</b>
<b>DPO – Data Protection Officer NEHF</b>	<b>(signature required)</b>
<b>IG Steering Group Chairperson</b>	<b>(signature required)</b>

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## Data Protection Impact Assessment – DPIA0031 – Frimley ICS Staff COVID-19 Antibody Testing

DPIA Identifier:	DPIA0031
DPIA Name:	Frimley ICS Staff COVID-19 Antibody Testing
DPIA Effective Date:	15 <sup>th</sup> June 2020
DPIA Review/End Date:	30th September 2020
Direct Care or Other Uses:	Direct Care and Other Uses
Sharing Data Controllership:	Joint control with NHS East Berkshire CCG as the lead controller
Information Assets:	Staff COVID-19 Antibody Testing
Data Processor(s):	None or C and C Technology and Consulting Limited with Google Ireland Limited providing the hosting platform as the sub-processor
Status:	Active
Version:	v1

This schedule to the Regional Health and Social Care Information Sharing Agreement provides a Data Protection Impact Assessment (DPIA) for the above processing and sharing arrangements. It is based on information the pre-existing NHS Surrey Heartlands CCG DPIA for the same requirement and solution options.

### Rationale for Conducting a Data Protection Impact Assessment

A DPIA has been carried out by NHS Surrey Heartlands CCG which indicates that a new or revised DPIA is required for the Frimley ICS Staff COVID-19 Antibody Testing.

### Summary of the Processing and Sharing Requirement Purpose

The purpose of the Frimley ICS Staff COVID-19 Antibody Testing is to support the booking and management of COVID-19 antibody tests for those staff members who wish to have themselves tested for the presence of COVID-19 antibodies and to allow NHS England and Public Health England to perform analyses on suitably de-identified datasets to better understand the spread and management of the COVID-19 virus.

### Summary of the Legal Basis for Processing and Sharing

COVID-19 Antibody Testing for staff is voluntary and no processing of sensitive, special category data will take place where members of staff choose not to be tested.

Unless a member of staff has objected to processing or joint processing and sharing and the sharing organisation has accepted the member of staff's objection(s) the legal basis for sharing and processing the records includes provisions of Section 251B of the Health and Social Care Act 2012 (as amended by the Health and Social Care (Safety and Quality) Act 2015):

2. The sharing organisation must ensure that the information is disclosed to:
  - (a) persons working for the sharing organisation
  - (b) any other relevant health or adult social care commissioner or provider with whom the sharing organisation communicates about the individual; and
3. So far as the sharing organisation considers that the disclosure is:
  - (a) likely to facilitate the provision to the individual of health services or adult social care in England
  - (b) in the individual's best interests.

The legal basis for the processing is also supported by the 20<sup>th</sup> March 2020 notice issued by the Secretary of State entitled "Covid-19 – Notice under Regulation 3(4) of the Health Service Control of Patient Information Regulations 2002".

Unless the member of staff has objected to processing or joint processing and sharing and the sharing organisation has accepted the staff member's objection the legal basis for viewing the shared records is also provided by General Data Protection Regulation:

1. For all purposes ... Article 6(1)e  
"processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller";
2. For the purpose of booking, managing and reporting the COVID-19 antibody test ... Article 9(2)h  
"processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services, on the basis of Union or Member state laws.";

3. For the purpose of analysing and researching the COVID-19 virus using test results test ... Article 9(2)i “processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care.”; and
4. The ‘official authority’ and the ‘member state laws’ establish the legal bases that organisations rely upon for the need to share and jointly process data to deliver care.

Where access to confidential data is legitimate, the common law duties of confidentiality are satisfied because consent to view a patient’s record is implied where the patient concerned agrees to be referred to a service or where the patient concerned refers themselves or presents to a service.

For the Frimley ICS Staff COVID-19 Antibody Testing, the individual concerned has been provided with a Frimley ICS Staff COVID-19 Antibody Testing-specific information sheet and privacy notice.

### Summary of the Processing and Sharing Requirement Process

The processing and sharing requirement is described in terms of:

1. The processing and sharing process options; and
2. The scope of the data processed and shared.

#### The Processing and Sharing Process Options

For organisations that choose to make the Frimley ICS Staff COVID-19 Antibody Testing arrangements available to staff, there are two options for providing the testing. These are:

1. The Portal-based Process Option; or
2. The Manual Process Option.

Each of these is described below in terms of the process itself, the privacy arrangements, the organisations involved and the types of data processed as part of the Frimley ICS Staff COVID-19 Antibody Testing arrangements.

#### 1. The Portal-based Process Option

The portal-based process option is based on the Trustwide portal provided by C and C Technology and Consulting Limited under contract to NHS Surrey Heartlands Clinical Commissioning Group.

The process is as follows:

1. Employers choosing to utilise the portal option provide staff with details of the Frimley ICS Staff COVID-19 Antibody Testing arrangements, together with the test booking URL, testing information sheet and privacy notice;
2. Members of staff who wish to take advantage of the antibody testing log onto the Trustwide portal and request an antibody test by providing the demographics and symptom data identified below;
3. Following the initial validation checks, members of staff create an account on the Trustwide system and select the preferred date for their test;
4. Once the staff member’s NHS number has been verified the member of staff receives confirmation of the date and time of their test;
5. Following the test appointment the sample is sent to the laboratory for the antibody test to be performed and on completion the results of the test are recorded in the laboratory system and a summary of the test results is copied to the Trustwide system;
6. When the results are received in the Trustwide system the member of staff is informed and is then able to log into the Trustwide system to view the results;
7. Staff members own GPs have access to the test result via the pathology system where the member of staff is registered with a practice that is served by the Berkshire and Surrey Pathology Service’s ICE systems;
8. Where staff members are registered with a practice outside the area covered by the Berkshire and Surrey Pathology Service, the member of staff can provide the result to the registered practice themselves should they so wish;
9. On a periodic basis the data in the Trustwide system is transferred to a certified data anonymisation provider under contract as data processor to NHS England;
10. The data anonymisation provider pseudonymises the data before making it available to NHS England and Public Health England for analysis;
11. Where a member of staff has agreed to be contacted, the member of staff may be contacted for more information and to clarify symptom and other COVID-19 related data; and

12. On a periodic basis the pseudonymised data from the Trustwide system is further processed to make it fully anonymised for the purposes of research by NHS England.

## **1.1. Portal Processing and Sharing Privacy Arrangements**

The privacy arrangements are as follows:

1. The Trustwide portal system is hosted on a secure web-based Google hosting platform that complies with or exceeds the minimum requirements for the storage and processing of special category data;
2. Email addresses and mobile phone numbers are used to verify staff members contact details;
3. NHS Numbers are checked against the spine;
4. Members of staff will need to log into the Trustwide portal to check their results when notified that the results are available;
5. Members of staff are provided with a Frimley ICS Staff COVID-19 Antibody Testing information sheet and an appropriate privacy notice;
6. At point 2 of the process as set out above, members of staff are able to prevent their data being used for research purposes by objecting (opting out) to the processing for research purposes;
7. Data used in the research elements of the programme are all anonymised;
8. Reidentification using the pseudonymised data only occurs where:
  - a. Members of staff have agreed to be contacted during the analysis and research aspects of the programme
  - b. Or where Public Health England identifies a specific clinical concern which requires a direct care intervention;
9. NHS England will apply the National Data Opt Out to exclude from the research processing all data for members of staff who have active National Data Opt Outs in place;
10. Where manual processes are necessary in the first phase of the testing the individuals carrying out the manual processes are all trained in Information Governance and their training is current and up to date; and
11. After a short initial period where manual processes are required to verify and resolve incorrect NHS numbers and to transfer results into the Trustwide system, all information processes are automated and secure, avoiding the need for manual intervention and a consequential disclosure of identifiable, sensitive data.

## **1.2. The Organisations Involved in the Portal-based Processing**

The data controller organisations for the testing phase:

1. Have signed the Regional Health and Social Care Information Sharing Agreement; and
2. Are:
  - a. Frimley Health NHS Foundation Trust as the lead organisation for the Berkshire and Surrey Pathology Service
  - b. The employers of the permanent, temporary or contracted members of staff being tested
  - c. NHS Berkshire East Clinical Commissioning Group
  - d. NHS Surrey Heartlands Clinical Commissioning Group (as lead controller).

The data processor for the Frimley ICS Staff COVID-19 Antibody Testing is C and C Technology and Consulting Limited with Google Ireland Limited providing the hosting platform as the sub-processor.

NHS England and Public Health England are the data controllers for the analysis and research phase and the data processor for the pseudonymised and anonymous processing is to be contracted by NHS England.

## **2. The Manual Process Option**

The manual process option is carried out by either the employer or by a combination of the employer and NHS East Berkshire Clinical Commissioning Group.

The process is as follows:

1. Employers choosing to utilise the manual option provide staff with details of the Frimley ICS Staff COVID-19 Antibody Testing arrangements, together with a manual test booking form;
2. Members of staff who wish to take advantage of the antibody testing complete the test booking form to request an antibody test by providing the demographics and symptom data identified below;
3. Once the staff member has been tested the sample is sent to the laboratory for the antibody test to be performed and on completion the results of the test are recorded in the laboratory system and a summary of the test results is either

returned to the employer for communication to the member of staff, or to NHS East Berkshire CCG for those organisations where the CCG is coordinating the communication of the test results:

- a. For practice employers, test samples are taken by qualified members of staff
  - b. For other employers, test samples are taken by qualified members of staff or by qualified third parties contracted to take the test samples on the employer's behalf;
4. Staff members own GPs have access to the test result via the pathology system where the member of staff is registered with a practice that is served by the Berkshire and Surrey Pathology Service's ICE systems;
  5. Where staff members are registered with a practice outside the area covered by the Berkshire and Surrey Pathology Service, the member of staff can provide the result to the registered practice themselves should they so wish;
  6. The original test booking form and the result provided by the laboratory are transferred to a secured Excel database;
  7. On a periodic basis the data in the secured Excel database relating to members of staff who have not objected to the research processing is transferred to a certified data anonymisation provider under contract as data processor to NHS England;
  8. The data anonymisation provider pseudonymises the data before making it available to NHS England and Public Health England for analysis;
  9. Where a member of staff has agreed to be contacted, the member of staff may be contacted for more information and to clarify symptom and other COVID-19 related data; and
  10. On a periodic basis the pseudonymised data is further processed to make it fully anonymised for the purposes of research by NHS England.

### ***2.1. Manual Processing and Sharing Privacy Arrangements***

The privacy arrangements are as follows:

1. Manual records of booking forms and results are held by the employer in a physically secured file;
2. Electronic copies of the manual records are held by the employer in a secured Excel database held in a secured server folder with restricted access rights;
3. Members of staff are provided with a Frimley ICS Staff COVID-19 Antibody Testing information sheet and an appropriate privacy notice;
4. At point 2 of the manual process as set out above, members of staff are able to prevent their data being used for research purposes by objecting (opting out) to the processing for research purposes;
5. Data used in the research elements of the programme are all anonymised;
6. Reidentification using the pseudonymised data only occurs where:
  - a. Members of staff have agreed to be contacted during the analysis and research aspects of the programme
  - b. Or where Public Health England identifies a specific clinical concern which requires a direct care intervention;
7. NHS England will apply the National Data Opt Out to exclude from the research processing all data for members of staff who have active National Data Opt Outs in place;
8. The individuals carrying out the manual processes are all trained in Information Governance and their training is current and up to date; and
9. Quality checks are carried out from time to time to ensure that manual processes do not result in data quality issues.

### ***2.2. The Organisations Involved in the Manual Processing***

The data controller organisations for the testing phase:

1. Have signed the Regional Health and Social Care Information Sharing Agreement; and
2. Are:
  - a. Frimley Health NHS Foundation Trust as the lead organisation for the Berkshire and Surrey Pathology Service
  - b. The employers of the permanent, temporary or contracted members of staff being tested
  - c. NHS Berkshire East Clinical Commissioning Group (as lead controller).

NHS England and Public Health England are the data controllers for the analysis and research phase and the data processor for the pseudonymised and anonymous processing is to be contracted by NHS England.

## The Scope of the Data Processed and Shared

The categories of data captured, shared and processed are:

1. Demographic and non-sensitive data:
  - a. First and last name
  - b. Home Address
  - c. Postcode
  - d. DOB
  - e. NHS Number
  - f. Email address
  - g. Phone number
  - h. Occupation (optional)
  - i. Work Location
  - j. Sex
  - k. Ethnicity;
2. Research objection/opt-out if applicable; and
3. Sensitive and special category data:
  - a. Symptoms experienced
  - b. Test results.

These data categories apply to both process options.

## Necessity and Proportionality

It is necessary and proportional to collect, share and jointly process the above spectrum of confidential data for the Frimley ICS Staff COVID-19 Antibody Testing arrangements on the grounds that:

1. The demographic data is the minimum necessary to book, manage and perform the antibody testing;
2. The demographic and symptom data is the minimum necessary to perform the analysis and research where members of staff have agreed that their data can be used for the analysis and research; and
3. The test results themselves need to be communicated to the members of staff and provided to the analysis and research aspects of the programme.

The data is not provided for analysis and research where members of staff object to it being used for this purpose.

All objections to the analysis and research will be upheld as a matter of policy and where members of staff have an active National Data Opt Out in place their data will be excluded from the analysis and research aspects of the programme.

## Summary of Consultations

Consultations specific to this programme have not been carried out by the controllers. However, all members of staff participating in the Frimley ICS Staff COVID-19 Antibody Testing are provided with a Frimley ICS Staff COVID-19 Antibody Testing information sheet and an appropriate privacy notice.

## Risks – The Portal Process Option

Risk assessments and proposed mitigations are provided for this option below.

### Risks identified and assessed (prior to mitigation and controls)

Risk description		Likelihood	Consequence / Impact	Risk Rating/ Score After mitigation actions implemented
P1	The Trustwide privacy notice is inadequate for the purposes of the Frimley ICS Staff COVID-19 Antibody Testing programme which means that staff will not benefit from the required level of transparency regarding the processing.	Likely	Moderate	Low
P2	The Trustwide process is not delivered by a data processor with security and information governance certifications that satisfy the minimum requirement for special category data which puts the security of the data and the processing at increased risk of breaches.	Likely	Major	High, moving to Medium

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Risk description		Likelihood	Consequence / Impact	Risk Rating/ Score After mitigation actions implemented
P3	The Trustwide solution does not initially interoperate with the Spine and with the BSPTS ICE system and, as a consequence, multiple manual interventions are necessary with an increased potential for data accuracy issues.	Likely	Moderate	Low
P4	NHS England has yet to appoint the data processor for the pseudonymisation, anonymisation, analysis and research phases of the processing and there is a risk that an unsatisfactory or unsafe processor will be appointed.	Unlikely	Major	Low
<b>Likelihood Ratings</b> – Rare (1), Unlikely (2), Possible (3), Likely (4), Almost Certain (5)				
<b>Consequence/ Impact</b> – Insignificant (1), Minor (2), Moderate (3), Major (4), Catastrophic (5)				
<b>Risk Rating</b> – Green = Low, Amber, Medium - Moderate, Red – High, Purple – Extremely High				

### Measures to reduce risks

Risk description		Measures to reduce, or remove risk	Effect on risk	Residual risk	Measure approved? Y/N
P1	Privacy notice adequacy	<ul style="list-style-type: none"> <li>A Frimley ICS Staff COVID-19 Antibody Testing programme information sheet has been developed</li> <li>A Frimley ICS Staff COVID-19 Antibody Testing programme privacy notice has been developed</li> </ul>	Moderate	Low	
P2	Standing of the data processor	<ul style="list-style-type: none"> <li>A contract has been executed between NHS Surrey Heartlands CCG and the data processor that includes terms and milestones to ensure that the data processor complies with the requirements by 31<sup>st</sup> July (Cyber Essentials), by 30<sup>th</sup> September (ISO27001 and DPST) and by June 2021 (Cyber Essentials Plus).</li> </ul>	Low	High, moving to Medium	
P3	The need for some manual processing	<ul style="list-style-type: none"> <li>Quality checks are carried out from time to time to ensure that manual processes do not result in data quality issues</li> </ul>	Moderate	Low	
P4	Appointment of NHS England data processor	<ul style="list-style-type: none"> <li>Data will not be released until the data processor has been appointed and assurances have been received that the processor satisfies at least the minimum requirements for a secure pseudonymisation and anonymisation processor.</li> </ul>	Major	Low	

### Risks – The Manual Process Option

Risk assessments and proposed mitigations are provided for this option below.

#### Risks identified and assessed (prior to mitigation and controls)

Risk description		Likelihood	Consequence / Impact	Risk Rating/ Score After mitigation actions implemented
M1	Special category data is held in a spreadsheet database and the spreadsheet may not be sufficiently secure.	Possible	Moderate	Medium
M2	Validating the NHS numbers for staff may result in a breach of confidentiality.	Possible	Moderate	Low
M3	Extensive level of manual activity is necessary with an increased potential for data accuracy issues.	Possible	Moderate	Medium

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Risk description		Likelihood	Consequence / Impact	Risk Rating/ Score After mitigation actions implemented
M4	NHS England has yet to appoint the data processor for the pseudonymisation, anonymisation, analysis and research phases of the processing and there is a risk that an unsatisfactory or unsafe processor will be appointed.	Unlikely	Major	Low
<b>Likelihood Ratings</b> – Rare (1), Unlikely (2), Possible (3), Likely (4), Almost Certain (5)				
<b>Consequence/ Impact</b> – Insignificant (1), Minor (2), Moderate (3), Major (4), Catastrophic (5)				
<b>Risk Rating</b> – Green = Low, Amber, Medium - Moderate, Red – High, Purple – Extremely High				

### Measures to reduce risks

Risk description		Measures to reduce, or remove risk	Effect on risk	Residual risk	Measure approved? Y/N
M1	Adequacy of the security of the spreadsheet database	<ul style="list-style-type: none"> <li>The spreadsheet is passworded</li> <li>The spreadsheet is held on a secure network folder</li> <li>Access to the network folder is restricted</li> </ul>	Moderate	Medium	
M2	Validating NHS numbers	<ul style="list-style-type: none"> <li>Staff will be encouraged to obtain their own NHS numbers before booking their tests</li> </ul>	Moderate	Low	
M3	Excessive level of manual processing	<ul style="list-style-type: none"> <li>Quality checks are carried out from time to time to ensure that manual processes do not result in data quality issues</li> </ul>	Moderate	Medium	
M4	Appointment of NHS England data processor	<ul style="list-style-type: none"> <li>Data will not be released until the data processor has been appointed and assurances have been received that the processor satisfies at least the minimum requirements for a secure pseudonymisation and anonymisation processor.</li> </ul>	Major	Low	

## Data Protection Impact Assessment Summary

Neither of the options presented in this DPIA result in low residual risk levels.

When deciding whether or not to proceed with the Frimley ICS Staff COVID-19 Antibody Testing programme, the employers will need to form a view of what is preferable from two very different areas of risk. These are:

1. The portal-based option, where the current standing of the data processor selected by NHS Surrey Heartlands CCG falls short of the minimum standards normally required for such processing; or
2. The manual option, where, as a consequence of the high level of manual processing, there are higher levels of risk associated with the quality of data and the potential for an accidental or deliberate data breach.

Employers may also take the view that on balance it would be best not to offer the antibody testing to staff because the residual IG risks are excessive for both options and neither option is satisfactory.

Employers may also want to consider the:

1. Increased resourcing requirements of the manual process option when deciding between the two options; and
2. The potential to begin with the manual option and migrate to the portal option as risk P2 is mitigated over time. (Please note that this is really only viable if repeat antibody testing is required over an extended time-frame.)

It is the view of the Regional IG Steering Group sub-committee meeting held on the 18<sup>th</sup> June 2020, that this DPIA provides a balanced description and assessment of the risks of the two available options for providing the Frimley ICS Staff COVID-19 Antibody Testing programme.



## Data Protection Impact Assessment Signatures and Approvals

### East Berkshire GP Data Protection Officer

On behalf of the Controller Organisations I confirm that the Data Protection Impact Assessment and the specific mitigation arrangements and residual risk status described in this schedule provide a balanced description and assessment of the risks of the two available options.

Data Protection Officer's comments


Signature:   
Anshu Varma (Jun 22, 2020 13:39 GMT+1)  
Email: anshuvarma@nhs.net

Agreed by Anshu Varma (name)  
as Data Protection Officer, for and on behalf of East. BERKSHIRE CCG practices (controllers).

### Surrey Heath GP Data Protection Officer

On behalf of the Controller Organisations I confirm that the Data Protection Impact Assessment and the specific mitigation arrangements and residual risk status described in this schedule provide a balanced description and assessment of the risks of the two available options.

Data Protection Officer's comments

Signature:   
Email: lucy.hunt11@nhs.net

Agreed by Lucy Hunt (name)  
as Data Protection Officer, for and on behalf of Surrey Heath GP Practices (controllers).

### NEHF GP Data Protection Officer

On behalf of the Controller Organisations I confirm that the Data Protection Impact Assessment and the specific mitigation arrangements and residual risk status described in this schedule provide a balanced description and assessment of the risks of the two available options.

Data Protection Officer's comments

Signature:   
Email: caroline.sims@nhs.net

Agreed by Caroline Sims (name)  
as Data Protection Officer, for and on behalf of N E Hampshire, Farnham, and S E Hampshire GP Practices (controllers).

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## **Regional Health and Social Care Information Sharing Agreement Information Governance Steering Group Chairperson**

On behalf of the Information Governance Steering Group I confirm that the Data Protection Impact Assessment and the specific mitigation arrangements and residual risk status described in this schedule are agreed.

Chairperson's comments:

**Signature:** *J R Rawlinson*  
J R Rawlinson (Jun 22, 2020 10:37 GMT+1)

**Email:** john.rawlinson@nhs.net

Agreed by J R Rawlinson

**(name)**

as Chair, for and on behalf of the Regional Health and Social Care Information Sharing Agreement Information Governance Steering Group.

**End of DPIA**