



Review Sheet



Last Reviewed
22 Jul '22



Last Amended
22 Jul '22



Next Planned Review in 12 months, or
sooner as required.

Business impact



Minimal action required circulate information amongst relevant parties.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This policy will support a service with the National Data Opt-Out process. The title of the policy has been changed from 'NHS Data Opt-Out Policy and Procedure' to 'National Data Opt-Out Policy and Procedure' to align with the national recognised term for this. References have also been checked to ensure they remain current.

Relevant legislation:

- The National Health Service Act 2006
- Data Protection Act 2018
- UK GDPR

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Information Commissioner's Office, (2022), *Guide to the UK General Data Protection Regulation (UK GDPR)*. [Online] Available from: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/> [Accessed: 22/7/2022]
- Author: NHS Digital, (2021), *National data opt-out*. [Online] Available from: <https://digital.nhs.uk/services/national-data-opt-out/> [Accessed: 22/7/2022]

Suggested action:

- Encourage sharing the policy through the use of the QCS App

Equality Impact Assessment:

QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



1. Purpose

1.1 The purpose of this policy is to explain the introduction of the Data Opt-Out Policy and to ensure that Harbour Medical Practice understands the steps it needs to take to comply with the Data Opt-Out Policy. This policy focusses on key information about the Data Opt-Out Policy, and Harbour Medical Practice acknowledges that it should ensure that it has a thorough understanding of the Data Opt-Out Policy by reviewing the information referred to in the Underpinning Knowledge / References and Further Reading sections of this policy.

1.2 To support Harbour Medical Practice in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
WELL-LED	HW4: Are there clear responsibilities, roles and systems of accountability to support good governance and management?
WELL-LED	HW5: Are there clear and effective processes for managing risks, issues and performance?
WELL-LED	HW6: Is appropriate and accurate information being effectively processed, challenged and acted on?

1.3 To meet the legal requirements of the regulated activities that {Harbour Medical Practice} is registered to provide:

- | The National Health Service Act 2006
- | Data Protection Act 2018
- | UK GDPR



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Patients may be affected by this policy:

- | Patients

2.3 The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Representatives
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



3. Objectives

3.1 To ensure that Harbour Medical Practice understands the requirements of the Data Opt-Out Policy.

3.2 To ensure that Harbour Medical Practice understands the steps it needs to take to determine whether the Data Opt-Out Policy applies to Harbour Medical Practice and, if it does, the steps Harbour Medical Practice needs to take to comply with the Data Opt-Out Policy.

Harbour Medical Practice

1 Pacific Drive, Sovereign Harbour North, Eastbourne, East Sussex, BN23 6DW



4. Policy

4.1 Harbour Medical Practice understands that it must comply with the Data Opt-Out Policy by 31 July 2022, showing to what extent information is processed within the scope of the Data Opt-Out Policy.

4.2 Harbour Medical Practice understands that the obligations placed on Harbour Medical Practice as Data Controller under the UK GDPR and Data Protection Act 2018 remain in place and are not affected by the introduction of the Data Opt-Out Policy.

4.3 Harbour Medical Practice understands that it may need to introduce new policies and procedures to ensure compliance with the Data Opt-Out Policy.

4.4 Harbour Medical Practice understands that the Data Opt-Out Policy applies if an organisation confirms it has approval from the Confidentiality Advisory Group (also known as Section 251 approval) for the disclosure of confidential patient or Patient information held by Harbour Medical Practice. Where Harbour Medical Practice is the Data Controller, it may, if it wishes, disclose the information to the data applicant without breaching its duty of confidentiality. Harbour Medical Practice understands that it is in these cases only that the Data Opt-Out Policy applies.

4.5 Harbour Medical Practice understands that it should read, understand and, if necessary, seek advice upon Section 251 and Section 259 of the National Health Service Act 2006 in order to fully understand the application of the Data Opt-Out Policy. Harbour Medical Practice acknowledges that this policy does not provide a detailed overview of the legislation and that Harbour Medical Practice must determine the extent to which the Data Opt-Out Policy applies to Harbour Medical Practice.

4.6 Harbour Medical Practice understands that the Data Opt-Out Policy applies to “confidential patient information” which is defined in Section 251(1) of the National Health Service Act 2006 as information that meets the following requirements:

- 1 The individual to which the information (for example, the Patient) relates is identifiable or likely to be identifiable; and
- 1 The information is given in circumstances where the individual (for example, the Patient) is owed an obligation of confidence; and
- 1 The information relates in some way to the physical or mental health or condition of an individual (for example, the Patient), a diagnosis of their condition and/or their care or treatment.

4.7 Harbour Medical Practice understands that the Data Opt-Out Policy applies to local authority social care organisations.

4.8 Harbour Medical Practice understands that the Data Opt-Out Policy only applies to Patients and not to employees of Harbour Medical Practice.

4.9 Harbour Medical Practice understands that the Data Opt-Out Policy only applies where the information is being disclosed beyond the purpose of individual care i.e. for research and planning. Where Harbour Medical Practice processes information on the basis of implied consent (for example, to provide care), express consent or where there is a legal requirement for disclosure, the Data Opt-Out Policy does not apply.

4.10 Harbour Medical Practice understands that the Data Opt-Out Policy applies to health and adult social care provided in England. It does not apply to information generated or processed outside of England including Wales, Scotland, Northern Ireland, the Isle of Man or Channel Islands.

4.11 Harbour Medical Practice understands that the Data Opt-Out Policy does not apply retrospectively to data disclosed before a Patient sets an opt out.



5. Procedure

5.1 Harbour Medical Practice will consider the following questions to determine whether the current and ongoing data disclosures of Harbour Medical Practice fall within the scope of the Data Opt-Out Policy:

5.1.1 Is the use or disclosure for individual care or research and planning? If the former, the Data Opt-Out Policy does not apply.

5.1.2 Is Harbour Medical Practice using or disclosing confidential patient information? Please see section 4.6 of the Policy section above for more information.

5.1.3 Does Harbour Medical Practice have express consent from the relevant individual (such as the Patient) for the use or disclosure? If so, the Data Opt-Out Policy does not apply.

5.1.4 Is the disclosure for the purpose of monitoring and control of communicable disease or other risks to public health? If so, the Data Opt-Out Policy does not apply.

5.1.5 Is the information being disclosed because of a legal requirement? If so, the Data Opt-Out Policy does not apply.

5.1.6 Is the use or disclosure in the overriding public interest? If so, the Data Opt-Out Policy does not apply.

5.1.7 Is Section 251 approval relevant? If the data or use has Section 251 support obtained under regulation 2 (diagnosis and treatment of cancer) or regulation 5 (general medical and research purposes), the Data Opt-Out Policy **will** apply (unless the Confidentiality Advisory Group (CAG) has determined that the Data Opt-Out Policy has been waived but this is only the case in limited and exceptional circumstances).

5.1.8 Has the use or disclosure been granted a specific exemption? Exemptions may apply for disclosures of data for the UK Health Security Agency National Disease Register

(see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-5-flows-to-public-health-england-national-diseases-e-registers>), Assuring Transformation (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-8-assuring-transformation>) and national patient experience surveys (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-9-national-patient-experience-surveys>).

5.1.9 Is the disclosure to NHS Digital? The Data Opt-Out Policy does not apply where NHS Digital requests data under section 259 of the Health and Social Care Act 2012.

5.1.10 Is the use or disclosure to support payment and invoice validation? The Data Opt-Out Policy does not apply to disclosure of confidential information for invoice validation for contracted and non-contracted activities to Controlled Environments for Finance.

5.2 If Harbour Medical Practice determines that the Data Opt-Out Policy is applicable to Harbour Medical Practice, Harbour Medical Practice will apply national data opt-outs by removing the records of anyone who has an opt-out registered before Harbour Medical Practice uses or discloses the information. Harbour Medical Practice understands that NHS Digital has developed a technical service which enables Harbour Medical Practice to check whether the Patients have requested a national data opt-out. The service can be used by Harbour Medical Practice submitting a list of NHS numbers, in which case the service will return a “cleaned list” of those that do not have a data opt-out, or Harbour Medical Practice can submit NHS numbers for all Patients with whom they have a legitimate relationship and temporarily store the list of Patients who do not have an opt-out at the current time.

5.3 If Harbour Medical Practice is required to apply the Data Opt-Out Policy, all records associated with the individual must be deleted or removed in their entirety. Harbour Medical Practice may retain data it uses for individual care purposes, but all data used for research and planning must be deleted.



6. Definitions

6.1 Information Commissioner's Office

- | The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals

6.2 UK GDPR

- | The UK GDPR is the retained EU law version of GDPR that forms part of English law

6.3 Data Protection Act 2018

- | The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK. It sits alongside the General Data Protection Regulation and replaces the Data Protection Act 1998

6.4 Data Opt-Out Policy

- | The policy was proposed by the National Data Guardian, accepted by the government and directed by the Department of Health and Social Care
- | The national data opt-out policy with which certain organisations must comply by the 31st July 2022

6.5 GDPR

- | General Data Protection Regulation (GDPR) (EU) 2016/679 is a regulation in EU law on data protection and privacy for all individuals within the European Union. It was adopted on 14 April 2016 and after a two-year transition period became enforceable on 25 May 2018. References to GDPR include references to the UK GDPR



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Harbour Medical Practice must understand and apply the Data Opt-Out Policy by the 31st July 2022



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- | Requests made by individuals (including Patients) to opt-out of use/disclosure of their information in line with their rights in the Data Opt-Out Policy will have requests complied with by the 31st July 2022



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

NHS Digital provides useful information relating to the Data Opt-Out Policy on its website, including at the following pages:

<https://digital.nhs.uk/services/national-data-opt-out/compliance-with-the-national-data-opt-out/>

<https://digital.nhs.uk/services/national-data-opt-out/guidance-for-health-and-care-staff>

<https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out>

NHS Digital also provides detailed information on patient confidentiality requirements:

<https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>

Digital Social Care - National Data Opt-Out - Actions for all CQC-registered adult social care services by 31 July 2022:

[https://www.digitalsocialcare.co.uk/data-security-protecting-my-information/national-data-opt-out/?](https://www.digitalsocialcare.co.uk/data-security-protecting-my-information/national-data-opt-out/?mc_cid=2b44fa16e9&mc_eid=8f36638d47)

[mc_cid=2b44fa16e9&mc_eid=8f36638d47](https://www.digitalsocialcare.co.uk/data-security-protecting-my-information/national-data-opt-out/?mc_cid=2b44fa16e9&mc_eid=8f36638d47)



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- | Harbour Medical Practice has conducted a data protection impact assessment on the data processing activity being taken to apply national data opt-outs
- | Harbour Medical Practice has implemented processes to ensure that all opt-outs requested under the Data Opt-Out Policy are complied with
- | The wide understanding of the policy is enabled by proactive use of the QCS App



Forms

Currently there is no form attached to this policy.