

Data Sharing Agreement (DSA)

GDPR Addendum

Between

GP Practices

and

Providers of NHS Funded Care

December 2018

# Your Care Connected (YCC) Data Sharing Agreement: GDPR Addendum

## Introduction

The Your Care Connected (YCC) Data Sharing Agreement (DSA) is dated September 2016 when the 1998 Data Protection Act (DPA98) was in force. On May 25th 2018 the General Data Protection Regulation (GDPR) came into force across the European Union and was enacted in the UK as the Data Protection Act 2018 (DPA18). Having received advice from internal IG and legal teams as well as from NHS England, YCC believes that the current DSA is compliant with GDPR, but there is an opportunity to take advantage of the new provisions enabled by the GDPR regulations. Our DSA also stipulates an expectation to review the DSA regularly in light of any new national guidance. This document should be read alongside the existing DSA and also provides the basis for updating public facing information to reflect the changes under GDPR (see appendix 1).

## Current DSA under GDPR

Much of the content of the current DSA still directly applies under GDPR. Most importantly the purpose for data sharing has not changed and is still for direct care only. The scope of sharing also hasn’t changed and is still a local shared care record. The principles of fairness and transparency, data minimisation and accuracy are already covered adequately. Data storage is not a concern for YCC as no data is stored outside of the current systems. YCC provides a real time view (look-up) of the GP record without local or remote storage. Integrity and Confidentiality (Security) have always been a key priority for YCC and the existing DSA clearly details the safeguards, both technical and organisational, that are in place. Individual organisations are of course responsible for compliance with GDPR but the YCC team has done due diligence in checking this compliance, particularly with Healthcare Gateway Limited (HGL) who provide the technical infrastructure for the YCC service.

## Lawful Basis for Sharing

This is the key area where there has been a change with GDPR. The role of consent, which the current DSA relies on as a lawful basis, has changed and organisations must choose one of the available lawful bases for sharing. YCC is adopting Section **6(1)(e) – ‘…perform a task in the public interest or for your official functions…’** as the lawful basis for sharing under GDPR which is equivalent to the elements listed in our existing DSA. This is the basis suggested by the ICO.

**Table 1** shows a more detailed consideration of the impact of changing the lawful basis for sharing

|  |  |  |
| --- | --- | --- |
| **Current DSA lawful basis (section 5 of the DSA)** | **Transition to lawful basis under GDPR** | **Comment** |
| Schedule 2 conditions - Patient Consent (implied at the point of sharing) | n/a | Even though patient consent is no longer the lawful basis for sharing, implied consent is still the basis for sharing under the common law duty of confidentiality. |
| Schedule 2 conditions - Vital Interests | 6(1)(d) – ‘…to protect the vital interests…’ | In the case of an emergency this lawful basis is still valid for record access, although is effectively also covered under 6(1)(e). |
| Schedule 2 conditions - ‘…*legitimate interests pursued…’* | 6(1)(e) – *‘…perform a task in the public interest…’* | The ICO is clear that legitimate interest can no longer be used by a public authority and has directed instead that 6(1)(e) is likely to be the most appropriate lawful basis. This basis is new in GDPR and is the equivalent to legitimate interests for public authorities. |
| Schedule 3 conditions – *‘…necessary for medical purposes…’* | 9(2)(h) - *‘…provision of health or social care…’* | This lawful basis for the processing of special category data is unchanged |

YCC believes that whilst the description of the lawful basis has changed because of the new legislation the spirit and principle of the lawful basis remains unchanged. The principle change is to the public task basis which did not exist in the DPA98 and is the closest new equivalent to the old legitimate interest (which can no longer be used by public authorities).

## Permission to View at the point of Care

The YCC DSA has a section on permission to view:

*Section 8.3.1 - To view a record available in YCC during Phase One, Permission to View must be sought in one of two ways: either by a Relevant Healthcare Professional at the point of care, or by the patient’s GP at the time of referral to the NHS Service Provider.*

As consent is no longer the lawful basis for data sharing, the Permission to View detailed in the original DSA is only relevant to the common law duty of confidentiality. For unscheduled care the treating clinician would still ask for permission to view the GP record where possible. For scheduled care, on referral, the patient has given permission through implied consent to share relevant information, as outlined in the [GMC guidance on confidentiality](https://www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/using-and-disclosing-patient-information-for-direct-care):

*‘You may rely on implied consent to access relevant information about the patient or to share it with those who provide (or support the provision of) direct care…’*

## Changes in terminology

The terminology used in the DSA requires updating to reflect current legislation and practice. These are the changes to consider when reading the current DSA:

* All references to DPA98 should be considered as reference to DPA18
* GDPR and DPA18 are terms used interchangeably as DPA18 is the UK enactment of the GDPR.
* ‘Data Controllers in Common’ has been replaced by the term ‘Joint Data Controllers’

## YCC under GDPR

Appendix 1 shows how YCC complies under GDPR, which will also be made available on our website and given to GP practices to enable them to update their own privacy notices. All patients currently enrolled in YCC have been informed that their data is being shared, who it is shared with and for what purpose, and been given the option to opt out. They have also been informed that any changes will be updated on our website. We will also support practices and providers in meeting their fair processing duties through the provision of posters and leaflets.

## Appendix 1

**Your Care Connected (YCC) Data Sharing Agreement: GDPR Addendum**

https://midlandsyourcareconnected.nhs.uk/

Why and how we process your data and your rights in the Your Care Connected record sharing system under the General Data Protection Regulations (GDPR).

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| --- | --- | --- |
| **Data controller** | Joint Data Controllers include all participating GP practices and providers as listed on our [website](https://midlandsyourcareconnected.nhs.uk/index.php/about/working-with-other-organisations) | |
| **Why and how we use the information?** | Your Care Connected (YCC) is an electronic record sharing system that allows authorised staff in the health and care services to securely view key aspects of the GP record, to provide patients with better and safer care. | |
| **Where is the data used?** | Our current list of providers can be viewed on our [website](https://midlandsyourcareconnected.nhs.uk/index.php/about/working-with-other-organisations) | |
| **What data is shared?** | The current data that is shared can be view on our [website](https://midlandsyourcareconnected.nhs.uk/index.php/patient-information/what-information-does-your-care-connected-share) | |
| **Where does this data come from?** | General Practice (GP) medical record | |
| **Does this contain sensitive data such as health information?** | Yes, sensitive data is processed as described in GDPR section 9(2)h for the purpose of health or social care. | |
| **Who are recipients of this data?** | Authorised health and care staff as listed on our [website](https://midlandsyourcareconnected.nhs.uk/index.php/patient-information/who-can-see-your-information) | |
| **Is data transferred outside the UK?** | No | |
| **How long the data is kept?** | Data not kept | |
| **Our lawful basis for processing this data** | Data is processed under Public Task as described in GDPR section 6(1)e | |
| **Your rights** | Tick Be informed  cid:image001.png@01D475C1.BEB81520 Get access to it  cid:image001.png@01D475C1.BEB81520 Rectify or change it  cid:image002.png@01D475C1.BEB81520 Erase or remove it  cid:image001.png@01D475C1.BEB81520 Restrict or stop processing it | cid:image002.png@01D475C1.BEB81520 Move, copy or transfer it  cid:image001.png@01D475C1.BEB81520 Object to it being processed or used  cid:image001.png@01D475C1.BEB81520 Know if a decision was made by a computer rather than a person |
| **How can you restrict or object to data processing?** | Patients can download an [opt out form](https://midlandsyourcareconnected.nhs.uk/index.php/patient-information/if-you-don-t-want-your-information-shared) from our website to complete and give to their registered GP practice to opt out of this type of data processing from the GP medical record. | |
| **Is the data subject to decisions made solely by computers?** | No | |