

## Equality and Social Justice Committee

Senedd Cymru  
Cardiff Bay  
Cardiff CF99 1SN

29 August 2023

## Equality and Social Justice Committee inquiry: Data justice – GPC Wales response

### Dear Chair

Many thanks for your letter of 7 August with some further questions stemming from my submission to the Committee's short inquiry on data justice in NHS Wales. In this response I'll address some of these questions individually.

### How GPs fulfil their data controller responsibilities

GP practices are data controllers for the data they hold about their patients. Although almost all practices will have data that are processed on their behalf by third parties, for example their IT system suppliers, it is the practice as data controller that has the responsibility for compliance under GDPR.

Under the GDPR, a data processor processes personal data 'on behalf of the controller', for example IT system suppliers are data processors. A processor can only act in response to an instruction from the data controller. Any change in the processing arrangements or significant decisions about the data can only be made by or with the agreement of the data controller.

The data controller has a legal responsibility to control the way in which a data processor processes data on their behalf. A contract must exist between the data controller and data processor that sets out these responsibilities and should include a range of specific criteria, for example, assurances that the data processor has adequate security measures in place. This would be particularly important should a data breach

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Rhestrwyd yn Undeb Llafur o dan Ddeddf Undebau Llafur a Chysylltiadau Llafur 1974.  
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occur. The prospective suppliers of GP clinical systems to Welsh practices must demonstrate that they have appropriate security measures and information governance safeguards to be included within the **NHS Wales GP IT Systems Procurement Framework** process.

As data controllers, practices retain responsibilities for handling all requests for access to the data, for example, subject access requests made by patients or requests from third parties such as insurance companies and solicitors. GP data controllers may delegate these activities but remain responsible for the final output. As we outlined in our previous response, GP partners are ultimately liable for any sanction levied by the Information Commissioner's Office in the event of any data breaches or release of inappropriate information.

Under the GMS contract, practices are required to periodically complete the **Welsh Information Governance Toolkit**<sup>i</sup>, a self-assessment process which has been developed by Digital Health & Care Wales in conjunction with GPC Wales. This helps organisations to measure their compliance with current IG standards and to identify areas of improvement.

With the advent of GDPR in 2018, public authorities (including GP practices), are required to have a Data Protection Officer in place. GPC Wales entered into discussions with Digital Health and Care Wales, known as NWIS at the time, to develop the **NHS Wales Data Protection Officer Support Service**<sup>ii</sup>. This service provides a number of activities including knowledge sharing; template documents; bespoke advice; training and learning materials; regular information sharing on relevant developments. This service is subscription based, as practices are entitled to appoint their own DPO, with the fees reviewed and agreed annually by a national governance board which includes representation from GPC Wales.

### [Accelerated Access to Patient Records in England](#)

It would not be appropriate for me to comment in great detail upon the issue of access to records in England, which colleagues in the General Practitioners Committee England (GPCE) are leading upon.

However, recent information on the situation in England can be found on the BMA website<sup>iii</sup>. This outlines that following imposition of their GP contract which was opposed by GPCE), practices in England - once they receive a contract variation notice - are required contractually to provide prospective record access to coded information, documents, and free text by 31 October 2023. The main exception is where a patient has expressly opted out.

Given the ongoing concerns (similar to those outlined in our previous letter to committee), GPCE are exploring how best to move forward ahead of the planned switch on date. Further information will be provided in due course.

### Alternative models

Given the statutory obligations of GDPR, it is difficult to see how any alternative models could allow for GPs to share/delegate their responsibilities and/or accelerate increased patient record access.

Our experience of subject access requests tells us that the likelihood of third-party information being held in an individual's GP record is high. This requires manual redaction by clinician in the absence of any technological solutions, and this is extremely time consuming as a result. This renders the general aim of safe data sharing outside of minimal coded datasets (such as allergies, medication information and diagnosis codes) impractical, and ultimately undeliverable given the critical workforce and sustainability challenges currently facing general practice (as per our recent Save Our Surgeries campaign<sup>iv</sup>).

We are supportive of patient access to their own record in principle and have had positive discussions about displaying structured clinical data such as medicines, allergies and diagnoses on the NHS Wales App with Digital Health and Care Wales and Welsh Government. However, this must be done in a considered, phased manner underpinned by robust Information Governance and access processes built into technological and legislative developments.

On behalf of GPC Wales, I would be happy to discuss these issues with you and colleagues in person or virtually if it would be helpful to enhance the understanding around information governance concerns of GPs.

Yours sincerely



**Dr Ian Harris**  
**Deputy Chair,**  
**General Practitioners Committee Wales**

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<sup>ii</sup> DHCW - *Welsh Information Governance Toolkit* <https://dhw.nhs.wales/ig/information-governance/welsh-information-governance-toolkit/>

<sup>ii</sup> DHCW - *Data Protection Officer Support Service* <https://dhw.nhs.wales/ig/information-governance/data-protection-officer-support-service/>

<sup>iii</sup> BMA (July 2023) *Updated guidance on accelerated access to GP-held patient records* <https://www.bma.org.uk/advice-and-support/gp-practices/gp-service-provision/updated-guidance-on-accelerated-access-to-gp-held-patient-records>

<sup>iv</sup> BMA Cymru Wales (June 2023) *Save Our Surgeries* <https://www.bma.org.uk/advice-and-support/nhs-delivery-and-workforce/pressures/wales-save-our-surgeries-campaign>