



Department
of Health

From the Rt Hon Jeremy Hunt MP
Secretary of State for Health

Richmond House
79 Whitehall
London
SW1A 2NS

POC_1028968

020 7210 4850

Andy Williams
Chief Executive
Health and Social Care Information Centre
1 Trevelyan Square
Boar Lane
Leeds LS1 6AE

15 APR 2016

Dear Andy,

Direction to the Health and Social Care Information Centre to process Type 2 objections

Further to the Health and Social Care Information Centre (Patient Objections) Directions 2015,¹ I am writing to set out the steps that the Health and Social Care Information Centre (HSCIC) is to take upon collecting information about patients who have registered Type 2 objections.

Please accept this letter as a direction given under section 254(1) and (6) of the Health and Social Care Act 2012 (“the 2012 Act”), regulation 32 of the National Institute for Health and Social Care Excellence (Constitution and Functions) and the Health and Social Care Information Centre (Functions) Regulations 2013 and sections 274(2) and 304(9)-(12) of the 2012 Act.

1. With effect from 29 April 2016, HSCIC is directed to establish and operate a system to process and uphold Type 2 objections, where reasonably practicable and in accordance with the following principles.
 - a. Type 2 objections are the requests expressed by patients and lodged with their GP Practice that indicate that personal confidential information that relates to them should not be disseminated or published by HSCIC for purposes beyond their direct care.
 - b. A Type 2 objection applies only to a patient’s personal confidential information. This has the same meaning as “confidential patient information”

¹ For the avoidance of doubt, the Health and Social Care Information Centre (Patient Objections) Directions 2015 continue to have effect.

defined in section 251 (11) of the National Health Service Act 2006. Accordingly, a Type 2 objection will not apply to information that is not “confidential”, including:

- i. aggregated information;
 - ii. information that is otherwise anonymised in accordance with the Information Commissioner’s Office Code of Practice on Anonymisation;² or
 - iii. patient registration information disclosed to the Office for National Statistics under section 43 of the Statistics and Registration Service Act 2007.
- c. A Type 2 objection will not apply to the disclosure of a patient’s personal confidential information for the purpose of facilitating the patient’s direct care. This includes all disclosure of a patient’s personal confidential information for the purpose of allowing his or her participation in National Screening Programmes endorsed by the UK National Screening Committee.
- d. Additionally, a Type 2 objection will not apply to the disclosure of a patient’s personal confidential information where:
- i. The disclosure is required by law;
 - ii. The patient has explicitly consented to that disclosure (whether before or after registering their Type 2 objection);
 - iii. The disclosure is authorised in accordance with section 261(4) of the 2012 Act where the HSCIC is disseminating personal confidential information to the person from whom the HSCIC collected the personal confidential information;
 - iv. The disclosure is authorised under regulation 3 (Communicable disease and other risks to public health) of the Health Service (Control of Patient Information) Regulations 2002 (SI 2002/1438) (“the 2002 Regulations”);
 - v. The disclosure is to the Office for National Statistics for the purpose of producing official statistics;

² Information Commissioner’s Office *Anonymisation: Managing Data Risk Code of Practice* (November 2012), available: <https://ico.org.uk/media/1061/anonymisation-code.pdf>



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- vi. Where there is an overriding public interest in the disclosure.
- e. A Type 2 objection will apply to the disclosure of a patient's personal confidential information approved under regulation 2 (Medical purposes related to the diagnosis or treatment of neoplasia) or regulation 5 (Approval for processing information) of the 2002 Regulations, in cases where the approval is subject to the Confidentiality Advisory Group standard condition that the wishes of patients who have withheld or withdrawn their consent are respected, except in respect of disclosures to the Office for National Statistics specified in (d)(v) above and disclosures under the approvals specified in (f) below.
- f. A Type 2 objection will not apply to the disclosure of a patient's personal confidential information under the following approvals:
 - i. National Cancer Registration Service (PIAG 03(a)/2001);
 - ii. National Congenital Anomalies and Rare Diseases Registration Service (CAG 10-02(d)/2015);
 - iii. Assuring Transformation: Enhanced Quality Assurance Process Data flow (Disclosure by HSCIC to NHS England) (CAG 8-02 (c)/2014).
- g. It will not be considered reasonably practicable for HSCIC to process and uphold Type 2 objections where HSCIC cannot do so for technical reasons, for example in the following cases:
 - i. Systems in which the application of Type 2 objections would require significant and system-wide IT development changes which are neither practical nor cost-effective to implement (e.g. given the pending replacement of the system and/or where there is an overriding need for the system to continue operating.) The only system presently believed to meet these criteria is the Cancer Waiting Times system.
 - ii. Systems which are primarily used to support direct care but where the data are also accessed for purposes to which Type 2 objections would otherwise apply, and where it would not be reasonably practicable to segregate those purposes and apply Type 2 objections (e.g. payment notification generated as part of Electronic Prescription Service).

- iii. Where an NHS Number cannot be identified for a record (either because the field is blank or an invalid NHS Number has been recorded).
- iv. Data Services for Commissioners Regional Offices (DSCROs), which currently use local IT systems but are in the process of migrating onto the central HSCIC IT system. In this case HSCIC is directed to apply Type 2 objections in accordance with the principles in this letter by 14 October 2016.
- v. Disclosure to Public Health England for the National Drug Treatment Monitoring Service, which involves disclosures authorised by patient consent and disclosures authorised by Regulation 5 approval (ECC 5-05(e)/2012). It is not currently possible to segregate the two classes of information. In this case HSCIC is directed to apply Type 2 objections in accordance with the principles in this letter by 14 October 2016.

In such cases, HSCIC must:

- a. Make every reasonable and practicable effort to overcome the technical barriers as soon as possible; and
 - b. Uphold objections in accordance with the above principles as soon as reasonably practicable.
2. With effect from 29 April 2016, HSCIC is further directed to analyse how Type 2 objections may affect the data it releases in order to support recipient organisations to understand how the application of Type 2 objections may affect their own analysis, research findings and performance measurement.



JEREMY HUNT

CC (by email):

Kingsley Manning, Chair, HSCIC

Tamara Finkelstein, Chief Operating Officer, Department of Health

Professor Martin Severs, Interim Executive Director of Information and Analysis and Clinical Professional Lead, HSCIC

Katie Farrington, Director, IGT, Department of Health

Cameron Robson, Deputy Director, IGT, Department of Health