

## Health and Social Care Information Centre

### Minute of Chair's Action – Monday 18 April 2016

#### Department of Health Directions to the HSCIC to process Type 2 Objections

Non-Executive Director (Chair)  
Non-Executive Director  
Non-Executive Director

Kingsley Manning  
Sir Ian Andrews  
Prof. Maria Goddard

The HSCIC acknowledges receipt of the Department of Health Directions to the HSCIC to process Type 2 Objections. The HSCIC also acknowledges receipt of a letter from Tamara Finkelstein (Department of Health Chief Operating Officer and Director General for Group Operations) on 15 April 2016 in respect to the Directions, to which the HSCIC CEO responded on 18 April 2016.

The HSCIC Standing Orders permit, in exceptional circumstances, that the powers which the Board has retained to itself may in emergency be exercised by the Chair, after having consulted at least two non-executive members. The exercise of such powers by the Chair must be reported to the next formal meeting of the Board for ratification.

On Monday 18 April 2016 by Chairs Action, the HSCIC accepted the Department of Health Directions to the HSCIC to process Type 2 Objections. The Chair and Non-Executive Directors Sir Ian Andrews and Professor Maria Goddard accepted the Directions on behalf of the Board. The HSCIC therefore agrees to the implementation of the Direction on 29 April 2016.

The Board resolved at the Board meeting on 25 November 2015 to agree to a Chairs Action because the draft Directions were not ready for the November Board. The interim Director of Information and Analytics (Martin Severs) confirmed that work was ongoing to draft the Directions with the Department of Health. The Board approved the management of the Directions via a Chairs Action.

It is confirmed the Chair has signed the associated [Information Commissioners Office \(ICO\) Undertaking](#).

The ratification of the Chair's Action will take place at the May Board meeting.



Department  
of Health

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

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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,<sup>1</sup> 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”

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<sup>1</sup> 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;<sup>2</sup> 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;

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



## Department of Health

- 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



Department  
of Health

*From the Tamara Finkelstein  
Chief Operating Officer and  
Director General for Group Operations*

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Andy Williams  
Chief Executive  
Health and Social Care Information Centre  
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Leeds LS1 6AE

15 April 2016

Dear Andy

On 14 April, the Secretary of State issued directions to HSCIC to implement Type 2 objections from 29 April, in accordance with the principles set out in those directions.

The Department recognises that implementation of Type 2 objections (and fulfilment of the undertaking to the Information Commissioner's Office to complete implementation within six months) requires the active cooperation of our system partners, including NHS England and Public Health England.

In support of this, I would like to assure you that the Department will continue to act in its usual role of ensuring that our system partners each act in alignment, in this case specifically to deliver the Department's Type 2 objections policy. Where necessary, we will of course convene discussions and broker agreement between HSCIC and your delivery partners under our existing sponsorship mechanisms.

Yours Sincerely,

Sent by e-mail:

Copy: Kingsley Manning, Chair, HSCIC  
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

18<sup>th</sup> April 2016

Tamara Finkelstein  
Chief Operating Officer  
Director General - Group Operations  
Department of Health  
Richmond House  
79 Whitehall  
London SW1A 2NS

Dear Tamara

We have now received the Secretary of State's letter "Direction to the Health and Social Care Information Centre to process Type 2 objections" dated 15<sup>th</sup> April and we have already started work on commencing its implementation before the 29<sup>th</sup> April.

In addition thank you for your letter of the 15<sup>th</sup> April 2016, which helpfully captures the challenge and the role the Department of Health will play if required so that the HSCIC can deliver the Directions and the Undertaking to the Information Commissioner, by the 14<sup>th</sup> October 2016. I hope such interventions will not be required and all parts of the system play their role to ensure that data continues to flow for the benefits of patients in a way they expect.

Yours sincerely



Andy Williams  
Chief Executive