



## Health Research Authority

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12 August 2019

Ms Tamatha Webster  
Care Quality Commission  
151 Buckingham Palace Road  
London  
SW1W 9SZ

Dear Ms Webster

**Application title:** 2019 NHS Adult Inpatient Survey  
**CAG reference:** 19/CAG/0097

Thank you for submitting a **non-research** application under Regulation 5 of the Health Service (Control of Patient Information) Regulations 2002 ('section 251 support') to process confidential patient information without consent.

Supported applications allow the controller(s) of the relevant data sources, if they wish, to provide specified information to the applicant for the purposes of the relevant activity without being in breach of the common law duty of confidence. Support provides a lawful basis to allow the information to be processed by the relevant parties for the specified purposes without incurring a breach of the common law duty of confidence only. Applicants must ensure the activity remains fully compliant with all other relevant legislation.

The role of the Confidentiality Advisory Group (CAG) is to review applications submitted under these Regulations and to provide advice to Secretary of State for Health and Social Care on whether application activity should be supported, and if so, any relevant conditions. This application was considered at the precedent set CAG meeting held on 05 July 2019. The application was considered via the precedent set process under category 11 - Applications made by the Picker Institute Europe to administer surveys on behalf of CQC.

### **Secretary of State for Health and Social Care decision**

The Secretary of State for Health and Social Care, having considered the advice from the Confidentiality Advisory Group as set out below, has determined the following:

1. The application to allow the disclosure of confidential patient information from participating acute and specialist NHS Trusts to approved contractors for the purpose of mailing out questionnaires is fully supported, subject to compliance with the standard and specific conditions of support.

**Please note that the legal basis to allow access to the specified confidential patient information without consent is now in effect.**

## **Context**

### Purpose of application

This non-research application from the Care Quality Commission set out the purpose of conducting the 2019 NHS Adult Inpatient Survey, using standardised methodology to build up a national picture of patient experiences. The outputs of this survey will be a set of aggregate statistical data that does not contain patient identifiable information.

This statistical dataset is used for a wide variety of purposes to support ongoing improvement in overall patient experience. The survey data will be used extensively by NHS trusts and Clinical Commissioning Groups (CCGs) in local improvement. The CQC will use data as part of its regulatory activities, as well as any other relevant functions. Individual level data for respondents will be shared with NHS England and the Department of Health and Social Care, containing sample file information. Individual level data for respondents and non-responders will be shared with NHS England to understand patients' experiences of NHS services and to drive improvements to them. The Department of Health and NHS England may use the results to generate aggregate indicators at local, regional and national level. These indicators form part of the range of Outcome Frameworks and other publications. The data will also be shared with the Health and Social Care Information Centre, or other organisations, working on behalf of Department of Health or NHS England for the purpose of generating these indicators. NHS Improvement will use the trust level results (scored data) to inform their oversight model for NHS Trusts.

The 2019 Inpatient survey will be the sixteenth carried out to date. All trusts will draw a sample of patients according to set criteria and follow standardised materials and procedures for all stages of the survey. The methods for the 2019 survey are unchanged from the 2018 survey. The methodology is well-established and has been supported by CAG in previous years.

When administering the survey, NHS trusts will be advised to employ the service of one of four approved contractors to reduce the cost, burden and risk in the provision of survey data. In doing so, it is expected that the risks to data quality and delay to the timetable are reduced dramatically, as evidenced throughout the application. Some NHS trusts may opt to undertake the mailing of questionnaires themselves, avoiding the need to employ an approved survey contractor.

A recommendation for class 5 and 6 support was requested to cover access to the relevant unconsented activities as described in the application.

### Confidential patient information requested

The following sets out a summary of the specified cohort, listed data sources and key identifiers. Where applicable, full datasets and data flows are provided in the application form and relevant supporting documentation as this letter represents only a summary of the full detail.

<p><b>Cohort</b></p>	<p>Inpatients aged 16 years old or over who were discharged from acute and specialist NHS hospitals in July 2019 (and earlier for smaller trusts), having had one overnight stay in hospital.</p> <p>Exclusions:</p> <ul style="list-style-type: none"> <li>• deceased patients</li> <li>• children or young persons aged under 16 years at the time of sampling</li> <li>• obstetrics/maternity service users, including spontaneous miscarriages</li> <li>• patients admitted for planned termination of pregnancy</li> <li>• psychiatry patients</li> <li>• day cases</li> <li>• private patients (non-NHS)</li> <li>• any patients who are known to be current inpatients patients without a UK postal address</li> <li>• any patient known to have requested their details are not used for any purpose other than their clinical care, including those responding to posters displayed on hospital wards referring to the survey (the survey instructions request that all responses to posters are logged and used for this purpose).</li> </ul>
<p><b>Data sources</b></p>	<p>148 acute and specialist NHS trusts</p>
<p><b>Identifiers required for linkage purposes</b></p>	<p>The mailing data is used to address questionnaires to the appropriate person. It contains:</p> <ul style="list-style-type: none"> <li>• Trust code.</li> <li>• A standardised unique identifier code, to be constructed as survey identifier, trust code followed by a whole number (consecutive across the sample of 1,250 patients from each trust),</li> <li>• Title (Mr, Mrs, Ms, etc.)</li> <li>• First name</li> <li>• Surname</li> <li>• Address Fields</li> <li>• Postcode (where available)</li> </ul>
<p><b>Identifiers required for analysis purposes</b></p>	<p>The sample data file is used to link demographic data to the survey responses, to aid analysis and to enable checks to be carried out for any errors in how the sample was drawn. This file contains:</p> <ul style="list-style-type: none"> <li>• The unique identifier code (as above)</li> <li>• Admission/discharge dates</li> <li>• Length of stay (this is calculated from the admission and discharge dates).</li> <li>• Whether admission from Treatment Centre</li> <li>• Route of admission</li> <li>• NHS Site code on admission and discharge</li> </ul>

	<ul style="list-style-type: none"> <li>• Ethnicity</li> <li>• Gender</li> <li>• Year of birth</li> <li>• CCG Code: to enable analysis at this level by stakeholders for the production of relevant indicators</li> <li>• ICD-11 code</li> </ul>
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### **Confidentiality Advisory Group advice conclusion**

The CAG agreed that there was a public interest in this activity, were supportive in principle of this activity proceeding, and therefore recommended to the Secretary of State for Health and Social Care that the activity be fully supported.

### **Specific conditions of support (Final)**

The following sets out the provisional specific conditions of support.

1. Confirmation provided from the IG Delivery Team at NHS Digital to the CAG that the relevant Data Security and Protection Toolkit (DSPT) submission(s) has achieved the 'Standards Met' threshold. See section below titled 'security assurance requirements' for further information. **DSPT required for:**
  - **Picker Institute Europe – confirmed by NHS Digital email on 17 July 2019,**
  - **Quality Health – confirmed by NHS Digital email on 24 July 2019,**
  - **Patient Perspective – confirmed by NHS Digital email on 30 July 2019,**

### **Security assurance requirements**

It is the policy position of the Department of Health and Social Care (DHSC) in England that all approved applications seeking 'section 251 support' to process confidential patient information without consent must evidence satisfactory security assurances through completion and satisfactory review by NHS Digital of the relevant Data Security and Protection Toolkit (DSPT). All organisations that are processing confidential patient information under this support must have completed a DSPT submission, and NHS Digital must have reviewed the self-assessment.

There is an agreed bespoke process in place, specifically for applicants seeking 'section 251 support', where the IG Delivery Team at NHS Digital will review the relevant DSPT submission and confirm to CAG that the submission meets the 'Standards Met' threshold. An organisational self-assessment does not provide sufficient evidence; the submission must be independently reviewed by NHS Digital.

To enable NHS Digital to confirm to CAG that the relevant DSPT submission has achieved 'Standards Met', applicants must ensure that the relevant organisations have completed a DSPT submission and submitted their self-assessment(s) through the usual process. At this stage, the applicant must email the Exeter Helpdesk via [exeter.helpdesk@nhs.net](mailto:exeter.helpdesk@nhs.net) and provide this CAG reference number, the organisational names and references that require review, and ask NHS Digital to review the DSPT submissions due to a CAG application. Once reviewed, NHS Digital will confirm to CAG by email that the submission has met the required level.

Please note that even if the outstanding clarifications are satisfactorily addressed, a final outcome letter will not be issued until evidence of adequate security assurance is provided as per the process above. Applicants are strongly encouraged to progress this element as soon as possible.

### Reviewed documents

The documents reviewed at the meeting are as follows.

<i>Document</i>	<i>Version</i>	<i>Date</i>
CAG application from (signed/authorised) [20190701 IP19 S251 CAG application v3.1]	3.1	01 July 2019
Corporate Level Security Policy (CLSP) [20190502 BMG ISMS 02 Network Systems Management_V8 April 2018]	8	02 May 2019
Other [20190620 IP19 Post testing questionnaire V6 Final]	6	02 June 2019
Other [20190620 IP19 Summary of changes - For CAG V1]	1	20 June 2019
Other [20180706 IP18 Survey Handbook V5]	5	06 July 2018
Other [20180710 IP18_Sampling instructions_V7]	7	10 July 2018
Other [20180719 IP18_Sample declaration form for trusts using a contractor_V2]	2	19 July 2018
Other [20190620 IP19 Post testing questionnaire V6 Final]	6	02 June 2019
Other [19CAG0097 CAT advice form 02072019]		02 July 2019
Patient Information Materials [20190502 IP19 Dissent V3]	3	02 May 2019
Patient Information Materials [20190425 IP19 dissent poster v1]	1	25 April 2019
Research protocol or project proposal [20180510 IP18 Sampling flowchart v4]	4	10 May 2018

### Membership of the Committee

The members of the Confidentiality Advisory Group who were present at the consideration of this item are listed below.

Please do not hesitate to contact me if you have any queries following this letter. I would be grateful if you could quote the above reference number in all future correspondence.

With the Group's best wishes for the success of this project.

Yours sincerely

Ms Katy Cassidy  
Confidentiality Advisor

On behalf of the Secretary of State for Health and Social Care.

Email: [HRA.CAG@nhs.net](mailto:HRA.CAG@nhs.net)

*Included:* List of members who considered application

Standard conditions of support

**Confidentiality Advisory Group precedent-set meeting attendance  
05 July 2019**

**Members present:**

Name	
Ms Sophie Brannan	CAG member
Dr. Simon Kolstoe	CAG member
Ms Clare Sanderson	CAG alternative vice-chair

**Also in attendance:**

<i>Name</i>	<i>Position (or reason for attending)</i>
Ms Katy Cassidy	HRA Confidentiality Advisor
Ms Kathryn Murray	HRA Senior Confidentiality Advisor

### **Standard conditions of support**

Support to process the specified confidential patient information without consent, given by the Secretary of State for Health and Social Care, is subject to compliance with the following standard conditions of support.

The applicant and those processing the information under the terms of the support will ensure that:

1. The specified confidential patient information is only used for the purpose(s) set out in the application.
2. Confidentiality is preserved and there are no disclosures of information in aggregate or patient level form that may inferentially identify a person, nor will any attempt be made to identify individuals, households or organisations in the data.
3. Requirements of the Statistics and Registration Services Act 2007 are adhered to regarding publication when relevant, in addition to other national guidance.
4. All staff with access to confidential patient information have contractual obligations of confidentiality, enforceable through disciplinary procedures.
5. All staff with access to confidential patient information have received appropriate ongoing training to ensure they are aware of their responsibilities and are acting in compliance with the application detail.
6. Activities must be compliant with the General Data Protection Regulation and Data Protection Act 2018.
7. Audit of data processing by a designated agent is facilitated and supported.
8. The wishes of patients who have withheld or withdrawn their consent are respected.
9. Any significant changes (for example, people, purpose, data flows, data items, security arrangements) must be approved via formal amendment prior to changes coming into effect.
10. An annual review report is submitted to the CAG every 12 months from the date of the final support letter, for the duration of the support.
11. Any breaches of confidentiality around the supported flows of information should be reported to CAG within 10 working days of the incident, along with remedial actions taken/to be taken. This does not remove the need to follow national/legal requirements for reporting relevant security breaches.