




Review Sheet		
Last Reviewed 30 Jul '20	Last Amended 30 Jul '20	Next Planned Review in 12 months, or sooner as required.
Business impact	 <p>These changes require action as soon as possible.</p> <p>HIGH IMPACT</p>	
Reason for this review	form update	
Were changes made?	Yes	
Summary:	This policy outlines how a service can appoint a Data Protection Officer. It has been reviewed with the form 'Appointment of a Data Protection Officer' relocated to the Forms section of the GDPR suite within the QCS management system. The policy has been updated to this effect and references checked to ensure they remain current.	
Relevant legislation:	<ul style="list-style-type: none"> • General Data Protection Regulation 2016 • Data Protection Act 2018 	
Underpinning knowledge - What have we used to ensure that the policy is current:	<ul style="list-style-type: none"> • Author: Information Commissioner's Office, (2018), <i>Data protection officers</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-officers/ [Accessed: 30/7/2020] • Author: Article 29 Working Party, (2018), <i>Guidance on Data Protection Officers and FAQs - See end of webpage</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/accountability-and-governance/data-protection-officers/ [Accessed: 30/7/2020] 	
Suggested action:	<ul style="list-style-type: none"> • Share Key Facts with the professionals involved in the service • Share Key Facts with the people involved in the service • Notify relevant staff of changes to the policy • Encourage sharing the policy through the use of the QCS App • Establish process to confirm the understanding of relevant staff • Establish training sessions for staff • Arrange specific meetings to discuss the policy changes and implications 	
Equality Impact Assessment:	QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.	



1. Purpose

1.1 To enable Holbeach Hospital & Nursing Home to understand whether it is required to appoint a formal Data Protection Officer (DPO) under GDPR, and the implications of appointing a DPO.

1.2 If Holbeach Hospital & Nursing Home is not required to appoint a DPO, this policy recommends nominating an internal point of contact to deal with day-to-day data protection and GDPR issues, concerns and requests.

1.3 To support Holbeach Hospital & Nursing Home in meeting the following Key Lines of Enquiry:

Key Question	Key Lines of Enquiry
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?
WELL-LED	W3: How are the people who use the service, the public and staff engaged and involved?

1.4 To meet the legal requirements of the regulated activities that Holbeach Hospital & Nursing Home is registered to provide:

- | General Data Protection Regulation 2016
- | Data Protection Act 2018



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Service Users may be affected by this policy:

- | Service Users

2.3 The following stakeholders may be affected by this policy:

- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



3. Objectives

3.1 Holbeach Hospital & Nursing Home will determine whether or not it is required to appoint a formal DPO under GDPR. If such appointment is not required under GDPR, Holbeach Hospital & Nursing Home will decide which individual within Holbeach Hospital & Nursing Home will have day-to-day responsibility for data protection and GDPR compliance.



4. Policy

4.1 Holbeach Hospital & Nursing Home understands that the following organisations must appoint a DPO under GDPR:

- | Public authorities (except courts acting in a judicial capacity)
- | Any organisation that carries out large-scale **Systematic Monitoring** of individuals as part of its core activities
- | Any organisation that carries out large-scale **Processing of Special Categories of Data** or data relating to criminal convictions and offences as part of its core activities
- | See policy sections 4.5 and 4.6 entitled 'Systematic Monitoring' and 'Special Categories of Data' for more information

4.2 Holbeach Hospital & Nursing Home understands that groups of companies or public authorities may appoint a single DPO, as long as the DPO is easily accessible.

4.3 If the **core activities** of Holbeach Hospital & Nursing Home require regular and systematic monitoring of Data Subjects on a **large scale**, or the **large-scale** processing of special categories of data, it will appoint a DPO.

- | "**Core activities**" are those activities that are key to achieving the objectives of Holbeach Hospital & Nursing Home, or where the processing of personal data forms an inextricable part of the services at Holbeach Hospital & Nursing Home
- | "**Large scale**" is not defined in GDPR. Holbeach Hospital & Nursing Home will consider a number of factors including the:
 - | Number of Data Subjects concerned
 - | Volume of data
 - | Duration of the processing
 - | Geographical extent of the processing
 - | Whether the processing has extensive or long-lasting effects
 - | Guidance provided which suggests that the processing of Patient information by a hospital is large-scale processing, but the processing of Patient information by an individual doctor is not large-scale processing

4.4 Holbeach Hospital & Nursing Home acknowledges that there needs to be a decision about whether Holbeach Hospital & Nursing Home carries out large-scale systematic monitoring of Data Subjects or large-scale processing of special categories of data. The following two sections will help define the need to appoint a DPO.

4.5 Systematic Monitoring

Holbeach Hospital & Nursing Home understands that "regular and systematic monitoring" is not defined in GDPR. "Monitoring" of Data Subjects means tracking and profiling the Data Subject to make decisions about that Data Subject or to analyse or predict the Data Subject's preferences, behaviours and attitudes. Some examples of "regular and systematic" monitoring include:

- | Tracking a person's use of a website so that targeted advertisements can be used
- | Monitoring wellness, fitness and health data via wearable devices
- | Potentially the use of CCTV, particularly if CCTV is used to monitor individuals on a daily basis rather than for security and prevention or detection of crime
- | Commissioning support and risk stratification activities (which may also constitute large-scale processing of special categories of data, described below)

4.6 Special Categories of Data

Holbeach Hospital & Nursing Home may carry out large-scale processing of special categories of data, depending on the extent to which the services it provides are centred around special categories of data. Holbeach Hospital & Nursing Home understands that if its core business is the delivery of health and social care, it is likely that it will be required to appoint a DPO.

Examples of large-scale processing of special categories of data include:

- | The processing of Patient data in the regular course of business by a hospital or NHS organisation



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would constitute large-scale processing of special categories of data

- | If care provided by Holbeach Hospital & Nursing Home on a regular basis involves treating, assisting with or otherwise processing personal data relating to the medical condition of Service Users, this is likely to constitute large-scale processing of special categories of data
- | The provision of care and care home services is likely to comprise large-scale processing of special categories of data, although it depends on the types of data processed

4.7 If Holbeach Hospital & Nursing Home determines that it is required to appoint a DPO, it will ensure that the DPO is chosen on the basis of his or her professional qualities, knowledge of data protection law and practices and that the DPO is able to fulfil the following tasks:

- | Informing the Data Controller and the Data Processor as well as any employees of Holbeach Hospital & Nursing Home who process personal data of their obligations under GDPR and any other relevant data protection law
- | Monitoring compliance with GDPR and any other relevant data protection law
- | Monitoring compliance with policies of the Data Controller and the Data Processor (including Holbeach Hospital & Nursing Home) in relation to protecting personal data, including raising awareness and training of staff of Holbeach Hospital & Nursing Home who process personal data
- | Providing advice relating to Privacy Impact Assessments and monitoring the completion of Privacy Impact Assessments at Holbeach Hospital & Nursing Home
- | Co-operating with the Information Commissioners Office (ICO) or other relevant supervisory authority
- | Acting as the point of contact with the ICO or other relevant supervisory authority

4.8 Holbeach Hospital & Nursing Home recognises that the DPO may be a staff member of Holbeach Hospital & Nursing Home or that the DPO may provide services to Holbeach Hospital & Nursing Home in accordance with a service contract between the DPO and Holbeach Hospital & Nursing Home. If Holbeach Hospital & Nursing Home appoints a formal DPO under GDPR, it will publish the DPO's contact details and notify the ICO of them.

4.9 If Holbeach Hospital & Nursing Home appoints a DPO, it will ensure that:

- | The DPO is involved in all issues relating to personal data
- | Holbeach Hospital & Nursing Home supports the DPO performing his or her tasks by providing the resources the DPO needs to carry out the tasks and by giving the DPO access to personal data and information relating to the processing carried out by Holbeach Hospital & Nursing Home
- | Holbeach Hospital & Nursing Home does not instruct the DPO to perform his or her tasks in a particular way
- | Holbeach Hospital & Nursing Home does not dismiss or penalise the DPO for performing his or her tasks
- | The DPO reports directly to the highest level of management of Holbeach Hospital & Nursing Home
- | Data Subjects are able to contact the DPO in respect of all issues relating to the processing of their personal data
- | The DPO is required to keep the performance of his or her tasks confidential
- | If the DPO fulfils any other tasks or duties for Holbeach Hospital & Nursing Home, those tasks or duties do not conflict with his or her obligations as a DPO

4.10 If Holbeach Hospital & Nursing Home is not required to appoint a formal DPO under GDPR, it recognises that there are a number of benefits of appointing a person within Holbeach Hospital & Nursing Home to have day-to-day responsibility for data protection and GDPR compliance.

If a person is nominated informally, Holbeach Hospital & Nursing Home will refer to such person as a "Privacy Officer" or similar to avoid confusion with formally appointed DPOs, as recommended by the ICO. The nominated person should have a good understanding of data protection and GDPR and be able to deal with day-to-day queries, or know who to contact externally if they are unable to assist. They will also be the central point for dealing with requests made by Data Subjects and with breaches to help ensure that each request or breach is dealt with in accordance with GDPR.



5. Procedure

5.1 Holbeach Hospital & Nursing Home will determine whether it is required to appoint a DPO under GDPR and, if so, it shall take steps to appoint an appropriate DPO and notify the ICO of the appointment. Holbeach Hospital & Nursing Home will also ensure that all members of staff at Holbeach Hospital & Nursing Home are aware of the identity of the DPO and understand that they should escalate all data protection and GDPR issues, concerns and requests to the DPO.

5.2 If Holbeach Hospital & Nursing Home is unsure if it is required to appoint a DPO, as it is unclear if it is undertaking large-scale regular and systematic monitoring of Data Subjects or large-scale processing of special categories of data, Holbeach Hospital & Nursing Home will contact the Information Commissioners Office (ICO) to seek further clarification, and follow the advice provided by the ICO.

5.3 If Holbeach Hospital & Nursing Home is not required to appoint a formal DPO, it will consider whether to nominate an individual within Holbeach Hospital & Nursing Home to have day-to-day responsibility for data protection and GDPR compliance.

5.4 Holbeach Hospital & Nursing Home will document all decisions taken in respect of appointing a DPO or nominating an internal point of contact for data protection and GDPR.

5.5 If Holbeach Hospital & Nursing Home chooses to appoint a person with day-to-day responsibility for data protection and GDPR compliance, it will begin the process of deciding who the appropriate person would be and setting out what will be expected of that person. It will also advise other members of staff of the identity of the nominated person and ensure that all members of staff understand the importance of escalating any data protection issues, concerns and requests to such person.



6. Definitions

6.1 Data Subject

- | The individual whom Holbeach Hospital & Nursing Home has collected personal data

6.2 Data Protection Act 2018

- | The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK. It sits alongside the General Data Protection Regulation and implements the EU's Law Enforcement Directive

6.3 DPO

- | Data Protection Officer

6.4 GDPR

- | **General Data Protection Regulation (GDPR)** (EU) 2016/679 is a regulation in EU law on data protection and privacy for all individuals within the European Union. It was adopted on 14 April 2016 and after a two-year transition period became enforceable on 25 May 2018

6.5 ICO

- | The Information Commissioner's Office, which is the supervisory body that oversees data protection and GDPR compliance in the UK

6.6 Personal Data

- | Any information about a living person including but not limited to names, email addresses, postal addresses, job roles, photographs, CCTV and special categories of data, defined below

6.7 Process or Processing

- | Doing anything with personal data, including but not limited to collecting, storing, holding, using, amending or transferring it. You do not need to be doing anything actively with the personal data – at the point you collect it, you are processing it

6.8 Special Categories of Data

- | Has an equivalent meaning to "Sensitive Personal Data" under the Data Protection Act 2018. Special categories of data include but are not limited to medical and health records (including information collected as a result of providing health care services) and information about a person's religious beliefs, ethnic origin and race, sexual orientation and political views

6.9 Must

- | The word '**must**' is used in this document to indicate a legal requirement

6.10 Should

- | The word '**should**' is used to indicate that, in particular circumstances, there may exist valid reasons not to follow the guidance, but the full implications must be understood and carefully considered before choosing a different course

6.11 May

- | The word '**may**' is used to indicate a discretionary activity for data controllers. This includes decisions where a permissive legal power is available. Under UK law, data controllers which are public authorities are additionally required to act in accordance with public law principles and to exercise their discretion reasonably and fairly, subject to judicial review, so again such organisations will need to understand the full implications and be able to justify their actions and decisions



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | The DPO or informally appointed Privacy Officer should be the main point of contact for data protection and GDPR queries
- | Appointment of a DPO or Privacy Officer does not prevent a Service User or other Data Subject contacting another member of staff of Holbeach Hospital & Nursing Home for data protection or GDPR queries. Holbeach Hospital & Nursing Home must ensure that the request, concern or other communication is properly dealt with, irrespective of who receives it
- | Any requests, questions or other communications received should be passed to the DPO or Privacy Officer
- | A DPO has to be appointed if Holbeach Hospital & Nursing Home undertakes large-scale 'systematic monitoring' or 'processing of special categories of data'
- | In addition, a DPO has to be appointed if the 'core activities' of Holbeach Hospital & Nursing Home includes large-scale monitoring or data processing
- | Any person appointed as a DPO has to have the suitable skills, experience and knowledge to fulfil the duties of a DPO



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- | Any appointment by Holbeach Hospital & Nursing Home of a DPO or a Privacy Officer does not prevent a Service User or other Data Subject contacting another individual within Holbeach Hospital & Nursing Home. It is the responsibility of Holbeach Hospital & Nursing Home to comply with GDPR, irrespective of the point of contact used within the organisation by the Service User or Data Subject



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

Please find form detailed below in the Forms section of the GDPR suite within the QCS

Management system:

Appointment of a Data Protection Officer

Information Commissioners Office: <https://ico.org.uk/global/contact-us/>

NHS Digital GDPR Guidance:

<https://digital.nhs.uk/information-governance-alliance/General-Data-Protection-Regulation-guidance>

Information Governance Alliance - This document includes a DPO Job Description:

<https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidance>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- | If the appointment of a DPO is required under GDPR, Holbeach Hospital & Nursing Home carefully considers the identity of the DPO and spends time interviewing potential DPOs (if appropriate) and determining which DPO would be best for Holbeach Hospital & Nursing Home
- | If a DPO is not required under GDPR, Holbeach Hospital & Nursing Home nominates an internal Privacy Officer to have day-to-day responsibility for data protection and GDPR compliance
- | Holbeach Hospital & Nursing Home provides appropriate training, advice and guidance to all staff members in respect of the appointment of the DPO or the Privacy Officer to ensure that the roles of the DPO or Privacy Officer are fully understood
- | The wide understanding of the policy is enabled by proactive use of the QCS App



Forms

Currently there is no form attached to this policy.