



## Review Sheet

Last Reviewed  
16 Jan '20Last Amended  
16 Jan '20Next Planned Review in 12 months, or  
sooner as required.

Business impact

**MEDIUM IMPACT**

Changes are important, but urgent implementation is not required, incorporate into your existing workflow.

Reason for this review

Scheduled review

Were changes made?

Yes

Summary:

This policy is in relation to seeking consent from a Data Subject that is GDPR compliant. References have also been updated to ensure that they remain current.

Relevant legislation:

- Mental Capacity Act 2005
- Mental Capacity Act Code of Practice
- General Data Protection Regulation 2016
- Data Protection Act 2018

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: Information Commissioner's Office, (2018), *Consent*. [Online] Available from: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/> [Accessed: 16/1/2020]
- Author: Information Commissioner's Office, (2018), *Children and the GDPR*. [Online] Available from: <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/> [Accessed: 16/1/2020]
- Author: NICE, (2018), *Decision-making and mental capacity - Guidelines NG108*. [Online] Available from: <https://www.nice.org.uk/guidance/ng108> [Accessed: 16/1/2020]
- Author: ICO, available from UK Government, (2018), *Guide to the General Data Protection Regulation*. [Online] Available from: <https://www.gov.uk/government/publications/guide-to-the-general-data-protection-regulation> [Accessed: 16/1/2020]

Suggested action:

- Encourage sharing the policy through the use of the QCS App
- Ensure the policy is discussed in planned supervision sessions with relevant staff
- Ensure relevant staff are aware of the content of the whole policy

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 ensure that Holbeach Hospital & Nursing Home seeks consent from the Data Subject in a way that is GDPR compliant.

**1.2** To ensure that when Holbeach Hospital & Nursing Home seeks to obtain consent, Holbeach Hospital & Nursing Home follows the Mental Capacity Act 2005 and Code of Practice where Service Users lack capacity.

**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:

- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | 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:

- | Family
- | Advocates
- | Representatives
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



## 3. Objectives

**3.1** To ensure that Holbeach Hospital & Nursing Home obtains appropriate and General Data Protection Regulation (GDPR) compliant consent from Data Subjects, including Service Users, where consent is necessary.



## 4. Policy

**4.1** Holbeach Hospital & Nursing Home understands that it may be able to rely on a ground other than consent under GDPR, such as legitimate interest, fulfilment of a contract, or the processing of special categories of data for the provision of health or social care or treatment or the management of health or social care systems and services. Holbeach Hospital & Nursing Home will review the guidance note entitled "GDPRG04 - Processing Personal Data" for more information about the grounds for processing under GDPR.

**4.2** Holbeach Hospital & Nursing Home understands that if it is required to seek consent from Data Subjects, including Service Users, such consent should be freely given and Holbeach Hospital & Nursing Home will clearly explain the processing that it intends to carry out in respect of the personal data.

**4.3** Holbeach Hospital & Nursing Home understands that under GDPR consent has to be:

- 1 Explicit - consent requires a very clear and specific statement of consent
- 1 Separate from other terms and conditions
- 1 Specific and 'granular' so that Holbeach Hospital & Nursing Home gets separate consent for separate things. Vague or blanket consent is not enough

**4.4** Holbeach Hospital & Nursing Home understands that it must take extra care when processing personal data about children. Holbeach Hospital & Nursing Home recognises that GDPR does not specify an age at which children are deemed to be able to consent to their personal data being processed under GDPR (except where online services are being provided to a child, in which case a child can provide their consent at the age of 13).

**4.5** Holbeach Hospital & Nursing Home shall seek consent in line with any relevant provisions in the Data Protection legislation and shall ensure that the ways in which it obtains consent from a child are appropriate. For example, Holbeach Hospital & Nursing Home will obtain consent using language that is appropriate and easily understood by the child, taking into account the child's age and ability and the type of personal data being processed.



## 5. Procedure

**5.1** Holbeach Hospital & Nursing Home will use the template forms provided if Holbeach Hospital & Nursing Home determines that it is required to seek consent from Data Subjects, including Service Users, to process their personal data under GDPR. If Holbeach Hospital & Nursing Home is uncertain as to whether consent is necessary or it is able to rely on an alternative ground, it will seek further advice.

**5.2** Holbeach Hospital & Nursing Home will ensure that it uses the appropriate form, bearing in mind whether the Data Subject has capacity or lacks capacity.

**5.3** Holbeach Hospital & Nursing Home will ensure that, where children's services are provided or activities are undertaken where children might be present or involved, parental/guardian consent is obtained in advance. This would include situations such as social events where photographs might be taken.



## 6. Definitions

### 6.1 Data Subject

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

### 6.2 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

### 6.3 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

### 6.4 Special Categories of Data

- | Has an equivalent meaning to “Sensitive Personal Data” under the Data Protection Act 1998. 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

### 6.5 Data Protection Act

- | The Data Protection Act 2018 implements GDPR in the UK

### 6.6 GDPR

- | General Data Protection Regulation (GDPR) (EU) 2016/679 is an EU regulation relating to data protection and privacy. It became enforceable on 25 May 2018



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | The forms attached to this policy should be used if consent needs to be obtained from a Data Subject, including Service Users
- | Personal data is any information that identifies someone or, in some cases, information that is about a person such as an opinion. It includes someone’s name, email address, postal address, job role, photographs, CCTV and more sensitive personal data includes types of information such as medical and health records, Care Plans, information about religious beliefs, origin and race, someone’s sexual orientation or political views



## Key Facts - People affected by the service

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

- | This form will be used by Holbeach Hospital & Nursing Home to obtain your consent to Holbeach Hospital & Nursing Home processing your personal data where consent is required under GDPR



## 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:

**General Data Protection Regulation (GDPR) guidance:**

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



## Outstanding Practice

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

- 1 Holbeach Hospital & Nursing Home carefully considers whether consent is the appropriate ground for processing personal data and documents its decision and the rationale behind it
- 1 The wide understanding of the policy is enabled by proactive use of the QCS App
- 1 Holbeach Hospital & Nursing Home conducts data privacy impact assessments in respect of the ways consent is obtained, particularly if consent is being provided by a child



## Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
GDPR Consent Authorisation Form - Person with Capacity - GDPR10	When the person has capacity to give consent	QCS
GDPR Consent Authorisation Form - Person Lacking Capacity - GDPR10	When the person does not have capacity to give consent	QCS

**Holbeach Hospital & Nursing Home**  
Boston Road North, Holbeach, Spalding, Lincolnshire, PE12 8AQ

Holbeach Hospital & Nursing Home

Name of Service User

Address

### **Holbeach Hospital & Nursing Home - Data Protection Consent Form**

#### **Background**

Holbeach Hospital & Nursing Home uses your personal data for a number of different reasons. Personal data is any information that identifies you or, in some cases, information that is about you such as an opinion. It includes your name, email address, postal address, job role, photographs, CCTV and more sensitive types of information such as medical and health records, your Care Plan, information about your religious beliefs, origin and race, your sexual orientation and your political views.

We comply with the law in place in the UK around data protection when we use your personal data including "GDPR" (short for the General Data Protection Regulation) and the Data Protection Act 2018. The law allows us to use your personal data for a number of reasons without checking with you that it is ok for us to do so, for example, where we can show that we have legitimate reasons to use your personal data or where we need to use your personal data to provide you with the services you have requested from us, or to meet a legal obligation placed on us.

However, in some situations, we need you to confirm that you are happy for us to use your personal data.

#### **Why we need your consent**

We need your consent for us to carry out the following activities with your personal data:

*[Insert an explanation here of what you do with the personal data that requires consent. Be as clear and specific as possible. Include an explanation of how long you will keep that personal data. If there is more than one activity you want to get consent for, you will need to get separate consent for each activity. It may be simplest to use multiple copies of this form, one for each processing activity. Alternatively, you could number the activities and incorporate a separate signature or tick box for each at the end of the form]*

#### **What happens next?**

If you are unsure about why we are processing your personal data for the reasons set out above, or what we are doing with it, please ask your Care Worker who would be happy to provide more information. Please do not sign this form until you are happy that you understand its content.

If you give Holbeach Hospital & Nursing Home consent to use your personal data in the ways explained above, you can ask Holbeach Hospital & Nursing Home to stop using your personal data in this way at any time by speaking to Mrs Maxine Winch or by emailing us at [info@holbeach-hospital.org.uk](mailto:info@holbeach-hospital.org.uk), writing to us at Boston Road North

Holbeach

Spalding

Lincolnshire

PE12 8AQ or phoning us on [insert phone number].

#### **Signature**

If you are happy for Holbeach Hospital & Nursing Home to use your personal data in the ways set out above, please sign below:

.....  
Signature

.....  
Date

**Holbeach Hospital & Nursing Home**  
Boston Road North, Holbeach, Spalding, Lincolnshire, PE12 8AQ

Holbeach Hospital & Nursing Home

Name of Service User

Address of Service User

### **Holbeach Hospital & Nursing Home - Data Protection Consent Form**

Your information:

Capacity in which you are signing this form on behalf of the Service User (please tick as appropriate):

1. Deputy - if you have been appointed by the Court of Protection as Deputy for the Service User, please attached a copy of the Order of the Court of Protection.
2. Attorney - if you are appointed as an Attorney under an Enduring Power of Attorney or a registered Lasting Power of Attorney, please attached a copy of the document.
3. Other - please explain the basis on which you are entitled to act on behalf of the Service User below.

#### **Background**

Holbeach Hospital & Nursing Home uses Service Users' personal data for a number of different reasons. Personal data is any information that identifies the Service User or, in some cases, information that is about the Service User such as an opinion. It includes the Service User's name, email address, postal address, job role, photographs, CCTV and more sensitive types of information such as medical and health records, Care Plans, information about the Service User's religious beliefs, origin and race, sexual orientation and political views.

We comply with the law in place in the UK around data protection when we use the Service User's personal data including "GDPR" (short for the General Data Protection Regulation) and the Data Protection Act 2018. They allow us to use the Service User's personal data for a number of reasons without checking with the Service User that it is ok for us to do so, for example, where we can show that we have legitimate reasons to use the Service User's personal data or where we need to use the Service User's personal data to provide services they have requested from us, or to meet a legal obligation placed on us.

However, in some situations we need consent from the Service User to confirm that they are happy for us to use their personal data.

On the basis that the Service User lacks the ability to consent, we require you to provide that consent on their behalf. We understand that you have authority to provide that consent.

#### **Why we need consent**

We need consent to carry out the following activities with the Service User's personal data:

*[Insert an explanation here of what you do with the personal data that requires consent. Be as clear and specific as possible. Include an explanation of how long you will keep that personal data. If there is more than one activity you want to get consent for, you will need to get separate consent for each activity. It would be simplest to use multiple copies of this form, one for each processing activity. Alternatively, you could number the activities and incorporate a separate signature box or tick boxes for each at the end of the form]*

#### **What happens next?**

If you are unsure about why we are processing the Service User's personal data for the reasons set out above, or what we are doing with it, please ask Mrs Maxine Winch who would be happy to provide more information. Please do not sign this form until you are happy that you understand its content.

If you give Holbeach Hospital & Nursing Home consent to use the Service User's personal data in the ways explained above, you can ask us to stop using the personal data in this way at any time by speaking to Mrs Maxine Winch or by emailing at [info@holbeach-hospital.org.uk](mailto:info@holbeach-hospital.org.uk), writing to us at Boston Road North

Holbeach

Spalding

Lincolnshire

PE12 8AQ or phoning us on [insert phone number].

#### **Signature**

If you believe that it is in the best interests of the Service User for Holbeach Hospital & Nursing Home to use the Service User's personal data in the ways set out above and therefore provide consent to such use, please sign below:

.....  
Signature

.....  
Date