Lawful basis for processing personal and special category data guidance

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1. **Introduction**

Under the General Data Protection Regulation (GDPR), the Trust must have a valid lawful basis in order to process personal and special category data.

2. **Responsibilities**

2.1 **All staff**

This procedure applies to all Trust employees and those working on behalf of the Trust in any capacity who has access to personal and sensitive data about service users, carers, staff or about anyone else.

3. **What is personal data?**

Personal data is defined as any information relating to an identified or identifiable natural person the data subject.

An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as:

- a name
- an identification number
- location data
- an online identifier

or to one or more factors specific to the:

- physical
- physiological
- genetic
- mental
- economic
- cultural
- social identity of that natural person

4. **Lawful basis**

There are six available lawful bases for processing personal data, also known as general processing. No single basis is ‘better’ or more important than the others – which basis is most appropriate to use will depend on the purpose and relationship with the data subject.

Most lawful bases require that processing is ‘necessary’. If we can reasonably achieve the same purpose without the processing, we won’t have a lawful basis.

We must determine the lawful basis before we begin processing and it must be documented with the purpose for processing (see fair processing notices - link). We must ensure that we get the lawful basis right first time as it should not be swapped to a different lawful basis at a later date without good reason.
5. The six lawful basis for processing personal data

At least one of the following lawful basis for processing personal data must apply, no basis, no processing:

(a) Consent: the individual has given clear consent to process their personal data for a specific purpose.

(b) Contract: the processing is necessary for a contract with the individual, or because they have asked for specific steps to be taken before entering into a contract.

(c) Legal obligation: the processing is necessary to comply with the law (not including contractual obligations).

(d) Vital interests: the processing is necessary to protect someone’s life.

(e) Public task: the processing is necessary to perform a task in the public interest or for official functions, and the task or function has a clear basis in law.

(f) Legitimate interests: the processing is necessary for your legitimate interests or the legitimate interests of a third party unless there is a good reason to protect the individual’s personal data which overrides those legitimate interests. (This cannot apply if you are a public authority processing data to perform your official tasks.)

For the processing of personal data of a service user, carer and employee to provide health and social care, employment and occupational services the Trust applies point:

- (c) Legal obligation: the processing is necessary to comply with the law (not including contractual obligations).

This means that the consent of the service users, carers or staff members is NOT required for the provision of health or social care or employment; however, the right to be informed is mandatory.

6. What is special category data?

Special category data is defined as data revealing:

- racial or ethnic origin
- political opinions
- religious or philosophical beliefs
- trade union membership

and the processing of genetic data biometric data for the purpose of uniquely identifying a natural person,

- data concerning health
- data concerning a natural person’s sex life or sexual orientation

7. The ten additional conditions for processing special category data

The Trust has to identify both a lawful basis for general processing (as above) and an additional condition for processing special category data:

a) the data subject has given explicit consent to the processing of those personal data for one or more specified purposes

b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law
c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

d) processing is carried out in the course of its legitimate activities with appropriate safeguards by a foundation, association or any other not-for-profit body with a political, philosophical, religious or trade union aim and on condition that the processing relates solely to the members of the body or to persons who have regular contact with it in connection with its purposes and that the personal data are not disclosed outside that body without the consent of the data subjects;

e) processing relates to personal data which are manifestly made public by the data subject;

f) processing is necessary for the establishment, exercise or defence of legal claims or whenever courts are acting in their judicial capacity;

g) processing is necessary for reasons of substantial public interest

h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and

i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices

j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

For the processing of special category data of a service user, carer and employee to provide health and social care, employment and occupational services the Trust applies points:

- b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law

- c) processing is necessary to protect the vital interests of the data subject or of another natural person where the data subject is physically or legally incapable of giving consent;

- g) processing is necessary for reasons of substantial public interest

- h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and

- i) processing is necessary for reasons of public interest in the area of public health, such as protecting against serious cross-border threats to health or ensuring high standards of quality and safety of health care and of medicinal products or medical devices

- j) processing is necessary for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes

8. **Criminal convictions and offence data**

We must identify both a general lawful basis for processing and an additional condition for processing this type of data.

The general lawful basis is:

- (c) Legal obligation: the processing is necessary to comply with the law (not including contractual obligations).

And the additional conditions are:
b) processing is necessary for the purposes of carrying out the obligations and exercising specific rights of the controller or of the data subject in the field of employment and social security and social protection law

• g) processing is necessary for reasons of substantial public interest

• h) processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and

9. Further support

Please contact the Information Governance Team or Data Protection Officer via logging a call in MySupport or emailing awp.infogov@nhs.net.