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Oakwood Medical Centre

Access to Health Records Policy & Disclosure of Personal Data Procedure

Version No: 1

The purpose of the Subject Access Request Policy is to ensure there is a systematic approach to the management and the process of access that is understood by all staff.

Document type	Access to Health Records Policy & Disclosure of Personal Data Procedure
Date approved	May 2021
Date implemented	July 2018
Next review date	May 2024 or sooner should legislative change require.
Policy author	StHK IG Team
Applies to	All Staff

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**updates and amendments. For the avoidance of doubt please see the Practices
Information Governance Lead.**

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Appendix 1 SAR Log

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Appendix 3 Police Request procedure

1.0 SCOPE

The Practice is committed to providing an effective Access to Health Record Service which deals appropriately with requests for access to information.

This policy was developed in conjunction with the guidance outlined in the Access to Health Records Act 1990, Data Protection Act 2018 and advice from the Information Commissioner's Office following the General Data Protection Regulation (GDPR) which came into force on 25th May 2018.

2.0 INTRODUCTION

This policy has been produced to ensure the Practice meets its obligations regarding requests for access to health records. It defines the different types of requests for access to a health record a Practice may receive and how to respond to such requests. The policy is divided into the following areas.

- Subject access request (SAR)
- Request for access made on behalf of others
- Requests from the police
- Requests from insurers
- Deceased patients

Staff should treat this policy as guidance based on best practice for managing access to health records requests.

The unauthorised passing on of patient personal information by staff is a serious matter and will result in disciplinary action as it is a criminal offence.

Staff must not allow personal details of patients to be passed on or sold for fund-raising or commercial marketing purposes.

3.0 STATEMENT OF INTENT

This policy is intended to:

- Set out a clear process for dealing with requests for access to health records for living and deceased patients.

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- Ensure the Practice complies with the requirements for access to health records, the Data Protection Act 2018, and the General Data Protection Regulation therefore avoiding the potential cost penalties associated with non-compliance;
- To ensure all staff at the Practice realise an individual has a right under GDPR/DPA2018 to be provided with access to their own PCD which the Practice holds about them.
- Ensure that staff are clear about the process for managing access requests, including their responsibilities in relation to this;
- Ensure staff adhere to the principles of being open in line with the Practice's Being Open policy in matters relating to health records whilst at the same time ensuring there are robust measures in place to ensure patient confidentiality;
- A step by step procedure for all Practice staff to follow. (See Appendix A for the Health Records Access Protocol).

Legislation relevant to this policy;

- The Data Protection Act 2018
- The General Data Protection Regulation
- The Access to Health Record Act 1990
- The Access to Medical Report Act 1988
- The Freedom of Information Act 2000
- The NHS Confidentiality Code of Practice 2003
- Common Law Duty of Confidentiality
- Mental Capacity Act 2005

4.0 DEFINITIONS

An **Access to Health records request** is any request for personally identifiable data and can be made by the data subject or other party.

An **application** means an application in writing or verbally

A **Health record** is defined as information relating to the physical and / or mental health of an individual who can be identified from that Information and which has been made by, or on behalf of a Healthcare Professional, in connection with the care of that individual. . The information is most commonly recorded in electronic form, however some records are in a manual form or a mixture of both. 'Information' covers expressions of opinion about individuals as well as facts.

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Health records may include notes made during consultations, correspondence between health professionals such as referral and discharge letters, results of tests and their interpretation, X-ray films, videotapes, audiotapes, photographs, and tissue samples taken for diagnostic purposes. They may also include reports written for third parties such as insurance companies.

The **holder** of the record is the Practice by which, or on whose behalf, the record is held.

The **patient** is the individual in connection with whose care the record has been made.

Personal Data means any information relating to an identified or identifiable individual.

The **Healthcare Professional** can be one or more of the following registered professions:

- Medical practitioner
- Dentist
- Optician
- Pharmaceutical chemist
- Nurse
- Midwife
- Health visitor
- Osteopath
- Chiropractor
- Podiatrist
- Dietician
- Occupational therapist
- Orthoptist
- Physiotherapist
- Clinical psychologist
- Child psychotherapist
- Speech therapist
- An art or music therapist employed by the Health Service
- Any other registered member of a Profession Supplementary to the Medicines Act 1960
- A scientist employed by the Health Service as a head of department

A **subject access request** is a request from a person asking an organisation to provide them

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with information relating to that person which is held or processed by the organisation.

5.0 DUTIES, ACCOUNTABILITIES AND RESPONSIBILITIES

This policy applies to all those working within the Practice, in whatever capacity. A failure to follow the requirements of the policy may result in investigation and management action being taken, in line with the Practice's disciplinary policy and procedure.

The Information Governance Lead/Practice Manager must make their staff aware of the Access to Health Records Policy at the earliest possible opportunity.

5.1 Senior Managers

Managers must give their full backing to all the guidelines and procedures as set out and agreed. They must ensure that their staff are aware and adhere to the policy requirements.

The Practice Manager has responsibility for ensuring all subject access requests relating to complaints are actioned. Is also responsible for requests by employees or ex-employees for copies of their personal employment files (this includes medical and non-medical staff).

5.2 The Caldicott Guardian

The Caldicott Guardian is responsible for ensuring that the Practice processes satisfy the highest practical standards for handling patient information and provide advice and support to Practice staff as required. The Caldicott Guardian is responsible for ensuring that patient identifiable information is shared appropriately and in a secure manner. The Caldicott Guardian will liaise where there are reported incidents of person identifiable data loss or identified threats and vulnerabilities in Practice information systems to mitigate the risk

5.3 Data Protection Officer (DPO)

The role of the DPO under GDPR includes:

- Inform and advise the organisation and its employees of their data protection obligations under the GDPR.
- Monitor the organisation's compliance with the GDPR and internal data protection policies and procedures. This will include monitoring the assignment of responsibilities, awareness training, and training of staff involved in processing operations and related audits.

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- Advise on the necessity of data protection impact assessments (DPIAs), the manner of their implementation and outcomes.
- Serve as the contact point to the data protection authorities for all data protection issues, including data breach reporting.

The DPO will be independent and an expert in data protection. The DPO will be the Practice's point of contact with the Information Commissioner's Office.

5.4 Practice Staff

It is the responsibility of all staff to co-operate in a timely manner regarding the investigation of access requests. In cases of non-compliance outstanding reports from staff will be pursued on request by the Practice Manager.

In terms of **record keeping**, health records must be clear, accurate, factual, legible and should be contemporaneous. They must include all relevant clinical findings, the decisions made, information given to patients, and drugs or treatment prescribed. Personal views about the patient's behaviour or temperament should not be included unless they have a potential bearing on treatment or it is necessary for the protection of staff or other patients. Health records should not be altered or tampered with, other than to remove or correct inaccurate or misleading information. Any such amendments must be made in a way that makes it clear what has been altered, who made the alteration and when it took place.

Doctors and other clinical staff should ensure that their manner of keeping records facilitates access by patients if requested. It may be helpful to order, flag or highlight records so that when access is given, any information which should not be disclosed, (such as those which identify third parties) is readily identifiable. If patients express views about future disclosure to third parties, this should be documented in the records. Doctors may wish to initiate discussion about future disclosure with some patients if it seems foreseeable that controversial or sensitive data may be the issue of a future dilemma, for example after the patient's death.

6.0 POLICY

Practice staff will read and adhere to this policy and procedure in order to effectively and efficiently comply with all requests for access to health records which the Practice receives. Individuals have the right to ask for a copy of the information an organisation holds about them; this right is known as a Subject Access Request (SAR)

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The Practice recognises that staff may find the process of personal access requests stressful and acknowledges that it is important that staff are appropriately supported. Any member of staff who has concerns or wishes to receive support or guidance in respect of their involvement in the access process should contact their Line Manager or senior Clinical Staff who will be available to provide or arrange support as appropriate.

There are certain formalities, which must be observed when applying to see records under the Act. It may seem a rather complicated process but it is of vital importance to make sure that the records are released only to the right person, because the confidentiality of records calls for the greatest safeguards.

- Any member of staff receiving a formal request for access, either verbally or in writing must advise Laura Clare, Practice Manager – Patient & Staff Services.
- If access to records is granted, proof of identity will be required in order to avoid any possible breach of confidentiality. This can be a passport, driving licence, utility bill or birth certificate.
- In order to ensure that we meet the terms of the Act, the administration will be co-ordinated by a named individual Laura Clare (as above)
- If arrangements are made for patient’s medical notes to be viewed, the viewing would normally be in the presence of Laura Clare.

7.0 SUBJECT ACCESS REQUEST

A Subject Access Request (SAR) is a request by the data subject/patient or a request by a third party who has been authorised by the patient, for access to their health record under the GDPR/DPA 2018.

A Subject Access Request (SAR) can be made;

- Verbally
- Electronically
- In writing

All SAR received must be recorded on a SAR register (see Health Records and Reports Register on Shared Drive)including the date the application was received, the date all information requested was received e.g. ID, fee if appropriate, consent etc. The identity of the requester must be verified before providing access.

The requestor may be invited by a member of the team to use the Practices SAR form (see appendix 2). Reasonable adjustments may be considered and/or made for disabled people, for

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example, responding in an appropriate format such as in Braille or large print. However the data subject does not have to complete this form they can put their request in another format as highlighted above.

7.1 Timescale for Disclosure

The Act imposes very specific duties upon us, which have to be carried out within a very tight timescale.

The information is to be supplied within 1 month from the date of the request for access or 1 month from the date you have sufficient information to enable you to satisfy yourself as to the identity of the person making the request and to locate the information requested.

For complex or numerous requests to access the same records the Practice can extend the timescale by a further 2 months. Applicants will be informed immediately.

7.2 Who may apply for access?

The following can request for access;

- Patients with capacity
- Children and young people under 18
- Solicitors

7.2.1 Data Subject (patients) with capacity

The Practice understands it is not necessary for a data subject /patient to provide a reason as to why they wish to access their health record. Subject to the exemptions listed in paragraph 7.7.

Data subjects with capacity have a legal right to request access to their PCD via a SAR under GDPR/DPA 2018. A data subject may also authorise a third party such as solicitor to request access on their behalf.

7.1.2. Children and young people age 13 and above

The Practice understands a child aged 16 and over is presumed to be competent, they are entitled to request access to information held about them. Children who are aged 13 or over, are generally expected to have the competence to give or withhold their consent to the release of information from their health record. However, children aged between 13 and 16 must demonstrate that they have sufficient understanding of what is proposed (termed as being Gillick Competent) in order to be entitled to make or consent to a SAR. Where a child aged 13 and above is considered capable of making decisions (termed as being Gillick Competent) about access to his or her medical record,

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the consent of the child must be sought before a parent or third party can be given access via a SAR.

Upon assessment from an appropriate health professional at the Practice and where the Practice believes a child lacks competency to understand the nature of his or her SAR application, the Practice is entitled to refuse to comply to the SAR. Where a child is deemed not to have capacity to consent to the access to their own health record; an applicant with parental responsibility of the data subject can request access following;

- The applicant is the child's natural mother (and there is no resident or other Court Order to the contrary). We have to take the applicants / solicitors written word for this at face value. This is often referred to as *acting in loco parentis* and is where the patient is under age 16 and is incapable of understanding the request.
- The applicant is the child's natural father or was married to the child's natural mother at the time of conception or birth of the child. NB the father does not necessarily still have to be married to the child's natural mother. He could be legally separated or divorced from her. Also, this whole point only applies providing that there is no residence or other Court Order to the contrary. We can accept Solicitors written confirmation of this. Marriage / Divorce papers are not necessary.
- The applicant is the child's natural father but was not married to the child's natural mother at the time of conception or birth of the child, but there is an agreement between both parents, which has been passed by a Court of Law, expressly giving the natural father parental responsibility. Documentation will exist if this is the case, and a photocopy of it should be obtained. Since December 2003, if the mother agrees, an unmarried father has parental rights if the child was registered together and the father's name is on the Birth Certificate.
- The applicant has parental responsibility by way of a Residence Order. This could be the child's natural father, a grandparent or other relative. Documentation will exist if this is the case, and a photocopy of it should be obtained. NB a Residence Order is not time limited – up to their sixteenth birthday unless discharged.
- If the applicant does not satisfy any of the above criteria, then access to the records will be denied, unless the applicant can provide the written authority of someone who has got parental responsibility.

7.1.3. Requests from solicitors

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A data subject/patient can authorise a solicitor to act on their behalf to make a SAR. Necessary steps will be taken to verify this is a valid request and the data subject's written consent has been obtained. It is the solicitor's responsibility to provide the patient's written consent. There must be complete transparency; the data subject must be fully aware to what they are consenting to. The consent captured must be freely given, informed and specific including the nature and extent of the information to be disclosed under the SAR, past medical history and who might have access to it as part of the legal proceedings.

In the event of where a patient refuses to allow a solicitor access to their health record, the solicitor may apply for a court order requiring disclosure of the information. (See appendix 2 for a third party Consent form)

7.1.4 Lasting power of attorney and an incapacitated patient's records

A Lasting Power of Attorney (LPA) authorises another person appointed by the patient to make decisions about their property and finances and/or health and welfare, which could include decisions about healthcare. However, it does not give an automatic right to see a patient's notes. The reason for this is that patients may have issues recorded in their notes that they may not wish others to see (even LPAs)-for example unknown relationships, sexuality and so on and/or sensitive health issues such as termination of pregnancy, HIV status, sexually transmitted diseases and so on. Patient confidentiality is paramount here.

Therefore always check the following before releasing a patient's records if they are incapacitated and have an LPA:

- The person applying for access must apply formally as per the policy for a SAR
- *and* The LPA must explicitly give permission for healthcare decisions for the named patient
- *and* It must be registered and there must be proof of registration with the Office of the Public guardian
- *and* the consultant in charge must check the notes and establish whether if it is thought to be in the patient's best interests and if any information should be withheld.
- Contact the Practice IG Lead – Laura Clare if further advice is needed as this is a patient confidentiality issue.

7.2 Processing a Subject Access Request

SARs can be made electronically, in writing or verbally;

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Oakwood Medical Centre understand the requirement to comply with the DPA 2018/GDPR and the Practice will take all necessary step to respond to data subject access request within/no later than 1 calendar month after verifying the identity of the requestor and obtaining consent from the data subject where applicable. An extension of 2 months may apply where a request is complex or excessive; The Practice will take necessary steps to inform the data subject or requestor without delay.

7.3 Administrative Fees

A fee cannot be charged for processing and responding to a subject access request from a data subject including a request made by third party on behalf of the data subject e.g. solicitors.

Initial access must be provided free of charge.

For further requests for the same information, a 'reasonable fee' can be charged if the request for PCD is 'manifestly unfounded' or 'excessive'.

For the avoidance of doubt the ICO have confirmed;

*"A SAR for the whole medical record would never be considered excessive for the purposes of imposing a charge. As to what constitutes 'excessive', the legislation is clear that this would be by way of repeated/vexatious requests and **NOT** dictated by the size of the record."*

Charging a fee for access to health records is likely to be rare; if a fee is charged it must be justified and the reason recorded.

This is not to be confused with a request for a medical report under the Access to Medical Records Act 1990 (See section 9) where the request for the report is chargeable.

7.4 Maintaining confidentiality

The Practice will take necessary steps to protect and maintain the confidentiality of the data subject at all times whilst handling, processing and responding to a SAR and information about third party persons contained on a data subject record will be redacted before disclosure.

7.5 What supplementary information must be provided with a SAR?

The GDPR requires the following additional information must be provided when providing copies of health records;

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- The purpose for processing data
- The categories of personal data
- The organisations with which the data has been shared
- The existence of rights to have inaccurate data rectified
- Right to complain to the ICO

A copy or the link to the Practices Privacy notice which contains all this information will be provided with each SAR.

7.6 Can access be refused?

If a request is ‘manifestly unfounded or excessive’, for example, because it is repetitive, access can be refused (or a fee can be charged, see above paragraph 5.3). There is little explanation from the legislation as to when a request might be considered as ‘manifestly unfounded or excessive’. However, the threshold must be set fairly high and that accordingly requests should be refused on this basis only where the facts are particularly extreme.

Where access has been refused on this basis, the patient must in any event be given an explanation as to why access has been refused and they must also be informed that they have the right to complain to the ICO.

7.7 When should information not be disclosed?

Information can be treated as exempt from disclosure and should not be disclosed, if:

- it is likely to cause serious physical or mental harm to the patient or another person; or
- it relates to a third party who has not given consent for disclosure (where that third party is not a health professional who has cared for the patient) and after taking into account the balance between the duty of confidentiality to the third party and the right of access of the applicant, the Practice concludes it is reasonable to withhold third party information; or
- it is requested by a third party and, the patient had asked that the information be kept confidential, or the records are subject to legal professional privilege, or the records are subject to confidentiality as between client and professional legal advisor. This may arise in the case of an independent medical report written for the

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purpose of litigation. In such cases, the information will be exempt if after considering the third party's right to access and the patient's right to confidentiality, the Practice reasonably concludes that confidentiality should prevail; or

- it is restricted by order of the courts; or
- it relates to the keeping or using of gametes or embryos or pertains to an individual being born as a result of in vitro fertilisation; or
- in the case of children's records, disclosure is prohibited by law, e.g. adoption records.

The Practice will redact, or block out any exempt information. Depending on the circumstances, the response will include an explanation to the requestor around how it has applied the relevant exemption. However, such steps should/ will not be taken if, and insofar as, they would in effect cut across the protections afforded by the exemptions. In some cases even confirming the fact that a particular exemption has been applied may itself be unduly revelatory (e.g. because it reveals the fact that the information sought is held where this revelation is itself unduly invasive of relevant third party data privacy rights). There is still an obligation to disclose the remainder of the records. While the responsibility for the decision, as to whether or not to disclose information, rests with the Practice, advice about serious harm will be taken by the Practice from the appropriate health professional before the records are disclosed. This is usually the health professional currently or most recently responsible for the clinical care of the patient in respect of the matters which are the subject of the request. If there is more than one, it should be the person most suitable to give advice. If there is none, advice should be sought from another health professional that has suitable qualifications and experience.

Circumstances in which information may be withheld on the grounds of serious harm are extremely rare, and this exemption does not justify withholding comments in the records because patients may find them upsetting. Where there is any doubt as to whether disclosure would cause serious harm, an appropriate health professional will discuss the matter anonymously with an experienced colleague such as the Data Protection Officer, or the Caldicott Guardian.

8.0 REQUESTS FOR ACCESS MADE ON BEHALF OF OTHERS.

The GDPR/DPA 2018 does not provide subject access rights to third parties when they are acting on behalf of an individual who is lacking competence or capacity. However they may still be able to access information as outlined below.

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7.1 Parents

Parents with parental responsibility may apply for access to confidential information of children aged 13 and above if the request is not contrary to the child’s best interest or a competent child’s wishes. Under the Data Protection Act a competent child may consent to processing from the age of 13, providing they are Gillick competent.

7.3 Individuals with a responsibility for adults who lack capacity

Requests from individuals with a responsibility for the data subject/patient may not automatically be entitled to access the data subject’s health record. Necessary steps will be taken to assess a data subjects mental capacity based on the request made on behalf of a data subject and in line with the Mental Capacity Act 2005

9.0 REQUESTS FROM THE POLICE

The Practice can release confidential information if the data subject/patient has provided consent and understands the consequences of making that decision. The police do not have an automatic right to access PCD of a data subject unless there is a court order or this is required under statute (e.g. Road Traffic Act). If the police do not have a court order or warrant they may ask for a patient’s health record to be disclosed voluntarily under the DPA 2018 Exemptions in Schedule 2 Part 1(2).

If the Practice receives a police request the following procedure must be followed (see attachment) and the request must only be authorised by Laura Clare, Practice Manager or Dr Nigel Luty, Caldicott Guardian .Only disclose PCD if you have;

1. Obtained Consent from the data subject/patient or
2. There is an overriding public interest.

An overriding public interest is a disclosure that is essential to prevent a serious threat to public health, national security, the life of an individual or a third party, or to prevent or detect a serious crime. This includes crimes such as murder, rape, kidnapping and abuse.

10.0 REQUESTS FROM INSURANCE COMPANIES

If a request is asking for a report to be written or it is asking for an interpretation of information within the record this is not a Subject Access Request. These requests fall under the Access to Medical Reports Act (AMRA)1990.

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In these circumstances, the Practice will clarify the nature of the request from the third party. If the third party confirms that they are seeking a copy of the medical record then this should be treated as a SAR and complied with in the usual way.

What third parties cannot do is seek a SAR for information under the AMRA. The position of the ICO is that the use of SARs to obtain medical information for life assurance purposes is an abuse of subject access rights and the processing of full medical records by insurance companies risks breaching the GDPR. It is a criminal offence (clause 181 DPA18) for a third party to trick or encourage a patient to use SARs to obtain medical information for life assurance purposes.

This does not mean, however, that the Practice can refuse to respond to a SAR from an insurer outright. When a SAR from an insurance company is received, the Practice will contact the patient to explain the extent of the disclosure that has been sought. If requested, the patient themselves can be provided with their medical record rather than providing them directly to the insurance company. It is then the patient's choice as to whether, having reviewed the record, they choose to share it with the insurance company.

The AMRA deals with reports or requests for information relating to employment and insurance purposes – accident claims, mortgages, etc. If you receive a request for information that requires you to create a document, this is not a subject access request and is chargeable.

There is a clear distinction between the use of SARs by a solicitor, who can be seen as an agent of the patient and who is acting on the patient's behalf, and the use of SARs by insurance companies. Insurance companies should use the provisions of the Access to Medical Reports Act 1988 to seek reports.

11.0 REQUESTS TO ACCESS A DECEASED PATIENT RECORD

GDPR/ DPA2018 does not apply to data concerning a deceased patient. Request for PCD for deceased patients can only be made under the Access to Health Record Act (AHRA) 1990. When a request is made to access PCD of a deceased patient, the Practice will take necessary steps to seek the reason for such a request; as the duty of confidentiality needs to be balanced with other consideration such as when a request is made in the interest of justice and of people close to the deceased. The Practice will continue to exercise its ethical obligation to respect a patient's confidentiality beyond their death.

11.1 Who legally can apply for access?

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- The patient’s personal representative (the executor or administrator of the deceased person's estate)
- Any other person who may have a claim arising out of their death has a right of access to information in their records, which is directly relevant to a claim.
- While there is no legal entitlement other than the limited circumstances covered under the AHRA legislation, health professionals have always had discretion to disclose information to a deceased person’s relatives or others when there is a clear justification.

The medical record needs to be checked to ensure the patient’s wishes are respected after death and all third party information which may cause distress, serious mental and physical harm to anyone is redacted.

A copy of the record should be supplied to the requester within 40 days if the request is for PCD concerns information which was recorded more than 40 days before the date of the request.

If the PCD requested was recorded in the 40-day period before the date of application then access must be given within 21 days.

11.2 Can a Fee be charged?

A fee can be charged for supplying a copy of the requested information. However the fee must not exceed the cost of making the copy any postal charges must reflect the true cost. (As per BMA guidance)

Health professionals may charge a professional fee to cover the costs of giving access to the records of deceased patients that is not covered by legislation.

Refer to the AHRA 1990 for more in depth information for access to a deceased record.

12.0 DISCLOSURE REQUIRED BY STATUTE

- Under the Mental Capacity Act 2005, Independent Mental Capacity Advocates (IMCAs) have rights of access to health/clinical records relating to the patient they are presenting. The Practice is required to give access to relevant records requested by an IMCA under S.35 (6) (b) of the Act. The rights of the IMCA include the right to examine and take copies of any records.

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- The Mental Health Act (2007) gives Independent Mental Health Advocates (IMHA) the right to access information relating to some individuals who are subject to the Mental Health Act.
- The Medical Act 1983 gives the General Medical Council (“GMC”) powers under S.35A for taking action when questions arise about fitness to practise. As part of a fitness to practice investigation, the GMC may request access to medical records. The Practice must comply with this request and have 14 days to process and provide copies of the information held.
- The Criminal Appeal Act 1995 gives the criminal Cases Review Commission the right to access clinical records requested. Consent from the service user is not required in the circumstances.
- The Coroner and Justice Act 2009 gives Coroners the power to request for any documents including health records. As part of the investigation into a deceased death, the coroner might request for health records and the Practice will be obliged to disclose these to the coroner.

13.0 RETENTION

The practice will log and retain all SARs and access to a deceased patient’s record in a register. All records will be kept in line with the Record Management Code of Practice 2016.

When records are destroyed by health professionals they must ensure the method of destruction is effective and does not compromise confidentiality.

[Appendix 3](#) of the Records Management Code of Practice for Health & Social Care 2016 defines the retention schedules for all health records which the Practice adheres to.

14.0 POLICY EXCLUSIONS

- Duplicate records provided to other health care providers;
- Duplicate individual letters provided directly to patients by consultants/medical secretaries ;

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- Medical reports that are completed by consultants for the benefit of the courts, insurance companies and the Police are outside the scope of this Policy as they do not constitute health records;
- Access data that is anonymised or pseudonymised which cannot identify the individual;
- The provision of original records for court purposes, however the Practice will take a paper copy of these records prior to release;
- Adopted children with new names are outside the scope of this policy. There is one national register of old and new names of adopted children held by the Department of Health whom these adopters will need to apply.
- Freedom of Information Request under the Freedom of Information Request Act 2000

15.0 COMPLAINTS CONCERNING ACCESS TO HEALTH RECORDS

If the applicant feels that they have not been fairly treated and that the holder of the record has not complied with the DPA 2018, then they should first complain in writing to Oakwood Medical Centre if they are still unhappy after this, the patient has the right to apply to Court if necessary. The Court can order that the applicant be given access to the records if it is satisfied that the complaint is justified.

16.0 REFERENCES

Author	Year	Title	Edition	Place of Publication
Her Majesty's Stationery Office (HMSO)	2018	Data Protection Act	2nd	London UK
Official Journal of the European Union	2016	General Data Protection Regulations	1st	European Union
HMSO	2000	Freedom of Information Act		London UK
British Medical Association (BMA)	July 2018	Access to Health Records		London UK

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APPENDIX 1 – SUBJECT ACCESS REQUEST LOG & PROTOCOL

please see here – the [S:\Oakwood\Insurance Reports and Health Records](#)

SUBJECT ACCESS PROTOCOL

Under the new GDPR Legislation, patients have a legal right to apply for access to health information held about them free of charge. This includes NHS or private health records held by a GP. The ICO best practice guidelines state:

*The GDPR includes a best practice recommendation that, where possible, **organisations should be able to provide remote access to a secure self-service system** which would provide the individual with direct access to his or her information (Recital 63)”*

A health record contains information about mental and physical health recorded by a healthcare professional as part of their care.

APPLYING FOR ACCESS TO YOUR HEALTH RECORDS - PATIENT

To view Health Records (in practice):

- I. Patients should be advised that the easiest way to view their health records is online via Patient Access (form needs to be filled in).
- II. If patients do not wish to do this then we need to be assured that
 - a. The patient is who they say they are (ID)
 - b. The request is understood (if from a third party)
 - c. A consent form may be required to ensure we fulfil these requirements (please see appendix at the end of this document)
- III. Patients must be informed of the following:
 - To view their records in practice: an appointment will be sent out to them within 20 days
 - A member of staff will be present during the appointment
 - Patients must provide two of the Identity documents detailed below
 - The practice can sometimes refuse to disclose information if, for example the information requested contains information that relates to another person
- II. Code the request in the patient’s health record
- III. Send the completed form to Laura Clare

To request a copy of Health Records (Full)

- I. Patients should be advised that the easiest way to view their health records is online via Patient Access (form needs to be filled in).
- II. The practice can sometimes refuse to disclose information if, for example the information requested contains information that relates to another person.

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- III. Code the request in the patient's health record
- IV. Send the request to Laura Clare

To request a copy of records (individual)

- I. On occasion a patient or carer may request an individual copy of a specific health record, such as a blood test result or medication list.
- II. This is not a full records request but is still classed as a 'Subject Access Request'. Patients have a right to request this information.
- III. Patients can request this in writing or verbally. Only the patient or someone with consent of the patient can request the information.
- IV. Staff must ensure the patient/carer identity is checked.
- V. Staff must check with the patient's GP or duty doctor that the information can be given to the patient as the practice can sometimes refuse to disclose information if, for example the information requested contains information that relates to another person, or if the information may be unduly distressing.
- VI. Once the GP has said it can be released it can be printed and given to the patient/carer.

SOLICITOR OR THIRD PARTY ACCESS TO HEALTH RECORDS

"The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them¹."

- I. We therefore provide access to patient's records through **an online portal: Patient Access.**
- II. If patients would like access to a copy of their health records should be asked to sign up for online access, printing out the information that is required and sending it to the Third Party.
- III. This also follows the BMA Access to Health Records Guidance.

We as a practice and Data Controller have to be sure that:

- ✓ Patient's understand what information would be disclosed to a third party who has made a subject access request on their behalf.
- ✓ Patients have allowed the third party to act on their behalf.

Therefore a consent form may need to be sent to the patient to complete before we can action the request.

To fulfil the request the patient may choose to:

- I. Send the third party a print out of the online system (preferred – best practice is that the patient chooses what to send to the Third Party as per ICO guidelines)
- II. Request that the third party asks for a Medical Report under Access to Health Records Act 1990 (for which a fee is chargeable)

¹ ICO Guidelines on Subject Access Requests and GDPR

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- III. On occasions where the online system is not suitable (for example if a patient does not have access to the internet) then patients can request an alternative method, depending on the consent form.
- ✓ A solicitor acting on behalf of a patient can request the medical records from Oakwood directly – we would expect all solicitors to use the BMA approved template when doing this.
 - ✓ Please note, we still may need to ask the patient to complete our own consent form if the request does not contain enough information, as per BMA best practice guidelines.

HOW TO COPY RECORDS

1. Request will come from Laura Clare and records are now digitised (mainly)
2. You will need to have Emis open and iGPR software enabled
 - a. access patient file on emis
 - b. check correct details against request.
3. In iGPR search for the correct patient and whether there are any date ranges needed
4. Click on continue and if redactions are needed (safeguarding) check these with the Caldicott Guardian if available or if not a Partner GP.
5. To create the disc:
 - a. Put a CD into the drive and click to format it (Burn files and USB).
 - b. Save the iGPR report to the CONFIDENTIAL folder in the shared drive
 - c. Copy the report to the disc drive
 - d. Use 7.zip to 'Add to archive' and create a password for the disc (oakwood+ EMIS number)
 - e. Write the name of the patient on the disc and send to address provided with instructions slip on how to request the password (e-mail managers e-mail address)

If collecting the disc and do not want password protection: PATIENTS MUST PROVIDE TWO OF THE FOLLOWING FORMS OF ID (including one photo ID):
 DRIVING LICENCE
 PASSPORT
 BIRTH CERTIFICATE
 UTILITY BILL (dated within the last 3 months)

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APPENDIX A – THIRD PARTY CONSENT FORM

**OAKWOOD MEDICAL CENTRE
APPLICATION FOR ACCESS TO MEDICAL RECORDS – THIRD PARTY RELEASE
GDPR – Patient Records Access Request**

Patient's authority consent form for release of health records to a third party.

We understand that you may have already filled in a consent form with the third party, however as the Data Controller of your information we must ensure that you are aware of and fully consent to the sharing of your information as per ICO and BMA best practice guidelines.

Please read and complete the consent form and return to the Practice as soon as possible.
(Please print all details and use dark ink)

To: **Laura Clare, Practice Manager, Oakwood Medical Centre, Broadway, Barnton**

SECTION A: Identity of individual about whom information is requested and access for third party:

Full Name	Any Former Name(s)
Current Address	Any Former Address (with dates of changes)
Date of birth	NHS Number (if known)
Contact phone number (including area code)	E-mail address (optional)

The ICO best practice guidelines state that:

“The GDPR includes a best practice recommendation that, where possible, organisations should be able to provide remote access to a secure self-service system which would provide the individual with direct access to his or her information (Recital 63)”

We therefore provide access to patient's records through an **online portal: Patient Access**.

- If you would like access to a copy of your health records you will be asked to sign up for online access.
- You can then print out the information that is required and send it to your third party:

Please tick the option you have chosen

I am aware of the Third Party request above and will print and send copies of my records to said third party	<input type="checkbox"/>
I am aware of the Third party request and will ask them to send a medical	<input type="checkbox"/>

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report request to you (Oakwood Medical Centre), under the Access to Health Records Act 1990	
I do not have access to the internet and would prefer an alternative method of accessing my medical records. I will then send them to the third party, or if the third party is a solicitor I consent to them being sent directly to them.	

For access to the Patient Access Portal please contact the Practice.

SECTION B – I DO NOT HAVE ACCESS TO THE INTERNET AND WOULD PREFER AN ALTERNATIVE METHOD– CONSENT FOR RECORDS TO BE SENT

1. I consent to clinical notes and records* of the above named patient being disclosed to:

Name of solicitor to whom disclosure is sought

2. I consent to the release of copies of either:

Health records dated from/to:

Health records relating to the following injury or condition:

All health records except those relating to the following condition:

All information contained on the health records from birth

****Please tick one of the above boxes, read the points and declaration below.***

- I understand that all of my health records (other than the exclusions, if given above) will be sent to the third party mentioned above. I understand that this may **include details from birth** if I decide to consent to the release of all the record.
- I understand that the GP/health professional will have no control over any information that has been sent to the third party once it has arrived at the destination requested.

Declaration

I declare that information given by me is correct to the best of my knowledge and that I am entitled to consent to disclosure of the health records referred to in section 1, under the terms of the GDPR, May 2018 on the basis that:

- I am the named patient
- I have been asked to act by the patient and attach the patient's written authorisation.
- I have parental responsibility/legal guardianship for the patient who is under age 13 and (delete appropriately):

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[is incapable of understanding the request] [has consented to me making this request]

I have been appointed the Guardian for the patient, who is over age 13 under a Guardianship order

Signature of applicant

Print name.....

Date.....

(Office use only) Date of application received

Received by

Signed: Date:

For further information please refer to the Practice Caldicott Guardian or Laura Clare.

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APPENDIX B – LETTER SENT TO THIRD PARTY TO INFORM OF PROCESS

Access to Records – patient details

From the 25 May 2018 best practice guidelines around access to health records following the GDPR state that:

*“...patients must be given access to their medical records **free of charge**, including when a patient authorises access by a third party such as a solicitor. A ‘reasonable fee’ can be charged if the request is manifestly unfounded or excessive, however, these circumstances are likely to be rare.”*

The ICO best practice guidelines state that:

*“The GDPR includes a best practice recommendation that, where possible, **organisations should be able to provide remote access to a secure self-service system** which would provide the individual with direct access to his or her information (Recital 63)”*

We therefore provide access to patient’s records through an online portal: Patient Access. If patients would like access to a copy of their health records they have been asked to sign up for online access, printing out the information that is required and sending it to you as a Third Party. This also follows the BMA Access to Health Records Guidance.

“The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them².”

We as a practice and Data Controller have to be sure that:

- Patient’s understand what information would be disclosed to a third party who has made a subject access request on their behalf.
- Patients have allowed the third party to act on their behalf.

Therefore we have sent the patient a consent form to complete before we can action your request.

To fulfil the request the patient may choose to:

- IV. Send the third party a print out of the online system (preferred – best practice is that the patient chooses what to send to the Third Party as per ICO guidelines)
- V. Request that the third party asks for a Medical Report under Access to Health Records Act 1990 (for which a fee is chargeable)
- VI. On occasions where the online system is not suitable (for example if a patient does not have access to the internet) then patient’s can request an alternative method, depending on the consent form.

A solicitor acting on behalf of a patient can request the medical records from us directly – we would expect all solicitors to use the BMA approved template when doing this. Please note, we still may need to ask the patient to complete our own consent form if the request does not contain enough information, as per BMA best practice guidelines.

Next Steps

- ✓ Await consent form from patient
- ✓ Adhere to returned consent form request

If you have any questions please do not hesitate to contact Laura Clare, Practice Manager – Patient & Staff Services on the number above.

² ICO Guidelines on Subject Access Requests and GDPR

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APPENDIX C – PATIENT GUIDE TO ACCESSING MEDICAL RECORDS

Access to Records

From the 25 May 2018, in most cases, patients must be given access to their medical records **free of charge**, including when a patient authorises access by a third party such as a solicitor. A ‘reasonable fee’ can be charged if the request is manifestly unfounded or excessive, however, these circumstances are likely to be rare.

We follow the ICO best practice guidelines which state that:

*“The GDPR includes a best practice recommendation that, where possible, **organisations should be able to provide remote access to a secure self-service system** which would provide the individual with direct access to his or her information (Recital 63)”*

We provide access to your records through an online portal - Patient Access. If you would like access to a copy of your health records please sign up for online access by filling in the application form (attached) and returning the form to the practice. If you are unsure whether you have this access please contact us.

We also have to be sure that the person requesting access to the medical records is the patient, so we may ask you for identification.

What if I want a solicitor or third party to request my records?

“The GDPR does not prevent an individual making a subject access request via a third party. Often, this will be a solicitor acting on behalf of a client, but it could simply be that an individual feels comfortable allowing someone else to act for them³.”

However, we as a practice and Data Controller have to be sure that:

- You understand what information would be disclosed to a third party who has made a subject access request on your behalf.
- You have allowed the third party to act on your behalf.

Therefore we may send you a consent form to complete before we can action the request.

To fulfil the request you may choose to:

- VII. Send the third party a print out of the online system (preferred – best practice is that the patient chooses what to send to the Third Party)
- VIII. Request that the third party send a medical report request to you (Oakwood Medical Centre), under the Access to Health Records Act 1990
- IX. On occasions where the online system is not suitable (for example if a patient does not have access to the internet) then we can send an encrypted disc with the records on to the patient or third party, depending on the consent form.

Next Steps

Please use the Patient Access form (attached) to request access to your medical records. Or Fill in the consent form if one is sent to you and return it to the practice with your preferences

³ ICO Guidelines on Subject Access Requests and GDPR

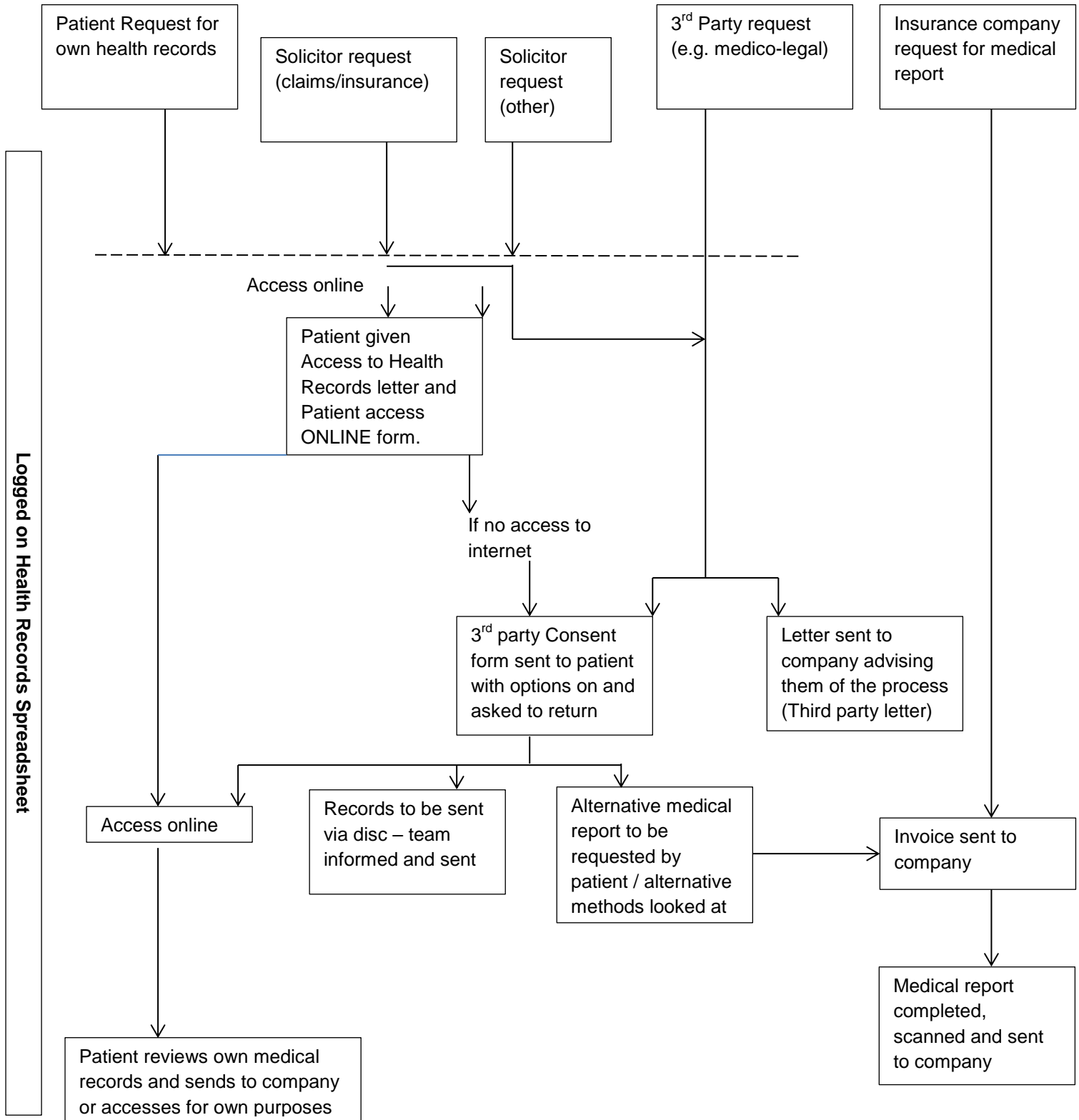
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APPENDIX D – PROCESS FOR MEDICAL RECORDS REQUESTS



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APPENDIX 3 – PROXY ACCESS TO MEDICAL RECORDS (ONLINE ACCESS)

Consent to proxy access to GP online services

Note: If the patient does not have capacity to consent to grant proxy access and proxy access is considered by the practice to be in the patient’s best interest section 1 of this form may be omitted.

Section 1

I,..... (name of patient), give permission to my GP practice to give the following people

..... proxy access to the online services as indicated below in section 2.

I reserve the right to reverse any decision I make in granting proxy access at any time.

I understand the risks of allowing someone else to have access to my health records.

I have read and understand the information leaflet provided by the practice

Signature of patient	Date
----------------------	------

Section 2

Online appointments booking	<input type="checkbox"/>
Online prescription management	<input type="checkbox"/>
Accessing the medical record for	<input type="checkbox"/>

Section 3

I/we..... (names of representatives) wish to have online access to the services ticked in the box above in section 2

for (name of patient).

I/we understand my/our responsibility for safeguarding sensitive medical information and I/we understand and agree with each of the following statements:

1. I/we have read and understood the information leaflet provided by the practice and agree that I will treat the patient information as confidential	<input type="checkbox"/>
I/we will be responsible for the security of the information that I/we see or download	<input type="checkbox"/>
I/we will contact the practice as soon as possible if I/we suspect that the account has been accessed by someone without my/our agreement	<input type="checkbox"/>
If I/we see information in the record that is not about the patient, or is inaccurate, I/we will contact the practice as soon as possible. I will treat any information which is not about the patient as being strictly confidential	<input type="checkbox"/>

Signature/s of representative/s	Date/s
---------------------------------	--------

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The patient

(This is the person whose records are being accessed)

Surname	Date of birth
First name	
Address	
Postcode	
Email address	
Telephone number	Mobile number

The representatives

(These are the people seeking proxy access to the patient's online records, appointments or repeat prescription.)

Surname	Surname
First name	First name
Date of birth	Date of birth
Address	Address (tick if both same address <input type="checkbox"/>)
Postcode	Postcode
Email	Email
Telephone	Telephone
Mobile	Mobile

For practice use only

The patient's NHS number		The patient's practice computer ID number	
Identity verified by (initials)	Date	Method of verification Vouching <input type="checkbox"/> Vouching with information in record <input type="checkbox"/> Photo ID and proof of residence <input type="checkbox"/>	
Proxy access authorised by			Date
Date account created			
Date passphrase sent			
Level of record access enabled Prospective <input type="checkbox"/> Retrospective <input type="checkbox"/> All <input type="checkbox"/> Limited parts <input type="checkbox"/> Contractual minimum <input type="checkbox"/>		Notes / comments on proxy access	

Title: Access to Health Records Policy & Disclosure of Personal Data Procedure

Document No:

Date Approved: [Insert Date]

Version No: 1

Status: [Insert document status]

Next Review Date: May 2024

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