

# **THE PORTCHESTER PRACTICE**

Dr A Ashworth | Dr B Sales | Dr A Lawrie | Dr J Perry | Dr T Diffey

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## **Right To Object Policy**

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May 2020	Revised from page added
Oct 2021	Change to partnership
July 2023	Review
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### **INTRODUCTION**

<https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/individual-rights/individual-rights/right-to-object/>

The GDPR gives individuals the right to object to the processing of their personal data in certain circumstances.

Individuals have an absolute right to stop their data being used for direct marketing. For The Portchester Practice (hereby referred to as “we” or “the Practice”), this refers to the use of data held by the practice to contact our patients. The use of email and SMS will be limited to communications that relate to patient care. A patient has the right to object to the use of a email address and mobile number and withdraw consent.

### **WHEN DOES THE RIGHT TO OBJECT APPLY?**

Individuals can object if processing is for the exercise of official authority – Article 6(1)(e). This is the legal basis for much of the processing that the surgery performs.

The Practice does not rely upon Article 6(1)(e) – performance of a task carried out in the public interest.

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The Practice provides all necessary fair processing information to enable individuals to be informed of their right to object. This information will be presented separately from other information about their data subject rights.

## **RECOGNISING AN OBJECTION**

An objection to processing in accordance with the GDPR/DPA 2018 can be made as a written request, which includes by email or fax, to the data controller, i.e. the Practice.

An objection to processing in accordance with the GDPR/DPA 2018 can also be made as a verbal request, especially if the person that the patient is making the request to can verify his/her identity (e.g. their GP). Such a request can be made face-to-face or by telephone, and in such cases a written record of such an objection request should be documented. That written request should then be passed onto either the Practice Manager or the Information Governance lead.

A request does not have to include the phrase “objection to processing” or “Article 21 of the GDPR” or “data protection” or “right to object”.

The requestor should provide enough proof to satisfy the Practice of their identity (and the Practice is entitled to verify their identity using “reasonable means”). The Practice must only request information that is necessary to confirm who they are.

An individual must give specific reasons why they are objecting to the processing of their data, based upon their particular situation, unless they are objecting to processing that has an already well-established “opt-out” mechanism (see below).

For former patients living outside of the UK and whom once had treatment for their stay here, under GDPR/DPA 2018 they still have the same rights to make a request for an objection. Such a request should be dealt with as someone making such a request from within the UK.

### **Patient Representatives**

A patient can give written authorisation for a person (for example a solicitor or relative) to express an objection on their behalf.

The Practice must be satisfied that the third party making the request is entitled to act on behalf of the individual, but it is the third party’s responsibility to provide evidence of this entitlement. This might be a written authority to make the request, or it might be a more general power of attorney (LPA for Health and Welfare) in the case of an individual who no longer has the mental capacity to manage their own health.

### **Court Representatives**

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A person appointed by the court to manage the affairs of a patient who is incapable of managing his or her own affairs may express an objection.

## Next of kin

Despite the widespread use of the phrase 'next of kin' this is not defined, nor does it have formal legal status. A next of kin cannot give or withhold their consent to the sharing of information on a patient's behalf. A next of kin has no rights of access to medical records. A next of kin cannot express an objection on behalf of a patient.

Children No matter their age, it is the child who has the data subject rights about their information.

Before responding to data subject rights expressed for information held about a child, we should consider whether the child is mature enough to understand their rights. If we are confident that the child can understand their rights, then we should usually respond directly to the child. We may, however, allow the parent to exercise the child's rights on their behalf if the child authorises this, or if it is evident that this is in the best interests of the child.

What matters is that the child is able to understand (in broad terms) what it means to make an objection and the possible consequences of doing so.

When considering borderline cases, The Practice should take into account, among other things:

- the child's level of maturity and their ability to make decisions like this;
- the nature of the personal data;
- any court orders relating to parental access or responsibility that may apply;

A person with parental responsibility is either:

- the birth mother, or
- the birth father (if married to the mother at the time of child's birth or subsequently) or,
- an individual given parental responsibility by a court

(This is not an exhaustive list but contains the most common circumstances).

If the appropriate health professional considers that a child patient is Gillick competent (i.e. has sufficient maturity and understanding to make decisions about their records) then the child should be asked for his or her wishes regarding the objection.

If the child is not Gillick competent and there is more than one person with parental responsibility, each may independently exercise their right to express an objection. Technically, if a child lives with, for example, its mother and the father expresses an objection on the child's behalf, there is no "obligation" to inform the mother. In practical terms, however, this may not be possible and both parents should be made aware of data subject rights expressed unless there is a good reason not to do so.

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In all circumstances good practice dictates that a Gillick competent child should be encouraged to involve parents or other legal guardians in any treatment/disclosure/objection decisions.

## **EXISTING “OPT-OUT” MECHANISMS**

For many data sharing schemes, a well-established “opt-out” mechanism already exists by which patients can prohibit the processing of their personal data. Examples include the National Summary Care Record,

Care and health Information Exchange (CHIE), secondary uses - Type 1 objections preventing the extraction and uploading of data to NHS Digital or the release of personal data authorised under s251/CAG approval, and EMIS Web data streaming.

In these cases, an objection is equivalent to the opt-out, with certain differences:

- The individual does not have to give any reason why they wish to object/optout
- The objection/opt-out is applied without delay
- The processing undertaken may rely upon an Article 6 legal basis other than 6(1)(e). For example, “legal obligation” for the National Diabetes Audit upload

## **NOTIFICATION OF OBJECTIONS**

The Practice will keep a central record of all objections (with the exception of processing activities for which there already exists an “opt-out” mechanism) in order to ensure that requests are cross-referenced with any complaints or incidents and that the deadlines for response are monitored and adhered to.

## **FEES**

The Practice must comply with the request free of charge.

## **MANIFESTLY UNFOUNDED OR EXCESSIVE OBJECTIONS**

Where objections are manifestly unfounded or excessive, taking into account whether the objection is repetitive in nature, the Practice can:

- charge a reasonable fee taking into account the administrative costs of complying with the request, or
- refuse to deal with the objection

## **TIMESCALES FOR COMPLYING WITH THE OBJECTION**

The Practice must act upon the objection without undue delay and at the latest within 28 calendar days. This is calculated from the day after the request is received (which will be day 1, and the response must be provided by the end of day 28).

The period for responding to the objection begins at its receipt or:

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- When the Practice receives any additional information required to confirm the identity of the requestor
- When the Practice receives any additional information requested (and required) to clarify the objection

The Practice will be able to extend the period of compliance by a further two months where requests are complex or numerous. If this is the case, the Practice must inform the individual within one month of the receipt of the objection and explain why the extension is necessary.

## **REQUIREMENT TO CONSULT AN APPROPRIATE HEALTH PROFESSIONAL**

It is the GP's responsibility to consider an objection expressed by an individual. That GP is likely to wish to discuss it with other members of the practice, and indeed it would be sensible for any such objection to be discussed at a practice meeting.

## **GROUND'S FOR REFUSING AN OBJECTION**

In the case of Article 6(1)(e) the right to object is not absolute. The Practice can continue processing if:

- we can demonstrate compelling legitimate grounds for the processing, which override the interests, rights and freedoms of the individuals, or
- the processing is for the establishment, exercise or defence of legal claims

If an individual objects on the grounds that the processing is causing them substantial damage or distress (e.g. financial loss) then the grounds for objection will have more weight.

## **INFORMING OF THE DECISION NOT TO DISCLOSE**

The Practice must inform the individual without undue delay and within one month of the objection being expressed.

We should inform the individual about:

- The reasons that we are not taking action
- The right to make a complaint to the ICO or another supervisory Authority
- The ability to seek to enforce this right through a judicial remedy This includes situations where we are refusing to deal with the objection on the grounds that it is manifestly unfounded or excessive (or that no fee was paid).

## **ACCEPTING AND COMPLYING WITH AN OBJECTION**

If we decide that we have no grounds to refuse an objection, then we must stop processing data in this way.

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We will need mechanisms to ensure that we can comply with the objection, whether by erasing, suppressing or otherwise ceasing to process personal data, whilst still allowing us to process the data for other purposes (such as the provision of safe medical care).

The data (i.e. the GP record) will need to be marked or flagged in such a way to ensure that it is not processed for purpose(s) that the individual has objected to.

Recording objections made verbally (face-to-face or by telephone)

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Have you positively identified the patient? YES / NO	
Name of patient	
Date of birth	
NHS number	
Date of request	
How was the request made	Face to Face                      Telephone
Is the patient wanting to object/opt out of any of these?	Summary Care Record <input type="checkbox"/> EMIS Web Data sharing <input type="checkbox"/> All Secondary Use <input type="checkbox"/>
What exactly is the patient wanting to object to?	
Details of the objection	
Remind patient that he/she might be contacted by the practice for further information or clarification about the objection, if needed	
This completed form is to be passed to the practice manager	