

Meeting Title	Board of Directors		
Date	10 September 2020	Agenda item	Bo.9.20.18

## Annual Data Protection Officer Report

Presented by	Graeme Holmes, Information Governance Manager		
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Lead Director	Cindy Fedell, Chief Digital and Information Officer and Senior Information Risk Owner		
Purpose of the paper	Data Protection Officer Annual Report		
Key control			
Action required	To note		
Previously discussed at/informed by			
Previously approved at:	Committee/Group	Date	
	NA		

### Key Options, Issues and Risks

This report is the annual update from the Trust's Data Protection Officer (DPO) regarding the discharging of the DPO role and general approach to compliance with the requirements of the General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018. It highlights key activities of the last year set against the national legislative landscape.

### Analysis

At the end of Quarter 4 of 2019/20 IG training compliance was 95%, combining both annual renewal and first-time training against an end of year target of 95%.

An improvement plan, focussed on further maturing as opposed to required improvement, for 2020/21 is in place that encompasses the Data Security and Protection Toolkit, General Data Protection Regulation and Data Protection compliance.

There were four externally reportable incidents in 2019/20. No action was taken by the Information Commissioner.

*The position of the Trust and the level of compliance with IG related legislation and standards is good. Its profile, which in my opinion is good, has been raised further this past year, in particular regarding incidents and training. Work undertaken by the IG Service and colleagues is to be commended. The extent of GDPR and Data Protection compliance achieved is testament to their expertise, drive and commitment. There is still room for further maturity and to this end the IG Service has a continuing rolling programme of checks and enhancements. Where necessary including improvements to policy, procedures and guidance supported by the right tools and advice. This will enable staff to continue to carry out their duties in accordance with best practice Information Governance standards.*

### Recommendation

The group is asked to

- note the opinion of the Data Protection Officer regarding the position of Information Governance
- consider the report and satisfy itself that the Data Protection Officer role is being effectively planned and discharged to provide the Board of Directors and Trust with the appropriate information and assurances regarding compliance with the General Data Protection Regulation/Data Protection Act.

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Risk assessment						
Strategic Objective	Appetite (G)					
	Avoid	Minimal	Cautious	Open	Seek	Mature
To provide outstanding care for patients		g				
To deliver our financial plan and key performance targets			g			
The level of risk against each objective should be indicated. Where more than one option is available the level of risk of each option against each element should be indicated by numbering each option and showing numbers in the boxes.	Low		Moderate	High	Significant	
	Risk (*)					
Explanation of variance from Board of Directors Agreed General risk appetite (G)	No variance.					

Benchmarking implications (see section 4 for details)	Yes	No	N/A
Is there Model Hospital data relevant to the content of this paper?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is there any other national benchmarking data relevant to the content of this paper?		X	<input type="checkbox"/>
Is the Trust an outlier (positive or negative) for any benchmarking data relevant to the content of this paper?	<input type="checkbox"/>		X

Risk Implications (see section 4 for details)	Yes	No
Corporate Risk register and/or Board Assurance Framework Amendments		X
Quality implications		X
Resource implications		X
Legal/regulatory implications		X
Diversity and Inclusion implications		X

Regulation, Legislation and Compliance relevance
<b>NHS Improvement:</b> (Risk assessment framework, quality governance framework, code of governance , annual reporting manual)
<b>Care Quality Commission Domain:</b> Well Led
<b>Care Quality Commission Fundamental Standard:</b> Good governance
<b>Other (please state):</b> General Data Protection Regulation (GDPR) and Data Protection Act 2018

Relevance to other Board of Director's Committee:					
Workforce	Quality	Finance & Performance	Partnerships	Major Projects	Other (please state)

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## 1 PURPOSE/ AIM

This report is the annual update from the Trust's Data Protection Officer (DPO) regarding the discharging of the DPO role and general approach to compliance with the requirements of the General Data Protection Regulation (GDPR) and Data Protection Act (DPA) 2018. It highlights key activities of the last year set against the national legislative landscape.

## 2 BACKGROUND/CONTEXT

The DPO is responsible for ensuring that the application of data protection and confidentiality legislation is consistently observed and any weaknesses in practices are identified and remedied where possible.

During 2019/20 the DPO provided advice on data protection and confidentiality across the Trust. As previously clarity around internal and cross-organisational information sharing has been a key focus. An IG Improvement Plan informs this and other work the team will progress throughout 2020/21 to further mature IG, rather than required improvement. We have seen another year of progress but there are areas where we can continue to make improvements.

## 3 PROPOSAL

### Monitoring and Compliance

As the changes required as a result of the GDPR and updated Data Protection Act have taken shape and become further embedded this past year the IG Team has looked to areas where further improvements may be made. It has a programme of work that includes development and refinement of existing documentation and the creation of new, which form the backbone of our IG controls. We have made inroads to improve our Data Protection Impact Assessment tools, and work began to refine and further align our Sharing and Processing Agreement templates with other Trusts' examples, in particular Airedale Hospital NHS Foundation Trust (ANHST) given our joint IG service. The IG Team has used requests from staff to help identify gaps and learning needs. For example, requests for advice and guidance in relation to collaboration agreements managed by the Bradford Institute for Health Research and external organisations. Also requests for help in fulfilling IG requirements of sharing and processing agreements, indicating a need for enhancements to staff guidance on when and where these are required, and how they should be completed.

*DPO Opinion - The Trust has controls in place so that it does not embark on new or changed processes without having considered the privacy impact and staff have become more aware of the need for Data Protection Impact Assessments (DPIAs) for example. The IG Service has provided assistance so that other teams can complete these as well as possible, provided support and guidance to address confusion about when and where they are needed, and has oversight of / reviews assessments. It continues to work with services Trust-wide to help ensure requirements are considered at the outset in line with Privacy by Design under GDPR.*

The IG Team was pro-active in engaging with other teams who sought advice, or who it relied on for evidence against the annual Data Security and Protection Toolkit (DSPT) assessment. The DSPT provides assurance of IG good practice. For 2019/20 the Trust was required to measure itself against 44 assertions comprising of 116 mandatory evidence

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items. It can only achieve a final overall outcome of Standards Met by providing evidence against each of the mandatory items. This mechanism equates to a Standards Met or Not Met outcome. There is no scoring system. Nationally, the deadline for the DSPT submission for all organisations was extended from March to September 2020. The Trust submitted as per the regular deadline as its assessment was complete. The end of year position at 31 March 2020 for the 2019/20 annual assessment confirmed Trust compliance of 'Standards Met' against all mandatory Assertions items. Internal Audit opinion from its review of the Assessment provided Significant Assurance again this year with fewer recommendations than previously.

*DPO Opinion - The Trust can take assurance that the controls upon which the organisation relies to manage IG are suitably designed, consistently applied and effective.*

Work took place to update policies and procedures. We have continued to work with business units to help ensure IG requirements are considered at the outset in line with Privacy by Design principles under GDPR. As reported previously, the Trust's information assets, what happens to them, and the controls surrounding them, inform a multitude of other areas. Thus the role Information Asset Owners (IAOs) play in ensuring such controls are in place remains key to our information asset management framework and mitigating information risk. In 2019/20 the Trust improved its intelligence of its processing activities further through the ongoing work related to the Information Asset Register and data flows mapping. An audit of the Information Asset Register was commissioned by the Trust SIRO in 2019 to ascertain progress on the maturing of the Register. The aim of which was to identify where we might make even more progress.

*DPO Opinion - Whilst the opinion returned was Limited, the recommendations made have helped to give clarity about where we might make enhancements and further refine our Information Asset Register and are to be welcomed. A joint annual workshop for Trust IAOs with ANHST IAOs delayed in 2019/20 is planned for 2020/21. Taking into account Covid-19, this will involve IT/information security colleagues. Training helps to provide assurance to the SIRO on the security, reliability, and integrity of assets plus reinforces their responsibilities and accountabilities*

Improvements to cyber security are continuous. A number of external assurances are sought and received each year. The Head of IT and team provided assurances to the IG Sub Committee and SIRO routinely through 2019/20 on the controls and actions in place and being progressed.

*DPO Opinion - In my opinion the Trust has well established governance in place with engaged membership. Assurance in 2019/20 came from the IG Sub-Committee (by way of the Quality Committee) provided through quarterly updates from the SIRO. The IG Sub-Committee, chaired by the Chief Digital and Information Officer who is the SIRO and Deputy Chaired by the Caldicott Guardian, received progress reports in relation to all matters of IG and cyber security. The IG Sub Committee has strong representation from clinical and non-clinical areas plus key technical officers from IT, the IG Team, and DPO. The Trust can be assured that the DPO has been afforded free access to senior management as is required of the role and has been able to undertake the role independently without management direction.*

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## **Awareness**

Mandatory training compliance was again high for the Trust. Training materials were reviewed and updated where appropriate. The Trust achieved a position of comprehensive awareness (95% of employees undertaking IG training).

*DPO Opinion - In my opinion, this is again a considerable achievement to be applauded; particularly as the 95% national target is challenging for organisations and often higher for example than Trust's core mandatory training compliance. The training material must continue to be reviewed to make sure that it remains fit for purpose and in alignment with national requirements and local workforce needs.*

## **Incidents and data breaches**

Incidents were well reported by staff during 2019/20. Most were minor (i.e. previously scoring 0-1 on the national IG SIRI scoring tool). All are assessed and advice is given on further mitigating actions or investigations where necessary. Reports are presented monthly to the IG Sub-Committee and included in the SIRO Report to the Quality Committee and Board of Directors. The majority of incidents reported by staff were lower level 'minor' incidents or near misses but the Trust saw several that were reportable externally. All were reported to the Information Commissioner, Trust investigations were undertaken and appropriate actions taken.

Ref 18253 HCA accessed records of patient/ex-partner, shared with the patient's daughter  
Ref 17127 Nurse accessed records, made inappropriate contact with patient he recognised  
Ref 14526 HCA disclosed patient data over snapchat  
Ref 13482 Self-referral request that no letters be sent to patient's home was missed

*DPO Opinion - Despite these incidents, it is the opinion of the DPO that the vast majority of staff have once more shown that they have embraced the need for honesty and transparency with regards to the management of personal information.*

Unfortunately benchmarking of incidents with other Trusts remains difficult. For 2020/21 changes to the Trust assurance reporting including IG will help show comparisons, trends and themes with our ANHST colleagues. Externally, the reported data is not consistent enough across organisations to make like for like comparisons however the DPO continues to share learning from incidents with other Trusts. Further work is needed to analyse our incidents, as to whether we can predict or establish any trends or themes.

*DPO Opinion - The Trust experienced occasional lapses in the emergence of several externally reportable incidents in 2019/20. Reporting of low level incidents is encouraging in demonstrating awareness but the appearance of more serious incidents this last year reaffirms that we cannot afford to be complacent. What is encouraging is that the ICO recognised these did not evidence there is a systemic problem in the Trust, rather that individuals acted alone and outside of their obligations of confidentiality and they took no action against the Trust. However the DPO points out that there are no guarantees the Trust will not be subject to fines or censure in the future despite the robust approach being taken which is reducing the risk.*

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The ICO imposed relatively few fines on UK organisations in 2019/20. As in previous years it is difficult to predict whether this will change and to what degree. We will continue to be vigilant locally, to monitor developments nationally to keep apprised of any potential 'flashpoints'.

### **Information Sharing**

The Trust has a responsibility to work with partners to minimise the burden of data collection, and ensure that it uses information effectively to support the overall aims of health and social care. 2019/20 saw even more organisations looking towards future shared care models or collaborative working and the IG Team received additional requests to develop or contribute to 'patch wide' or 'purpose specific' Information (or Data) Sharing Agreements.

*DPO Opinion - It is my opinion that this is an area that will only increase as the requirements associated with cross-organisation sharing call for such agreements and for assurances within respective organisations. Agreements requirements and content are becoming more complex and prolific. The IG Service will need to ensure it can keep pace with the demand which it has to date. Staff across the Trust will need to be mindful of the requirements associated with complex data sharing scenarios and the IG Service, individual IAOs and IT/information security colleagues will be instrumental in embedding this understanding.*

The National Data Opt Out Programme does not affect sharing for direct care. It offers patients the opportunity to make an informed choice about whether they wish their personally identifiable data to be used only for their individual care and treatment or also used for research and planning purposes. Patients and the public who decide they do not want their data used for planning and research purposes will be able to set their opt-out choice online. The Trust lead took actions to ensure the Trust was ready for national live implementation in 2019/20, although the date of March 2020 when opt-outs must be upheld was moved to September 2020.

*DPO Opinion - The Trust responded to the Opt Out programme appropriately.*

### **Risks**

The SIRO and IG Team monitors and reports incident related and other Information Governance related risks reported on the Trust risk register routinely via the IG Sub-Committee.

*DPO Opinion - The Trust has a robust system and governance structure for identifying, assessing and monitoring IG associated risks.*

### **Networking and Collaboration**

The IG landscape has continued evolving, less due to the changes in data protection legislation and more in relation to the increasing focus on NHS digital aspirations. The DPO contributes proactively to the IG sector sharing of advice, guidance and working practices. The DPO and IG Team regularly contribute to and work alongside peers at Bradford District Care Trust, the regional (North Yorkshire and Humber) and National SIGN (Senior IG Network), other Trusts, and the Yorkshire and Humber Care Record programme.



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The key issues and themes year over year are often repeated as they remain challenging for organisations and as changes in national guidance or requirements are issued. During the course of the year the Trust has again ensures inclusion of information sharing and agreements, and NHS Digital and NHS IG guidance on data protection legislation and on compliance. Also included is guidance around the increased use of and need for digital technologies in the NHS and the requirement IG elements and assurances.

National bodies such as the ICO, NHS Digital, NHS IG and NHSx have developed guidance but there are still gaps, one example being in relation to data sharing and agreements and safe digital technologies. There needs to be consistent health sector guidance and tools to prevent unnecessary duplication but also ensure clarity across the sector.

*DPO Opinion - The newly formed NHS IG did not bring forth the quantity of newly developed guidance that was expected. It is hoped that this will happen in 2020/21. The DPO has highlighted such matters through regional and national IG groups.*

The IG Service is a shared service established to instigate collaborative working between with ANHSFT. The IG Service has worked to develop shared IG protocols and training in line with the ever involving data security and protection agenda. The Joint Head of IG manages the service. The team currently consists of an IG Manager at both locations, supported by an IG Officer (1.0 WTE) at BTHFT, an IG Officer (0.5 WTE) and FOI Assistant (0.8 WTE) at ANHST. Whilst progress has been made and continues to be, the size of the IG Service and the complexities and disparities of existing processes in some areas between the Trusts means there is still work to do. Required activities are included within a 'joint' IG Improvement Plan to ensure the IG programme of work at each Trust is set in the context of the shared IG Service. It is likely that further investment will be required to develop and grow this Service as the IG agenda is increasingly developing and growing.

*DPO Opinion - The IG Team staff at the Trusts have continued to work closely to align or replicate processes and guidance where possible and as required. This should be progressed in 2020/21 and be complemented by updated and improved 'joint' IG policy and staff guidance and tools to help improve awareness and further embed good practice. Some gaps in service due to absences have hindered progress in some areas against this work but in March 2020 a new IG Manager appointment at ANHST ensures that this work can pick up pace once more for 2020/21.*

### **Future Plans and Key Activities**

The IG Service planned catalogue is yet to be completed and this should be a focus for 2020/21 as it will help provide clarity for staff across services, sites and Trusts. It will also help inform and clarify reporting requirements both assurance and performance. Completion of the work taking place to update and improve staff (and Team) guidance and communication channels will be important in improving awareness and further embedding good practice.

*DPO Opinion - As DPO, I expect continued maturity of the IG Improvement Plan alongside a updated, clear IG Strategy. The existing Strategy is currently under review.*

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#### 4 SUMMARY

The level of compliance with the GDPR and DPA 2018 is evidenced as having been progressed. This can be seen for example by the favourable Internal Audit opinion of the Trust's DSPT assessment review and consistent compliance with Subject Access and Freedom of Information Act requests plus high levels of mandatory training compliance. The internal audit of the Information Asset Register helped highlight areas where further improvement may be made to which a plan of action has been attributed and is being progressed. This has included development of a the Trust's Information Asset Register, which continues to progress.

The Trust has a dynamic improvement plan to refresh and improve its compliance with the DSPT standards. Evidence for many of the assertions is refreshed as part of established daily business or monitoring activities throughout the year. Some objectives are more challenging and for this reason are constantly targeted as key areas. These are included in an improvement plan.

The Trust has made improvements in terms of raising awareness of IG, of training, in implementing and updating the required new and existing policy and procedures, and compliance with GDPR / data protection legislation.

The IG Service will continue to work with other NHS organisations in our region sharing good practice, and to aim for an integrated approach.

*DPO Opinion - Support from the Trust leadership and education services continues to be critical to ensure the Trust maintains or improves training compliance throughout the year to prevent end of year blockages where staff have to be encouraged to complete at year end.*

*I believe that the Board can take assurance that the controls upon which the Trust relies to manage IG are suitably designed, applied and effective. However, there is room for further continual improvement across different areas of IG and I am sure that this will remain the case. Information Governance is a changing and developing area regionally and nationally and it is important we are conscious of this to avoid complacency and a potential lull in progress or backward steps.*

*The IG Service and Caldicott Guardian regularly receive requests for advice and direction on a variety of work streams; most notably in 2019/20 with regard to partners and data sharing. It is evident that this emerging challenge from last year is still very much at the forefront of requests for advice and guidance. As previously reported the IG resources available to the Trust are limited and more does need to be done to align policy, procedures and guidance between the Trust and ANHSFT. This has been challenging due to the availability of resources and high demand for advice and assistance. In addition, because the wider IG landscape is ever changing and evolving, to aid the path towards a truly digital NHS, the Trust will need to keep pace. It will be important to attribute the necessary resources and attention to the Trust's IG obligations in order to meet demand and assure the Board that work in this area is safe, legal, efficient and stands up to scrutiny.*



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<b>5</b>	<b>RECOMMENDATIONS</b>
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The group is asked to

- note the opinion of the Data Protection Officer on the position of IG in the Trust
- consider the report and satisfy itself that the Data Protection Officer role is being effectively planned and discharged to provide the Board of Directors and Trust with the appropriate information and assurances regarding compliance with the GDPR and Data Protection Act 2018.

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<b>6</b>	<b>Appendices</b>
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N/A