

Letter via email

Dear Professor Powis

**Re: Sharing of information by the Royal Free with Google DeepMind**

Thank you for your letter of 25<sup>th</sup> November and for the associated information.

I would like to apologise for the time that has elapsed since my last correspondence to you. My panel and I gave careful consideration to your initial collaboration with Google DeepMind to develop an app to improve the detection and management of acute kidney failure, which you came to discuss with us in May 2016. We have also spent time ensuring our work is complementary to that of the ICO and MHRA and have aimed to avoid any duplication of requests to you for information.

Thank you for providing the information about your new five-year agreement with Google DeepMind, which replaces your initial arrangement. This information was shared in confidence with my panel and discussed at our meeting in November.

In discussions with my advisory panel, we have been considering the definition of direct care, and the extent to which the development of new technology prior to deployment can be considered within this definition. Alongside this, we have been reviewing whether implied consent is an appropriate legal basis for such work and the related matter of whether the use of patient identifiable data to support this would fall within the reasonable expectations of patients.

My considered position is that when work is taking place to develop new technology this cannot be regarded as direct care, even if the intended end result when the technology is deployed is to provide direct care. Implied consent is only an appropriate legal basis for the disclosure of identifiable data for the purposes of direct care if it aligns with people's reasonable expectations, i.e. in a legitimate relationship. We do not believe that to have been the case when patient data was shared with Google DeepMind.

At the request of the Information Commissioner, I have agreed that the ICO will lead on this matter, and that my panel and I will provide advice to them based on our experience of the application of the common law duty of confidentiality, and particularly the use of the legal basis of implied consent to share data for direct patient care. Given this, I have copied this letter to the Information Commissioner.

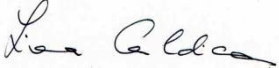
Should you have additional information which you think will be useful to any further discussions on this matter, please send it to my office.

I have copied colleagues from Google DeepMind on this correspondence, given that they have also contacted me with kind offers to provide further information should that be required.

Given the wider interest in this matter, I feel that it is appropriate that I make my views known publically. I will therefore be publishing a short statement on the National Data Guardian website in due course. Before doing this, I do of course want to give you the opportunity to respond to this letter. It would be helpful to receive your response by 11<sup>th</sup> January please.

Lastly, I would like to say that my panel and I fully appreciate the benefits to patients of the development and deployment of applications such as those being developed by Google DeepMind. However, as with all uses of patient data, it is absolutely paramount that this is undertaken in a transparent and secure manner, which helps to build public trust, otherwise the full benefits of such developments will not be realised, and indeed harm may be done.

Yours sincerely



Dame Fiona Caldicott, MA FRCP FRCPsych  
National Data Guardian

CC Elizabeth Denham, Information Commissioner  
David Sloman, Chief Executive, Royal Free London NHS Foundation Trust  
Mustafa Suleyman, Co-Founder, DeepMind  
Will Cavendish, Strategy Lead, DeepMind