

Minutes of the meeting

National Data Guardian's Panel Meeting



14.06.2022



Microsoft Teams Virtual Meeting

Panel members present:

Dr Nicola Byrne
Mr Adrian Marchbank
Andrew Hughes
Dr Chris Bunch
Eileen Phillips
Prof James Wilson
Dr Joanne Bailey
John Carvel

Maisie McKenzie
Rob Shaw
Sam Bergin Goncalves

NDG Office staff in

attendance:

Karen Swift
Ryan Avison
Carl Beesley
Layla Heyes
Dr Vicky Chico

Guests:

Manish Loharuka (item 4)
Stephen Koch (item 4)
Richard Phillips (item 4)
Nicola Brassington (item 6)

1. Welcome, apologies, and declarations of interest:

The National Data Guardian (NDG) Dr Nicola Byrne chaired the meeting. Apologies were received from Dr Arjun Dhillon, Dr Edward Dove, Dr Fiona Head, Professor Ian Craddock and Rakesh Marwaha.

No declarations of interest pertaining to items on the agenda were recorded.

2. Minutes from previous meeting, actions, and decisions:

The minutes from the NDG's panel meeting held on 10 May 2022 were accepted as an accurate record of the meeting.

Head of the Office, Ryan Avison, provided an update on the two open actions.

All other actions were agreed as having been completed prior to this meeting.

3. Key updates:

Members of the office team provided an update for panel on recent NDG activities:

1637: The Federated Data Platform Programme:

Following the NDG's interview as part of the programme's Gateway 2 assurance process (where feedback is shared on an anonymous basis with the programme leads), the NDG has apprised the Department of Health & Social Care and NHS England and NHS Improvement of her feedback.

1389: Data Strategy for Health and Social care:

The Government's strategy 'Data Saves Lives: Reshaping Health and Social Care with Data' was published on 13 June 2022.

1269: ICO anonymisation guidance:

The office has provided feedback on behalf of the NDG on Chapters 3 and 4 of the ICO anonymisation guidance.

There is a point in chapter 4 that requires more exploration: *If the disclosure of confidential patient information (CPI) for medical research purposes is in the public interest and the data has undergone pseudonymisation, it is then out of scope of the Common Law Duty of Confidentiality (CLDC).*

The office is concerned that without much more detailed guidance, it is misleading to say that pseudonymised data is 'out of scope' of the Common Law Duty of Confidentiality (CLDC) and does not seem to have considered the application of section 251 NHS Act 2006 and Regulation 5 and 7 of Control of patient information (COPI) notices.

1558 Police, Crime, Sentencing and Courts (PCSC) Act - Serious Violence Duty (SVD) health information sharing and revised draft guidance:

The Home Office has published draft guidance for consultation in relation to the SVD contained in the PCSC Act 2022, which requires specified authorities to work together to prevent and reduce serious violence in their area.

Panel members were reminded that NDG had previously scrutinised and challenged the requirements of the SVD contained in the Act as it made its way through parliament. This was to ensure that health bodies would not be required to share patient or personal data in order to comply with the SVD.

The NDG will be responding to the consultation before it closes on 21 July 2022.

4. 1642: Introducing L2 authenticators to Summary Care Record:

Manish Loharuka, Associate Director of Identity Platform (ai), Stephen Koch, Executive Director of Platforms and Richard Phillips, Programme Manager, NHS Digital attended Panel to discuss the authentication process for accessing patient information for direct care, and proposals on how these can be changed so that organisations who don't have smartcards can access relevant information.

Panel members considered the key themes from the presentation and made several observations. Discussions also focused on: professional engagement and how this could be adopted in such a mixed landscape; 'bring your own device' (BYOD) schemes; security, ID verification and other controls; and which organisations will be involved in the pilot scheme.

Dr Byrne thanked the programme for their useful presentation and the discussion and said that she and the panel would be happy to continue engaging and providing advice and guidance where it is helpful and within the NDG's remit.

5. 1463: Goldacre Review update to Panel:

Nicola Brassington, Deputy Director of Data & Analytics, NHS Transformation Directorate, Department of Health and Social Care attended Panel to discuss the Goldacre review and its recommendations - including how it links to the data strategy and how the recommendations will be implemented.

Panel members considered the main points from the presentation and made several observations. Key areas of discussion included: the conditions that create public trust; data sharing; data flows and pseudonymisation. Panel was encouraged by the programme's commitments to providing greater openness about how data is used and to giving the public a bigger say in this.

Panellists also discussed the suggestion in the report that once secure data / trusted research environments are in place, the national data opt-out should be reviewed. Dr Byrne confirmed that she doesn't disagree - however, the public would certainly need to be engaged in some work to look at how we make sure that the opt-out options are clear, coherent, simple to action and offer authentic choices.

Dr Byrne thanked Nicola for her attendance and the discussion and said that she and the panel would be happy to continue engaging and providing advice and guidance if that would be helpful.

6. Any Other Business:

No items were raised by members in advance of the meeting.
