

Meeting report	Information Commissioner's Office (ICO) and NHS Connecting for Health (CfH)
Date:	18 November 2010
ICO attendees:	Christopher Graham (CG) Jonathan Bamford (JB) Dawn Monaghan (DM)
CfH attendees:	Charles Gutteridge (CG2) Marlene Winfield (MW) Lyndsay Rooney (LR) Nic Fox (NF) Richard Clay (RC) Emyr Wyn Jones (EW) from 10 am Tom Denwood (TD) by telephone from 10.30 am
Reason for meeting:	Quarterly Update
Contribution to business plan:	Stakeholder Engagement
KPI information	
Associated file number	

Issues discussed / questions raised	Action
<ul style="list-style-type: none"> The meeting opened with introductions. The action points arising from the previous meeting were reviewed. <p>1.) Matters arising from the minutes not on the agenda:</p> <ul style="list-style-type: none"> Contact about an audit of an aspect of CfH has been delayed pending post-election decisions about CfH activities. ICO advised that Louise Webb in audit team is awaiting contact. ICO also requested that we revisit the project discussed several years ago about looking at the extent of blagging in the NHS. Richard Clay is the contact who will advise on revised ICO website documents re Summary Care Record (SCR). <p>2.) ICO update</p> <ul style="list-style-type: none"> CG reported that the NHS is 'top of the league' for data protection breaches, in part because of the comprehensive reporting by the NHS. The 	<p>MW to raise with Paul Jones revisiting audit plans and blagging project.</p> <p>ICO to contact Richard Clay for ICO website document update</p> <p>ICO to write to the NHS Chief Executive about</p>

ICO can now levy Civil Monetary Penalties (CMPs) of up to £500k and they are about to make their first CMPs in the NHS . It was agreed that a letter to the Chief Executive of the NHS to raise awareness of the new penalty powers and of the types of breaches that are being reported might be useful in the Chief Executive's continuing efforts to remind the local NHS of its responsibilities for physical security of data and the safety measures expected. The ICO is happy to work with the NHS on improvement initiatives.

- The ICO has improved the speed of Freedom of Information (FOI) complaints handling and public authorities have similarly improved their response times to the ICO. There will always be a presumption of disclosure. Improved response times mean that where a public authority does not want to disclose, they need to make a good case for withholding the information in a clear and timely manner.
- In Data Protection (DP), the ICO is becoming a more demanding partner. DP is a matter of public trust. Breaching organisations will be expected to explain how they are improving their internal systems and practices to prevent recurrence.
- The ICO is concerned to ensure that the move to GP consortia will not result in a loss of accountability and transparency due to fragmentation. The ICO stressed that no matter what the structure of the NHS, the same FOI and DP requirements apply. The ICO is happy to work with the NHS on a framework for assuring FOI and DP compliance in the reorganised NHS.
- The ICO sought clarification about the statement in the SCR Review report regarding the use of Smartcards. CfH advised that CG2 will be undertaking a review of the technical and cultural aspects of use of smartcards in primary care practices. ICO is happy to help with the review, including culture change aspects.

3.) CfH update

- CG2 reported that the recommendations from the Summary Care Record Review, which involved the ICO, had been published. CfH is

enhanced penalty powers, continuing reported DP breaches by the NHS, and the ICO's willingness to work with the NHS on measures to improve compliance.

CG2 will advise Christine Connelly of ICO's concern post-restructure and offer of help with framework development.

CG2 to involve the ICO in the smartcard review.

SCR team will maintain regular dialogue with the

working closely with key stakeholders on changes resulting from the review. 3.5 million records have been created to date and usage is increasing. Regular dialogue is needed with the ICO to ensure continued DP compliance as usage increases.

- CfH advised that the future structure and role of an informatics section of the Department of Health (DH) are still not fully decided.
- CfH advised that the patient journey may look fundamentally different in five or ten years' time and with it the information flows, including health and social care integration.
- Medical students' training needs to keep pace with the changing world with regard to information governance. The ICO would like to do more to influence medical student training. It was suggested that they ask to present to the Association of UK University Hospitals (AUKUH) medical directors sub-group.
- CfH is involved in a theatre of debate initiative in medical schools concerning use of patient data for research. ICO would be interested in attending a performance if the project goes forward.
- CfH advised that, with the move from creating a few universal systems to linking a variety of systems together, the confidentiality management approaches will be more diverse. Though all systems have to meet certain minimum standards, they may do so in different ways. The ICO would like to inform the development of confidentiality management systems by suppliers. It was suggested that the ICO address a meeting of Intellect, the supplier umbrella organisation. The ICO is also happy to do anything else required to support good standard setting.

4.) SCR update

- One of the main outcomes of the SCR review identified the need to build clinician and patient trust and to work closely with key stakeholders.
- The scope of the SCR has been clarified as supporting urgent and emergency care.
- The core information added to the SCR will be medications, adverse reactions and allergies, uploaded with informed implied consent from the patient's GP record. Where a patient and

ICO about DP compliance as usage increases.

CG2 to introduce ICO to AUKUH

MW to keep the ICO informed of progress with theatre of debate

MW to arrange for ICO to address Intellect.

MW to ensure those setting system standards know about the ICO's offer to help.

their doctor would like to include additional information in the patient's SCR, this can be included with the explicit consent of the patient.

- A new body is being created to take responsibility for the content of the SCR. This will be led by patients, working in partnership with the clinical professions and tempered by the IT capability. This new body will be established in 2011. At present only information from the patient's GP record will be sent to the SCR.
- Additional feeds from secondary care (Release 2) are on hold pending any decisions made by the new body being established to take responsibility for the content of the SCR.
- Materials for the Public Information Programme (PIP) will include:
 - A clearer, more standardised letter
 - A streamlined leaflet making choices clearer
 - An opt out form included in the pack with a freepost return service
 - Removal of the pre-paid envelope for ordering materials, to avoid confusion. (Materials will be available through the helpline, web, and local NHS facilities.)
 - To clarify scope, a strap line will say 'your emergency care summary'.
- The review strongly recommended not re-mailing those previously mailed, but wanted local and national initiatives to reinforce the message for both past and future recipients of the Public Information Programme pack. CfH is working with key stakeholders including the BMA on ways to reinforce the message in surgeries.
- RC advised that no mailings occurred during the review period but records continued to be created for those previously contacted.
- ICO said that while its role is to advise on legal compliance, it supported the review's recommendations that go beyond what is required by law and help to improve the ability to make more informed choices.
- All agreed that measures were needed to minimise the risk of people thinking they had to fill out the enclosed form in order to have an SCR
- LR raised the issue of how long helpline and

NF to send new materials to DM when they are ready.

SCR team to explore measures to prevent mistaken opt outs

mail order aspects of the PIP should plan to continue. ICO said the main issue would be not prejudicing people's ability to exercise choice but there would come a point where it was not worth continuing the helpline and mail order facilities due to low demand, provided there were alternative sources of information such as websites, GP surgeries, other health care settings.

5.) Cerner upgrade

- TD presented a paper on progress. He advised that the US upgrade centre was set to begin upgrades to UK trust systems in December. An independent audit of the US centre found it complied with all agreed DP safeguards. In the meantime, due to capacity issues in the US following the increased demand resulting from the Obama stimulus package, Cerner has had to revise its plans and create a UK upgrade centre. Both centres will work on UK upgrades. TD advised that both centres would operate according to the requirements developed with the ICO. The ICO advised that as long as the required safeguards remain in place, their continued approval would apply to future upgrades, but they recommended that audits be ongoing. CfH to provide further updates as appropriate.

TD to provide further Cerner upgrade updates as appropriate including plans for further audits

6.) Audit trail messages

- LR presented a paper about informing the public about audit trails with three options. She asked the ICO to advise what the NHS should be offering people in relation to availability of audit trails. Making them available proactively is both technically difficult for many systems and could involve disclosure of third party information. The ICO advised that the most important thing is to explain clearly the types of people who will have access to someone's records and that more detailed information could be available if needed. However, as a matter of transparency and as a way of building public confidence, it would be good practice to proactively offer access to the audit trail where this is practicable. The ICO advised that in most, though not all, cases the

LR to liaise with DM on wording of messages about availability of audit trail information.

interests of individuals in knowing who has accessed their records would outweigh the privacy rights of health professionals identified in the course of doing their job. There are cases, for example involving possible blagging, where it would be important to know who has accessed a record. The ICO thought option 3 was best: referring to the right to know the information but that it is a direction of travel and may take some time to get there. The ICO offered to advise on wording for future communications materials with regard to this matter.

7.) Arrangements for dealing with FOI requests and queries from the local NHS

- All agreed that the present arrangements were working well.

8.) Any other business

- NF advised that having previously mailed their patients about the introduction of the SCR, some local health communities are now re-evaluating their upload plans. In such cases, should people be re-mailed to explain the change of plan? The ICO advised that this was not a DP point, but a customer care one. It would be good practice to inform people to avoid confusion or unnecessary requests for deletion.
- On a matter unrelated to the SCR, the ICO advised that Phil Walker was meeting David Evans and would be discussing among other things an issue that arose from trusts' re-use of pre-paid envelopes.

Any other comments:	CfH will prepare draft minutes for ICO's approval.
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