Birmingham and Solihull Mental Health NHS Foundation Trust

Appropriate Policy for the use of Personal Data Document

Policy number and category	**IG 12**	**Information Governance**
Version number and date	**2**	**May 2025**
Ratifying committee or executive director	**Information Governance Steering Group**	
Date ratified	**August 2025**	
Next anticipated review	**August 2028**	
Executive director	**Executive Director of Finance**	
Policy lead	**Head of Information Governance**	
Policy author *(if different from above)*	**As above**	
Exec Sign off Signature (electronic)		
Disclosable under Freedom of Information Act 2000	**Yes**	

Policy context

The Data Protection Act (DPA) 2018 outlines the requirement for an Appropriate Policy Document (APD) to be in place when processing special category and / or criminal offence data under certain specified conditions to cover these processing activities

Policy requirement (see Section 2)

This policy covers personal data about service users, carers, applicants, consisting of: students, and staff (both present and past) and third parties. It includes pseudonymised data but not anonymised data. It applies to all personal data, whether held on-premise, cloud, on a portable device or by third parties. It applies to information held electronically and on paper

Change Record

Date	Version	Author (Name & Role)	Reasons for review / Changes incorporated	Ratifying Committee
March 2025	**3**	**Kirstie Macmillan, data Protection Officer**	**Policy review**	**Information Governance Steering Group**

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1: Introduction

The Data Protection Act (DPA) 2018 outlines the requirement for an Appropriate Policy Document (APD) to be in place when processing special category and / or criminal offence data under certain specified conditions to cover these processing activities.

Almost all the substantial public interest conditions in Schedule 1 Part 2 of the DPA 2018, plus the condition for processing employment, social security, and social protection data, require Birmingham and Solihull Mental Health NHS Foundation Trust (BSMHFT) to have an APD in place (for further information please refer to Schedule 1 paragraphs 1(1)(b) and 5) of the DPA 2018).

This APD confirms that the processing of special category and criminal offence data based on these specific Schedule 1 conditions is compliant with the requirements of the General Data Protection Regulation (UK GDPR) Article 5 principles. It also includes our retention policies with respect to this data (for further information please refer to Schedule 1 Part 4 of the DPA 2018).

The APD complements our general record of processing under Article 30 of the UK GDPR and provides special category and criminal offence data with further protection and accountability.

This APD also supplements BSMHFTs privacy notices.

2: **The policy**

This policy covers personal data held and processed by BSMHFT.

Personal data is recorded information from which a living person can be identified, either from the data alone, or when combined with other data that is or may become available to the recipient of the data.

This policy covers personal data about service users, carers, applicants, students, and staff (both present and past) and third parties. It includes pseudonymised data but not anonymised data. It applies to all personal data, whether held on-premise, cloud, on a portable device or by third parties. It applies to information held electronically and on paper.

Pseudonymisation is the process of replacing identifying information with random codes, which can be linked back to the original person with extra information,
whereas **anonymisation** is the irreversible process of rendering personal data non-personal, and not subject to the GDPR.

This policy covers BSMHFTs requirements for data protection, whether it is the Data Controller or Data Processor, and where BSMHFT works in partnership with other organisation(s) as joint Data Controller, for example, to achieve seamless or integrated care for patients or service users.

This policy is applicable to all BSMHFT employees, Non-Executive Directors, students, and contractors and third parties who work for or on behalf of BSMHFT and who have access to BSMHFT information assets.

3: The procedure

Under DPA 2018, BSMHFT processes personal data for the performance of a task carried out in the public interest and in exercising our official authority. This means that it is necessary for us to process personal data for those purposes.

Additionally, other alternative conditions may be applicable where the above justification is not available, for example in the event of a life or death situation such as to prevent harm being caused by a patient or service user.

Table one below provides a description of all the ways we process personal data, and the legal bases we rely on to do so.

Purpose/activity	Type of data	Lawful basis for processing including basis of legitimate interest
Direct Care	a) Identity b) Contact c) Special Categories	All Health and Adult Social Care providers are subject to the statutory duty under Section 251B of the Health and Social Care Act 2012 to share personal data about patients for their direct care. UK GDPR Article 6(1) (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller. GDRP Article (2) (h) Processing is necessary for the purposes of preventative or occupational medicine for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment, or management of heath or social cares systems and services on the basis of Union or Member State law or a contract with a health professional.
To respond to a request under the Freedom of Information Act, enquiries, complaints	a) Identity b) Contact	UK GDPR Article 6(1) (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller. Comply with a legal or regulatory obligation

To respond to a request under Data Protection Act or the General Data Protection Regulation	a) Identity b) Contact c) Special Categories such as health information	UK GDPR Article 6(1) (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller.
Safeguarding	a) Identity b) Contact c) Special Categories such as health information	Local Authorities have a duty to make enquiries where an adult or child is experiencing or is at risk of abuse or neglect and had a duty to collaborate with partners generally and in specific cases. UK GDPR Article 6 (1) (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller. UK GDPR Article 9 (2) (b) Processing is necessary for the purpose of carrying out the obligations and exercising the specific rights of the controller or the data subject in the field of social protection law in so far as it is authorised by Union or Member State Law.
To investigate and respond to a complaint (including whistleblowing)	a) Identity b) Contact c) Special Categories	UK GDPR Article 6 (1) (e) processing is necessary for the performance of a task carried out in the public interest or in exercise of official authority vested in the controller. UK GDPR Article 9 (2) (a) The data subject has given explicit consent to the processing of those personal data for one or more specified purposes

Commissioning and Planning Purposes	a) Identity b) Contact c) Special Categories	Your information is sent to the commissioners of our services, the Clinical Commissioning Groups who pay us for providing our services. We are also required to report to the Healthcare Commission and the Department of Health on our activities and performance. These uses of your information would almost never involve a person looking at your records. Most submissions of your data outside of the Foundation Trust are done by computer and sent securely. Only very rarely would someone need to check into the submissions we make to focus on a specific person, and even then, it is unlikely that the information would easily identify you as an individual. The Trust also undergoes external audit by the Audit Commission or other professional bodies given the legal authority to carry out audits. These audits may involve reviewing information in patient records to ensure accuracy, completeness and the competency of the staff that served you. It would rarely be the case that the auditors would ever be interested in knowing about you directly, and only in extreme cases of misconduct or incompetence in the Trust would they be interested in tracing you as an individual.
		The Trust cannot prevent your information from being provided to the above when it is seeking payment for its services. By engaging in care provided by the Trust you will have consented for your information to be used in these ways. Most national and local flows of personal data in support of commissioning are established by NHS Digital either centrally or for local flows by the Data Services for Commissioners Regional Officers (DSCRO). These flows do not operate based on consent for confidentiality or data protection purposes Article 6 (1) (c) Processing is necessary for compliance with a legal obligation. Article 6 (1) (e) Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. Article 9 (2) (h) Processing is necessary for the purposes of preventative or occupational medicine, for assessing the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or management of health or social care systems and services on the basis of Union or Member State law or a contract with a health professional.
Research	a. Identity b. Contact c. Special Categories	For research purposes, the common law duty of confidentiality must still be met through consent. This requirement has not changed under the UK GDPR. Consent is still needed for people outside the care team to access and use service user personal data for research, unless you have Section 251B of the Health and Social Care Act 2012 support or the data is anonymised (no longer identifiable). This includes encryption techniques, such as pseudonymisation (using special codes), to

		enhance your privacy and protect your confidentiality before using your information for research. Article 6 (1) (e)Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller. Article 9 (2) (j) Processing is necessary for archiving purposes in the public interest, or scientific and historical research purposes or statistical purposes in accordance with Article 89(1).

3.1 Procedures for ensuring compliance with the principles

Accountability principle
i. BSMHFT maintains record of processing activities under Article 30 of the UK GDPR ii. BSMHFT has appropriate information governance policies in place iii. BSMHFT carries out data protection impact assessments (DPIA) for uses of personal data that are likely to result in high risk to individuals' interests
Principle (a): lawfulness, fairness and transparency
i. The appropriate lawful basis for processing is outlined in BSMHFTs privacy notices and supplementary information accessible via BSMHFT website: **Privacy policy and cookies - Birmingham and Solihull Mental Health NHS Foundation Trust - BSMHFT**
Principle (b): purpose limitation
i. BSMHFT has clearly identified our purpose(s) for processing the special category and criminal offence data (please refer to table one) ii. BSMHFT has included appropriate details of these purposes in our privacy notices and supplementary information: **Privacy policy and cookies - Birmingham and Solihull Mental Health NHS Foundation Trust - BSMHFT** iii. Any plan to use personal data for a new purpose (other than a legal obligation or function set out in law), BSMHFT will check that this is compatible with the original purpose or get specific consent for the new purpose
Principle (c): data minimisation
i. BSMHFT is satisfied that we only collect special category and criminal offence personal data we need for our specified purposes and this is assessed during the Data Protection Impact Assessment (DPIA)
Principle (d): accuracy
i. BSMHFT has appropriate processes in place to check the accuracy of data we collect. ii. BSMHFT has procedures in place to support individuals who challenge the accuracy of data and in addition those who request to enact their right to rectification
Principle (e): storage limitation

i. BSMHFT has both corporate and clinical records management policies in place (based on national retention schedules) which identify how long special category and criminal offence data should be retained for.
Principle (f): integrity and confidentiality (security)
I. BSMHFT has assessed the appropriate level of security we need for this data processing and this is considered as part of the Data Protection Impact Assessment (DPIA) II. BSMHFT has overarching ICT policy which includes information security. III. BSMHFT has technical measures or controls in place IV. BSMHFT utilises NHS Digital's data security awareness training, and all staff are expected to complete this training annually

3.2 Retention and erasure policies

Our retention and erasure practices are set out in our Corporate Records Management Policy and Clinical Records Management Policy.

We will only retain personal data for as long as necessary to fulfil the purposes we collected it for, including for the purposes of satisfying any legal or reporting requirements.

To determine the appropriate retention period for personal data, the amount, nature, and sensitivity of the personal data, the potential risk of harm from unauthorised use or disclosure of the personal data, the purposes for which the data was processed and whether we can achieve those purposes through other means, and the applicable legal requirements will be considered.

All records held by BSMHFT will be kept for the duration specified by national guidance from the Department of Health and Social Care found in the Records management: NHS code of practice for health and social care 2016.

In some circumstance's patients can ask us to erase their data by contacting the Information Requests team as stated in our privacy notice.

3.3 APD review

This policy will be retained for the duration of our processing and for a minimum of 6 months after processing ceases.

This policy will be formally reviewed every three years or, when changes in legislations, statutory requirements necessitate earlier review.

This policy may also be reviewed and amended at any time if it is considered that amendments are required to ensure the policy is up to date and accurate for the Trust.

Any amendments to this policy will need to be approved by the Information Governance Steering Group.

4: Responsibilities

This should summarise defined responsibilities relevant to the policy.

Post(s)	Responsibilities	Ref
Chief Executive	As the Accountable Officer, they have the overall responsibility for Information Governance within the Trust	
Trust Board	The Trust Board is responsible for ensuring that information governance is addressed at strategic level and assurance provided via the Trust Board sub committee Finance, Performance and Productivity Committee. The named Executive Directors on the Trust Board with responsibility for information governance is the Executive Medical Director and Executive Director of Finance	
Executive Medical Director	The Executive Medical Director is also the Caldicott Guardian and has overall responsibility for ensuring information relating to patients and users of the service is used confidentially and handled with appropriate safeguards	
Executive Director of Finance	The Executive Director of Finance is also the Senior Information Risk Owner (SIRO) which is a mandated role and has overall responsibility for managing information risk across the Trust	
Head of Information Governance / Data Protection Officer	This role will lead the information governance agenda for the Trust and is accountable to the Associate Director of Performance and Information who is also the Deputy SIRO. They will have day to day operational responsibility for information governance (expect information security and data quality). The Head of Information Governance also acts as the Trust's Data Protection Officer.	

Staff	All staff are responsible for ensuring they comply with their information governance responsibilities	

5: Development and Consultation process:

Consultation summary		
Date policy issued for consultation	May 2025	
Number of versions produced for consultation	1	
Committees / meetings where policy formally discussed	**Date(s)**	
Information Governance Steering Group		
Where received	**Summary of feedback**	**Actions / Response**

6: Reference documents

- The Data Protection Act 2018 - **Data Protection Act 2018 (legislation.gov.uk)**
- General Data Protection Act (EU 2016/679) - **Guide to the General Data Protection Regulation - GOV.UK (www.gov.uk)**
- Freedom of Information Act 2000 - **Freedom of Information Act 2000 (legislation.gov.uk)**
- Human Rights Act 1998 - **Human Rights Act 1998 (legislation.gov.uk) 7:**

7: Bibliography:

Camden and Islington NHS Foundation Trust – November 2020 Appropriate Policy Document

8: Glossary:

Data Controller	The natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data; where the purposes and means of such processing are determined;

Data Processor	A natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller;
Data Subject	An individual who is the subject of personal information;
Direct Care	A clinical, social or public health activity concerned with the prevention, investigation and treatment of illness and the alleviation of suffering of individuals. It includes supporting individuals' ability to function and improve their participation in life and society. It includes the assurance of safe and high quality care and treatment through local audit, the management of untoward or adverse incidents, person satisfaction including measurement of outcomes undertaken
	By one or more care professionals and their team with whom the individual has a legitimate relationship for their care (this definition is taken from the Caldicott 2 report);
Health and Care Professional	An individual who is employed or engaged by a Provider Partner and is either: a regulated or registered health or social care professional involved in the direct care of; or (b) an individual co-ordinating or facilitating direct care for a person receiving services;
Indirect Care	Activities that contribute to the overall provision of services to a population as a whole or a group of patients with a condition, but which fall outside the scope of direct care. It covers health services management, preventative medicine, and medical research;
Patients	Patients that are registered with Practice healthcare providers.
Personal Data	Any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person

Profiling	Any form of automated processing of personal data consisting of the use of personal data to evaluate certain personal aspects relating to a natural person, in particular to analyses or predict aspects concerning that natural person's performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.
Processing	Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction);
Record of Processing	The record which the Practice as a Controller and its Processor(s), are required to keep and maintain of processing activities under their responsibilities in accordance with **Art. 30 UK GDPR** and/or **DPA Section 61**
Regulatory or Supervisory Body	Any statutory or other body having authority to issue guidance, standards or recommendations with which the relevant Provider Partner must comply or to which it or they must have regard, including: (i) CQC; (ii) NHS Improvement; (iii) NHS England; (iv) the Department of Health and Social Care; (v) NICE; Healthwatch England and Local Healthwatch; Public Health England; the General Pharmaceutical Council; and the Healthcare Safety Investigation Branch; Information Commissioner's Officer (ICO)
Special Categories Personal Data	Data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation shall be prohibited;

9: Audit and Assurance:

Element to be monitored	Lead	Tool	Frequency	Reporting Committee
BSMHFT maintains record of processing activities under Article 30 of the UK GDPR	Head of Information Governance	Review of Register of Processing Activities (ROPA)	Annual report to Information Governance Steering Group	Information Governance Steering Group
BSMHFT has appropriate information governance policies in place	Head of Information Governance	Review of Information Governance Policies	Every three years, or sooner following change in legislation	Information Governance Steering Group
BSMHFT carries out data protection impact assessments (DPIA) for uses of personal data that are likely to result in high risk to individuals' interests	Head of Information Governance	Review of DPIAs approved	Bi-monthly update to Information Governance Steering Group	Information Governance Steering Group

10. Appendices

Appendix 1 - Equality Analysis Screening Form

Appendix 1

Equality Analysis Screening Form

A word version of this document can be found on the HR support pages on Connect
http://connect/corporate/humanresources/managementsupport/Pages/default.aspx

Title of Policy	Appropriate Policy Document		
Person Completing this policy	Kirstie Macmillan	**Role or title**	Head of Information Governance
Division	Performance and Information	**Service Area**	Information Governance
Date Started	14th March 2025	**Date completed**	14th March 2025
Main purpose and aims of the policy and how it fits in with the wider strategic aims and objectives of the organisation.			
The Data Protection Act (DPA) 2018 outlines the requirement for an Appropriate Policy Document (APD) to be in place when processing special category and / or criminal offence data under certain specified conditions to cover these processing activities. Almost all the substantial public interest conditions in Schedule 1 Part 2 of the DPA 2018, plus the condition for processing employment, social security, and social protection data, require Birmingham and Solihull Mental Health NHS Foundation Trust (BSMHFT) to have an APD in place (for further information please refer to Schedule 1 paragraphs 1(1)(b) and 5) of the DPA 2018). This APD confirms that the processing of special category and criminal offence data based on these specific Schedule 1 conditions is compliant with the requirements of the General Data Protection Regulation (UK GDPR) Article 5 principles. It also includes our retention policies with respect to this data (for further information please refer to Schedule 1 Part 4 of the DPA 2018). The APD complements our general record of processing under Article 30 of the UK GDPR and provides special category and criminal offence data with further protection and accountability.			
Who will benefit from the policy?			

Service users and staff				
Does the policy affect service users, employees or the wider community? ***Add any data you have on the groups affected split by Protected characteristic in the boxes below. Highlight how you have used the data to reduce any noted inequalities going forward***				
Service users and staff				
Does the policy significantly affect service delivery, business processes or policy? ***How will these reduce inequality?***				
No				
Does it involve a significant commitment of resources? ***How will these reduce inequality?***				
No				
Does the policy relate to an area where there are known inequalities? (e.g. seclusion, accessibility, recruitment & progression)				
No				
Impacts on different Personal Protected Characteristics – *Helpful Questions:*				
Does this policy promote equality of opportunity? *Eliminate discrimination?* *Eliminate harassment?* *Eliminate victimisation?*				*Promote good community relations?* *Promote positive attitudes towards disabled people?* *Consider more favourable treatment of disabled people?* *Promote involvement and consultation?* *Protect and promote human rights?*
Please click in the relevant impact box and include relevant data				
Personal Protected Characteristic	**No/Minimum Impact**	**Negative Impact**	**Positive Impact**	**Please list details or evidence of why there might be a positive, negative or no impact on protected characteristics.**
Age	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation

Including children and people over 65 Is it easy for someone of any age to find out about your service or access your policy? Are you able to justify the legal or lawful reasons when your service excludes certain age groups				
Disability	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
Including those with physical or sensory impairments, those with learning disabilities and those with mental health issues Do you currently monitor who has a disability so that you know how well your service is being used by people with a disability? Are you making reasonable adjustment to meet the needs of the staff, service users, carers and families?				
Gender	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
This can include male and female or someone who has completed the gender reassignment process from one sex to another Do you have flexible working arrangements for either sex? Is it easier for either men or women to access your policy?				
Marriage or Civil Partnerships	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
People who are in a Civil Partnerships must be treated equally to married couples on a wide range of legal matters Are the documents and information provided for your service reflecting the appropriate terminology for marriage and civil partnerships?				
Pregnancy or Maternity	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
This includes women having a baby and women just after they have had a baby Does your service accommodate the needs of expectant and post natal mothers both as staff and service users? Can your service treat staff and patients with dignity and respect relation in to pregnancy and maternity?				
Race or Ethnicity	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
Including Gypsy or Roma people, Irish people, those of mixed heritage, asylum seekers and refugees What training does staff have to respond to the cultural needs of different ethnic groups? What arrangements are in place to communicate with people who do not have English as a first language?				

Religion or Belief	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
Including humanists and non-believers Is there easy access to a prayer or quiet room to your service delivery area? When organising events – Do you take necessary steps to make sure that spiritual requirements are met?				
Sexual Orientation	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
Including gay men, lesbians and bisexual people Does your service use visual images that could be people from any background or are the images mainly heterosexual couples? Does staff in your workplace feel comfortable about being 'out' or would office culture make them feel this might not be a good idea?				
Transgender or Gender Reassignment	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
This will include people who are in the process of or in a care pathway changing from one gender to another Have you considered the possible needs of transgender staff and service users in the development of your policy or service?				
Human Rights	x			This policy support service users to understand how as a Trust we meet the requirements of data protection legislation
Affecting someone's right to Life, Dignity and Respect? Caring for other people or protecting them from danger? The detention of an individual inadvertently or placing someone in a humiliating situation or position?				
If a negative or disproportionate impact has been identified in any of the key areas would this difference be illegal / unlawful? I.e. Would it be discriminatory under anti-discrimination legislation. (The Equality Act 2010, Human Rights Act 1998)				

	Yes	**No**		
What do you consider the level of negative impact to be?	**High Impact**	**Medium Impact**	**Low Impact**	**No Impact**

If the impact could be discriminatory in law, please contact the **Equality and Diversity Lead** immediately to determine the next course of action. If the negative impact is high a Full Equality Analysis will be required. If you are unsure how to answer the above questions, or if you have assessed the impact as medium, please seek further guidance from the **Equality and Diversity Lead** before proceeding. If the policy does not have a negative impact or the impact is considered low, reasonable or justifiable, then please complete the rest of the form below with any required redial actions, and forward to the **Equality and Diversity Lead.**
Action Planning:
How could you minimise or remove any negative impact identified even if this is of low significance?
No negative impact identified.
How will any impact or planned actions be monitored and reviewed?
No negative impact identified.
How will you promote equal opportunity and advance equality by sharing good practice to have a positive impact other people as a result of their personal protected characteristic.
No negative impact identified.
Please save and keep one copy and then send a copy with a copy of the policy to the Senior Equality and Diversity Lead at **bsmhft.edi.queries@nhs.net**. The results will then be published on the Trust's website. Please ensure that any resulting actions are incorporated into Divisional or Service planning and monitored on a regular basis