



## Review Sheet



Last Reviewed  
15 Jan '20



Last Amended  
15 Jan '20



Next Planned Review in 12 months, or  
sooner as required.

Business impact



These changes require action as soon as possible.

Reason for this review

New Policy

Were changes made?

Yes

Summary:

This new policy details the steps that a provider must take to ensure that they are compliant by March 2020 with the NHS Data Opt-Out. It links to resources that can help inform staff and people using services.

Relevant legislation:

- The National Health Service Act 2006
- General Data Protection Regulation 2016
- Data Protection Act 2018

Underpinning knowledge - What have we used to ensure that the policy is current:

- Author: NHS Digital, (2020), *National data opt-out*. [Online] Available from: <https://digital.nhs.uk/services/national-data-opt-out/> [Accessed: 15/1/2020]

Suggested action:

- Encourage sharing the policy through the use of the QCS App
- Establish process to confirm the understanding of relevant staff
- Arrange specific meetings to discuss the policy changes and implications

Equality Impact Assessment:

QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.



## 1. Purpose

**1.1** The purpose of this policy is to explain the introduction of the Data Opt-Out Policy and to ensure that Pol Community Care Ltd understands the steps it needs to take to comply with the Data Opt-Out Policy. This policy focusses on key information about the Data Opt-Out Policy, and Pol Community Care Ltd acknowledges that it should ensure that it has a thorough understanding of the Data Opt-Out Policy by reviewing the information referred to in the Underpinning Knowledge / References and Further Reading sections of this policy.

**1.2** To support Pol Community Care Ltd in meeting the following Key Lines of Enquiry:

**Key Question****Key Lines of Enquiry**

WELL-LED

W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?

**1.3** To meet the legal requirements of the regulated activities that Pol Community Care Ltd is registered to provide:

- | The National Health Service Act 2006
- | General Data Protection Regulation 2016
- | Data Protection Act 2018



## 2. Scope

**2.1** The following roles may be affected by this policy:

- | All staff

**2.2** The following Service Users may be affected by this policy:

- | Service Users

**2.3** The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Representatives
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



## 3. Objectives

**3.1** To ensure that Pol Community Care Ltd understands the requirements of the Data Opt-Out Policy by March 2020.

**3.2** To ensure that Pol Community Care Ltd understands the steps it needs to take to determine whether the Data Opt-Out Policy applies to Pol Community Care Ltd and, if it does, the steps Pol Community Care Ltd needs to take to comply with the Data Opt-Out Policy.



## Pol Community Care Ltd

Office 2, Caradon Enterprise Centre, 1 Holman Road, Liskeard Business Park, Liskeard, Cornwall, PL14 3UT



## 4. Policy

**4.1** Pol Community Care Ltd understands that it must comply with the Data Opt-Out Policy by March 2020 to the extent it processes information that is within the scope of the Data Opt-Out Policy.

**4.2** Pol Community Care Ltd understands that the obligations placed on Pol Community Care Ltd as Data Controller under the GDPR and Data Protection Act 2018 remain in place and are not affected by the introduction of the Data Opt-Out Policy.

**4.3** Pol Community Care Ltd understands that it may need to introduce new policies and procedures to ensure compliance with the Data Opt-Out Policy.

**4.4** Pol Community Care Ltd understands that the Data Opt-Out Policy applies if an organisation confirms it has approval from the Confidentiality Advisory Group (also known as Section 251 approval) for the disclosure of confidential patient or Service User information held by Pol Community Care Ltd. Where Pol Community Care Ltd is the Data Controller, it may, if it wishes, disclose the information to the data applicant without breaching its duty of confidentiality. Pol Community Care Ltd understands that it is in these cases only that the Data Opt-Out Policy applies.

**4.5** Pol Community Care Ltd understands that it should read, understand and, if necessary, seek advice upon Section 251 and Section 259 of the National Health Service Act 2006 in order to fully understand the application of the Data Opt-Out Policy. Pol Community Care Ltd acknowledges that this policy does not provide a detailed overview of the legislation and that Pol Community Care Ltd must determine the extent to which the Data Opt-Out Policy applies to Pol Community Care Ltd.

**4.6** Pol Community Care Ltd understands that the Data Opt-Out Policy applies to “confidential patient information” which is defined in Section 251(1) of the National Health Service Act 2006 as information that meets the following requirements:

- 1 The individual to which the information (for example, the Service User) relates is identifiable or likely to be identifiable; and
- 1 The information is given in circumstances where the individual (for example, the Service User) is owed an obligation of confidence; and
- 1 The information relates in some way to the physical or mental health or condition of an individual (for example, the Service User), a diagnosis of their condition and/or their care or treatment.

**4.7** Pol Community Care Ltd understands that the Data Opt-Out Policy applies to local authority social care organisations.

**4.8** Pol Community Care Ltd understands that the Data Opt-Out Policy only applies to Service Users and not to employees of Pol Community Care Ltd.

**4.9** Pol Community Care Ltd understands that the Data Opt-Out Policy only applies where the information is being disclosed beyond the purpose of individual care i.e. for research and planning. Where Pol Community Care Ltd processes information on the basis of implied consent (for example, to provide care), express consent or where there is a legal requirement for disclosure, the Data Opt-Out Policy does not apply.

**4.10** Pol Community Care Ltd understands that the Data Opt-Out Policy applies to health and adult social care provided in England. It does not apply to information generated or processed outside of England including Wales, Scotland, Northern Ireland, the Isle of Man or Channel Islands.

**4.11** Pol Community Care Ltd understands that the Data Opt-Out Policy does not apply retrospectively to data disclosed before a Service User sets an opt out.



## 5. Procedure

**5.1** Pol Community Care Ltd will consider the following questions to determine whether the current and ongoing data disclosures of Pol Community Care Ltd fall within the scope of the Data Opt-Out Policy:

5.1.1 Is the use or disclosure for individual care or research and planning? If the former, the Data Opt-Out Policy does not apply.

5.1.2 Is Pol Community Care Ltd using or disclosing confidential patient information? Please see section 4.6 of the Policy section above for more information.

5.1.3 Does Pol Community Care Ltd have express consent from the relevant individual (such as the Service User) for the use or disclosure? If so, the Data Opt-Out Policy does not apply.

5.1.4 Is the disclosure for the purpose of monitoring and control of communicable disease or other risks to public health? If so, the Data Opt-Out Policy does not apply.

5.1.5 Is the information being disclosed because of a legal requirement? If so, the Data Opt-Out Policy does not apply.

5.1.6 Is the use or disclosure in the overriding public interest? If so, the Data Opt-Out Policy does not apply.

5.1.7 Is Section 251 approval relevant? If the data or use has Section 251 support obtained under regulation 2 (diagnosis and treatment of cancer) or regulation 5 (general medical and research purposes), the Data Opt-Out Policy **will** apply (unless the Confidentiality Advisory Group (CAG) has determined that the Data Opt-Out Policy has been waived but this is only the case in limited and exceptional circumstances).

5.1.8 Has the use or disclosure been granted a specific exemption? Exemptions may apply for disclosures of data for Public Health England National Disease Register (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-5-flows-to-public-health-england-national-disease-registers>), Assuring Transformation (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-8-assuring-transformation>) and national patient experience surveys (see <https://digital.nhs.uk/services/national-data-opt-out/operational-policy-guidance-document/policy-considerations-for-specific-organisations-or-purposes#7-9-national-patient-experience-surveys>).

5.1.9 Is the disclosure to NHS Digital? The Data Opt-Out Policy does not apply where NHS Digital requests data under section 259 of the Health and Social Care Act 2012.

5.1.10 Is the use or disclosure to support payment and invoice validation? The Data Opt-Out Policy does not apply to disclosure of confidential information for invoice validation for contracted and non-contracted activities to Controlled Environments for Finance.

**5.2** If Pol Community Care Ltd determines that the Data Opt-Out Policy is applicable to Pol Community Care Ltd, Pol Community Care Ltd will apply national data opt-outs by removing the records of anyone who has an opt-out registered before Pol Community Care Ltd uses or discloses the information. Pol Community Care Ltd understands that NHS Digital has developed a technical service which enables Pol Community Care Ltd to check whether the Service Users have requested a national data opt-out. The service can be used by Pol Community Care Ltd submitting a list of NHS numbers, in which case the service will return a “cleaned list” of those that do not have a data opt-out, or Pol Community Care Ltd can submit NHS numbers for all Service Users with whom they have a legitimate relationship and temporarily store the list of Service Users who do not have an opt-out at the current time.

**5.3** If Pol Community Care Ltd is required to apply the Data Opt-Out Policy, all records associated with the individual must be deleted or removed in their entirety. Pol Community Care Ltd may retain data it uses for individual care purposes, but all data used for research and planning must be deleted.



## 6. Definitions

### 6.1 Data Opt-Out Policy

- 1 The national data opt-out policy with which certain organisations must comply by March 2020. The policy was proposed by the National Data Guardian, accepted by the government and directed by the Department of Health and Social Care

### 6.2 Data Protection Act 2018

- 1 The Data Protection Act 2018 is a United Kingdom Act of Parliament that updates data protection laws in the UK. It sits alongside the General Data Protection Regulation and replaces the Data Protection Act 1998

### 6.3 GDPR

- 1 **General Data Protection Regulation (GDPR)** (EU) 2016/679 is a regulation in EU law on data protection and privacy. It was adopted on 14 April 2016 and after a two-year transition period became enforceable on 25 May 2018



## Key Facts - Professionals

Professionals providing this service should be aware of the following:

- 1 Pol Community Care Ltd must understand and apply the Data Opt-Out Policy by March 2020



## Key Facts - People affected by the service

People affected by this service should be aware of the following:

- 1 Requests made by individuals (including Service Users) to opt-out of use/disclosure of their information in line with their rights in the Data Opt-Out Policy will have requests complied with by March 2020



## Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

**NHS Digital provides useful information relating to the Data Opt-Out Policy on its website, including at the following pages:**

<https://digital.nhs.uk/services/national-data-opt-out/compliance-with-the-national-data-opt-out/>

<https://digital.nhs.uk/services/national-data-opt-out/guidance-for-health-and-care-staff>

<https://digital.nhs.uk/services/national-data-opt-out/understanding-the-national-data-opt-out>

**NHS Digital also provides detailed information on patient confidentiality requirements:**

<https://www.gov.uk/government/publications/confidentiality-nhs-code-of-practice>



## Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- 1 Pol Community Care Ltd has implemented processes to ensure that all opt-outs requested under the Data Opt-Out Policy are complied with
- 1 Pol Community Care Ltd has conducted a data protection impact assessment on the data processing activity being taken to apply national data opt-outs
- 1 The wide understanding of the policy is enabled by proactive use of the QCS App



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### Forms

Currently there is no form attached to this policy.