



Home Office



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Dear Sarah

**Memorandum of Understanding between NHS Digital, Department of Health and Social Care and the Home Office**

The Department of Health and Social Care and the Home Office would like to take this opportunity to set out their views in response to your letter of 29 January to the Chief Executive of NHS Digital (NHSD), in which you called for an immediate suspension of the data sharing Memorandum of Understanding (MOU) between NHSD, the Department of Health and Social Care and the Home Office.

Ministers and senior officials in both departments welcomed the opportunity to provide evidence to the Committee on 16 January as part of its consideration of the MOU alongside NHS Digital. We are disappointed that you chose to write only to one party to the MOU, when this is a joint administrative document between three bodies.

We recognise the importance of ensuring there is a clear and robust basis for sharing personal data held by the NHS with other bodies, and agree that patient confidentiality should be respected by ensuring that medical information about a person is properly protected. That is why no medical information can be

requested or disclosed under the MOU. The public should have confidence in the controls which apply to the information they provide to the NHS.

### **Home Office use of this data**

We would first like to address a misunderstanding around the purposes for which the Home Office uses this data. During the hearing and in correspondence there appeared a presumption that the Home Office uses this data to track down and remove undocumented migrants. This term incorrectly implies that the tracing activity is intended to identify anyone unknown to the immigration authorities. However, requests made under the MoU must necessarily relate to known immigration offenders who have ceased contact with the Home Office and compliance with immigration law over a protracted period of time. It is also incorrect to assume the Home Office aims to remove all those it re-establishes contact with. The Home Office progresses cases to their conclusion, which may in some cases lead to a grant of leave, and in others to removal after the due process of the immigration system has run its course. In either case, it is the Government's view that it is clearly in the public interest that immigration offenders do not lose contact with the relevant authorities.

### **Health impact and confidentiality**

We take very seriously the need to maintain a confidential health service. Maintaining this confidence is vital to public trust. The information provided by NHS Digital is strictly limited to demographic and administrative details about a defined set of individuals and does not include any clinical information. We believe that the release of this information is a lawful and proportionate action in pursuit of the effective enforcement of the UK's immigration policy (to which we return below).

The Government is of course concerned to provide a comprehensive health service in the UK. Primary care is free of charge to all, as is the diagnosis and treatment of certain infectious diseases and of sexually transmitted infections. More widely, treatment which in the view of a clinician is urgent or immediately necessary is never withheld, irrespective of whether charges for such services would apply. The Government would be concerned if individuals are not seeking healthcare where they are lawfully entitled to do so.

We believe that anecdotal evidence needs to be approached with caution. However, when concerns in this important area are raised, we consider that it is appropriate for those concerns, and the relevant evidence base, to be properly explored. The health sector has a strong track record in research and we do not agree that it is not possible to collect further evidence in relation to the impact

of the MOU on health-seeking behaviours and the consequences of interventions, in order to properly inform further consideration. That is why the Government has commissioned Public Health England (PHE) to look further into the matter and report back by January 2019. PHE is the right statutory body to undertake this examination and we are confident that they are inviting wide ranging evidence on this matter.

This step demonstrates the seriousness of the Government's commitment to keeping the balance of public interest in relation to information-sharing under constant review.

However, we do not consider that, on the present state of the evidence, there is warrant for a significant change of approach – or specifically for terminating the MOU and ending the important public interest function it serves.

### **Enforcement of the UK's immigration laws**

We consider that the public policy objective of maintaining the effective enforcement of the UK's immigration laws is a thoroughly important one. It does not appear to have been given due weight in your letter of 29 January. This objective has been repeatedly recognised by Parliament and the Courts as being of high public importance. Indeed, we would also suggest that this recognition reflects the importance many of the public place on ensuring a properly managed migration system, and understandable public concerns about dealing in a fair and controlled way with known immigration offenders who have ceased contact with the authorities.

As set out in the MOU, the enforcement of immigration laws enables the government to remove/prevent the entry of those who might pose a danger to the public. It is surely in the public interest that limited taxpayers' resources and precious public services (including the NHS, jobs and housing) are protected from unnecessary financial and resource pressures. Immigration offenders harm the economic wellbeing of the country by contributing to such pressures.

The public rightly expects government to take action to determine the cases of immigration offenders who come to light in the UK through the due process of law under the Immigration Act 1971 and related legislation. For individuals who fail to qualify for leave to remain, this means supporting them to leave the UK or enforcing their removal if they refuse to leave voluntarily. The Government is clear that it is neither in the public interest nor in the interest of the individuals concerned for them to lose contact with the immigration system and remain in the country without lawful immigration status. Individuals in

these circumstances are vulnerable to exploitation and other forms of criminality and cannot enjoy the same range of protections as those with lawful status.

Where the Home Office encounters immigration offenders who cannot immediately be removed, these individuals are normally placed on immigration bail pending resolution of their cases. This can involve requiring them to reside at a particular address in the community and to report to the Home Office regularly. Our ability to progress these cases toward conclusion is dependent on individuals remaining in touch with the immigration system. Where such individuals break contact with the Home Office, we rely on a range of sources of information to enable us to re-establish contact.

In the evidence provided by Ministers and officials to the Committee on 16 January, it was explained that the Home Office only makes requests to NHSD for address data under the terms of the MOU where other attempts to trace individuals have been unsuccessful, and no medical data about the individuals concerned is disclosed. In the quarter from November 2017 to January 2018, NHSD approved a total of 1,297 requests for information from the Home Office. In 545 cases, NHSD confirmed that the current address on its system matched the current address for the subject in Home Office records. In 501 cases, NHSD provided a different address for the individual, highlighting the value of this source of address information to the Home Office. NHSD could not trace 248 cases from their records and three cases were recorded as deceased. Even in cases where the address details for the individual are confirmed as the same, the information is still of significant value; it provides confidence that the Home Office has the right basis for making further enquiries and can direct its resources accordingly.

The operational impact of the Home Office losing access to this data should not be underestimated. Those who have lost contact with the Home Office have committed immigration offences that are serious enough to result in their removal from the UK. Further, there are confirmed cases in which immigration offenders have committed other criminal offences, including violent or sexual offences. Loss of Home Office access to the current trace facility provided by NHSD could prejudice our ability to protect the public from foreign national offenders. By way of illustration, a Pakistani national overstayed a visitor visa and an out of time application for leave to remain was refused in 2013, after which the individual ceased contact with the Home Office. Home Office tracing activity using other sources was unsuccessful. An NHSD trace in 2017 identified a new address for the individual. The Home Office visited the address and arrested the individual, a convicted sex offender, who is now complying with the Home Office and will leave the UK.

It is also important to note that the ability to locate immigration absconders through data sharing arrangements helps reduce burdens on the police. Where the Home Office is unable to trace absconders through other methods, it places their details on the Police National Computer, which means they are liable to be arrested if encountered. The Home Office therefore makes every effort to re-establish contact with individuals through casework processes, utilising such tracing tools, rather than relying on the police to arrest them in the community.

It is not possible to provide a statistical breakdown demonstrating a direct causal link between the information provided by NHSD and positive case outcomes (either grants of legal immigration status or removals), as these are derived from a range of factors and interactions with a range of agencies, including the extent to which the migrant themselves re-engage with the immigration process. Analysis of immigration records indicates that a number of cases which have been the subject of information requests to NHSD have been reconnected to the casework process, with some being granted immigration status and others leaving the UK.

## **Consultation and the MOU**

We note the Committee's view that the MOU signed in November 2016, and renewed by NHSD, DHSC and the Home Office in December 2017, should have been the subject of public consultation, including with NHS practitioners and the NGO community. It is, however, important to recall that, firstly, the MOU simply reflects longstanding data sharing arrangements which have been in place for many years, rather than a significant departure in data sharing practice, and secondly, the recommendation to have a MOU was the result of the National Back Office review. The review team engaged with users and stakeholders, including the NDG, the Independent Information Governance Oversight Panel, public health representatives, civil liberties groups, immigration support groups, and charitable health and care representatives. Over 70 surveys were sent out with 60 returned, many of which were followed up by one to one meetings. The MOU formalises the existing process and puts in place a series of detailed procedural safeguards which prevent unauthorised disclosures.

Throughout the development of the MOU, we have worked closely with NHSD to ensure it reflects appropriate levels of control and authorisation before requests for information are made and responded to. We keep this process under regular review to ensure that the public interest balance is maintained.

## **Parliament and public confidence**

Parliament has specifically authorised the sharing of data for the investigation of criminal offences. There is nothing unusual about public bodies sharing data whether this is for police forces investigating a range of criminal offences, HMRC in investigating tax offences, or the Home Office in investigating immigration offences.

We strongly disagree that the sharing of administrative, non-medical data held by the NHS to enable the investigation of criminal offences has significant implications for public confidence. Indeed, the Government believes that when it comes to identifying immigration offenders who have ended contact with the authorities, the public should be able to feel confident that everything which can be done, legitimately and according to the law, is being done.

The MOU has robust safeguards in place. Data is shared securely and confidentially between NHSD and the Home Office and is only sought from NHS Digital after all reasonable steps have been taken to check all usual sources. This requirement can only be departed from in carefully and tightly drawn circumstances, requiring exceptional reasons such as a risk of harm to the public or concern for an individual's welfare. Medical data is never requested nor shared.

We consider public confidence is increased by these processes. The public expect the Government to use its statutory powers to investigate criminal offences and to safeguard public services. Parliament has provided that the NHS should be free at the point of delivery for those ordinarily resident in England, and similar provision is made in Scotland, Wales and Northern Ireland. But in all parts of the UK, legislation is in place to apply overseas visitor charges to persons subject to immigration control who are visiting the UK or in the country without lawful status.

NHS Digital has undertaken a public interest assessment to consider whether, on balance, the information should be shared with the Home Office. In doing so, they have considered the factors that point towards non-disclosure – the maintenance of a confidential NHS and the health risk from changes to health seeking behaviours – and the factors in favour of disclosure – the effective enforcement of immigration control, maintenance of contact with the authorities to reduce the risk of harm to individuals and reduction of abuse of public services.

The arguments being deployed against the MOU by campaign groups alleging that migrants are being deterred from seeking treatment by questions about their

status in the country by NHS staff, are the same arguments advanced for the abolition of all controls on access to the NHS by non-residents. These arguments, if accepted without question, would damage public confidence that a scarce and valuable national resource funded by the taxpayer is being protected against those non-residents who do not contribute towards its maintenance.

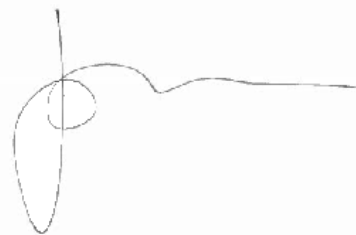
It is also important to consider the expectations of anybody using the NHS – a state-provided national resource. We do not consider that a person using the NHS can have a reasonable expectation when using this taxpayer-funded service that their non-medical data, which lies at the lower end of the privacy spectrum, will not be shared securely between other officers within government in exercise of their lawful powers in cases such as these. We consider it increases public confidence that government shares data in all these circumstances.

### **Conclusion**

In conclusion we consider that, in the circumstances provided for under the MOU, the public interest is in favour of maintaining the effective enforcement of the UK's immigration laws. The secure and confidential sharing of non-medical data between NHS Digital and the Home Office supports this. The Government and NHS Digital will continually keep this under review, not least when the outcomes of the PHE review are known.



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