


General Data Protection Regulations (GDPR) - Policy & Procedure
Category: GDPR – Sub-category: Policies

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Key Question	Key Line of Enquiry (KLOE)
WELL-LED	W2 – Does the governance framework ensure that responsibilities are clear, and that quality performance, risks and regulatory requirements are understood and managed?
	W3 – How are the people who use the service, the public and staff engaged and involved?

Purpose:

The purpose of this policy is to introduce the General Data Protection Regulation 2016 (“GDPR”) and to ensure that Larchfield House understands the key principles of GDPR.

This policy sets out the steps that need to be taken by Larchfield House to ensure that Larchfield House handles, uses and **processes personal data** in a way that meets the requirements of GDPR. It should be read alongside the additional GDPR policies and procedures and guidance that will be produced between now and May 2018.

This policy applies to all staff at Larchfield House who process personal data about other staff, Residents and any other living individuals as part of their role.

To support Larchfield House in meeting the Key Lines of Enquiry as above.

To meet the legal requirements of the regulated activities that Larchfield House is registered to provide:

- The Data Protection Bill 2017
- The General Data Protection Regulation 2016 (EU) 2016/679

Scope:

The following roles may be affected by this policy:

- All staff

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The following people may be affected by this policy:

- Residents

The following stakeholders may be affected by this policy:

- Commissioners

Objectives:

The objective of this policy is to introduce the principles and requirements of GDPR.

When reviewed alongside future policies and procedures and guidance, Larchfield House and staff should understand the key principles of GDPR and the steps that need to be taken to ensure Larchfield House complies with GDPR when handling and using personal data provided by both staff and Residents.

This policy will assist with defining accountability and establishing ways of working in terms of the use, storage, retention and security of personal data.

This policy will assist with understanding the obligations of Larchfield House in respect of the rights of the staff and Residents who have provided personal data and the steps Larchfield House should take if it breaches GDPR.

Policy:

GDPR Background

GDPR will come into force on 25 May 2018 and will replace the Data Protection Act 1998. GDPR will be implemented regardless of Brexit. GDPR will provide greater protection to individuals and place greater obligations on organisations, but it can be dealt with in bite-size chunks to ensure that any impact on the provision of care and services is reduced.

All staff will need to understand whether the ways in which they handle personal data already meet the requirements of GDPR and, if not, the steps that need to be taken to achieve compliance.

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Larchfield House’s Approach to GDPR

Larchfield House is required to take a proportionate and appropriate approach to GDPR compliance. Larchfield House understands that not all organisations will need to take the same steps – it will depend on the volume and types of personal data processed by a particular organisation, as well as the processes already in place to protect personal data. We understand that if we process significant volumes of personal data, including **special categories of data**, or have unusual or complicated processes in place in terms of the way we handle personal data, we will consider obtaining legal advice specific to the processing we conduct and the steps we may need to take.

GDPR does not apply to any personal data held about someone who has died. Both the Access to Medical Reports Act 1988 and the Access to Health Records 1990 will continue to apply.

Larchfield House’s Process for Promoting Compliance

To ensure that Larchfield House understands and is able to comply with GDPR, all staff should review the following documents that will be produced over the next few months:

- Initial Privacy Impact Assessment Policy & Procedure
- GDPR - Key Terms Guidance
- GDPR – Key Principles Guidance
- GDPR – Processing Personal Data Guidance
- Appointing a Data Protection Officer Guidance
- Data Security and Retention Policy & Procedure
- Website Privacy Policy & Procedure
- Subject Access Requests Policy & Procedure
- Subject Access Requests Process Map Policy & Procedure
- Subject Access Requests – Request Letter Policy & Procedure
- Rights of Data Subject Guidance
- Breach Notification Policy & Procedure
- Breach Notification Process Map Policy & Procedure
- Fair Processing Notice Policy & Procedure
- Consent Form
- GDPR – Transfer of Data Guidance
- Privacy Impact Assessment Policy & Procedure

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Overview of Key Principles and Documents

The key principles and themes of each of the documents listed above are summarised below:

Initial Audit and Privacy Impact Assessment

Larchfield House understands that we should conduct an audit of the personal data we currently process. This can be carried out internally by Larchfield House with the assistance of key staff members. The audit will reveal whether the ways in which Larchfield House processes personal data meet the requirements of GDPR and will also indicate whether Larchfield House should delete some of the personal data it currently holds. An initial Privacy Impact Assessment template will be provided as part of the GDPR documentation.

Key Terms

GDPR places obligations on all organisations that process personal data about a Data Subject. A brief description of those three key terms is included in the Definitions of this document and will be expanded upon in the Key Terms Guidance.

The requirements that Larchfield House will need to meet will vary depending on whether Larchfield House is a Data Controller or a Data Processor. We recognise that in most scenarios, Larchfield House will be a Data Controller. The meaning of Data Controller and Data Processor, together with the roles they play under GDPR will be explained in the Key Terms Guidance.

Special categories of data attract a greater level of protection, and the consequences for breaching GDPR in relation to special categories of data may be more severe than breaches relating to other types of personal data. This will also be covered in more detail in the Key Terms Guidance.

Key Principles

There are 6 key principles of GDPR which Larchfield House must comply with. These 6 principles are very similar to the key principles set out in the Data Protection Act 1998. They are:

- Lawful, fair and transparent use of personal data
- Using personal data for the purpose for which it was collected
- Ensuring the personal data is adequate and relevant

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- Ensuring the personal data is accurate
- Ensuring the personal data is only retained for as long as it is needed
- Ensuring the personal data is kept safe and secure

These key principles will be explained in more detail in the guidance entitled 'GDPR – Key Principles'.

Larchfield House recognises that in addition to complying with the key principles, Larchfield House must be able to provide documentation to the Information Commissioner's Office (ICO) on request, as evidence of compliance. We understand that we must also adopt 'privacy by design'. This means that data protection issues should be considered at the very start of a project, or engagement with a new Resident. Data protection should not be an after-thought. These ideas will also be covered in more detail in the Key Principles Guidance.

Processing Personal Data

The position has been improved under GDPR in terms of the ability of care sector organisations to process special categories of data. The provision of health or social care or treatment or the management of health or social care systems and services is now expressly referred to as a reason for which an organisation is entitled to process special categories of data.

In terms of other types of personal data, Larchfield House must only process personal data if it is able to rely on one of a number of grounds set out in GDPR. The grounds which are most commonly relied on are:

- The Data Subject has given his or her consent to the organisation using and processing their personal data
- The organisation is required to process the personal data to perform a contract; and
- The processing is carried out in the legitimate interests of the organisation processing the data – note that this ground does not apply to public authorities

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The other grounds which may apply are:

- The processing is necessary to comply with a legal obligation
- The processing is necessary to protect the vital interests of the Data Subject or another living person
- The processing is necessary to perform a task carried out in the public interest

The grounds set out above and the impact of the changes made in respect of special categories of data will be explained in more detail in the guidance entitled 'GDPR – Processing Personal Data'.

Data Protection Officers

Larchfield House understands that some organisations will need to appoint a formal Data Protection Officer under GDPR (a 'DPO'). The DPO benefits from enhanced employment rights and must meet certain criteria, so we recognise that it is important to know whether Larchfield House requires a DPO. This requirement will be outlined in the policy and procedure on Data Protection Officers.

Whether or not Larchfield House needs to appoint a formal Data Protection Officer, Larchfield House will appoint a single person to have overall responsibility for the management of personal data and compliance with GDPR.

Data Security and Retention

Two of the key principles of GDPR are data retention and data security.

- Data retention refers to the period for which Larchfield House keeps the personal data that has been provided by a Data Subject. At a high level, Larchfield House must only keep personal data for as long as it needs the personal data
- Data security requires Larchfield House to put in place appropriate measures to keep data secure

These requirements will be described in more detail in the policy & procedure entitled Data Security and Retention, which will be drafted with a view to being circulated amongst staff at Larchfield House.

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Website Privacy Policy & Procedure

Where Larchfield House collects personal data via a website, we understand that we will need a GDPR compliant website privacy policy. The privacy policy will explain how and why personal data is collected, the purposes for which it is used and how long the personal data is kept. A template website policy will be provided.

Subject Access Requests

One of the key rights of a Data Subject is to request access to and copies of the personal data held about them by an organisation. Where Larchfield House receives a Subject Access Request, we understand that we will need to respond to the Subject Access Request in accordance with the requirements of the GDPR. To help staff at Larchfield House understand what a Subject Access Request is and how they should deal with a Subject Access Request, a Subject Access Request Policy & Procedure will be made available to staff. A Larchfield House process map to follow when responding to a Subject Access Request, as well as a Subject Access Request letter template will also be included.

The Rights of a Data Subject

In addition to the right to place a Subject Access Request, Data Subjects benefit from several other rights, including the right to be forgotten, the right to object to certain types of processing and the right to request that their personal data be corrected by Larchfield House. All rights of the Data Subject will be covered in detail in the corresponding guidance.

Breach Notification Under GDPR

We understand, that in certain circumstances, if Larchfield House breaches GDPR, we must notify the ICO and potentially any affected Data Subjects. There are strict timescales in place for making such notifications. A policy and procedure for breach notification that can be circulated to all staff, together with a process map for Larchfield House to follow if a breach of GDPR takes place will be published.

We understand that this requirement is less likely to have less impact on NHS organisations that are already used to reporting using the NHS reporting tool.

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Fair Processing Notice and Consent Form

Organisations are required to provide Data Subjects with certain information about the ways in which their personal data is being processed. The easiest way to provide that information is in a Fair Processing Notice. A Fair Processing Notice template will be produced for Larchfield House to use and adapt on a case by case basis.

The Fair Processing Notice will sit alongside a consent form which can be used to ensure that Larchfield House obtains appropriate consent, particularly from the Resident, to the various ways in which Larchfield House uses the personal data. The Consent Form will contain advice and additional steps to take if the Resident lacks capacity.

Transfer of Data

If Larchfield House wishes to transfer personal data to a third party, we understand that we should put in place an agreement to set out how the third party will use the personal data. The transfer would include, for example, using a data centre in a non-EU country. If that third party is based outside the European Economic Area, we recognise that further protection will need to be put in place and other aspects considered before the transfer takes place. Guidance will be produced to explain the implications of transferring personal data in more detail.

Privacy Impact Assessments

In addition to carrying out an Initial Impact Assessment (referred to above), Larchfield House will carry out further assessments each time it processes personal data in a way that presents a "high risk" for the Data Subject. Examples of when a Privacy Impact Assessment should be conducted will be provided in the relevant policy & procedure. Given the volume of special categories of data that are frequently processed by organisations in the health and care sector, there are likely to be a number of scenarios which require a Privacy Impact Assessment to be completed.

The Privacy Impact Assessment template may also be used to record any data protection incidents, such as breaches or 'near misses'.

Compliance with GDPR

Larchfield House understands that there are two primary reasons to ensure that compliance with GDPR is achieved:

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- It will promote high standards of practice and care, and provide significant benefits for staff and, in particular, Residents
- Compliance with GDPR is overseen in the UK by the ICO. Under the Data Protection Act 1998, the ICO has the power to levy fines of up to £500,000 for the most serious breach. Under GDPR, the ICO has the ability to issue a fine of up to 20 million Euros (approximately £17,000,000) or 4% of the worldwide turnover of an organisation, whichever is higher. The potential consequences are therefore significant.

Larchfield House appreciates that it is important to remember, however, that the intention of the ICO is to educate and advise, not to punish. The ICO wants organisations to achieve compliance. A one-off, minor breach may not attract the attention of the ICO but if Larchfield House persistently breaches GDPR or commits significant one-off breaches (such as the loss of a large volume of personal data, or the loss of special categories of data), it may be subject to ICO enforcement action. In addition to the imposing fines, the ICO also has the power to conduct audits of Larchfield House and our data protection policies and processes. Larchfield House realises that the ICO may also require Larchfield House to stop providing services, or to notify Data Subjects of the breach, delete certain personal data we hold or prohibit certain types of processing.

Procedure:

All staff should review the GDPR policies and procedures and guidance that will be produced over the next few months.

Larchfield House will nominate a person or team to be responsible for data protection and GDPR compliance (if a formal Data Protection Officer is not required, somebody with an understanding of the requirements who can act as a day-to-day point of contact will be chosen).

Mr Cliff Grand-Scrutton manager@larchfield.care 01628639428 should ensure all staff understand the policies and procedures provided, including how to deal with a Subject Access Request and what to do if a member of staff breaches GDPR.

Mr Cliff Grand-Scrutton manager@larchfield.care 01628639428 will consider providing training internally about GDPR (in particular, the Key Principles of GDPR) to all staff members.

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Larchfield House will conduct an audit of the personal data currently held by Larchfield House (the initial Privacy Impact Assessment template provided will be used for this purpose).

Larchfield House will delete any personal data that Larchfield house no longer needs, based on the results of the audit conducted, taking into account any relevant guidance, such as the Records Management Code of Practice for Health and Social Care 2016.

Larchfield House will, if necessary, put in place new measures or processes to ensure that personal data continues to be processed in line with GDPR.

Larchfield House will, if necessary, finalise and circulate a Fair Processing Notice to Residents.

Larchfield House will ensure proper consent is obtained from each Resident in line with GDPR regulations (the Consent Form provided can be used for this purpose). Larchfield House will review the additional steps that Larchfield House should be taking to ensure that Larchfield House obtains consent from guardians, carers or other representatives where Larchfield House works with those who lack capacity.

Larchfield House will ensure that processes and procedures are in place to respond to requests made by Data Subjects (including Subject Access Requests) and to deal appropriately with any breaches or potential breaches of GDPR.

Mr Cliff Grand-Scrutton manager@larchfield.care 01628639428 will maintain a log of decisions taken and incidents that occur in respect of the personal data processed by Larchfield House using the Larchfield House Privacy Impact Assessment template.

Definitions:

Data Subject

The individual about whom Larchfield House has collected personal data.

Data Protection Act 1998

The law that relates to data protection. It will remain in force until and including 24 May 2018. It will be replaced by GDPR on 25 May 2018.

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GDPR

The General Data Protection Regulation 2016. It will replace the Data Protection Act 1998 from 25 May 2018 as the law that governs data protection in the UK. It will come into force in the UK via the Data Protection Bill.

Personal Data

Any information about a living person including but not limited to names, email addresses, postal addresses, job roles, photographs, CCTV and special categories of data, defined below.

Process or Processing

Doing anything with personal data, including but not limited to collecting, storing, holding, using, amending or transferring it. You do not need to be doing anything actively with the personal data – at the point you collect it, you are processing it.

Special Categories of Data

Has an equivalent meaning to "Sensitive Personal Data" under the Data Protection Act 1998. Special Categories of Data include but are not limited to medical and health records (including information collected as a result of providing health care services) and information about a person's religious beliefs, ethnic origin and race, sexual orientation and political views.

Key Facts – Professionals

Professionals providing this service should be aware of the following:

- GDPR provides greater protection for staff and Residents in respect of their personal data
- Compliance is mandatory, not optional
- Larchfield House will adopt an appropriate and proportionate approach what is right and necessary for Larchfield House may not be right for another organisation
- Achieving compliance with GDPR will not only reduce the risk of ICO enforcement or fines but will also promote a better-quality service for Residents and an improved working environment for staff

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Key Facts – People Affected by The Service

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

- Your personal data will be protected
- You have a right to see what information we hold about you
- You will be asked for your consent before we obtain your personal data in line with GDPR requirements
- In addition to the new GDPR regulations, our staff will continue to follow confidentiality policies in relation to all aspects of your care

Outstanding Practice:

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

- Larchfield House provides training to all staff in respect of GDPR and the new policies and processes that have been adopted
- Larchfield House conducts Privacy Impact Assessments for each new processing activity carried out, whether or not the processing presents a “high risk” to the Data Subjects
- There is evidence that Larchfield House conducts regular (6 monthly or annual) audits of the personal data that is processed to ensure continued compliance with GDPR
- Larchfield House can evidence that there are processes in place for ensuring Larchfield House remains up to date with guidelines and recommendations relating to data protection, including ICO guidance and guidance issued by NHS Digital and this information is effectively cascaded to all relevant staff

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Appendix:

- **Underpinning Knowledge – What have we used to ensure that the policy is current:**

Information Commissioner's Office (2018) Guide to the General Data Protection Regulation (GDPR)
[Online] Available from: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/> [Accessed: 16/01/2018]

Information Commissioner's Office (2017) Preparing for the General Data Protection Regulation (GDPR) – 12 steps to take now. [Online] Available from: <https://ico.org.uk/media/1624219/preparing-for-the-gdpr-12-steps.pdf> [Accessed: 16/01/2018]

Information Commissioner's Office (2018) Health. [Online] Available from: <https://ico.org.uk/for-organisations/health/> [Accessed: 16/01/2018]

- **Relevant Legislation:**

The Data Protection Bill 2017

The General Data Protection Regulation 2016 (EU) 2016/679

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In Summary:

A detailed introduction to GDPR, setting out the documents that will be produced. The policy includes a journey map with the issues that should be considered and steps to take to achieve GDPR compliance. It refers at a high level to all the elements of GDPR that will be covered in each of the policies and procedures and guidance, as well as an explanation of the governance/enforcement of GDPR.

Suggested Action:

- Notify all staff of changes to policy
- Share Key Facts with professionals involved in the service
- Share Key Facts with people involved in the service
- Training Sessions
- Discuss in team meetings
- Discuss in supervision sessions
- Impact assessment/action plan
- Confirm relevant staff understand the content of the policy
- Add the policy to the planned team meeting agendas