

GDPR: STAFF COMPLIANCE CHECKLIST

This document is designed as a simple checklist for you to use in order to ensure that you are thinking along the right lines when you process any personal data.

Registration

1. On 25th May 2018 the GDPR enters into UK law. Previously, if you processed personal data electronically, you were required to "register" with the ICO. Under the new regulation, the term "registration" will be dropped, but you will instead be required to pay a "**Data Protection Fee**" of £40 (there's a £5 discount if you pay by direct debit). If you are registered with the ICO already for Data Protection Act purposes, then this will carry over.
2. If you keep only paper records, the ICO does not require you to pay the fee. But be aware, that **ANY records kept on your computer, iPad, Smartphone etc constitute an electronic record**, so you need to cough up. This includes your copies of letters to GPs written in MS Word, MRI reports received, referrals from other practitioners...
3. Further, even if you only keep paper records, you are still required to comply with the terms of the GDPR.
4. Here's where to register:

<https://ico.org.uk/for-organisations/register/>

Case Histories

5. You do NOT need consent to process (ie store and handle) case histories. The GDPR provides 2 reasons to process personal data:
 - a. **Contract**. You have a contract with your patients to provide a service and the case history is necessary for you to fulfil your part of the bargain.
 - b. **Legitimate Interest**. It is a legitimate interest for both you and the patient that you record a medical history and your treatment.
6. You also have a **Legal Obligation** to retain your notes for the statutory minimum of 8 years, but this is not in itself a justification for taking the notes in the first place(!).
7. You must secure the information:
 - a. It is fine to store paper case notes in locked filing cabinets, provided unauthorised persons do not have access to the keys.
 - b. Filing cabinets (locked or otherwise) inside a secure building are satisfactory. The regulations simply require that reasonable steps have been taken to prevent unauthorised persons accessing the data. You do not have to remove the filing cabinet keys from locked premises – that would be ridiculous! Just make sure that the cleaning lady or the electrician can't get hold of the keys and access all your notes- ie don't leave them in an obvious place.

- c. It is fine to store data on a password-protected computer, provided reasonable steps are taken to prevent unauthorised persons accessing the computer.
- d. You are not in breach of the GDPR if your computers or files are stolen, but you should inform the ICO immediately that there has been a possible breach. It would be good practice also to inform the General Council, but it is not a requirement.
- e. If using a cloud-based data-processor (PPS, TM4, Cliniko or similar), you need only check that the provider is GDPR compliant. Check with them too that there is no personal data saved on your own, local computer(s) – this is simply so that you know whether there has been a data breach in the event that the computer is stolen or lost. And bear in mind that you may be saving personal data yourself in the form of Excel spreadsheets, letters to GPs or similar.
- f. There is no requirement under GDPR for you to back up data. However, if your computer explodes and all your data is lost, that would be a breach, because the data is no longer available (it's also a bit of a disaster for you!).

Appointment Reminders

- 8. There is no need to obtain consent for appointment reminders, as this constitutes "**Legitimate Interest**" under the GDPR, but there is no harm in doing so. The same applies, of course, if you need to change or cancel an appointment.

Information About A Patient's Current Condition

- 9. "**Legitimate Interest**" is also sufficient reason to send a patient information about their current condition – things such as exercises, or specific information which may help them recover.
- 10. It's OK to contact a patient to find out how they are (and if they are doing well, there's no reason that you shouldn't then ask for a testimonial).

Consent

- 11. Consent is required for all marketing information: promotions, newsletters, "clinic updates", etc.
- 12. There are very strict rules about what constitutes consent:
 - a. The request for consent is prominent and separate from terms and conditions. So, no weasel-wording to obscure your intention to send marketing bumph.
 - b. People must positively opt in (no pre-ticked boxes or any other type of default consent)
 - c. The language must be clear, plain and easy to understand (so why not make it entertaining?!).
 - d. You must give individual options to consent separately to different purposes and types of processing (eg newsletters, info on specific medical topics).
 - e. Individuals must be able to refuse to consent without detriment.

- f. Consent must not be a precondition of service (remember, this is consent to receive your marketing info).
13. You must keep a record of when and how you got consent from the individual, noting exactly what they were told at the time.

Managing consent

14. Review consents regularly to check that the relationship, the processing and the purposes have not changed. This might be relevant if you start up a new method of marketing (text messaging, for example).
15. The GDPR require that you have processes in place to refresh consent at appropriate intervals, (remember, this is about marketing only – not permission to treat, and not for processing and retaining case histories), but an “appropriate interval” is not defined.
16. Consider using privacy dashboards or other preference-management tools as a matter of good practice. This only really applies if you are getting consent through a website. For most practitioners this will be an unnecessary complication.
17. Make it easy for individuals to withdraw their consent at any time, and publicise how to do so. This applies to any marketing material and is really important. Patients cannot withdraw consent to you processing their medical records until the statutory period of 8 years has expired.
18. Act on withdrawals of consent as soon as you can and do not penalise individuals who wish to withdraw consent.

Informing Patients

19. Make sure that patients are aware (or can easily discover) how their data is processed and why. A privacy notice on your website is sufficient for this purpose, but you might also consider making the notice available to all patients when they first attend (if they fill in a patient information form, for example, add a single sheet underneath for them to read – they don't have to sign it).
20. You could add a link to the bottom of your emails, or a reference to the web page in other written communication.
21. You do NOT have to have a sign on the wall giving chapter and verse of the GDPR. In fact, you do not have to have a sign on the wall at all!
22. If you are communicating with patients and consent is a requirement (marketing, for example), then patients must be told that they can withdraw their consent at any time.

Use common sense.

Much of this is about being polite. It's about preventing patients from getting unwanted messages, which they might think of as spam – no matter how hard you worked on your marketing masterpiece!

Call us if you need help: 01933 328150