



RESPONSE

TO

NATIONAL DATA GUARDIAN FOR HEALTH & CARE CONSULTATION

The Optical Confederation represents the community eye health sector, including the 12,000 optometrists, 6,000 dispensing opticians, 7,000 optical businesses and 45,000 ancillary staff in the UK, who provide high quality and accessible eye care services to the whole population. The Optical Confederation also represents manufacturers, distributors and importers. As a Confederation we work with others to improve eye health for the public good.

1. The Government proposes that: the remit of the National Data Guardian for Health and Social Care role should follow the health and care data.

The remit here is not as clear as it might be which is concerning. However if the proposal is that the National Data Guardian would have jurisdiction over all health and care data generated, retained and utilised by organisations including both NHS and private area, we will support that, subject to the caveat below.

There is already significant legislation governing the transfer of patient data and data in general. We would hope that the aim of the National Data Guardian would be to support, streamline and consolidate existing processes. We would be very concerned if it were to result in an additional layer of bureaucracy which does not improve the handling of patient data or benefit the patient.

2. The Government is seeking your views on: what are the key factors and issues that need to be considered when determining whether children's social care should be part of the National Data Guardian remit and where the National Data Guardian could make a positive contribution to care services for children and young people?

N/A

3. The Government proposes that: The National Data Guardian should be able to provide advice to all organisations that hold health and care data which could be used to identify individuals.

We agree that the National Data Guardian should be able to provide advice to all national organisations that handle health and care data. We would strongly suggest that the National Data Guardian should work in partnership with and where appropriate through existing national bodies that already provide advice and guidance to health care organisations – in the case of the optical sector this would be the professional body for optometry, the College of Optometrists, General Optical Council (GOC) and the Optical Confederation, which is made up of the representative bodies for the sector.

4. The Government proposes that: Any regulator with a responsibility for overseeing organisations which routinely hold, use and share health and care data, should consult the National Data Guardian on the criteria they use to assess an organisation’s use of data.

For the optical sector the GOC is the relevant regulator. We welcome the intent to ensure consistency by recommending that the regulator should consult the National Data Guardian on the criteria they use to assess data. However processes and risks differ across different parts of health and social care and it will be important not to adopt a “one size fits all” set of criteria. The criteria for managing and assessing the use of data must be proportionate to the type of organisation and the nature of the data held. We would therefore expect that there should be a two way relationship and that the regulator should also be able to advise the National Data Guardian on criteria that are appropriate to each sector and profession. We would also expect full consultation with our members if any new criteria are proposed.

5. The Government proposes that: Organisations holding health and care data which could be used to identify individuals should be required to publish all materials demonstrating how they have responded to advice from the National Data Guardian.

We assume that this requirement applies to national organisations (as set out in paragraph 2.5 of the consultation). We would be very concerned if this proposal were to be applied to every provider of health and care services that maintains patient records because it would impose a disproportionate burden on business.

6. The Government proposes that: The National Data Guardian should be required to publish an annual report which should include a report of all the advice provided in the relevant year and an overview of how the relevant organisations responded to it.

N/A

7. The Government proposes that: The referral role of the National Data Guardian with the CQC and ICO should be set out in a Memorandum of Understanding.

We welcome the proposal that the relationship between the National Data Guardian, CQC and ICO should be embodied in a Memorandum of Understanding. However, the substantive issue for the Confederation is the content of any such Memorandum. Such a Memorandum must:-

- Make clear the data areas to be lead on by each regulatory body under partnership arrangements
- Ensure that an organisation is not held to account and pursued by different regulatory bodies concerning the same matter

Given the implications here, the Optical Confederation also feels that this Memorandum should itself be the subject of a separate consultation among relevant stakeholders.

8. The Government proposes that: The National Data Guardian should have power to refer actions by an individual to the appropriate regulator for the profession concerned.

We agree that the National Data Guardian should have the power to refer actions by an individual professional to the appropriate regulator, in our case the General Optical Council. This will minimise costs and bureaucracy, and avoid the risks of multiple regulation.

9. Please also provide any other comments on how the National Data Guardian might advise and challenge professionals working outside the regulated professions or organisations.

N/A

10. Please also provide any other comments on how the National Data Guardian and regulators can maximise the appropriate use of existing sanctions and fines.

We fully support the proposal that sanctions should be managed through the existing regulators. In our view the sanctions available to the GOC are sufficient to cover any data issues which might arise and have stood the test of time. We see no need to add additional sanctions.

11. The Government is seeking views on the most suitable long-term location for the National Data Guardian.

N/A

12. The Government proposes that: the National Data Guardian’s annual report should include a section demonstrating how the National Data Guardian has sought and gathered the views of the public and how those views will inform work in the future.

N/A

13. The Government proposes that: The National Data Guardian, CAG and the HSCIC should agree and publish a Memorandum of Understanding that sets out the National Data Guardian remit in relation to the additional safeguards that are being put in place as described at paragraph 4.2 (*The relationship of the National Data Guardian to those new arrangements will be clarified as the legislation and structures are implemented. However there will need to be clear and transparent processes for the referral of issues to, and the sharing of information with, CAG and the HCSIC’s independent advisory committee, in line with those put in place for relations with the ICO and other organisations*).

N/A

14. The Government proposes that: The National Data Guardian should engage with the relevant regulators of organisations outside the health and care system to ensure that they understand their obligations and responsibilities in relation to the health and care data to which they have access.

N/A

15. Do you have any comments or views on the potential impact that these proposals have on equality between different groups and health inequalities?

N/A

16. Do you have any comments or views on the potential impact that these proposals have on the potential for additional administrative and financial burdens?

It will be important, as already set out, that the National Data Guardian develops criteria that are flexible and can be adapted to the different operating circumstances and risks associated with different parts of health and social care: consistency should not be confused with “one size fits all”. It is also important to ensure that the National Data Guardian works with, rather than duplicates, existing regulatory systems. We would be very concerned if the introduction of new powers for the National Data Guardian placed new and unnecessary financial and administrative burdens on optical practices.