

Subject	Questions	Answers
Breach	Does a breach in data protection linked to safeguarding, such as a provider need to inform local safeguarding team?	Yes, where there is any data breach involving safeguarding, the local safeguarding team need to be informed.
Breach	How does ICEL determine a 'SERIOUS' breach and does right to be informed extend to family as Providers could end up over reporting?	The Information Commissioner's Office states this in regard to reporting breaches under GDPR: <i>What breaches do I need to notify the relevant supervisory authority about?</i> <i>You only have to notify the relevant supervisory authority of a breach where it is likely to result in a risk to the rights and freedoms of individuals.</i>
Breach	Hospitals have turned off all faxes- we have people in Hub beds and need to have assessments and MAR sheets sent over- without faxes they need to be emailed which would be classed as a breach; we have been told to get an NHS.net email address for data protection purposes we have to complete an Information Governance Toolkit, which is a huge project and not a quick fix- so how should information be shared meantime?	All sensitive or personal information must be sent by secure email. There is no alternative that is secure enough without significant cost. It is important to note that if you are outside the NHS.net network, you cannot assume any email you send or receive is secure.
Breach	For reporting breaches where we need to inform OCC, should we be contacting our contract manager within OCC or a OCC data protection officer/team or both?	Where the incident relates to a council client, then the council must be informed. The exact details will be confirmed to you before 25 May 2018.
Breach	I just want to clarify a point that was made that following the new legislation the provider needed to inform the Commissioning contracts team of any serious IG breach involving a resident funded by the commissioner within 72 hours. There followed a discussion about who would be available to take the call in the council and your colleague made the point that we should contact the council before the ICO and that this was not just for Oxford but was for all commissioners. I had a discussion about this point with the ICO yesterday and after double checking they informed me that the legal requirement is still to inform the ICO within 72 hours, there is no legal requirement to inform commissioners although there may be a contractual requirement at local level.	OCC recognise the position of the ICO and this is a local level requirement. OCC are still data controller in most cases so responsibility rests with OCC to inform the ICO. Whether or not the ICO requires the controller or commissioned body to do the informing, we locally require that it is done by OCC.
Consent	St Mungo's have already done a lot of preparation work so in many ways they are ahead of us. One of the key issues they are raising FYI is the question of consent to share for 16/17 year olds where it would not be appropriate for parents to give consent. It would be good to include a response to this particular group in any FAQ	In Data Protection terms, a young person is an adult at 16. Therefore, for sharing their data, they must be treated as an adult and they must be asked to give consent. If there is an assessment that has determined they lack capacity, then the appropriate person must be asked, just as you would for an adult.
Consent	If a parent does not give consent for us to share their data with OCC (e.g. name of child, DOB, employment situation, childcare situation – all currently provided to OCC via contract monitoring (short breaks contract); do we have to refuse the service?	Where a service being provided to a client is a statutory service, consent to collect and use that data is not required. Clearly, if a client / parent refuses to supply information that is vital in order to provide that service, then you may refuse to provide the service; however in these circumstances it is worth contacting your council contracts officer to confirm this at the time.
Consent	Can OCC provide template on consent for sharing our data with OCC?	Where a service being provided to a client is a statutory service, consent to collect and use that data is not required. The council does not have a template consent form, but follows a framework based on guidance from the Information Commissioner's Office.
Consent	If service users don't have capacity to consent?	There must be an assessment carried out to determine capacity. Until the results of that assessment, you must assume the client has capacity. Where there is any doubt about capacity, it is vital to arrange for the assessment as soon as possible.
Consent	Getting consent from NOK - how to manage and record this?	It is good practice to contact the Next of Kin to inform them the client has named them as Next of Kin. If the NoK object, then you need to go back to the client and get alternative details. All NoK details should be recorded in the client file.
Consent	If a client requests copies of all their data, do we have a duty to the careworkers to redact their names from all the logsheets?	No, the names of staff working with a client are not personal data in a Data Protection sense. This is because the care file focuses on the client, not the staff working with them.

Consent	We are a small charity. We have trustees who regularly communicate by email. Do we need to have a document for all Trustees agreeing to share their email data or should we be asking people to take their personal data off emails (e.g. just use initials)?	The trustees of a charity - presumably they are volunteers and use their own personal equipment in their trustee role? For all employees, including voluntary staff, you should ensure that you have policies in place that they are aware of and agree to abide by. See the ICO website for more information about this. Presumably also see the Charity Commission as they should specify the arrangements you must have in place for trustees.
Consent	Workload of obtaining consent	As noted above, consent only applies where the service is not statutory. Where sharing is taking place, consent is not be required if the sharing must take place in order to provide the statutory service.
Consent	We talked at length yesterday about needing to have consent from people like NOK if we are storing their personal details. Along a similar line, we hold personal information on people who are not our clients as part of the risk assessments we complete for people, and it would not always be safe for us to ask for their consent, or even to notify them that we are holding this. For example, we may have a client who has experienced domestic abuse from an ex-partner, and our risk assessment may give information about this person, possibly including their name, address, description. I'd be interested to know how we should manage this.	Comments below are not advice or guidance and they only relate specifically to a third party Provider where they are acting under contract to the council, as OCC are not providing advice or guidance to Providers about Data Protection. Providers would have to seek guidance from their own legal support regarding any concerns around collecting data or process. Under GDPR, whether or not the provider is allowed to hold personal data that is not collected with consent; it depends. Where there is other legislation that allows the provider to the council to collect, process and hold personal data, then it may override the GDPR. We cannot commit to say that legislation will definitely override GDPR; much will depend on the specific law and on the circumstances. Where the provider has been collecting, processing and holding personal data on behalf of the council up to now, it is reasonable to say that this should continue unless there is direct instruction either from us, or from their legal advisor to the contrary.
Consent	If running a youth provision that has young people either side of the age of data consent, how should you ensure that you have parental consent for younger and personal consent for older people? Also, should you re-consent on the birthday where young people reach the age of data consent?	Until we are told differently, consent for a child is 16; from that point on they are an adult in terms of decisions about collecting, using and sharing their personal data. Where you deal with children below 16 and above 16, then you need to seek consent as they turn 16. Below 16 the consent is still from parents, but once a child is at least 13 they should expect to be included in any decision making about them. The consent in any form should be stored with the client file, or whatever documentation you hold about each child / young person.
Data processing	Will social workers be getting data protection forms signed before sealing service rec's out by HSPO, will provider have a copy?	The County Council will continue to provide clients with a privacy notice explaining what data is being collected and used. They will also seek consent where it is required for the County Council to act. If the needs of the client change, you may need to inform them about changes to the personal data that is being collected and used. If that is the case, contact the council contracts officer for advice.
Data processing	What is meant by data processing?	The ICO describes processing as follows: Processing, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including – (a) organisation, adaptation or alteration of the information or data, (b) retrieval, consultation or use of the information or data, (c) disclosure of the information or data by transmission, dissemination or otherwise making available, or (d) alignment, combination, blocking, erasure or destruction of the information or data. The definition of processing is very wide and it is difficult to think of anything an organisation might do with data that will not be processing.
Data processing	Are computer and paper records given the same treatment in data protection law?	Under GDPR, yes.

Data protection officer	Who would be our data protection officer?	Only a large organisation - over 250 employees - needs to appoint a Data Protection Officer under the GDPR. However, you will still need to name an individual employee who has responsibility for ensuring Data Protection compliance across the organisation.
Encrypted emails	What is the difference between secure and Encrypted and how do you encrypt or secure an email?	In email terms there is no difference; to make email secure, it is encrypted.
Encrypted emails	Can OCC or OACP suggest outlook add on that will encrypt emails from client base?	This is not something the council can advise on. There are many secure email tools available; the council uses Egress Switch.
Encrypted emails	If OCC refer to us, how will we in future receive these (e.g. we don't use 'egress switch')?	The council uses Egress Switch as its secure email system. It must continue to use this to send any personal information outside the organisation. If you continue to work with the council, you will need to accept Egress Switch emails or provide the council with an alternative method for sending and receiving secure emails.
Personal data	Is it necessary for OCC to have the personal data, will anonymous data not suffice?	There are many reasons that personal data must be given so that the service can be provided. If there is specific information being asked for and you are not certain it is required in order to provide the service, contact the council contracts officer for advice.
Personal data	As a provider we liaise with hospitals who ask for personal data as well as paramedics, should these people be put on OCC forms when asking to share data and do you have to name hospitals etc?	Wherever consent is being sought regarding sharing, then be as specific as possible. However, bear in mind that paramedics are medical staff working for the NHS and therefore it is reasonable to assume that sharing with the NHS would include a variety of different people. It is advisable to discuss this with the client to ensure they are clear what they are consenting to. The problem with specifying individual hospitals or medical staff is that as these change, the consent given will be out of date. Also bear in mind that consent may not be required if the sharing is in order to provide a statutory service.
Personal data	Can we send service users' photos within the same organisation that has permission via email/messenger/whatsapp from one work phone to another?	The use of social media is strongly discouraged and we advise that each organisation draws up its own social media policy or rules around the use of social media at work. Client data - including photographs - should only be collected / captured and shared if required to provide the service. If the data is not required, it should not be collected. If there is a defined business need to send client data to other parts of the organisation in order to provide the service, then that is acceptable.
Personal data	Should individual organisations use Egress to share service users information between each other or is it ok not to as it's the same servicer?	Each organisation must use a secure, encrypted email service when sending and receiving personal and / or sensitive data outside that organisation. For the sending of data within the organisation, your organisation's internal email system should be of sufficient security that no extra security or encryption is needed. If your email system uses a free open product, there will be no inherent security and you will need to consider purchasing additional secure email. While the County Council uses Egress Switch secure email, there are many other products available.
Personal data	We all know how we keep users personal data safe but how does the council keep their data safe i.e. what safeguards do you have in place?	
Personal data	Would self funders be included under direct payment?	Where a client has their own finances and is not assisted by the council or the NHS, then they are not a direct payment, but their contract is direct with you.
Personal data	Is it acceptable for people to send emails with initials , NHS no: or DOB?	Where any information is sent outside your organisation, consider whether there is any personal data in there; or if the information may be combined with other information in the public domain to allow a living person to be identified. The council uses secure email wherever possible to ensure there is no risk when sending information outside the organisation.

Personal data	What is personal data?	The GDPR states: For the purposes of this Regulation: (1) 'personal data' means any information relating to an identified or identifiable natural person ('data subject'); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;
Personal data	If a carer leaves, what are our obligations regarding the carer's client key-codes? (We advise carers to disguise keycodes as a telephone number but cannot be sure that they have done this or that when they leave they have deleted this information).	Your employees' actions and behaviours are your direct responsibility. You must have in place the procedures and requirements for staff to follow; you must also ensure staff do follow them.
Personal data	Client files shared in their homes contain personal data (e.g. care plans, contract etc), is this ok?	The client file is information about the client; therefore the content of the file is their own information and they have the right to see it. If the client is content for the file to be left with them, you can advise them it is sensitive and needs to be kept secure. However, it is for the client to decide how to look after their own file.
Personal data	Is there anything new about 3rd party information in subject access requests?	Not as yet.
Retention	At the end of a contract do we need to handover and destroy our data on families e.g. referral forms and file notes we run several services – some of which are contracted by OCC. We would say we are the Data Controller and we would not (and should not) destroy our files. Our other services will continue after our OCC contract?	Your contract with the County Council will state what should happen to County Council client data at the end of that contract. Normally we would expect the client data to be returned to the council. As a provider, you will need to retain some basic information about the client for audit purposes so you can demonstrate that you provided services to them and particularly if there have been any payments involved. Where the client was not a County Council client, then we do not want that client data sent to us. The contract you have with the relevant body for that client should state what should happen to the data at the end of that contract. Future - will be agreement to retain data built into contract. Provider may continue to hold on our behalf, for a peppercorn rent. OCC will have rights to access the data. Provider must dispose of securely at end of agreed retention period.
Retention	Both OCC and CQC require person centred care plans, this is contract compliance. If the client wants us to delete this information how do the agency reach their compliance and work towards an outstanding organisation with CQC?	Where there is a statutory need to keep any personal data, we are not able to comply with a request for erasure of that data. For this reason, the GDPR specifies that we as data controller and you as data processor are clear about the reasons for collecting and processing of personal data. If you are under any doubt about whether the reasons for holding data are statutory, please contact your council contract officer.
Retention	Recommend time for securing the data held in service user's home?	The client data should be held for the time period specified in the council's retention schedule. For adult social care this is seven years from the date of last contact. If you are not certain how long data should be kept, please contact your council contract officer.
Sensitive data	What is sensitive data?	According to the Data Protection Act 1998: Sensitive personal data means personal data consisting of information as to - (a) the racial or ethnic origin of the data subject, (b) his political opinions, (c) his religious beliefs or other beliefs of a similar nature, (d) whether he is a member of a trade union (within the meaning of the Trade Union and Labour Relations (Consolidation) Act 1992), (e) his physical or mental health or condition, (f) his sexual life, (g) the commission or alleged commission by him of any offence, or (h) any proceedings for any offence committed or alleged to have been committed by him, the disposal of such proceedings or the sentence of any court in such proceedings.

Training	The impact that training all staff on Data Protection is costly and this is not part of the costing that providers receive?	The requirement to train all staff in Data Protection is an existing requirement of the Data Protection Act, not a requirement of your contract with the council. The council does not provide funding for this training as it is a legal requirement on your organisation as a data processor and data controller.
Variation contract	Will the new variation contract to providers have to be signed by nok and social workers	No, the contract variation is between you and the County Council.