

# Public Benefit and Privacy Panel for Health and Social Care

## Review of Tier 1 Panel Decisions 2016/17

### Executive Summary

The Public Benefit and Privacy Panel for Health and Social Care (PBPP) is a governance structure of NHSScotland. Its remit is to carry out information governance (IG) scrutiny of requests for access to health data for purposes of health care administration, research and other well-defined and bona fide purposes, on behalf of individual data controllers. Its principal focus is on what are deemed national data-sets or cases which are highly complex, contentious, have national implications and/or require anonymisation, linkage or matching of data, or transfers of data outside NHSS. The PBPP acts as the final arbiter of requests which fall within its remit, but does not replace any existing or future requirements for ethical review or approval.

The Panel has a duty to the public to correctly identify and support public benefit in the use of NHS Scotland data.

The PBPP operates on a two-tier structure utilising the proportionate governance method, thus ensuring that scrutiny is balanced, and that available NHS Scotland data resources are utilised effectively. Each of the two tiers focuses on the assessment of risk and the balancing of privacy risk with likely public benefit. The tiered structure provides a mechanism for the approval, conditional approval and indication of no approval of applications to use data. Applications are referred by Tier 1 for scrutiny by Tier 2 Out of Committee when a prescribed level of risk, as determined by the proportionate governance criteria, is reached.

Since its inception in 2015, nearly 200 applications for access to NHS Scotland data have been approved. 86% of applications were approved by Tier 1, with no further review requested by the Tier 2 Committee. Given that the vast majority of applications are approved at Tier 1, it was considered appropriate to undertake a review of these decisions in the first instance.

The purpose of the audit exercise is;

- to establish that the governance process is robust, as it must be shown that a fair and consistent approach to decision making is being followed.
- to ensure that proportionate governance criteria is the correct measurement tool under which to assess the principles of safe information handling.

It also presents an opportunity to identify whether any errors have been made in the application of the proportionate governance criteria and consider whether it is fit for purpose. The Panel can also consider releases of data which should not have taken place and decide if action should be taken to assess the risk of any breach of confidentiality.

The PBPP committee reviewed ten applications approved at Tier 1 between January 2016 and December 2016 selected randomly by the PBPP Manager. These were reviewed by a subgroup of the PBPP Committee.

The PBPP Manager collated applications where a discrepancy existed between the Tier 1 decision and the PBPP Committee audit review. A workshop was held with a subgroup of PBPP Committee and Tier 1 panel members to discuss the applications and address the purpose of the audit as detailed above.

From the ten applications that were randomly selected, eight were considered to be appropriately approved by Tier 1 and two of the applications should have been referred to Tier 2 Out of Committee for further scrutiny. A number of recommendations have been put forward which look to strengthen the application review process:

- The role of PhD supervisors is strengthened within the application form to promote this as a responsible role.
- The application form is modified to capture the different levels/types of Peer review.
- Creation of a template to request justification for each data variable.
- Question 6 of the proportionate governance criteria is amended to separate out the assessment of Peer Review, Privacy Impact Assessment and Lay Consultation.
- Proportionate Governance criteria make clear that referrals to Tier 2 can be made on an accumulation of 'amber' scores.
- As gatekeepers to ensure the applications to the panel are of a sufficient quality to enable an efficient review eDRIS co-ordinators should be empowered to raise concerns relating to an application prior to review.

A copy of the full Outcome Report is available on request by emailing [nss.PBPP@nhs.net](mailto:nss.PBPP@nhs.net).