NHS Scotland Public Benefit and Privacy Panel for Health and Social Care

Review of Tier 1 Panel Decisions 2018/19: Summary of Outcome Report

The Public Benefit and Privacy Panel for Health and Social Care (PBPP) is a governance structure of NHS Scotland, established with delegated authority from NHS Scotland Chief Executive Officers and the Registrar General. 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.

Applications to PBPP can be reviewed at two different tiers: . Most applications are scrutinised and approved at the Tier 1 level, which consists of a panel of IG Leads from across NHS Scotland. Applications that the Tier 1 panel consider to be a higher privacy risk, as determined by a set of proportionate governance criteria, are referred to the higher Tier 2 level for further review. The Tier 2 level consists of senior leaders from the NHS, research, public and other stakeholders and these are the PBPP committee members. As most applications are approved at the Tier 1 level, the Tier 2 committee members carried out an audit of those applications approved at Tier 1 in 2018/19.

The purposes of the audit were:
- to assess whether the scrutiny of applications across the different Tier 1 panels is fair, transparent and consistent;
- from the sample of applications audited, to provide an indication of the possibility that any Tier 1-approved applications should have been referred to the Tier 2 committee members;
- to consider whether the proportionate governance criteria are still appropriate for the scrutiny purpose and to highlight any changes that are required;
- to determine whether the introduction of the new data protection legislation (General Data Protection Regulation [GDPR] and the Data Protection Act [DPA] 2018 disproportionately changed the review process for applications approved at Tier 1.

The PBPP Tier 2 committee members reviewed a total of ten applications approved at Tier 1 between May 2018 and March 2019, selected at random by the PBPP Manager. After the reviews were returned from Tier 2 committee members, the PBPP Manager identified applications where a discrepancy existed between the Tier 1 decision and the PBPP committee members audit review, or where an application raised a point of discussion. Results were presented at the PBPP Annual Training Day in October 2019.

From the ten applications that were randomly selected, seven were considered to be appropriately approved by Tier 1, while three applications each raised 'red' referral points, but for each, from only one of its Tier 2 committee reviewers. The points raised were discussed and a number of recommendations were proposed. These aim to strengthen the

application and review processes, including minor modifications to the application guidance documents and the proportionate governance review documents.

The conclusion was that this review was a useful exercise to highlight some of the challenges encountered from interpretation of the new legislation. Many of the Tier 1 panels and Tier2 reviews raised similar points, which demonstrates the shared learning across the different tiers of PBPP and across the NHS Boards.