



THAMES VALLEY AND SURREY
CARE RECORDS

P117 Data Controller Narrative

P117 Version 1 Approved

January 2023

Subject:	Narrative regarding TVS Information Governance Data Controllership
Description:	TVS Information Governance Data Controllership Narrative

Table of Contents

Thames Valley & Surrey Shared Care Record (TVS ShCR) - Data Contollership Narrative: ..	3
The responsibilities that remain with a General Practice are:	4
Related Questions and Answers:.....	4
Glossary: Document Control	6
Document Properties:	6
Version History:	6
Approvals:	6

Thames Valley & Surrey Shared Care Record (TVS ShCR) - Data Controllorship Narrative:

This briefing describes the 'data controllorship' arrangements for the TVS ShCR. It is important to know the definition of controllorship of data from the UK-GDPR:

'controllor' means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the processing of personal data.'

And what is meant by 'determines the purposes and means of processing of personal data':

Considerations over purpose can include:	How it is processed may include:
<ul style="list-style-type: none"> - Why is this being done? - Who started this activity? - Who benefits from this activity? 	<ul style="list-style-type: none"> - Whose data will be processed - How long will it be processed for - Who will have access to the data - Who will receive the data - Design of security measures

The TVS ShCR controllorship model is one of 'joint control', where all partners signing up to the data sharing agreement schedules become joint controllors of the data. The Information Commissioner's Office has a brief checklist to consider when deciding if control is 'joint':

- We have a common objective with others regarding the processing.
- We are processing the personal data for the same purpose as another controllor.
- We are using the same set of personal data (eg one database) for this processing as another controllor.
- We have designed this process with another controllor.
- We have common information management rules with another controllor.

As with all ICO checklists the more boxes that are ticked, the more likely the circumstances apply and at least 4 of the above apply in this case to all partners.

The ICO also has useful detail on what it means to be a joint controllor:

Joint controllors must arrange between themselves who will take primary responsibility for complying with UK GDPR obligations, and in particular transparency obligations and individuals' rights.

However, all joint controllors remain responsible for compliance with the controllor obligations under the UK GDPR.

As joint controllors must arrange who takes primary responsibility for complying with obligations, this is why the sharing agreement establishes a 'lead controllor' organisation, in this case Frimley Health NHS Foundation Trust (FHFT). The agreement also establishes that FHFT will provide the administrative functions, such as co-ordinating responses to data subject requests, oversee data processor compliance and undertaking audits of use.

So the majority of responsibilities fall to FHFT to directly support and administer.

The responsibilities that remain with a General Practice are:

- 1. Performing adequate due diligence when agreeing to share data with the TVS program managed by Frimley.** In this they have support from the ICB and their Data Protection Officer in reviewing the documentation, going to the relevant meetings and committees to ensure that the obligations of the parties are being honoured, and consulting Practices, the LMC, and other interested parties.
- 2. Ensuring that they include participation in the TVS SHCR in their privacy notice** – example privacy notices including reference are provided by SCW CSU IG team.
- 3. Managing their own users' access to the system** – Access from GP systems is via 'context launch' from their own organisational system (via Cerner Health Information Exchange) into the TVS Shared Care Record. Practices already administer the user accounts to their own system, so there are no additional steps per user to set up TVS SHCR access
- 4. Auditing of use by practice staff** – Linked to the existing Data Security & Protection Toolkit (DSPT) assertion to conduct confidentiality spotchecks on use of data by practice staff, practices are expected to check their staff are accessing records appropriately. This does not mean the practice need to conduct audits on the TVS SHCR. As practice access is via a link to the practice electronic patient record system, then practice staff can only access data on patients who are registered in their own system, therefore they only need to check on the appropriateness of access in their own system. If no inappropriate access to records is found in the practice system, there can't be any inappropriate access to data by practice staff in the TVS SHCR.
- 5. Reporting any potential issues or incidents to the TVS programme** – as part of signing up to the sharing framework any partner is expected to report any potential issue/incident to the programme so that a proportionate investigation can be undertaken.

Related Questions and Answers:

The ICO state *all joint controllers remain responsible for compliance*, can the ICO or a data subject take action against a practice as all controllers remain jointly responsible?

Technically yes. However, the ICO would make strenuous efforts in any investigation of a data breach to identify the root cause and therefore the organisation(s) responsible party.

An individual can bring an action/claim against one or more joint controllers, however article 82(3) of the UK GDPR states a controller (or processor) is exempt from liability if it proves that it is not in any way responsible for the event giving rise to the damage.

Proving 'not at fault' carries some cost, so the Regional Information Sharing Agreement, which the TVS SHCR sharing schedule is part of has an indemnity in schedule A (Risk sharing & indemnity arrangements) that covers the 'reasonable legal costs' incurred as a result of responding to civil or regulatory action provided these aren't covered by the practice's own indemnity assurance arrangements or where the practice is determined to be at fault and therefore responsible.

As lead controller who is Frimley (FHFT) accountable to?

Frimley are accountable to all the other joint controllers, themselves and ultimately to the Information Commissioner's Office should they be found to be failing in their responsibilities as set out in the data sharing arrangement. As part of monitoring compliance, the TVS Programme has established the 'Federated Controllers Group' with key representatives from each constituent part of TVS with a rolling programme of compliance reports from each area. The Group can also serve as the committee for any joint controller to raise a concern and for it to be assessed and responded to in a transparent manner.

Does a practice receiving a 'subject access request' have to provide the TVS SHCR detail as part of the response?

No, the practice would have to provide their own records as they do currently. Whilst the practice can access the detail in the TVS SHCR they are not in a position to assess the TVS SHCR information for possible exemptions to the right of access. For example where the TVS SHCR includes data from an acute hospital, then the healthcare professional in charge of the care of the patient to which the data relates has to assess whether any data should be exempted on the basis of potential harm or distress being caused.

Should a practice receive a SAR requesting the provision of the TVS SHCR for that patient it will have to pass that onto the TVS Programme who will co-ordinate the response by relevant partner

Glossary: Document Control

Document Properties:

Title:	P117 Data Controller Narrative
Author (Creator):	Adam Horton-Tuckett
Title:	P117 Data Controller Narrative
Subject:	Narrative regarding TVS Information Governance Data Controllership
Description:	TVS Information Governance Data Controllership Narrative
Publisher:	TVS Partnership, see https://www.thamesvalleysurreycarerecords.net
Contributor(s):	See version history below
Date (of this Version):	January 2023
Owner:	Stephanie Colborne
Document Reference:	P117
Document Status:	Approved
Document Version:	Version 1
Next Review Date:	January 2024

Impact Assessment:

Version History:

Version	Date	Author	Comments
V1.0	January 2023	Adam Horton-Tuckett	Final version for website

Approvals:

Governance Group	Date	Information or Input/ Approval/ Ratification	Comments