

# FAQ for the Accelerated Access to Records Programme Implementation

## What is a DPIA?

The ICO (Information Commissioner's Office) defines a DPIA (Data Protection Impact Assessment) as a process designed to help systematically analyse, identify and minimise the data protection risks of a project or plan. It is a key part of a GP contractor's accountability obligations under the UK GDPR, and when done properly helps assess and demonstrate how contractors must comply with their data protection obligations.

If a data controller wishes to process personal data in a new way, it must by law carry out a DPIA. Providing patients with access online to their medical records in accordance with the new legal requirements is a new form of processing, so GPs as data controllers need to conduct a DPIA.

The BMA has conducted a general DPIA on behalf of the profession as a way of sharing the data protection analysis it has carried out. It is intended to help practices carry out their own DPIAs.

## Which DPIA template should we use?

You can use the suggested BMA template, which is based on the ICO's, or you may wish to develop your own bespoke template and process to suit your own particular needs. In addition to the sample DPIA, the BMA has prepared guidance, outlining actions that practices may need to take depending on where they are in the process. While the BMA has completed a general DPIA (dated 6 October 2023) practices are required to undertake their own DPIA. Practices may use content from the BMA's DPIA if they identify the same risks and mitigations.

## We have completed our own DPIA, and our concerns appear to have been mitigated. What do we do next?

If the GP contractor has completed a DPIA, taken actions to mitigate risks and determined that any remaining risks are acceptable then they have fulfilled their duty to complete a DPIA. However, as data controllers, GPs have an ongoing responsibility to comply with their general duties under data protection law, so processing must always be carried out in accordance with those duties.

## We have completed our own DPIA, and our concerns mirror the BMA's. What do we do next?

The BMA DPIA has identified a number of risks which may be mitigated by operating an opt-in model, which means providing access only to patients who request access, as opposed to providing access to all patients who have not opted out. Practices who conduct their own DPIA and reach the same conclusion may want to operate an opt-in model. This can be done until 31 October 2023 which is the date by which GPs' contracts require access to be given to all patients. This could be via batch-coding with the '104' code and then asking all patients if they wish to opt in to access. The BMA has produced separate guidance on how to operate an opt-in model for those practices that decide this is the best way to mitigate the risks they identify in their own DPIA.

## What do these '103', '104' and '106' codes mean?

These codes can be added to a patient's record and are reviewed automatically when you provide your patients with online access if you have opted into the accelerated access functionality. They govern whether the patient gets full prospective access or not.

(Note: SCTID is the SNOMED-CT identification number.)

The '103' code – used when a patient has declined access. (SCTID: 1290331000000103)

***Online access to own health record declined by patient*** (situation)

The '104' code – used to (temporarily) block access. (SCTID: 1364731000000104)

***Enhanced review indicated before granting access to own health record*** (situation)

The '106' code – used to negate a '104' code and allow. (SCTID: 1364751000000106)

***Enhanced review not indicated before granting access to own health record*** (situation)

## We are a TPP SystemOne practice – is there anything specific we should know?

The BMA has completed a general DPIA on behalf of the profession. You will now need to complete your own DPIA as a practice. TPP SystemOne already supports provision of records access, including the ability to redact information before it becomes available for patient view. TPP SystemOne has identified that it is already possible to change existing user settings for groups of existing users to provide access to future information and change system defaults to provide this access for new users. No functional change is required to their software.

You should ask your patients if they consent to the programme and wish to seek an opt-out, as not all will want access (please see reference A). You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind.

## We are an EMIS practice, and we have booked a date for a bulk enablement. What do we do?

The BMA has completed a general DPIA on behalf of the profession. You will now need to complete your own DPIA as a practice. After review of your DPIA, you will need to decide whether you may wish to proceed as planned or take steps to mitigate any risks identified. We would also suggest you consider if those patients you have coded as 'at risk' from being able to automatically view their records require the addition of the '104' code. Given you haven't yet gone live, you should ask your patients if any decline consent to the programme and wish to seek an opt-out, as not all will want access (please see reference A). You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind. Those you consider 'at risk' and code as '104' still need the opportunity to request access, and they need to be made aware of this. We have provided a template message you could send to such patients below.

## We are an EMIS practice, we have done a DPIA and still wish to go ahead with the date booked with EMIS to bulk enablement. What do we do?

After review of your DPIA, you may wish to proceed as planned. You need to give patients an opportunity to opt out when you inform them that you are due to provide all patients with access (please see reference A). You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind. You should also contact those patients you have identified as 'at risk' and have added '104' codes, in order to make them aware that they can still request access should they want it. As a practice you can decide how you do this, e.g. you may initially wish to maintain a list of 'at risk' patients requesting access and follow a consent-based model. We have provided template messages below.

## **We are EMIS, but we missed the 4 October bulk enablement date. We wish to continue with the programme. What do we do?**

We would advise you discuss this with your ICB's primary care IT team and EMIS to schedule a new 'bulk enablement' date. EMIS confirmed at the JGPIT meeting on 04 October 2023 that they can accommodate this. We would also suggest you consider if those patients you have coded as 'at risk' from being able to automatically view their records require the addition of the '104' code. Given you haven't yet gone live, you should ask your patients if any decline consent to the programme, and wish to seek an opt-out, as not all will want access (please see reference A). You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind. Those you consider 'at risk' and code as '104' still need the opportunity to request access, and they need to be made aware of this. We have provided template messages you could send to such patients, below.

## **We had asked EMIS to book a date for the bulk enablement. Following completion of our DPIA, we now wish to defer this and initially offer an opt-in consent-based approach. What do we do?**

You need to inform EMIS of your intentions in writing and/or apply bulk code '104' to all your patients before the go-live date on 31 October. This will not affect any patients who currently have access. You will also need to give patients an opportunity to opt out when you advise them of the programme (please see reference A). You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind.

## **We haven't asked EMIS to give us a 'bulk upload' date, and we wish to defer the programme due to our concerns. What do we do?**

We would advise you to communicate with your patients to ensure they are kept up to date with this programme and explain that your contract requires you to provide prospective access to their full GP-held online record on or before 31 October 2023 unless they opt out. We would recommend you undertake a DPIA and inform your ICB primary care IT team if you have concerns, and we have provided a template letter you could use to send to your commissioner. We have also provided a template patient consent form you can use before 31 October 2023.

## **We use EMIS and have batch-coded all our patients with the '104' code. We now want to provide all patients with access – what do we do?**

After you have considered your DPIA, if you wish to proceed to provide you need to add the '106' code to each of those patients with a '104' code who you think can safely be given prospective access. Once the EMIS script runs, patients with a '106' code will be granted access if that '106' code has been entered into the record more recently than a '104' code. You will also need to give patients an opportunity to opt out when you advise them of the programme. You should also direct them to an information resource explaining how they may choose to opt in, should they change their mind. Those with '104' codes should still be made aware that they can request access. If not already done, we would recommend reassessing your list of patients whom you deem as 'at risk' – for safeguarding reasons etc – and apply the '104' code to their records before the EMIS script is run.

## Reference A – updated 11 October 2023

### Considerations for consent-based prospective records access

#### Step 1 – Until 31 October 2023

Practices are under a contractual obligation<sup>1</sup> to provide their patients who have not opted out with the facility to access their GP-held medical record no later than 31 October 2023.

Practices should carry out a Data Protection Impact Assessment (DPIA) identifying all risks associated with implementing automatic prospective record access and identifying what, if any, mitigations you intend to put in place to manage these risks. The BMA's template DPIA, which can be downloaded [here](#) can be used as a starting point and adapted by practices in producing their own DPIA.

A practice may decide that the risks associated with providing records access for all patients who have not opted-out can only be adequately mitigated by the adoption of an opt-in, consent-based approach. Practices that wish to adopt an opt-in model until 31 October 2023 will need to configure settings within their clinical information systems appropriately to limit access to that of the Summary Care Record, for example, for any newly created online accounts, particularly if these have been automatically created by the patient signing up to the NHS app and creating a suitably authenticated NHS login. If a practice has agreed a future 'go live' date with a system supplier that will change the way access is provisioned through a change to the system software, then the practice may need to revoke any authorisation given as a matter of urgency.

The guidance below outlines steps that practices could take if they decide to adopt this approach.

- **For practices that haven't asked their system suppliers to adopt the accelerated access functionality at all**, they can advertise prospective access and seek informed consent and then provide access to those patients who want it. This model can be operated until 31 October 2023 from which point practices should be prepared to provide access to all patients who have not opted out.
- **For practices who have already adopted the new functionality** and it has been 'turned on', or is due to be turned on, the bulk addition of '104' codes (SCTID: 1364731000000104 'Enhanced review indicated before granting access to own health record') to all patients (regardless of current access level) would put the brakes on further access provision until manual intervention occurred to provision access on an individual level within the clinical system settings for each patient. Bulk addition of the '104' code after 'switch on' would not remove access from anyone who already had it (whether they had originally requested this access or not).
- **For practices who have requested a go live date but it hasn't yet occurred** then you do have some options. You can still decide to go ahead as planned and code all those patients deemed at risk with the '104' code. If you decide you need more time and don't want to go ahead, then you will need to contact EMIS urgently and ask them not to run the script that will give access to all your patients who do not have an active '104' code.
- Where patients have specifically declined access to their online records '103' codes should be applied (SCTID: 1290331000000103 'Online access to own health record declined by patient') and the clinical system checked to remove any existing access. This code is able to be sent via GP2GP and may be helpful in the future should the patient move practice.
- As and when patients request access this should be provided once informed consent has been given. The easiest way to create an online account (which can then be provisioned

<sup>1</sup> This assumes that practices have received contract variation notices from their ICBs which incorporate the new requirements in the GMS and PMS Regulations into practices' individual contracts.

by the practice for prospective access) is if a patient downloads the NHS app and completes the sign-up process through the app. If a patient already has an NHS login authenticated to the high level and has used the NHS app whilst a registered patient, it should be possible to provide the required access levels at that point too. Should NHS app sign-up prove difficult for the patient, practices can still issue the codes required to set up an online account in the usual way, after checking identification documents with the patient. Clinical systems continue to allow registration letters to be issued for this purpose. Use of the NHS app by patients should be encouraged due to the other functions it offers, particularly in regard to messaging.

## Step 2

It will ultimately be for practices to decide how they want to engage patients, the RCGP has provided some information on doing this [here](#) but any plans on implementing a consent-based approach should consider the following aspects:

Timelines – how long will it take to confirm preferences with patients and enable access?

- Unless government policy changes and the imposed contract is revised access must be given to all patients, unless they opt out, by 31 October 2023. You should speak to your local ICB team about your concerns and GPCE will continue to discuss with NHSE the risks of the programme. We will inform you when we have new information.
- Consideration should also be given to the fact that some patients may proactively contact the practice to indicate their preference as the programme receives more publicity – any requests for access, or to opt out of getting access, should be actioned as soon as practicable.
- You may wish to set up a process within your practice of a 'waiting list' for those seeking access, with requests processed when practice time and resources allow (bearing in mind the deadline of 31 October 2023). Keeping patients informed of this will be important.

Communication – How do you initially intend to communicate with patients?

- Practices may wish to employ a range of approaches including SMS communications, letter writing, physical notices in waiting rooms and digital notices on the practice website and on any social media pages that the practice runs (eg Facebook pages).
- You may also mention the possibility of online access to records in routine consultations and during any other communications between practices and patients.
- Consideration should also be given to the resources that could be used when signposting. The following pages may be useful:
  - [Commonly found abbreviations in medical records](#)
  - [What you need to know about your GP Record](#)
  - [Seeing your medical record](#)

Consent – How can patients indicate their decision to you to have their records visible/not visible?

- Will you require consent before providing access? Do you expect to create an automated system for receiving consent? If so, is this secure?
- If you decide you require consent from each patient before providing access, then we have provided a template consent form here that can be used.

Workload – Do you have sufficient time allotted to have conversations about records access?

- What, if any, mitigations do the practice need to put in place to protect vulnerable patients who wish to have records access?
- Will you put in place a process for answering patients' questions (online resources, FAQs for practice staff fielding calls, dedicated drop-in sessions for patients to ask questions, utilising patient participation groups)?

- Practice plans should reference their DPIA and should set out the reasoning for implementing any mitigations including a consent-based approach (if that is what a practice has decided).
- Plans can be shared with your local ICB team and provided to the ICO alongside the DPIA.

### Step 3 – In line with internal practice plans

Once a plan has been agreed internally, engagement can begin. Communication with patients should reference the fact that a DPIA has been carried out and, if the practice has determined that seeking consent is the best way to ensure that access can be safely provided, this should be made clear to patients. Patients should be encouraged to communicate their preference as a matter of urgency and in any event before 31 October 2023.

Although it is ultimately up to individual practices to decide how best to engage patients, an example of an online process can be found [here](#). This has been provided by Dr Amir Hannan at Haughton Thornley Medical Centres for his patients and includes an information video and questionnaire along with the ability to submit this electronically and hence request access. After review by Dr Hannan and his team, and possible discussion with the patient, access can be given. The practice website also contains links to resources patients can use to understand their medical records more easily and improve health literacy.

As and when patients indicate their preferences, and after any necessary discussion has taken place with those patients in view of their personal circumstances, access should be provided accordingly.

### Step 4 – After 31 October 2023

Unless DHSC and NHSE change policy to allow a patient-led, opt-in process, with access only granted after informed consent has been obtained, practices will need to consider how to comply with their contractual obligations after 31 October 2023. Any patients who do not have access and who have not opted out must be provided with access, subject to practices' [ordinary duties under data protection law](#) not to disclose third party confidential information or information which could cause harm.

Practices may wish to make their own decisions on what to do after weighing up the competing interests of the contract and any assessment they have made through their DPIA. The local ICB team should be kept informed.

We advise practices to contact their system suppliers for help if a decision is made to change access settings in bulk in order to comply with the contract.

We are led to believe EMIS will provide further dates for 'switch on' in November for those who require it.

GPC England continues to put forward the case for making access to records opt in.

## Glossary

#### **103 code – patient declines access**

SCTID: 1290331000000103

Online access to own health record declined by patient (situation)

#### **104 code – to block access to records**

SCTID: 1364731000000104

Enhanced review indicated before granting access to own health record (situation)

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