

 **Review Sheet**




Last Reviewed
11 Jul '23



Last Amended
11 Jul '23



Next Planned Review in 12 months, or sooner as required.

<p>Business impact</p>	 <p>MEDIUM IMPACT</p> <p>Changes are important, but urgent implementation is not required, incorporate into your existing workflow.</p>
<p>Reason for this review</p>	<p>Scheduled review</p>
<p>Were changes made?</p>	<p>Yes</p>
<p>Summary:</p>	<p>This policy will support with UK GDPR compliance in relation to consent. It has been reviewed and updated with no significant changes. References have been checked to ensure they remain current.</p>
<p>Relevant legislation:</p>	<ul style="list-style-type: none"> • The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 • Mental Capacity Act 2005 • Mental Capacity Act Code of Practice • Data Protection Act 2018 • UK GDPR
<p>Underpinning knowledge - What have we used to ensure that the policy is current:</p>	<ul style="list-style-type: none"> • Author: ICO, (2022), <i>Encryption scenarios</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/encryption/encryption-scenarios/#16 [Accessed: 11/7/2023] • Author: GOV.UK, (2018), <i>Guide to the UK General Data Protection Regulation (UK GDPR)</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/ [Accessed: 11/7/2023] • Author: ICO, (2022), <i>How can we comply with the data protection principles when using surveillance systems?.</i> [Online] Available from: https://ico.org.uk/for-organisations/guide-to-data-protection/key-dp-themes/guidance-on-video-surveillance/how-can-we-comply-with-the-data-protection-principles-when-using-surveillance-systems/ [Accessed: 11/7/2023] • Author: Information Commissioner's Office, (2018), <i>Consent</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/lawful-basis-for-processing/consent/ [Accessed: 11/7/2023] • Author: Information Commissioner's Office, (2018), <i>Children and the UK GDPR</i>. [Online] Available from: https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/children-and-the-gdpr/ [Accessed: 11/7/2023] • Author: NICE, (2018), <i>Decision-making and mental capacity - Guidelines NG108</i>. [Online] Available from: https://www.nice.org.uk/guidance/ng108 [Accessed: 11/7/2023]
<p>Suggested action:</p>	<ul style="list-style-type: none"> • Encourage sharing the policy through the use of the QCS App
<p>Equality Impact Assessment:</p>	<p>QCS have undertaken an equality analysis during the review of this policy. This statement is a written record that demonstrates that we have shown due regard to the need to eliminate unlawful discrimination, advance equality of opportunity and foster good relations with respect to the characteristics protected by equality law.</p>



1. Purpose

1.1 To ensure that Digby Manor Residential Care Home seeks consent from the data subject in a way that is UK GDPR compliant.

1.2 To ensure that when Digby Manor Residential Care Home seeks to obtain consent, Digby Manor Residential Care Home follows the Mental Capacity Act 2005 and Code of Practice where Residents lack capacity.

1.3 To support Digby Manor Residential Care Home in meeting the following Key Lines of Enquiry/Quality Statements (New):

Key Question	Key Lines of Enquiry	Quality Statements (New)
WELL-LED	W2: Does the governance framework ensure that responsibilities are clear and that quality performance, risks and regulatory requirements are understood and managed?	QSW5: Governance, management and sustainability
WELL-LED	W3: How are the people who use the service, the public and staff engaged and involved?	QSW3: Freedom to speak up

1.4 To meet the legal requirements of the regulated activities that {Digby Manor Residential Care Home} is registered to provide:

- | The Health and Social Care Act 2008 (Regulated Activities) Regulations 2014
- | Mental Capacity Act 2005
- | Mental Capacity Act Code of Practice
- | Data Protection Act 2018
- | UK GDPR



2. Scope

2.1 The following roles may be affected by this policy:

- | All staff

2.2 The following Residents may be affected by this policy:

- | Residents

2.3 The following stakeholders may be affected by this policy:

- | Family
- | Advocates
- | Representatives
- | Commissioners
- | External health professionals
- | Local Authority
- | NHS



3. Objectives

3.1 To ensure that Digby Manor Residential Care Home obtains appropriate and UK General Data Protection Regulation (UK GDPR) compliant consent from data subjects, including Residents, where consent is necessary for processing of personal data.



4. Policy

4.1 Digby Manor Residential Care Home understands that it may be able to rely on a legal basis for processing other than consent under UK GDPR, such as legitimate interest, fulfilment of a contract, or the processing of special categories of data for the provision of health or social care or treatment, or the management of health or social care systems and services. Digby Manor Residential Care Home will refer to the Data Privacy Policy and Procedure for more information about the grounds for processing under UK GDPR.

4.2 Digby Manor Residential Care Home understands that if it is required to seek consent from data subjects, including Residents, such consent should be freely given and Digby Manor Residential Care Home will clearly explain the processing that it intends to carry out in respect of the personal data. Consent must be informed to be valid.

4.3 Digby Manor Residential Care Home understands that under UK GDPR, consent has to be:

- 1 Explicit - consent requires a very clear and specific statement of consent
- 1 Separate from other terms and conditions
- 1 Specific and 'granular' so that Digby Manor Residential Care Home gets separate consent for separate things. Vague or blanket consent is not enough

4.4 Digby Manor Residential Care Home understands that it must take extra care when processing personal data about children. Digby Manor Residential Care Home recognises that UK GDPR does not specify an age at which children are deemed to be able to consent to their personal data being processed under UK GDPR (except where online services are being provided to a child, in which case a child can provide their consent at the age of 13).

4.5 Digby Manor Residential Care Home shall seek consent in line with any relevant provisions in the data protection legislation and shall ensure that the ways in which it obtains consent from a child are appropriate. For example, Digby Manor Residential Care Home will obtain consent using language that is appropriate and easily understood by the child, taking into account the child's age and ability and the type of personal data being processed.

4.6 Digby Manor Residential Care Home recognises that where surveillance systems are used it is difficult to obtain consent from individuals when processing their personal data in public spaces. A legitimate interest assessment can help to demonstrate lawfulness of the processing and should be completed. Staff can refer to the Legitimate Interests Assessment Policy and Procedure for further information. If Digby Manor Residential Care Home uses surveillance to help keep Residents safe or to monitor their wellbeing, the CQC treats it as part of their care. This means it must meet the regulations under the Health and Social Care Act. But any recordings Digby Manor Residential Care Home makes of people also counts as information about them. Collecting information about people is regulated by the Information Commissioner's Office (ICO).



5. Procedure

5.1 Digby Manor Residential Care Home will use the template forms provided if Digby Manor Residential Care Home determines that it is required to seek consent from data subjects, including Residents, to process their personal data under UK GDPR. If Digby Manor Residential Care Home is uncertain as to whether consent is necessary or it is able to rely on an alternative ground, it will seek further advice.

5.2 Digby Manor Residential Care Home will ensure that it uses the appropriate form, bearing in mind whether the data subject has capacity or lacks capacity.

5.3 Digby Manor Residential Care Home will ensure that, where children's services are provided or activities are undertaken where children might be present or involved, parental/guardian consent is obtained in advance. This would include situations such as social events where photographs might be taken.



6. Definitions

6.1 Surveillance Systems

- | Surveillance systems are the technology and equipment used to carry out surveillance or to store and process the information gathered. Advances in technology mean that new systems or methods may become more commonplace. For simplicity in this information, we will generally make reference to 'surveillance', which could encompass CCTV, Wi-Fi cameras, audio recording, radio-frequency identification (RFID) tracking and many other types of systems

6.2 Data Subject

- | The identified or identifiable individual about whom Digby Manor Residential Care Home has collected personal data

6.3 Personal Data

- | Any information about a living person from which they can be identified directly or indirectly including but not limited to names, email addresses, postal addresses, job roles, photographs, CCTV, online identifiers and special categories of data, defined below

6.4 Process or Processing

- | Doing anything with personal data, including but not limited to collecting, storing, holding, using, amending or transferring it. You do not need to be doing anything actively with the personal data – at the point you collect it, you are processing it

6.5 Special Categories of Data

- | A term for personal data that is sensitive and personal in nature
- | Special categories of data include but are not limited to medical and health records (including information collected as a result of providing health care services), genetic and biometric data and information about a person's religious beliefs, ethnic origin and race, sexual orientation, trade union membership and political views

6.6 Data Protection Act

- | The Data Protection Act 2018 implements GDPR in the UK

6.7 UK GDPR

- | The UK GDPR is the retained EU law version of GDPR that forms part of English law

6.8 The Information Commissioner's Office (ICO)

- | The UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals



Key Facts - Professionals

Professionals providing this service should be aware of the following:

- | Personal data is any information that identifies someone or, in some cases, information that is about a person such as an opinion. It includes someone's name, email address, postal address, job role, photographs, CCTV and more sensitive personal data includes types of information such as medical and health records, care plans, information about religious beliefs, origin and race, someone's sexual orientation or political views
- | The forms attached to this policy should be used if consent needs to be obtained from a data subject, including Residents



Key Facts - People affected by the service

People affected by this service should be aware of the following:

- | This form will be used by Digby Manor Residential Care Home to obtain your consent to Digby Manor Residential Care Home processing your personal data where consent is required under UK GDPR



Further Reading

As well as the information in the 'underpinning knowledge' section of the review sheet we recommend that you add to your understanding in this policy area by considering the following materials:

CQC - Using Surveillance in your Care Service:

<https://www.cqc.org.uk/guidance-providers/all-services/using-surveillance-your-care-service#:~:text=CQC%20and%20the%20ICO%20both,Health%20and%20Social%20Care%20Act.>

CQC - Find out if you need consent to use technology as part of someone's care:

<https://www.cqc.org.uk/guidance-providers/all-services/find-out-if-you-need-consent-use-technology-part-someones-care>



Outstanding Practice

To be 'outstanding' in this policy area you could provide evidence that:

- 1 The wide understanding of the policy is enabled by proactive use of the QCS App
- 1 Digby Manor Residential Care Home conducts data privacy impact assessments in respect of the ways consent is obtained, particularly if consent is being provided by a child
- 1 Digby Manor Residential Care Home carefully considers whether consent is the appropriate ground for processing personal data and documents its decision and the rationale behind it



Forms

The following forms are included as part of this policy:

Title of form	When would the form be used?	Created by
UK GDPR Consent Authorisation Form - Person with Capacity - GDPR10	When the person has capacity to give consent.	QCS
UK GDPR Consent Authorisation Form - Person Lacking Capacity - GDPR10	When the person does not have capacity to give consent.	QCS

Digby Manor Residential Care Home
908 Chester Road, Erdington, Birmingham, West Midlands, B24 0BN

Digby Manor Residential Care Home

Name of Resident

Address

Digby Manor Residential Care Home - Data Protection Consent Form

Your information:

Capacity in which you are signing this form on behalf of the Resident (please tick as appropriate):

1. Deputy - if you have been appointed by the Court of Protection as Deputy for the Resident, please attached a copy of the Order of the Court of Protection
2. Attorney - if you are appointed as an Attorney under an Enduring Power of Attorney or a registered Lasting Power of Attorney, please attached a copy of the document
3. Other - please explain the basis on which you are entitled to act on behalf of the Resident below

Background

Digby Manor Residential Care Home uses your personal data for a number of different reasons. Personal data is any information that identifies you or, in some cases, information that is about you such as an opinion. It includes your name, email address, postal address, job role, photographs, CCTV and more sensitive types of information such as medical and health records, your care plan, information about your religious beliefs, origin and race, your sexual orientation and your political views.

We comply with the law in place in the UK around data protection when we use your personal data including "UK GDPR" (short for the UK General Data Protection Regulation) and the Data Protection Act 2018. The law allows us to use your personal data for a number of reasons without checking with you that it is ok for us to do so, for example, where we can show that we have legitimate reasons to use your personal data or where we need to use your personal data to provide you with the services you have requested from us, or to meet a legal obligation placed on us.

However, in some situations, we need you to confirm that you are happy for us to use your personal data.

Why we need your consent

We need your consent for us to carry out the following activities with your personal data:

[Insert an explanation here of what you do with the personal data that requires consent. Be as clear and specific as possible. Include an explanation of how long you will keep that personal data. If there is more than one activity you want to get consent for, you will need to get separate consent for each activity. It may be simplest to use multiple copies of this form, one for each processing activity. Alternatively, you could number the activities and incorporate a separate signature or tick box for each at the end of the form].

What happens next?

If you are unsure about why we are processing your personal data for the reasons set out above, or what we are doing with it, please ask your Care Worker who would be happy to provide more information. Please do not sign this form until you are happy that you understand its content.

If you give Digby Manor Residential Care Home consent to use your personal data in the ways explained above, you can ask Digby Manor Residential Care Home to stop using your personal data in this way at any time by speaking to Mrs Jane Louise Farr or by emailing us at info@digby-manor.co.uk, writing to us at 908 Chester Road

Erdington

Birmingham

West Midlands

B24 0BN or phoning us on [insert phone number].

Signature

If you are happy for Digby Manor Residential Care Home to use your personal data in the ways set out above, please sign below:

.....
Signature

.....
Date

Digby Manor Residential Care Home
908 Chester Road, Erdington, Birmingham, West Midlands, B24 0BN

Digby Manor Residential Care Home

Name of Resident
Address of Resident

Digby Manor Residential Care Home - Data Protection Consent Form

Your information:

Capacity in which you are signing this form on behalf of the Resident (please tick as appropriate):

1. Deputy - if you have been appointed by the Court of Protection as Deputy for the Resident, please attached a copy of the Order of the Court of Protection
2. Attorney - if you are appointed as an Attorney under an Enduring Power of Attorney or a registered Lasting Power of Attorney, please attached a copy of the document
3. Other - please explain the basis on which you are entitled to act on behalf of the Resident below

Background

Digby Manor Residential Care Home uses Residents' personal data for a number of different reasons. Personal data is any information that identifies the Resident or, in some cases, information that is about the Resident such as an opinion. It includes the Resident's name, email address, postal address, job role, photographs, CCTV and more sensitive types of information such as medical and health records, care plans, information about the Resident's religious beliefs, origin and race, sexual orientation and political views.

We comply with the law in place in the UK around data protection when we use the Resident's personal data including "UK GDPR" (short for the UK General Data Protection Regulation) and the Data Protection Act 2018. They allow us to use the Resident's personal data for a number of reasons without checking with the Resident that it is ok for us to do so, for example, where we can show that we have legitimate reasons to use the Resident's personal data or where we need to use the Resident's personal data to provide services they have requested from us, or to meet a legal obligation placed on us.

However, in some situations we need consent from the Resident to confirm that they are happy for us to use their personal data.

On the basis that the Resident lacks the ability to consent, we require you to provide that consent on their behalf. We understand that you have authority to provide that consent.

Why we need consent

We need consent to carry out the following activities with the Resident's personal data:

[Insert an explanation here of what you do with the personal data that requires consent. Be as clear and specific as possible. Include an explanation of how long you will keep that personal data. If there is more than one activity you want to get consent for, you will need to get separate consent for each activity. It would be simplest to use multiple copies of this form, one for each processing activity. Alternatively, you could number the activities and incorporate a separate signature box or tick boxes for each at the end of the form].

What happens next?

If you are unsure about why we are processing the Resident's personal data for the reasons set out above, or what we are doing with it, please ask Mrs Jane Louise Farr who would be happy to provide more information. Please do not sign this form until you are happy that you understand its content.

If you give Digby Manor Residential Care Home consent to use the Resident's personal data in the ways explained above, you can ask us to stop using the personal data in this way at any time by speaking to Mrs Jane Louise Farr or by emailing at info@digby-manor.co.uk, writing to us at 908 Chester Road

Erdington
Birmingham
West Midlands

B24 0BN or phoning us on [insert phone number].

Signature

If you believe that it is in the best interests of the Resident for Digby Manor Residential Care Home to use the Resident's personal data in the ways set out above and therefore provide consent to such use, please sign below:

.....
Signature

.....
Date