

## TVS LHCR FAQs

### Lawful basis for processing:

There are two main uses of data in the TVS LHCR Programme .

#### **1 – Providing your care:**

Each public sector organisation involved in the programme who uses data for providing care is established by legislation, such as the NHS Act 2006, to provide care services. Private organisations supplying services to NHS patients are under contract with an NHS Commissioner. These powers and the powers of Section 251B of the Health and Social Care Act 2012 (as amended by the Health and Social Care (Safety and Quality) Act 2015) establish that data can be shared as long as it complies with the lawful basis for using data for the provision of care in Data Protection legislation, specifically:

1. Article 6(1)e “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”; and
2. Article 9(2)h “processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services”.

Where access to confidential data is legitimate, the common law duties of confidentiality are satisfied because consent to view a patient’s record is implied where the patient concerned agrees to be referred to a service or where the patient concerned refers themselves or presents to a service.

#### **2 – Using data to ensure effective design and operation of health and care services:**

The organisations that commission health and care services (such as Clinical Commissioning Groups and Local Authorities) have wide ranging legal powers, from Acts such as the NHS Act 2006 and the Care Act 2014 to use data for design and operation of services.

The use of data in such instances must either by anonymous data, or personal data that has been reduced as far as possible to the minimum needed for the purpose. Where such activities do use data that comes within the definition of personal data in data protection legislation, then the lawful basis for the use of such data is:

1. Article 6(1)e “processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller”; and

2. Article 9(2)h “processing is necessary for the purposes of preventive or occupational medicine, for the assessment of the working capacity of the employee, medical diagnosis, the provision of health or social care or treatment or the management of health or social care systems and services”.

Detailed techniques are used to remove as much identifying data as possible to the extent that the use of the data should not breach the confidentiality of the individual. If for any reason this is not possible, then the use of the data has to be considered by the National Confidentiality Advisory Group. They can agree that in specific circumstances the powers of Section 251 of the Health & Social Care Act 2012 can be used to process the data. Individuals have the right to opt out of such uses of data via the National Data Opt Out.

These FAQs cannot cover all aspects of data usage in the health and care system. Each initiative for using and sharing data is required by law to assess the impact of the use of that data prior to the data being used and to ensure all risks have been identified and reduced as far as possible.