

**SUPPLEMENTARY GUIDANCE FOR ALL
NHS SERVICES:**

**MANAGING THE FRIENDS AND
FAMILY TEST (FFT) IN LINE WITH
GDPR**

GDPR AND THE FFT

What is the GDPR?

The GDPR is the EU's General Data Protection Regulation - effective from 25 May - bringing a number of changes affecting how organisations store data. The GDPR and the Data Protection Act 2018 replace the provisions of the Data Protection Act 1998 and continue in place after the UK exit from the EU. The GDPR is designed to strengthen and unify data protection for all individuals within the EU.

The GDPR sets out the legal requirements for how organisations must handle and process personal data.

Accountability

One of the key changes under GDPR is an explicit accountability principle. Organisations must be able to demonstrate that they are meeting the requirements of the GDPR with emphasis on organisations being able to demonstrate their justification for obtaining and using datasets. Under GDPR, only necessary personal data, required for each specific purpose, should be collected, processed and stored.

Legal basis for processing

It is important that organisations are clear about their legal grounds for collecting, using and storing personal data. This should be documented.

More information on the GDPR can be found on the:

- ▶ Information Commissioner's Office website - <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>
- ▶ Information Governance Alliance website - <https://digital.nhs.uk/data-and-information/looking-after-information/data-security-and-information-governance/information-governance-alliance-iga/general-data-protection-regulation-gdpr-guidance>

The NHS Act 2006 Section 13E (inserted by Health and Social Care Act 2012) specifies that the NHS has a duty to secure continuous improvement in quality of services to individuals, particularly the quality of experience undergone by patients.

NHS England discharges this duty via the NHS Standard Contract. Organisations undertaking the FFT as part of the NHS Standard Contract are therefore 'exercising official authority' in doing so and this is the legal basis under the GDPR.

What is the impact of the GDPR on the FFT?

The GDPR should have no effect on the running of the FFT if your organisation does not use an individual's personal data in order to collect FFT feedback.

So, if your organisation is not using an individual's personal data to contact them, for example gathering feedback via postcards, paper questionnaires, kiosks or tablets, then there should be no impact.

GDPR is most likely to affect collections of FFT which use personal data in order to contact patients to ask them about their experience. These are most likely to be digital methods such as SMS or e-mail. If you run such a system, then it is important to ensure that you are meeting the GDPR requirements.

The Information Commissioner's Office website states that:

- ▶ The GDPR applies to 'personal data' meaning any information relating to an identifiable person who can be directly or indirectly identified in particular by reference to an identifier.
- ▶ This definition provides for a wide range of personal identifiers to constitute personal data, including name, identification number, location

data or online identifier, reflecting changes in technology and the way organisations collect information about people.

If identifiable health information is used (such as attendance at a diabetic clinic), the GDPR requires a condition for processing this level of data. This 'Special Category Data' data is covered in article 9(2)(h) under 'the management of health or social care systems' and so is permissible under the GDPR.

Recommended actions to ensure compliance with the GDPR

Be clear that the purpose of the FFT is to gather feedback on services provided

As part of the NHS constitution, the NHS actively encourages feedback from the public, patients and staff, and welcomes its use to improve its services. Communications about the FFT should make clear that it is a feedback mechanism for patients about their experience.

To support the implementation of GDPR, you may feel it appropriate to reiterate to patients the purpose of seeking feedback through the FFT, and to explain how their data will be used, especially if you do use their personal data in order to contact them for feedback.

Provide high quality Fair Processing information and/or privacy notices

Your organisation may already be considering this as part of their local GDPR preparations, for example developing a "how we use your info" leaflet or similar. The FFT doesn't necessarily have to be an explicit topic within the Fair Processing but the Fair Processing needs to cover up front what happens to an individual's personal data, including where it might be used for FFT purposes.

It is important to address the following areas:

- ▶ Be clear about why you want the information
- ▶ Be clear on the legal basis for processing (i.e. exercising official authority - plus special category health data, if necessary)
- ▶ Be clear on who is doing the processing (whether it is the trust itself or a third party)
- ▶ Be clear on what happens in the processing (such as whether people can be identified through the data involved – i.e. mobile phone numbers or email addresses)
- ▶ Be clear on where the processing is taking place (such as whether it is in the UK, within the EU and so on).
- ▶ Be clear about the retention period for the data
- ▶ Be clear about subject access rights, including rectification and erasure of personal data
- ▶ Inform of the right to complain to the Information Commissioner's Office.

Supplier Contracts

You should ensure that any contracts you hold with Suppliers to deliver the FFT are compliant with the GDPR.

Handling free text responses

The common law duty of confidence is unaffected by GDPR. The process for handling free text comments remains the same. The FFT responses must not be presented or published in a way that allows individuals to be identified unless there is a lawful basis to do so. Free text comments that could lead to identification of respondents or other individuals must be removed before publication or disclosure outside the organisation.

Summary

Under GDPR, if you ARE NOT using personal data to contact people to ask for their feedback...

... you need take no further action.

Under GDPR, if you ARE using personal data to contact people to ask for their feedback...

... you will need to consider whether further action is necessary.

You should:

- ▶ check that your Fair Processing covers FFT as part of activities that use patient information
- ▶ be particularly clear on the purpose of the FFT
- ▶ ensure any contracts with suppliers for the purpose of delivering the FFT are compliant with the GDPR.

Frequently asked questions

Why isn't consent needed before asking for feedback?

If, as a provider, you want to seek consent from patients to use their data for the purposes of seeking feedback, this is fine. It's not required, however, as processing personal data for this purpose is part of exercising the organisation's official authority, and using a person's health data as part of this exercise is part of managing a healthcare system.

Why don't we have to handle the free text comments differently?

If a person is named within the comment (such as a nurse or doctor) that person's information has not been given by, nor used in the provider's processing activity, which is where GDPR applies. It is however, covered by the common law duty of confidence; when it became mandatory to ask a free text comment in FFT, the FFT guidance set out how comments should be handled according to that law. Information on how providers will handle free text comments should be available to the public; perhaps as part of fair processing or on the provider's website.

CONTACT US

This guidance is intended to assist providers and their FFT suppliers in considering the impact of GDPR legislation on their FFT activity. It has been produced by the Insight & Feedback team at NHS England.

If you have queries about the FFT please direct these, in the first instance, to our Friends and Family Test Helpdesk at: england.friendsandfamilytest@nhs.net.

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This information can be made available in alternative formats, such as easy read or large print and may be available in alternative languages upon request. Please contact 0300 311 2233 or email england.contactus@nhs.net