

CAG and the common law



Dr Tony Calland
Chair, Confidentiality
Advisory Group
19 October 2022

Setting the scene

- Data Linkage
- Confidential patient data
- Identifiers
- Legal basis
- About CAG
- GDPR and Common Law
- CAG support, what is it, how to get it
- CAG roles and responsibilities
- What CAG needs to know in the application
- Responsibilities of applicant

Data linkage

- To link personal level data from multiple sources requires the use of identifiers
- Will need a common law legal basis to do this
 - Consent
 - Direct care team (on behalf of the applicant)
 - S251

Who are the CAG?

- Statutory committee that advises whether to set aside Common law duty of confidentiality (CLDC).
- Advisory body to:
 - HRA (research applications)
 - Secretary of State (non-research applications)
- Up to 30 unpaid volunteers - mix of lay people and experts, medical, social care, research.
- Meet twice a month.
- Precedent set.

Legal issues

- What is the CLDC? Requires a legal basis
- GDPR allows processing but runs in parallel to CLDC.
 - Both must be satisfied
 - Article 6&9 and s251.
- CAG legislation is:
 - NHS Act 2006 s251
 - COPI Regs 2002, Reg 5.

An application to CAG

- Who decides if necessary ?
- Direct care team and direct care
- Research requires CAG and REC
- Non research
- Apply via HRA IRAS process
- Advice on CAG section of HRA website, discussion with CAT
- HRA process full applications within 60 days/PS within 30 days (does not include time queries with applicant)

The information CAG requires

- Primary and secondary objective
- What is the status of data, CPI, pseudo, etc
- Data flows (from where to whom and how)
- Cohort size and identifiers required
- What processing and for what purpose
- Is consent or other alternative possible?

The information CAG requires (cont.)

- Information for patients – strategy and text
- Opt out – National Data Opt Out and local
- Public and patient involvement - support for data use without consent
- Proportionate to cohort size
- Exit strategy

Outcomes and applicant responsibilities

- Deferred, provisional, conditional, final.
- Outcome letter within 2 weeks
- Support is ONLY for processing as per the outcome letter.
- Any changes to support must submit an amendment
- Annual review
- CAG keeps a register of support and publishes meeting minutes

Thank you for listening

- cag@hra.nhs.uk
- 020 7104 8100