



## **LEGAL QUESTION OF THE WEEK**

### **The NHS Digital Database – What are the Privacy Challenges?**

By Pulina Whitaker, Partner and Co-Leader of Morgan Lewis' Privacy & Cybersecurity Practice

The Government's controversial plan to create a database of all GP records over the past 10 years for sharing with third-parties is a challenge to implement from a privacy perspective. The implementation date of the database has been delayed from 1 July until 1 September 2021 to address privacy concerns from the British Medical Association and Royal College of GPs, as well as privacy groups including Foxglove.

The key challenge is that the records will continue to contain personal data, where the identifiers are removed or the data is otherwise "pseudonymised" so it is not directly identifiable but patients can be re-identified with other information. This kind of data is strictly protected by the UK's implementation of the General Data Protection Regulation and, therefore, NHS Digital will need to comply with key obligations.

At the outset of the collection of GP records, it must provide each patient with a clear privacy notice regarding how the data will be collected from GPs, how it will be used, with whom it will be shared, how it will be protected and give patients certain rights to control their data including request that the processing is restricted or their data is deleted. They must comply with restrictive processing conditions, such as only use the data where necessary for scientific research too.

NHS Digital will also need to allow patients to access a copy of their data and ask for details of how it is being processed after it is transferred to the database. Finally it must require all organisations to protect the data to the same standard as in the UK, including through data transfer agreements where the data is transferred outside the UK or Europe to a country not otherwise deemed to have "adequate" data protection laws.

One of the concerns relates to the commercialisation of health data, where it is shared with commercial health providers around the world and, therefore, potentially creates a loss of control of the patient data for the relevant patient. The UK's data protection authority, the Information Commissioner, has welcomed to the delay to the plan to allow for privacy concerns to be addressed and build trust with the public, who have until 1 September 2021 to opt-out in advance. The Information Commissioner's Office has said it will work with NHS Digital to resolve the privacy concerns.