

CAG advice provision to NHS Digital under the Care Act 2014 (interim)

The following sets out an interim process on how the Confidentiality Advisory Group (CAG) will provide advice to NHS Digital under the remit of the Care Act 2014

Step 1: Identify appropriate route for handling

1. Where there are no alternative existing agreed process/ criteria, there is a need to identify an issue as appropriately handled via Route A or Route B.
2. Following either NHS Digital internal escalation to their Caldicott Guardian, or Health Research Authority (HRA) or CAG escalation to Chair of CAG, the relevant issue will be discussed between NHS Digital Caldicott Guardian and CAG Chair to assist mutual understanding and enable initial assessment of appropriate process (Route A or Route B).
3. CAG Chair to take a proposal, based on this discussion, on handling to CAG members before progressing down either Route A or Route B. CAG members will be engaged directly in any new decision to pursue Route A or Route B. This proposal will be initially disseminated to all members via email so that all members have the opportunity to comment. Discussions may take place at a face to face meeting but the limitations of not all members being present will be taken account of.
4. The decision on handling is to be recorded in a minute published on the HRA website as well as a summary of the outcome, and communicated to NHS Digital in writing.

Step 2: Route A: Establish mutual understanding

5. Route A is appropriate where the aim is to explore whether there are any substantive differences between established positions in HRA CAG and NHS Digital, to describe respective positions for the purposes of mutual understanding, and/or to seek advice from third party to avoid operational inconsistency.
6. Route A is not appropriate where aim is to engage CAG in dialogue on issues where there is no clearly established CAG position. Involvement of third-parties is agreed by mutual consent.
7. Any request to explore whether processes can reduce duplication may take Route A and HRA staff would lead from HRA side due to the operational nature (not CAG Chair). A member of the CAT should be involved to ensure any outcomes will be recorded in a minute to be published on the HRA website

Step 2: Route B: Formal – Request for CAG Advice

8. This route is considered appropriate when NHS Digital wish to engage CAG in dialogue on issue of genuine uncertainty and CAG do not have established position.
9. CAG members will discuss requests for advice at scheduled CAG meetings. NHS Digital is expected to submit to the relevant deadline for that meeting.
10. It will be ensured that the request for advice is communicated to all members to allow the opportunity for written feedback to be provided for members who cannot be present at face to face meetings.
11. NHS Digital may attend with mutual agreement; the advice provided by the CAG will be published on the HRA website.
12. The mechanisms described above are intended to be developed iteratively as a result of evaluation and reflection on what is/ not working well.

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13. Advice provided by the CAG to NHS Digital takes place under a different legal framework and does not require a formal decision by the HRA or Secretary of State for Health and Social Care.
14. Advice provided by the CAG will produced by the confidentiality advice team (CAT) and will be sent directly to NHS Digital once the CAG confirm accuracy of the advice within 5 working days of the meeting taking place.
15. The CAT will flag with the HRA if there are any broader issues raised by the advice content that may be relevant to the broader work of the HRA.