



KEY POINTS YOU NEED TO KNOW ABOUT HUMAN RIGHTS LAW

WHO

- The Human Rights Act 1998 (HRA) applies to researchers and data custodians employed by or working on behalf of public bodies

WHAT

- The relevant provision is Article 8 which protects the right to respect for a private life
- If a data use does not violate this right it will normally also be lawful under the common law of confidentiality
- Even if a data use is lawful under the HRA, you will still need to be sure you comply with the conditions of the Data Protection Act 1998 (DPA). Similarly compliance with the DPA does not necessarily guarantee adequate protection of the right to privacy

WHY

- If a proposed research use of a patient's data is different from the uses to which a patient could have reasonably expected, the research could be seen as failing to respect her/his right to privacy
- However, the Human Rights Act requires infringement of the right to privacy to be balanced against wider public interest and if the latter outweighs the former, the right has not been illegally infringed

WHAT SHOULD YOU DO?

- Use data in ways that are covered by consent conditions where possible
- Only use patient identifiable data for unconsented research purposes when a robust public interest argument for doing so exists, and take measures to reduce any potential risks to patient privacy (e.g. by anonymising the data) so that these risks proportionate to the greater benefits