Council, 27 March 2008

# Confidentiality: guidance to registrants consultation responses and revised guidance

## Executive summary and recommendations

### Introduction

The Council consulted on our Confidentiality: Guidance for Registrants from 4 June 2007 to 7 September 2007. The responses to the consultation have been analysed and the guidance amended.

It is proposed that the guidance should become effective from 1 July 2008 (this will allow sufficient time for publication and for stakeholders to be informed about the guidance). The guidance will be publicised by:

- A press release and news item on the HPC website
- Articles in the HPC newsletter

The guidance will undergo extensive proofing prior to publication.

### Decision

The Council is asked to agree the following:

- To recommend to council the text of the consultation responses document
- To approve the text of the revised guidance pending further editing necessary to achieve the Plain English Campaign Crystal Mark
- To agree that the revised guidance should be effective from 1 July 2008

### Background information

### Resource implications

- Type-setting and publication of new guidance (if appropriate) online and in hard-copy

### Financial implications

- Type-setting and publication of guidance

These financial implications are accounted for in the 2007/8 budget.

## Appendices

The following are appended:

Appendix 1: Consultation responses document
Appendix 2: Revised confidentiality: guidance to registrants

## Date of paper

12 March 2008

# Confidentiality: Guidance for Registrants

## Responses to our consultation and our decisions

## Introduction

We consulted on our Confidentiality: Guidance for Registrants from 4 June 2007 to 7 September 2007.

We sent a copy of our consultation document to over 300 organisations on our consultation list. Our consultation list includes employers, education providers and professional bodies. In addition, the consultation document was published on our website and members of the public could also request hard copies.

In this document, we first consider comments made about the guidance as a whole, including comments on the introduction, language and function of the guidance. We then consider comments made about each individual chapter in the guidance document. After each section, we then outline the decisions that we have taken following your comments.

In this document, ‘you’ is a reference to a registrant and ‘we’ or ‘our’ is a reference to the Health Professions Council.

We would like to thank all of those who took the time to respond to the consultation.

You can download a copy of the consultation document from our website: http://www.hpc-uk.org/publications/consultations/.

### The standards

This guidance builds upon our standards of conduct, performance and ethics. We have recently consulted on changes to these standards and we will ensure that the guidance reflects any amendments we make as a result of the consultation process.

### Analysing your responses

Now that the consultation has ended, we have analysed all the responses we received. We considered carefully each suggestion we received, taking into account whether similar comments were made by other respondents.

## General comments

In this section we provide a summary of the comments we received which relate to the document as a whole, rather than individual chapters.

### Function of the guidance

Most respondents were supportive of our new guidance. Gwent Community Health Council said that: 'Members believed that the document was well written and comprehensive and offered a good way forward for the subject matter which is a critical element for all patients.' The British Psychological Society said: 'This guidance is clearly written and helpful to registrants.' One respondent said: 'The document clarifies the level and extent of responsibility of the practitioner to maintain confidentiality at all times.'

A small number of respondents raised concern that the guidance was too general to be of relevance to registrants. The Board of Community Health Councils in Wales said: 'The guidance is very basic and we query the usefulness of the document given the very general information contained.' The British Association for Counselling and Psychotherapy said: 'Although we appreciate the difficulties in producing guidance for a wide audience of professionals, the content itself is often unnecessarily vague and could be tightened up.'

### Our comments

Most respondents were supportive of the new guidance and believed that it would prove useful both to registrants and potential registrants. We considered carefully the level of detail included in the guidance and the amount of information it contained. The level of detail is to a large extent dictated by the need for it to be relevant to all registrants, as far as possible, working in many different environments with differing interactions with service users. In addition, professional bodies also produce guidance in this area and we did not wish to duplicate this.

When drafting the document, we considered information from a variety of sources including previous fitness to practise cases and the guidance issued by other regulators. By seeking input from a variety of sources, we tried to strike a balance between writing guidance which was not relevant to all registrants and guidance which was too general. The guidance is intended to build upon recent fitness to practise cases concerning confidentiality and to provide guidance on this area to registrants.

### Language

We received a small number of comments about the specific language used in this document. The Society and College of Radiographers said: '…whilst we support the use of the term "service users" we would suggest that a fuller definition is used in this document similar to that in the draft Standards of Conduct, Performance and Ethics.' Amicus (Community Practitioners and Health Visitors' Association) said: '…we think that the language used needs to be stronger i.e. "must" rather than "should" – this will imply to the registrant that the actions are required rather than open for consideration and personal choice.'

Several respondents requested additional clarity on some of the language used. Three respondents suggested that the guidance should include a definition of the phrases ‘safe from harm’ and ‘patient’s best interest’ as these are important principles that can guide decision-making in difficult cases.

**Our comments**

The clarity of the language used in the guidance is key to ensuring that the guidance is accessible to all registrants. The glossary states that when the term ‘service user’ is used, we mean ‘anyone who uses or is affected by the services of a registrant’. This definition of ‘service user’ is also used in our consultation document on the revised standards of conduct, performance and ethics. However, the consultation document on the revised standards of conduct, performance and ethics also contains a paragraph on the meaning of our inclusive definition of ‘service user’. To ensure consistency between the documents and clarity in meaning, we will incorporate the paragraph on ‘service users’ into the confidentiality guidance with minor amendments.

When we write our standards, we use the word ‘must’ because registrants must comply with the standards in order to join the Register or remain on the Register. However, this document is intended as guidance for registrants which they can use to help them meet the standards. We will, therefore, continue to use the word ‘should’ throughout the guidance.

We have considered the comments we received asking us to include a definition of the phrases ‘safe from harm’ and ‘patient’s best interest’. We do not use the phrase ‘safe from harm’ within the guidance and therefore will not include a definition within the glossary. The best interests of a patient will vary depending upon the individual circumstances. It is therefore impossible to provide a definition which will be relevant to all situations.

## Specific comments

In this section we consider comments relating to each specific chapter within the guidance document.

### Introduction

This section outlines the importance of confidentiality, establishes principles for handling information and emphasises a registrant's responsibility to safeguard and respect the confidentiality of service users. A number of respondents, including the Society and College of Radiographers and the Association for Perioperative Practice, suggested that the introduction to our guidance should contain clear references to relevant legislation on data protection, confidentiality and consent.

A small number of respondents suggested that the principles for handling information should make specific reference to Caldicott and Caldicott Guardians. The East of England Ambulance Service said that there should be a mention of '…Caldicott and the principles – advice when there is uncertainty about release of information can be sought from the employer's Caldicott Guardian'. Amicus (Community Practitioners and Health Visitors' Association) said: 'There is a need to acknowledge the Caldicott principles about information governance because these principles need to be more than just taking 'reasonable steps'.'

The General Medical Council suggested that there should be additional clarity on the types of information that is considered 'identifiable information'. They suggested that, for greater clarity, identifiable information could be contrasted against effectively anonymised information with a definition of anonymised information added to the glossary.

### Our comments

We understand the comments from a number of respondents about making specific reference to the relevant legislation in our guidance document. We believe that it is important that this guidance is informed by the legislation on data protection, confidentiality and consent. However, we believe that the guidance should not make reference to specific pieces of legislation. In the section on confidentiality and the law, we state that we 'have not referred to any legislation by name to avoid any confusion and so that this document can be easily understood by all of our stakeholders.' The guidance is designed to be relevant, as far as possible, to all stakeholders and we believe it important that the guidance does not lose its clarity by the addition of too much information on how the guidance relates to specific, often complex, legislation.

Our guidance has been written in the same style as the standards that we set for proficiency and conduct. We do not make reference to specific legislation because we acknowledge that if we did make such references, we would be required to update our guidance and then consult on the changes every time there was a change in legislation. The guidance has been written in a style which is designed not to be too prescriptive but instead offers general advice on some of the challenges and issues that registrants may face around issues of confidentiality.

We recognise the importance of Caldicott and the principles that stem from the Caldicott Report. We have not made specific reference to Caldicott Guardians as we acknowledge that our registrants work in a variety of environments and as a result, not all registrants will have Caldicott Guardians in their place of work. We believe that the principles which we have established at the beginning of this document do reflect the Caldicott principles. We have reviewed the principles and will make no amendments to them.

Definitions of anonymised and identifiable information are extremely important in this document. We will therefore, amend the introduction to include the section on anonymised information which is currently on page 10 of the guidance. We will also add a definition of anonymised information to the glossary.

## Keeping information safe

This section considers how confidential information can be kept safe by taking reasonable steps and also considers the importance of following employer protocols whilst ensuring that registrants still meet our standards. A number of responses questioned whether more specific reference should be made to procedures that employers have in place designed to deal with issues regarding confidentiality. One respondent said that, where requests for information are made under the law, '…in the first instance a practitioner should contact their Trust's legal department who would then process all such requests'. The Royal College of Speech and Language Therapists said: 'It is recommended that there is a greater emphasis on support from employee's legal department, human resources department and managers rather than acting in isolation and good faith. Many organisations have clear support processes for staff that are dealing with tricky issues of consent and confidentiality and staff should be encouraged to use these.' However, the Board of Community Health Councils in Wales said: 'Many of your health professionals work independently and therefore are unable to benefit from employers policies and guidelines relating to confidentiality issues.' The Royal College of General Practitioners said: 'It is not clear from this section where single-handed practitioners without an employer would go to for advice for disclosures relating to the public interest. Practitioners and employers should be able to seek such support in cases where they are being pressured to disclose information in the public interest.'

A small number of respondents raised the issue of whether more information should be available in the guidance on confidentiality issues relating to computerised information and the handling of images and pictures. One respondent said: 'I feel that there is a place for some specific comments on generating, handling and storing digital images because so many healthcare professions already do… I feel that the many and various images that can be stored need to be listed.' The Institute of Medical Illustrators asked whether the guidance should include 'specific guidance about the difficulty of anonymising clinical photographs.'

## Our comments

HPC's registrants work in a variety of environments, ranging from large public sector bodies to small private organisations. For our guidance to be relevant, as far as possible, to all registrants, it must reflect the resources available to all registrants, not just those who work within large organisations. One of the principles which inform the guidance is that registrants should ‘where appropriate, seek advice from HPC, colleagues, professional bodies, unions or legal professionals’. We believe that this principle will encourage registrants, particularly those who work independently, to seek advice on issues of confidentiality where appropriate.

We understand the comments from some respondents about the issues around electronic records and images. Our standards of conduct, performance and ethics state that registrants must ‘…protect information in records against loss, damage, inappropriate access or tampering.’ These principles apply to all forms of information about a service user regardless of the form in which the information is stored. Registrants need to take reasonable steps to safeguard information about service users. We believe that adding specific guidance relating to digital images would make the guidance too specific.

### Disclosing information

This section outlines how information can be disclosed and the importance of obtaining consent from the service user prior to the disclosure of information. Several respondents suggested that service users should be provided with additional information when consent was being obtained. The British Psychological Society said: ‘…we consider it important not to assume that service users will understand what access others will have to their information. We would recommend that guidance is given to registrants to provide some details to service users of how their information will be shared with others, thereby allowing them to give informed consent regarding its provision.’ The Royal College of General Practitioners said: ‘…this section states that service users should be aware of why and to whom information is disclosed. They should also be fully aware of the use(s) the information will be put, and it should be made clear that the information will only be used for that specific purpose.’ The Board of Community Health Councils in Wales suggested the addition of the following sentence to the section on express consent: ‘When seeking express consent to disclosure you must make sure that patients are given enough information on which to base their decisions.’

Several respondents, including Guild Higher Education, asked for guidance on issues of confidentiality in an educational setting. The Society and College of Radiographers said: ‘We also note there is no guidance for educators on the use of patient information in case studies, yet this is a recurring concern.’ The British and Irish Orthoptic Society asked for clarification as to whether specific, written consent should be obtained when information relating to a service user is used for teaching. They asked: ‘…if the student is assessing the patient would this mean that we do not need written consent as the release of identifiable information is related to the care of that patient?’

We also received a small number of comments relating to the confidentiality of visual records and images. The Association of Clinical Scientists said: ‘There are significant risks associated with the use of visual records… It is difficult to anonymise visual records, and express consent should be sought in all circumstances.’

The General Medical Council suggested that the guidance should encourage registrants only to disclose information which is relevant, rather than disclosing all the information that that they have been asked to disclose. The GMC suggested this change because: '…requests for information can be very broad and compliance would involve disclosure of irrelevant information.'

## Our comments

Under the section on 'consent and confidentiality' we define informed consent as providing the service user with 'enough information to make a decision about whether they are happy for information to be shared with others.' We believe that this statement incorporates the importance of providing information to service users of how their information will be shared with others. However, we recognise that service users may not be aware of how their information may be used and we will amend our guidance to reflect the importance of informing service users of this.

If a student was assessing a service user whilst on clinical placement we would consider that assessment to be part of the process of caring for the service user. It is important to obtain express, written consent, when identifiable information is used for the specific purposes of teaching, separate from the function of caring for the service user. For example, a student presenting a case study would be expected to anonymise the information about the service user. If they were unable to anonymise the information, then the student should obtain express, written consent. In addition, this is an area in which education providers often produce their own guidance which students would need to comply with.

We understand the comments we received suggesting that express consent should be sought whenever visual records are made. The guidance states that informed consent should be obtained before sharing or disclosing information or using information for reasons which are unrelated to care or the provision of services. As part of the process for obtaining informed consent, the registrant would explain the purpose of making the visual record and how that information would be shared. We have considered the guidance we have written in this area and we will not make any changes.

We acknowledge that sometimes registrants may be asked by individuals to disclose more information than is relevant. We will amend the guidance to state that registrants must 'only disclose information which is relevant'.

## Disclosure without consent

This section outlines some circumstances when information may have to be passed on without the service user's consent or when consent has been refused. Several respondents, including the Picker Institute, commented that they would like more detail in the document relating to service users who are unable to give consent. The Board of Community Health Councils in Wales said: 'There is nothing in the document to advise on disclosure issues relating to children and other patients who may lack competence to give consent.' Pembrokeshire and Derwen NHS Trust suggested that this section should include information on: '…

the new Mental Capacity Act (2007) and the guidance on Safeguarding Children, and Protection of Vulnerable Adults.'

Several respondents questioned whether the guidance complied with best practice relating to child and adult protection. The College of Occupational Therapists said: 'The document needs to be much clearer when confidentiality can be breached in light of child protection issues. This matter is referred to in passing and needs to have greater prominence as there is some confusion amongst professionals about this as it is one where the child's safety comes first. …This should be far more explicit in the section on 'Public interest disclosure' to be of assistance to registrants.'

### Our comments

We acknowledge that there are occasions when service users may be unable to provide consent, for a variety of reasons. However, the focus of this guidance is not on issues relating to consent but on confidentiality. As a result, the guidance does not deal with issues relating to consent in detail.

We recognise the importance of guidance relating to the protection of children and vulnerable adults. As part of our standards workplan for 2007-8 the Executive will also explore developing the standards section of the HPC website. This could include producing a 'bank' of information on a small number of topics. The topics could include the protection of children and vulnerable adults.

### Disclosures required by law

We received a small number of comments relating to this section. The Picker Institute said that the paragraph entitled 'Disclosure to regulators' should clarify that information disclosed to regulators would relate to information about other health professionals. Buckinghamshire Chilterns University College suggested that this section should include requests from the police with the relevant order under which this information can be requested. The Royal Pharmaceutical Society suggested that this section should also include disclosures of information requested by: '…H.M. Coroner, a judge or other presiding officer of a court, Crown Prosecution Office in England and Wales or Procurator Fiscal in Scotland.'

### Our comments

Having considered the small number of comments we received, we have decided to make no changes to this section. The guidance is designed to be relevant, as far as possible, to all registrants. We did not wish to be so specific that the guidance moves away from general principles and instead becomes so detailed that it is not relevant to most registrants.

### Case studies

As part of our consultation, we asked respondents to comment on the usefulness of the case studies and whether they had any suggestions for additional case studies we could add to illustrate the guidance we gave. Several respondents, including the Registration Council for Clinical Physiologists and the Society of

Sports Therapists, said that the case studies were well chosen and provided appropriate examples. However, the College of Operating Department Practitioners commented: ‘The College feel the case studies do not add any really add value to the understanding of the many facets that occur in breaches of confidentiality.’

We received a number of specific comments about the case studies. The College of Occupational Therapists said of the first case study that: ‘The example provided under this section has given the College some cause for debate as this conflicts with advice that we provide within our own Code of Ethics.’ Gwent Healthcare (Physiotherapy Directorate) said: ‘…it is the second scenario that usually poses professionals with disclosure issues and this clearly gives a useful backdrop to decision making’. A number of respondents said that the second example did not comply with best practice on issues relating to child protection. In particular, the length of time taken to report the matter to the police was queried when there was clear evidence that a child had been abused by the service user. Amicus (Speech and Language Therapy Occupational Advisory Committee) said: ‘The example on page 12 of the consultation document we feel is inappropriate... the evidence seen…strongly indicates that a child has already suffered significant harm… The time delay of contacting the line manager and waiting for the collective decision of a multidisciplinary team is unacceptable in this context.’

Several respondents provided suggestions for additional case studies. NHS Education for Scotland suggested several different case studies, including: ‘A case study reflecting the need to deal with another agency when health records are electronically stored within an agency other than health.’ Birmingham Eastern and North Primary Care Trust suggested more examples including ‘what to do with a request from a person’s estate following the death of the individual.’ The British Dietetic Association asked for further case studies on paediatric confidentiality issues.

## Our comments

We have carefully considered the comments we received regarding the case studies. We have decided to remove the case studies from the guidance. We understand that case studies can help to clarify some of the difficult issues around confidentiality. However, some of the comments that we received highlighted that the case studies can themselves create confusion as they may contradict other sources of confidentiality guidance or good practice.

## List of respondents

Below is a list of those who responded to the consultation. Where a response has been given on behalf of an organisation, we have given the name of the organisation in the text. Where the response comes from an individual, we have not.

We received eight responses from individuals and thirty four responses from organisations.

Amicus (Community Practitioners’ and Health Visitors’ Association and Speech and Language Therapists Occupational Advisory Group)
Association of Clinical Scientists
Association for Perioperative Practice
Birmingham Eastern and North Primary Care Trust (HPC Registrants)
Board of Community Health Councils in Wales
British Association for Counselling and Psychotherapy
British Dietetic Association
British and Irish Orthoptic Society
British and Irish Orthoptic Society Professional Development Committee
British Psychological Society
Buckinghamshire Chilterns University College
College of Occupational Therapists
College of Operating Department Practitioners
East of England Ambulance Service
General Medical Council
Guild HE
Gwent Community Health Council
Gwent Healthcare Wales (Physiotherapy Service)
Institute of Biomedical Science
Institute of Chiropodists and Podiatrists
Institute of Medical Illustrators
NHS Dumfries and Galloway
NHS Education for Scotland
NHS Tayside
Pembrokeshire and Derwent NHS Trust
Pharmaceutical Society of Northern Ireland
Picker Institute
Registration Council for Clinical Physiologists
Royal College of General Practitioners
Royal College of Speech and Language Therapists
Royal Pharmaceutical Society of Great Britain
Society and College of Radiographers
Society of Sports Therapists
Welsh Scientific Advisory Committee

# Confidentiality – guidance for registrants

## This document

This document provides advice about some of the issues relating to how you handle information about service users. It might also be helpful to potential registrants, employers and other people who want to know how we expect health professionals to approach issues of confidentiality.

This document is not designed to replace local procedures and is not meant to cover every situation where problems can come up. However, it is meant to act as a ‘toolkit’ which you can use to make informed and reasonable decisions relating to issues of confidentiality, in line with our standards.

Please read all of this document. If you have any questions, please see the ‘More information’ section on page 15. We also explain some of the terms and phrases we use throughout this document in the glossary on page 16.

## About us

We are the Health Professions Council. We are a regulator and our main aim is to protect the public. To do this, we keep a register of health professionals who meet our standards for their training, professional skills, behaviour and health.

### Who do we regulate?

We currently regulate 13 health professions.

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Clinical scientists
- Dietitians
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Prosthetists / orthotists
- Radiographers
- Speech and language therapists

We may regulate other professions in the future. For an up-to-date list of professions, please see our website at **www.hpc-uk.org**

### Protected titles

All of the professions have at least one professional title which is protected by law. This means, for example, that anyone using the title ‘physiotherapist’ or ‘dietitian’ must be registered with us.

It is a criminal offence for someone to claim that they are registered with us when they are not, or to use a protected title that they are not entitled to use. We will prosecute people who commit these crimes.

# Introduction

## Confidentiality

Service users expect the health professionals involved in their care or who have access to information about them to protect their confidentiality at all times.

This information might include details of a service user's lifestyle, family or medical condition which they want to be kept private. Breaking confidentiality can affect the care or services you provide, as service users will be less likely to provide the information you need to care for them. Doing this may also affect the public's confidence in all health professionals.

**This guidance cannot cover every situation where problems or challenges about confidentiality might come up.** As a guide, however, you should keep the following principles in mind when handling information.

You should:

- take reasonable steps to keep information about service users safe;
- get the service user's informed consent if you are passing on their information, and get express consent, in writing, if you are using the information for reasons which are not related to providing care or services for the service user;
- only disclose identifiable information if it is absolutely necessary, and, when it is necessary, only disclose the minimum amount necessary;
- tell service users when you have disclosed their information (if this is practical and possible);
- keep appropriate records of disclosure;
- keep up to date with relevant law and good practice;
- if appropriate, ask for advice from colleagues, professional bodies, unions, legal professionals or us; and
- make your own informed decisions about disclosure and be able to justify them.

This document covers these principles in more detail and provides extra guidance about some of the issues which come up about confidentiality. It builds on the expectations of health professionals outlined in our standards of conduct, performance and ethics.

## Our standards of conduct, performance and ethics

The following standards of conduct, performance and ethics describe the professional behaviour we expect from you.

1 You must act in the best interests of service users.
2 You must respect the confidentiality of service users.
3 You must keep high standards of personal conduct.
4 You must provide (to us and any other regulators) any important information about your conduct and competence.
5 You must keep your professional knowledge and skills up to date.
6 You must act within the limits of your knowledge, skills and experience and, if necessary, refer the matter to another practitioner.
7 You must communicate properly and effectively with service users and other practitioners.
8 You must effectively supervise tasks you have asked other people to carry out.
9 You must get informed consent to give treatment (except in an emergency).
10 You must keep accurate records.
11 You must deal fairly and safely with the risks of infection.
12 You must limit your work or stop practising if your performance or judgement is affected by your health.
13 You must behave with honesty and integrity and make sure that your behaviour does not damage the public's confidence in you or your profession.
14 You must make sure that any advertising you do is accurate.

You can download copies of these standards from the publications section of our website, or you can ask us to send you a copy. Please see the section 'More information' on page 17.

As our registrants work in a variety of settings and in a variety of different roles, we have written our standards so that they are relevant, as far as possible, to all registrants. We have also written them in a way that means they can take account of any changes in the law, technology or working practices.

Our standards are flexible enough to allow individuals and employers to take account of local circumstances – such as availability of resources – to develop ways of working that are practical, effective and meet the needs of service users.

We have written this document to help you meet our standards. However, there is often more than one way in which you can meet our standards. As an autonomous health professional, you still need to make personal decisions about the best way to meet our standards, taking account of your own practice and the needs of your service users.

If someone raises concerns about your practice, we will take account of any steps you have taken, including following this guidance, when we decide whether you have met our standards.

## Language

In most of this guidance, the service users we refer to are patients, clients and other people who are directly affected by the care, treatment and advice registrants provide. We use the term ‘care’ to include a broad range of services our registrants provide, including treatment, therapy and advice.

We hope the guidance sets out some broad principles which still apply to registrants who work in other roles. This could include registrants who provide services to organisations rather than individuals.

## Confidentiality and the law

Your duty to respect and protect the confidentiality of service users at all times is both a professional and a legal responsibility.

It is a professional responsibility because our standards are there to protect the public and say that you should protect the confidentiality of service users at all times. Breaking confidentiality can affect your registration.

It is a legal responsibility because of the principles set by law, which say that professionals have a duty to protect the confidentiality of the people they have a professional relationship with. The law also says how you should keep, handle and disclose information.

This guidance draws on relevant laws that affect health professionals and their service users. We have not referred to any law by name to avoid any confusion and make sure this document can be easily understood by everyone who reads it.

## Identifiable information and anonymised information

Throughout this document, we refer to ‘identifiable information’ and ‘anonymised information’. Identifiable information is any information you hold about a service user that could identify them. This includes personal details such as names, addresses, pictures, videos or anything else which might identify the service user. Anonymised information is information about a service user that has had all identifiable information removed from it.

## Keeping information safe

Our standards of conduct, performance and ethics say that:

**'you must not knowingly release any personal or confidential information to anyone who is not entitled to it, and you should check that people who ask for information are entitled to it';**

and

**'you must protect information in records against loss, damage, inappropriate access or tampering'**.

This means that you need to take reasonable steps to protect information about service users.

By 'reasonable steps', we mean that you need to take sensible, practical measures to make sure that you keep the information safe. For example, you could store records in a locked container when you move them between clinics. If you run your own practice, you could develop a clear policy for your practice and provide training for your members of staff. Or, you might make sure that you avoid having conversations about service users in public areas where other people might be able to hear.

If you are an employee, your employer will normally have policies and guidelines on how you should store, handle and share information. In most circumstances, following these policies will allow you to meet our standards comfortably. However, you still need to think about your own practice to make sure that you are protecting confidentiality at all times.

As a responsible professional, it is important that you take appropriate action if it is brought to your attention that confidentiality has been broken, or if there might be a risk of this happening. You should tell your employer (if you have one) and take steps to try to make sure that the problem doesn't happen again.

If you feel that your employer's policy might mean that confidentiality is put at risk, you should contact your union or professional body for advice.

# Disclosing information

## Using information

Our existing standards of conduct, performance and ethics say that:

**‘you must only use information about a service user to…continue to care for that person… or for purposes where that person has given you specific permission to use the information’.**

When we refer to ‘using’ information, we mean handling information in any way. This includes accessing information, as well as disclosing information to third parties and using information in research or teaching.

In particular, you should be aware that accessing information without good reason or authorisation is considered to be breaking confidentiality, even if this information is not passed on to a third party. It is good practice to only access confidential information when it is relevant and necessary to protect the health and wellbeing of service users.

## Consent and confidentiality

Identifiable information is disclosed for a number of reasons. It can happen when you refer a service user to another health professional or when a service user asks for information to be given to a third party.

It is important that you get the service user’s informed consent before you share or disclose their information or use it for reasons which are not related to the care or services you provide for them. There are some exceptions to this and we cover these later in this document.

By ‘informed consent’, we mean that the service user has enough information to make a decision about whether they give their permission for information to be shared with other people. Service users should be fully aware of why you need to share any information about them, how you will do so and who you will be sharing the information with. You should also tell them how not giving their permission is likely to affect the care or services they receive.

There are two types of informed consent – implied consent and express consent.

## Implied consent

If you are using identifiable information to care for a service user or provide services to them, in most circumstances you will have their implied consent. Most service users will understand the importance of sharing information within the multidisciplinary team. If you are not sure whether you have implied consent, you should get express consent.

## Express consent

This is where you are given specific permission to do something. You need to get express consent if you are using identifiable information for reasons which are not related to the care or services you provide for the service user. This might be when you need information for teaching or research. It is also important to get express consent if a service user has previously objected to you sharing their information with other people.

This guidance deals with issues of consent wherever they are relevant to using information about service users.

## Liaising with other professionals

One of the most common reasons for disclosing confidential information will be when you liaise with other health professionals. This might include discussing a case with a colleague or referring a service user to another health professional.

Sharing information is often part of good practice. Care is rarely provided by just one health professional, and sharing information within the multidisciplinary team is often an important way of making sure care can be provided effectively.

Most service users will understand the importance of sharing information with members of the multidisciplinary team, so you will normally have implied consent to do this. However, when you share information with other colleagues, you should make sure that:

- it is necessary to provide the information and the information you provide is relevant;
- the professional receiving the information understands why you are sharing it and that they have a duty to keep it confidential; and
- you explain to the service user the possible effect of not sharing information about their care or treatment or other services you are providing.

You should act in the best interests of service users at all times. This includes giving service users enough information to make sure that they are able to make a decision about whether they give their consent for you to share their information with other people. If the service user objects to you sharing their information, you and your colleagues must respect their views.

If you decide not to liaise with other professionals when you might reasonably be expected to, or if a service user asks you not to do so, it is important that you keep clear records of this and are able to justify your decision.

If you are asked to disclose information, you should make sure that you only disclose the information that is relevant. If you are concerned about a request someone makes for information – for example, if it appears that the information they have asked for is not relevant – you should contact the person who has asked for the information so they can explain their request. You may also want to get legal advice or advice from a union or professional body if you are a member.

## Express consent

It is important that you get specific consent, in writing, if you plan to use identifiable information for reasons which are not related to the service user's care or if you have a good reason to believe that you do not have implied consent. This might include when you need information for research or teaching.

You should always use anonymised information if you can. You should consider how much information you need to change or remove to make sure that you are protecting the service user's confidentiality. For example, you should consider whether the area in which you work means that it might be possible to identify the service user by their job or by their medical condition.

If you need to use identifiable information, you should explain fully to the service user how you will use their information and whether there are any risks involved in disclosing it. You should make sure that their consent is clearly written down in the notes.

Sometimes, you may be asked for information by a third party who is not a health professional. This might be a request to send information to an insurance company or a solicitor. You should take steps to make sure that you have consent to provide any information. For example, if the request has come directly from a solicitor, you should make sure that the service user gives their consent for you to supply this information. You should also keep a written record of the information you have disclosed and only disclose what you have been asked to.

## Disclosing information without consent

There are a small number of circumstances where you might need to pass on information without consent, or when you have asked for consent but the service user has refused it.

In circumstances where it is not possible to get consent (for example, in some emergencies), you may have to disclose information if it is in the best interests of the service user.

It is important to make sure that a service user is able to give their consent. By this, we mean that the service user is able to understand the information you give them so that they can make an informed decision about whether they want to give their consent or not.

Whether a service user is able to give consent will depend on a number of different things, including their mental capacity and age. This guidance does not deal with these issues in detail.

You should speak to your employer (if you have one) or professional body for further guidance. You can also find links to other helpful publications on our website at **www.hpc-uk.org**

### Public interest

You can disclose confidential information without consent if it is in the public interest to do so.

This might be in circumstances where disclosing the information is necessary to prevent a serious crime or serious harm to other people. You can find out whether it is in the public interest to disclose information, by considering the possible risk of harm to other people if you do not pass it on compared with the possible consequences if you do. This includes taking account of how disclosing the information could affect the care, treatment or services you provide to the service user.

You should carefully consider whether it is in the public interest to disclose the information. You should speak to your employer (if you have one). You may also want to get legal advice. You may be asked to justify a decision to disclose information in the public interest (or a decision not to disclose information) so it is important that you keep clear records.

You should still take appropriate steps to get the service user's consent (if possible) before you disclose the information. You should keep them informed about the situation as much as you can.

However, this might not be possible or appropriate in some circumstances, such as when you disclose information to prevent or detect a serious crime.

## Disclosing information by law

The law describes who has rights to access information. For example, service users have a right, by law, to access information about them. Although not every request you receive for information will quote the law, it is important that you respect service users' rights to ask to see their information.

Sometimes, you may be asked for information directly under the law – for example, if a court has ordered you to disclose the information. You have a legal duty to keep to these kinds of requests.

You should tell the service user if you have disclosed information about them, unless there are good reasons not to. You should also only provide the information you have been asked for and keep a record of this in the notes.

### Disclosing information to regulators

There are a number of regulators – such as the General Medical Council, the Healthcare Commission and us – who may need you to pass on information to them. This section refers to regulators of health professionals, as you are more likely to receive requests for information from these organisations. However, the guidance here is still relevant to other types of regulators.

We recognise that disclosing information to regulators can cause problems. Registrants are often not sure about passing on identifiable information because they don't know how this information might be used. However, so that regulators can protect the public, it is important that you tell them if you have any concerns about whether a registered health professional is fit to practise. This is also related to your duties under our standards of conduct, performance and ethics.

### Reporting concerns to regulators

When you tell a regulator about your concerns, you may need to include information about a service user. This might be because your concerns are about the treatment of a particular service user or group of service users.

If you need to disclose information about a service user, you should make sure that:

- the information is relevant to your concerns;
- you have received the service user's consent to disclose the information;
- all identifiable information, including names and addresses, has been removed; and
- you keep an appropriate record of your reasons for disclosing the information, and you can justify your decision if you are asked to.

You might also want to discuss these matters with your line manager (if you have one) or a professional colleague.

If you are not sure whether to tell a regulator, what information to provide, or how they will use the information, you should contact the regulator for more advice.

## Requests for information

Sometimes regulators make requests for records that they need to help them in an ongoing investigation.

For example, if we are looking at a complaint about a health professional who isn’t keeping proper records, we might need to ask for copies of the records so that we can decide whether the health professional has met our standards. Regulators often have powers to ask for information from anyone, apart from the health professional the complaint relates to.

Regulators will often make these requests using ‘statutory powers’. These are legal powers that a regulator has to ask for information to help them in an investigation. You have to meet these requests but it is good practice to tell service users (if possible) that the regulator has asked for their information. You should make sure that you only provide the information the regulator has asked for, and provide anonymised or partly anonymised information when you can.

If you are concerned about a request – for example, if it appears that the information the regulator has asked for is not relevant – you should contact the regulator and ask them to explain their request. You may also want to get legal advice or advice from a union or professional body if you are a member.

## Identifiable information and being fit to practise

When we are investigating whether a registrant is fit to practise, we may need to ask for identifiable information. We often need to ask for identifiable information because we need it to form part of the evidence at a hearing.

We sometimes use our statutory powers to ask for information. If we do so, we will put this in writing and explain why we are asking for the information and how we will use it. Any information we use during a hearing has to have all the identifiable information removed from it, and we will always take appropriate steps to make sure that we protect a service user’s confidentiality. These steps include referring to a service user by their initials and holding hearings in private when necessary. We have a legal responsibility to handle this information responsibly and keep it confidential.

## Confidentiality and accountability

As an autonomous health professional, you are responsible and accountable for the decisions you make.

We feel that you are best placed to make practical decisions, taking account of the way in which you practice. You need to make informed and reasonable decisions about your own practice to make sure that you respect and protect the confidentiality of service users at all times. It is also important that you are able to justify the decisions you make.

## More information

If you have any questions, please contact us straight away. Please be aware, however, that we cannot offer legal advice. You can contact us at the following address.

Health Professions Council
Park House
184 Kennington Park Road
London
SE11 4BU

Phone: 020 7582 0866

You can download copies of our standards documents and other publications from our website at **www.hpc-uk.org.**

We recognise the valuable role professional bodies play in representing and promoting the interests of their members. This often includes guidance and advice about good practice which can help you meet the standards that we set.

For a list of publications produced by other organisations that can help you meet our standards, please see our website.

## Glossary

You may not be familiar with some of the terms we use throughout this document, so we have explained them below.

**Anonymised information**
Information about a service user that has had all identifiable information removed from it.

**Court order**
An order made by a judge or an officer of the court for something to happen.

**Express consent**
Specific permission, given verbally or in writing, to use information.

**Fit to practise**
When someone has the skills, knowledge, character and health to do their job safely and effectively.

**Health professional**
A person whose work is concerned with improving and promoting the health and wellbeing of their service users in a variety of different ways and in a variety of different settings.

**Identifiable information**
Any information that might identify a service user.

**Implied consent**
When a service user is aware of the possibilities for sharing information and their right to refuse this, but does not object.

**Informed consent**
When a service user has enough information to make a decision about whether they give their permission for information to be shared with other people.

**Professional bodies**
These organisations carry out work which may include promoting the profession, representing members, producing curriculum frameworks, overseeing post-registration education and training and running continuing professional development programmes.

**Register**
A published list of health professionals who meet our standards. The Register is available on our website at **www.hpc-uk.org**

**Registrant**
A health professional who appears on our Register. If a registrant does not meet our standards, we can take action against them. This may include removing them from the Register so that they can no longer practise.

**Regulator**
An organisation that makes sure people keep to certain laws or requirements.

**Service user**
Anyone who uses or is affected by the services of a registrant. This includes carers and relatives.

**Standards of conduct, performance and ethics**
Standards of behaviour that we expect from health professionals who are registered with us.

**Statutory powers**
Legal powers that certain organisations, such as regulators, have to ask for information.

**Third party**
Someone who is not the service user, a member of their family, or a carer or professional involved in that service user's care.