
Confidentiality – guidance for registrants

Contents

About this document.....	2
About us	3
Introduction	5
What information is confidential?	8
Keeping information safe.....	9
Consent and confidentiality	11
Disclosing information with consent	13
Disclosing information without consent	15
Disclosing information by law	17
Disclosing information to regulators	18
Confidentiality and accountability	20
More information	21
Glossary	22

About this document

This document provides guidance on some of the issues relating to how health and care professionals handle information about service users. It has been written primarily for our registrants, but might also be helpful to potential registrants, employers and other people who want to know how we expect 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 help you to make informed and reasonable decisions relating to issues of confidentiality, in line with our standards.

If you have any questions after reading this document, please see the 'More information' section on page 21. We also explain some of the terms and phrases we use throughout this document in the Glossary on page 22.

Language

In most of this guidance, when we refer to 'service users' we mean to include patients, clients and other people who are directly affected by the care, treatment or other services that registrants provide. The broad principles set out in this guidance also apply to registrants who provide services to organisations rather than individuals.

In this document, 'you' means a registrant and 'we' and 'our' refers the Health and Care Professions Council.

About us

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

Health and care professionals on our Register are called 'registrants'. If registrants do not meet our standards, we can take action against them. In serious cases, this may include removing them from the Register so that they can no longer practise.

Our registrants work in a variety of different settings and with a variety of different people. In this document, we refer to those who use or who are affected by the services of our registrants as 'service users'.

Who do we regulate?

We currently regulate the following professions.

- Arts therapists
- Biomedical scientists
- Chiropodists / podiatrists
- Clinical scientists
- Dietitians
- Hearing aid dispensers
- Occupational therapists
- Operating department practitioners
- Orthoptists
- Paramedics
- Physiotherapists
- Practitioner psychologists
- Prosthetists / orthotists
- Radiographers
- Social workers in England
- Speech and language therapists

We may regulate other professions in the future. For an up-to-date list, please see our website at www.hcpc-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.

Anyone who uses a protected title who is not registered with us, or who claims to be registered when they are not, is breaking the law and could be prosecuted.

DRAFT FOR CONSULTATION

Introduction

Confidentiality means the protection of personal information. This information might include details of a service user's lifestyle, family, health or care needs which they want to be kept private.

Service users expect the health and care professionals who are involved in their care or treatment, or have access to information about them, to protect their confidentiality at all times. 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 and care 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 all reasonable steps to keep information about service users safe;
- make sure you have the service user's 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, treatment or other services for them;
- only disclose identifiable information if it is necessary, and, when it is, 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 and care 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. You must:

1. Promote and protect the interests of service users and carers
2. Communicate appropriately and effectively
3. Work within the limits of your knowledge and skills

4. Delegate appropriately
5. Respect confidentiality
6. Manage risk
7. Report concerns about safety
8. Be open when things go wrong
9. Be honest and trustworthy
10. Keep records of your work

You can download copies of these standards from our website, or you can ask us to send you a copy. Please see the section 'More information' on page 21.

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 and all professions. 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 registrants 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 and care 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.

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. Confidentiality issues 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 and care professionals and their service users. You are not expected to be an expert on the law, but you must keep up to date with and meet your legal responsibilities. We have not referred to any law by name in this document to avoid any confusion and to make sure that this document can be easily understood by everyone who reads it.

Apart from the law, there is a large amount of guidance produced by other organisations, such as professional bodies, which may apply to you. If you are employed, your employer is also likely to have policies about confidentiality and sharing of information. You should keep up to date with and to follow any guidance or policies that are relevant to your practice.

Accessing and using information

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

This guidance focuses mainly on disclosing or sharing information with other professionals or third parties. However, you should be aware that accessing information (including care records) without good reason, permission or authorisation is considered to be breaking confidentiality, even if you do not then share the information with a third party. You should be sure that you have a legitimate reason for accessing information about service users, for example where you need it to provide care, treatment or other services. For other reasons you are likely to need specific permission from the service user.

DRAFT FOR CONSUMPTION

What information is confidential?

Information about a service user can be 'identifiable' or 'anonymised'.

By identifiable information we mean any information you hold about a service user that could identify them. Identifiable information about a service user must be treated as confidential.

This can include:

- personal details such as names and addresses;
- information about a service user's health, treatment or care that could identify them;
- photos, videos or other images; and
- other information that a service user, family member or carer shares with you that is not strictly related to the care, treatment or other services you provide.

On the other hand, anonymised information is information about a service user that has had all identifiable information removed from it and where there is little or no risk of a service user being identified from the information available. You may be able to share anonymised information more openly in some circumstances. However you should always consider carefully what you are sharing and with whom.

DRAFT FOR CONSULTATION

Keeping information safe

What our standards say

Our standards of conduct, performance and ethics say that:

‘You must treat information about service users as confidential’ (5.1)

and

‘You must keep records secure by protecting them from loss, damage or inappropriate access.’ (10.3)

This means that you need to take all 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 paper records in a lockable cabinet or room. 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 employed by an organisation, 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 action if it is brought to your attention that information about a service user has been lost, tampered with or accessed by someone inappropriately, 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 does not happen again.

Electronic records

Health and care records are increasingly being held electronically, rather than in paper form. We do not provide any specific guidelines about the types or features of computer-based systems which registrants should use.

This is partly because technology changes quickly and we would not want to prevent registrants from using new technologies. It is also because the type of electronic record system you use will depend on your practice, the type of setting you work in and other factors.

If you are employed, you should follow your employer’s policies and procedures for electronic record keeping and information security.

If you are self-employed and need to set your own policies and procedures, you must make sure that you continue to meet our standards. With regard to electronic records, this means ensuring that the records are kept secure and can only be

accessed by the appropriate people. An effective system for restricting access to the records – for example, personal logins and effective passwords – should be in place.

DRAFT FOR CONSULTATION

Consent and confidentiality

Identifiable information is disclosed for a number of reasons. It can happen when you refer a service user to another health and care 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 permission, or '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.

What our standards say

Our standards of conduct, performance and ethics say that:

'You must only disclose confidential information if:

- you have permission;
- the law allows this;
- it is in the service user's best interests; or
- it is in the public interest, such as if it is necessary to protect public safety or prevent harm to other people.' (5.2)

What is consent?

Consenting means that the service user understands and does not object to:

- the information being disclosed or shared;
- the reason for the disclosure;
- the people or organisations with which the information will be shared; and
- how the information will be used.

For consent to be valid, it must be **voluntary** and **informed**, and the person must have the **capacity** to make the decision.

'Voluntary' means that the decision is made freely and without coercion or pressure from professionals, family, friends or others.

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

By 'capacity' we mean a service user's ability to understand what they are consenting to, which is not diminished by an illness (including mental health condition) or disability.

There are two types of consent – **express consent** and **implied consent** – which are explained below.

- **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, treatment or other services you provide for the service user, or in a way which they would not reasonably expect. It is also important to get express consent if a service user has previously objected to you sharing their information with other people. Express consent could be spoken or written. If you are employed, your employer may use consent forms or have other procedures in place.
- **Implied consent:** This is where consent from the service user is not expressly spoken or written but can be taken as understood, for example because they have agreed to receive treatment, care or other services. 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 always seek express consent.

DRAFT FOR CONSULTATION

Disclosing information with consent

In most cases, you will need to make sure you have consent from the service user before you disclose or share any identifiable information.

Liaising with other practitioners

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

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

Most service users will understand the importance of sharing information with others who are involved in their care or treatment and will expect you to do so, 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;
- you only disclose the information that is relevant; and
- the professional receiving the information understands why you are sharing it and that they have a duty to keep it confidential.

If you decide not to liaise with other practitioners 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 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.

Other reasons

It is important that you get express consent, in writing where possible, if you plan to use identifiable information for reasons which are not directly related to the service user's care or if they would not reasonably expect their information to be used or shared in that way.

Examples might be where you need information for research, teaching or health and care services planning. In many cases it will be sufficient to use anonymised or de-identified information. Where possible, it is preferable to use this than to use identifiable information. 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 recorded in their notes.

Sometimes, you may be asked for information by a third party who is not a health and care professional. This might be a request to send information to an insurance company, government agency or a solicitor. You should take steps to make sure that you have express consent to provide any information.

In these situations, you should also keep a written record of the information you have disclosed and only disclose what you have been asked to. You should also offer to show the service user or provide a copy of any report you write about them for such purposes.

If a service user does not consent

You must 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. For example, you should make sure that you explain to the service user the possible effect of not sharing information about their care or other services you are providing.

If a service user who has capacity refuses to give consent for information to be shared with other health and care professionals involved in providing care, treatment or other services, you must respect their decision, even if it could diminish the care, treatment or other services they can receive.

However, if the law says you must disclose the information or it is justified in the public interest to share the information, you may do so without the consent of the service user. We explain more about such situations later in this document.

Children and young people

There are specific rules relating to consent for children and young people. In some cases, you may need to seek consent from a parent or someone with parental responsibility in order to use or share information about a child or young person. In other cases, a child or young person may be assessed as competent to give or withhold consent without the involvement of a parent. You should follow the policies and processes in this area of your employer, if you have one, or seek legal advice if you are unsure about a specific situation.

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.

If the service user is unable to consent

In some circumstances it may not be possible to seek consent from a service user to share information. For example, in some emergency situations, the service user may be unable to communicate or give consent because they are very unwell or unconscious. In other circumstances, the service user may not have capacity to give consent.

Whether a service user has capacity will depend on a number of different things, including their mental capacity and age. There is complex legislation and case law on these issues, and this guidance does not deal with them in detail. If a service user is unable to consent, you may have to disclose information if it is in the best interests of the service user – for example, to prevent significant harm.

Additionally, information may need to be shared with those closest to them (such as a carer or family members) to enable you or other health and care professionals to determine what is in their best interests. It is also reasonable to assume that they would want those closest to them to be kept informed of their condition, treatment or care, unless they previously indicated otherwise.

You should speak to your employer (if you have one) or professional body for further guidance.

Public interest

You can also disclose confidential information without consent from the service user 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 other services you provide to the service user.

You should carefully consider whether it is in the public interest to disclose the information. If you are unsure, you should speak to your manager or employer (if you have one), or your union or defence organisation. You may also want to get legal advice.

You need to be able 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.

Even where it is considered to be justified in the public interest to disclose confidential information, you should still take appropriate steps to get the service user's consent (if possible) before you do so. 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 report a serious crime.

DRAFT FOR CONSULTATION

Disclosing information by law

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 comply with the order.

You should tell the service user if you have had to disclose information about them by law, unless there are good reasons not to – for example, if telling them would undermine the prevention or detection of serious crime. You should also only provide the information you have been asked for and keep a record of this.

Keep in mind that not all requests from solicitors, the police or a court are made under legal compulsion. If disclosure is not required by law, and cannot be justified in the public interest, you must get express consent from the service user.

Requests from service users

Service users have rights to access information about them and it is important that you respect service users' rights to ask to see their information.

DRAFT FOR CONSULTATION

Disclosing information to regulators

There are a number of regulators – such as the General Medical Council, the Care Quality Commission and us – who may need you to pass on information to them. This section refers to regulators of health and care professionals, but is relevant to other types of regulators as well.

Reporting your concerns

We recognise that disclosing information to regulators can cause problems. Registrants are often not sure about passing on identifiable information because they do not 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 professional is fit to practise. This is also related to your duties under our standards of conduct, performance and ethics.

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 care or services provided to 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 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.

Identifiable information and the fitness to practise process

Sometimes regulators make requests for information about service users that they need to help them in an ongoing investigation about a registrant's fitness to practise. For example, if we are looking at a complaint about a registrant's record-keeping, we might need to ask for copies of the records so that we can decide whether the professional has met our standards.

Regulators often have powers to require information from people. They will sometimes make these requests using 'statutory powers'. These are powers that a regulator has from legislation to help them in an investigation. You have to provide the information, but it is good practice to tell service users (if possible) when you have disclosed information about them.

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 we ask for information using our statutory powers, we will put this in writing and explain why we are asking for the information and how we will use it. Information we use during a hearing will usually 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. We have a legal obligation to handle this information responsibly. For example, we use terms such as 'Service user A' to refer to individuals. We may also hold hearings fully or partly in private when necessary.

DRAFT FOR CONSULTATION

Confidentiality and accountability

As an autonomous health and care professional, you are responsible and accountable for the decisions you make, including ones about confidentiality and disclosing information.

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.

If you are employed by an organisation, they are likely to have policies and procedures in place relating to confidentiality. We expect you to practise in accordance with these

If you are self-employed or employ others, we expect you to put in place policies and procedures to make sure you are holding service users' information confidentially and sharing it only where lawful and appropriate.

However if you find that the policies and procedures relating to confidentiality in the organisation or service where you work are not suitable or appropriate, or do not enable you to fulfil your duties, you should raise your concerns. This might be to your manager or the person with responsibility for data protection where you work, or with another appropriate authority. If you feel that your employer's policy might mean that confidentiality is put at risk, you should contact your union, professional body or us for advice.

More information

If you are not sure about what you should do in a specific situation, you should consider asking for advice from your manager or someone who is responsible for data protection at your place of work.

The **Information Commissioner's Office (ICO)** is the UK's independent authority set up to uphold information rights and has produced guidance which you may find useful: <https://ico.org.uk/>

In addition we recognise the valuable role professional bodies providing advice and guidance to their members. If you are a member of a professional body, you may find it useful to ask for advice about good practice relating to confidentiality as it relates to your profession.

In particularly complex situations, you might also consider getting independent legal advice.

Contact us

You can contact us if you have any questions about this guidance or our expectations with regard to confidentiality. Please be aware, however, that we cannot offer legal advice. Our contact details are below:

The Health and Care Professions Council
Park House
184 Kennington Park Road
London
SE11 4BU.

tel +44 (0)300 500 6184

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

Glossary

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

Accountable

As an accountable health and care professional, you will be responsible for the decisions you make and you may also be asked to justify them.

Anonymised information

Information about a service user that has had all identifiable information removed from it, and where there is little or no risk of an individual being identified.

Autonomous

As an autonomous health and care professional, you make your own decisions based on your own judgement.

Court order

An order made by a judge or court for something to happen.

Disclose / disclosure

When information is revealed, released or passed on from one person to another.

Express consent

Specific permission from the service user, given verbally or in writing, to use or share information about them.

Fitness to practise

A professional is fit to practise if they have the training, skills, knowledge, character and health to do their job safely and effectively. We can take action if we have concerns about a registrant's fitness to practise.

Identifiable information

Any information that might identify a service user, e.g. their name, address or details of their health condition, treatment or care.

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

Organisations which promote or represent members of a profession. They may also carry out work such as providing guidance and advice, producing curriculum frameworks, overseeing post-registration education and training, and running continuing professional development programmes.

Public interest

Disclosures of information are made in the 'public interest' where they are necessary to prevent a serious threat to public health, national security, the life of the individual or another person, or to prevent or detect serious crime.

Register

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

Registrant

A health and care professional who appears on our Register and meets our standards.

Regulator

An organisation that protects the public by making sure people or organisations keep to certain laws or requirements.

Service user

Anyone who uses or is affected by the services of a registrant. This includes patients and clients.

Standards of conduct, performance and ethics

Standards of behaviour that we expect from health and care professionals who are registered with us.

Statutory powers

Certain organisations, such as regulators, have powers derived from legislation. This sometimes includes the power to require information from people.

Third party

Someone who is not the service user, a member of their family or a carer or the professional involved in their care or treatment. This could include another professional or an organisation that has requested information.