

Health Professions Council
Conduct and Competence Committee, 30th January 2007
Confidentiality guidance

Executive Summary and Recommendations

Introduction

At its meeting on 19th September 2006, the Conduct and Competence Committee considered a draft copy of guidance to the standards of conduct, performance and ethics on confidentiality.

A further draft is attached, together with a draft of the consultation letter.

Decision

The Committee is invited to approve the attached documents for consultation and to recommend approval by the Council.

Background information

None

Resource implications

None

Financial implications

None

Background papers

None

Appendices

Appendix 1: Consultation letter

Date of paper

3rd January 2007

[inside cover]

Our standards of conduct, performance and ethics describe our expectations of registrants in terms of their professional behaviour. Our standards say that:

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 any important information about conduct, competence or health
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 professional
7. You must maintain proper and effective communications with service users and other professionals
8. You must effectively supervise tasks you have asked others to carry out for you
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 integrity and honesty
14. You must make sure that any advertising is accurate
15. You must make sure that your behaviour does not damage public confidence in you or your profession

You can download copies of the 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 16.

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This document

This document provides advice to registrants about some of the issues around handling information about service users. It might also be helpful to potential registrants, employers and others who want to know the ways in which health professionals are expected to approach issues of confidentiality.

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

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’. This includes carers and relatives.

Please read the whole of this document. If you have any further questions, please see the ‘More information’ section on page 15.

Please let us know if you would like to be sent a copy of the document in an alternative format.

About us

We are the Health Professions Council. We are a health regulator, and our job is to protect the health and wellbeing of people who use the services of the health professionals registered with us.

To protect the public, we set standards that health professionals must meet. Our standards cover health professionals’ education and training, behaviour, professional skills, and their health. We publish a register of health professionals who meet our standards.

Health professionals on our register are called ‘registrants’. If registrants do not meet our standards, we can take action against them which may include removing them from the register so that they can no longer practise.

When we say health professional, we mean 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.

Who do we regulate?

The health professions we regulate at the moment are:

- arts therapists;
- biomedical scientists;
- chiropodists and podiatrists;
- clinical scientists;
- dietitians;
- occupational therapists;
- operating department practitioners;
- orthoptists;
- paramedics;
- physiotherapists;
- prosthetists and orthotists;
- radiographers; and
- speech and language therapists

We may regulate other professions in the future. For an up-to-date list of professions, please see our website: 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 titles '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 that professionals involved in their care or who have access to information about them will protect their confidentiality at all times.

Information might include details of a service user's lifestyle, family or medical condition which is sensitive to them and which they want to be kept private. Breaches of confidentiality can affect the care or services you provide by making service users less likely to provide the information needed to care for them. It can also affect the trust of service users in the professionals involved in their healthcare and public trust and faith in all healthcare professionals.

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

You should:

- take reasonable steps to keep information about service users safe;
- obtain informed consent for disclosure and obtain express written consent when information is being used for reasons which are unrelated to the care of a service user;
- always disclose the minimum amount of identifiable information possible;
- keep service users informed of disclosures (where practical and possible);
- appropriately record disclosures;
- keep up-to-date with the relevant law and best practice;
- where appropriate, seek advice from HPC, colleagues, professional bodies, unions or legal advice; and
- make your own informed decisions about disclosure and be able to justify them.

This document covers the principles set out on the previous page and provides additional guidance about some of the issues which come up around confidentiality. It builds upon the expectations of health professionals which are outlined in our Standards of conduct, performance and ethics.

Our Standards of conduct, performance and ethics

As registrants work in a variety of settings and undertake a variety of different roles we have written our standards so that they are relevant to all our registrants, regardless of where or how they work. They are also written in a way so that they can take into account changes in the law, technology or working practices which might take place over time.

Our standards are flexible enough to allow individuals and employers to take into account local circumstances, such as a specific area of practice or the availability of resources, to develop ways of working which are practical, effective and meet the needs of service users.

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

If your practice is called into question we will take into account any steps you have taken, including following this guidance, in deciding whether you have met our standards.

Confidentiality and the law

Your duty as a registrant to respect and safeguard 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. Breaches of confidentiality can affect your registration.

It is a legal responsibility because of principles established by the law which say that professionals have an obligation of confidentiality to those with whom they have a professional relationship. Legislation also states how information should be kept, handled and disclosed.

This guidance draws on relevant laws that affect health professionals and their service users. 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.

Identifiable information

Throughout this document we refer to ‘identifiable information’. Identifiable information is any information held about a service user which could identify them. This includes personal details such as names and addresses and also includes pictures or videos.

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...You must be particularly careful not to reveal, deliberately or accidentally, confidential information that is stored on computers.”

and

“You must protect information in records against loss, damage or use by anyone who is not authorised. You can use computer based systems for keeping records but only if they are protected against anyone tampering with them.”

You need to take reasonable steps (such as those described above) to safeguard information about service users.

By reasonable steps we mean that you need to take sensible, practical measures to make sure that information is kept safe. For example, you could store records in a locked container when moving 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.

If you are employed your employer will normally have policies and guidelines for how you should store, handle and provide information to others. In the vast majority of circumstances following these policies will allow you to comfortably meet our standards. 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 inform your employer (if you have one) and take steps to try and make sure that the problem doesn't happen again.

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

Disclosing information

Using information

Our 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 the 'use' of information we mean the handling of 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 limit your access to confidential information (wherever possible) to that which is relevant and necessary to protect the health and wellbeing of service users.

Consent and confidentiality

Disclosure of identifiable information happens for a number of reasons. It can happen when making a referral to another professional or when a service user asks for information to be given to a third party.

Any handling of information about service users touches on issues of consent and how this should be obtained. It is important that you seek and obtain informed consent before sharing or disclosing information or using information for reasons which are unrelated to care or the provision of services. 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 are happy for information to be shared with others. Service users should be fully aware why any information about them is to be shared or disclosed and to whom the information will be given. They should also be informed of the likely impact upon their care or the services they receive if they do not consent.

There are two types of informed consent:

Implied consent: If you are using identifiable information in order to care for a service user then in most circumstances you will have implied consent. Most service users will understand the importance of sharing information within the healthcare team. If you are unsure whether you have implied consent you should obtain express consent.

Express consent: This is where you are given specific consent to do something. It is necessary to gain express consent if you are using identifiable information for reasons which are unrelated to care or the provision of services. This might be when information is needed for use in teaching or research. It is also important to gain express consent where a service user has previously objected to information about them being shared with others.

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

Liaison with other professionals

One of the most common reasons for disclosing confidential information will be liaising with other health professionals. This might include discussing a case with a colleague or making a referral to another practitioner.

Sharing information is often part of best practice. Care or treatment of a service user is rarely undertaken by just one professional and effective communication and sharing of information within the healthcare team is often an important way of ensuring continuity of care.

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

- it is necessary to provide the information and the information provided is relevant;
- the professional receiving the information understands why it is being shared and that it should be kept confidential;
- you and your colleagues respect the wishes of a service user if they object to information being shared; and
- you explain to the service user the possible effect of not sharing information about their care or treatment.

At all times you should act in a way which is in the best interests of service users. This includes making reasonable efforts to persuade a service user to allow information to be shared or disclosed if this might be in their best interests.

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

Example

A paediatric speech and language therapist is asked by the parents of a 6 year old boy to produce a report about his language difficulties. She would normally contact other professionals involved in his care when producing her report to gather information and to discuss her assessment. She would then normally send a copy of her report when complete.

The parents tell her that they would prefer she didn't contact any other professionals directly because they want an independent opinion. She discusses all the options with them and respects their wishes. They provide her with copies of previous reports to read. She documents in the report the information she took into account and why she didn't contact other professionals. She provides the parents with copies of her report which they can distribute if they want to.

In this example the registrant has respected the confidentiality of her service user by following the informed wishes of his parents. She has kept clear records and, if asked to, can justify her decision not to speak to other professionals.

Express consent

It is important that specific, written consent is obtained if identifiable information is to be used for purposes unrelated to the care of a service user or if you have good reason to believe that you do not have implied consent. This might include when information is needed for use in research or teaching.

Anonymised information should always be used if this is satisfactory. This involves removing any identifiable information such as names, addresses or anything else which might identify the service user.

You should consider how much information you need to change or remove to make sure that the confidentiality of the service user is protected. 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 occupation or by their medical condition.

If identifiable information is necessary you should explain fully to the service user how the information is to be used and any risks in consenting to disclosure. You should make sure that consent is clearly documented in the notes. It is important that once consent is received you do not move beyond that consent without gaining further consent from the service user concerned.

Sometimes requests may be made for information to be disclosed to 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 consents to this information being given. You should also clearly document the disclosure and only disclose what you have been asked to.

Disclosure 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 it has been refused by the service user.

In circumstances where it is not possible to obtain consent, for example, in an emergency, a decision to disclose information should be made if it is in the best interests of the service user.

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

Whether a service user is competent to give consent will depend upon their mental health and their age. This can include children and adults with learning disabilities. If you think that a service user lacks competence to give consent, you should raise this with a colleague.

Public interest disclosure

Confidential information may be disclosed without consent or where consent has been withheld if it is in the public interest to do so.

This might be in circumstances where information is necessary to prevent a serious crime or serious harm to others. The public interest is determined by balancing the potential risk of harm to others if the information wasn't disclosed against the possible consequences of disclosing the information. This includes taking into account the effect of disclosing the information upon the care or treatment of the service user.

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

Appropriate steps should still be taken to obtain the consent of the service user before disclosure occurs. They should be kept informed of the situation as far as possible.

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

Example

Sue, an occupational therapist who works in a community mental health team, has been supporting a service user through regular visits to his home. During these visits she has noticed a series of sexually explicit images from magazines displayed around his room, which she finds distasteful. She discusses her concerns with her line manager, but as the images do not appear to be illegal, they do not take any action.

However, during her last visit Sue notices other images which show the service user abusing a child.

Sue discusses what she has seen with her line manager who brings the matter to a multi-disciplinary team meeting. At the meeting, those present decide that as there is evidence of a serious criminal offence, the public interest in protecting others from harm in this instance outweighs the service user's right to confidentiality. They discuss whether it would be appropriate to inform the service user first, but decide that it is important that the evidence is not destroyed and that they act quickly. They inform the police and keep records of their considerations.

In this example, a decision to disclose information has been taken after careful consideration by the multidisciplinary team, weighing the rights of the service user against the wider public interest.

Disclosures required by law

The law describes who has rights to access information. For example, service users have a right to access information about them under the law. Although not every request for information will be made quoting the law, it is important that you respect service users' rights to obtain information about them.

Sometimes requests might be made directly under the law. This might be a formal request made by a solicitor or the order of a court. You have to comply with requests to disclose information to comply with legal obligations.

You should inform the service user of the disclosure unless there are good reasons not to. You should also only provide the information requested and record the disclosure in the notes.

Disclosure to regulators

There are a number of regulators such as the General Medical Council, the Audit Commission and us to whom disclosure of information might be necessary. This section refers to regulators of healthcare professionals as this is a common area where registrants might be asked for information. However, the guidance here is still relevant to other types of regulator.

We recognise that disclosing information to regulators can be problematic. Registrants are often hesitant about disclosing identifiable information because they are uncertain about how this information might be used. However, so that regulators can protect the public it is important that they are informed when there are concerns about the fitness to practise of a registered health professional. This is also related to your duties under our standards of conduct, performance and ethics.

Reporting concerns to regulators

In the course of telling 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;
- the service user's consent has been sought for the disclosure and/or;
- identifiable information – including names and addresses has been removed;
and

- you appropriately record the reasons for the disclosure and can justify your decision if asked to.

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

If you are uncertain about whether to inform a regulator, what information to provide, or how the information will be used, you should contact the regulator for further advice.

Requests for information

Sometimes requests are made by regulators for records in order to assist them in an ongoing investigation.

For example, if we are looking at a complaint about inadequate record keeping we might need to ask for copies of the records so that we can decide whether our standards have been met. Regulators often have powers to request anyone who they think can provide them with information or documents, apart from the health professional about whom an allegation has been made.

Such requests will often be made using ‘statutory powers’. These are powers that a regulator has under law to request information to assist them in an investigation. You have to comply with such requests but it is good practice to inform service users (wherever possible) that information has been requested. You should take care that you only provide the information requested and provide anonymised or partially anonymised information when this is satisfactory.

If a request causes concern, for example, if it appears that the information requested is not relevant to the matters at hand, you should contact the regulator for clarification. You may also wish to seek legal advice or the advice of a union or professional body.

HPC, fitness to practise and identifiable information

In the course of investigating the fitness to practise of a registrant, we may need to request identifiable information. We often need to ask for identifiable information because we need this to form part of the evidence at a hearing.

We sometimes use our statutory powers to request information. If we do so we will put this into writing and explain why we asking for the information and how it will be used. Any information we use in the course of a hearing has to be anonymised and we will always take appropriate steps to make sure that confidentiality is protected. These include referring to a service user by their initials and holding hearings in private

when necessary. We have a legal responsibility to handle such information responsibly and confidentially.

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 into account the way or area in which you practice. You need to make informed, reasoned decisions about your own practice to make sure that you respect and safeguard 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 do not hesitate to contact us. Please note, however, that we are unable to offer legal advice. You can contact us at the following address:

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

Telephone: 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 played by professional bodies in representing and promoting the interests of their members. This often includes guidance and advice about best practice which can help you meet the standards laid out in this document.

For a list of publications produced by other organisations which can help you meet our standards, please see our website.¹

¹ It is planned that this information will be available on our website, once the finalised document is published.

Glossary

Court order

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

Express consent

Specific consent, written or oral, for care, treatment or use of information.

Fitness to practise

When we say that someone is 'fit to practise', we mean that they have the skills, knowledge, character and health to do their job safely and effectively. We also mean that we trust them to act legally.

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 which might identify a service user.

Implied consent

When a service user is aware of the potential for sharing information and their right to refuse and makes no objection.

Professional body

The professional bodies representing the health professions regulated by the HPC.

Public interest disclosure

Providing information without consent but where it might be needed to prevent serious harm.

Register

A published list of health professionals who meet the HPC's standards. The register is available on our website.

Registrant

A health professional that appears on our register

Regulator

An organisation that acts to make sure that people comply with certain laws or requirements.

Service user

When we say ‘service user’ we mean anyone who uses or who is affected by the services of a registrant.

Standards of conduct, performance and ethics

A document which sets out the behaviour that we expect from health professionals who are registered with us.

Statutory powers

Legal powers that certain bodies, such as regulators, have to request information.

Third party

When we say third party we mean someone who is not the service user, their family or carer or a professional involved in that service user’s care.