
Education and Training Committee, 3 March 2016

Reviewing the guidance on confidentiality

Executive summary and recommendations

Introduction

The HCPC published the document 'Confidentiality – guidance for registrants' in 2008. This guidance document provides advice to registrants on handling information about service users and other issues relating to confidentiality. It was produced to assist registrants in meeting the standards of conduct, performance and ethics (SCPE), which include requirements related to respecting the confidentiality of service users' information.

This paper proposes a work plan, including activities and expected timescales, for a review of the guidance. The review will take account of any relevant changes in law or practice, as well as changes resulting from the recent review and re-publication of the SCPE.

If agreed, the Executive plans to present a draft revised version of the guidance and a draft consultation document to the Education and Training Committee for consideration in September 2016.

Decision

The Committee is invited to discuss this paper and agree the proposed work plan for a review of the guidance on confidentiality.

Background information

- The current version of the document 'Confidentiality – guidance for registrants' is appended to this paper and can also be found on the HCPC website: <http://www.hcpc-uk.org/publications/brochures/index.asp?id=164>
- The revised SCPE were published on 26 January 2016: <http://www.hcpc-uk.org/aboutregistration/standards/standardsofconductperformanceandethics/>

Resource implications

The resource implications include those associated with the review activities outlined in this paper, the public consultation process and analysis, and publication and launch of the revised guidance. These will be taken into account in departmental work plans for 2016/17.

Financial implications

The financial implications, including reprinting the guidance document, will be accounted for in departmental planning for 2016/17.

Appendices

Appendix 1: Confidentiality – guidance for registrants (current version)

Date of paper

12 February 2016

Reviewing the guidance on confidentiality

1. Introduction

- 1.1 This paper proposes review activities and an estimated timeline for a review of the guidance document 'Confidentiality – guidance for registrants'.

2. About the guidance

- 2.1 The document 'Confidentiality – guidance for registrants' was published in June 2008. It was intended to provide further information for registrants on meeting the requirements around maintaining confidentiality
- 2.2 The document covers the responsibilities of registrants in respect of service user information, including the following:
- keeping service user records and other information safe;
 - handling information about service users;
 - the importance of obtaining consent from service users to share or disclose their information;
 - definitions of implied and express consent;
 - when it is possible to disclose information without consent; and
 - disclosing information by law.
- 2.3 A copy of the current guidance has been provided at Appendix 1.

3. Reviewing the guidance

- 3.1 We are proposing to undertake a review of the guidance on confidentiality to ensure it remains up to date and useful for our registrants and other stakeholders. We carry out a formal review of all published guidance periodically for this reason. The guidance on confidentiality has not undergone a formal review since it was published in 2008.
- 3.2 Additionally, in January 2016 we published a revised version of the standards of conduct, performance and ethics (SCPE). Whilst the expectations around confidentiality and using service user information in the standards have not been changed drastically from the previous version, the relevant standards do use different language and follow a different format. We would use the review to ensure the guidance is in line with the revised SCPE, and that it is effective at explaining these expectations.
- 3.3 We are conscious that the accepted interpretation of legislation relating to confidentiality can sometimes change. Therefore a key part of the review

would also be to ensure that the guidance provides the most up-to-date legal information on these issues.

4. Proposed review activities

4.1 We propose the following activities to form the review:

- obtain legal advice on current legislation and interpretation regarding confidentiality and using service user information;
- consider where amendments need to be made in line with revised SCPE;
- examine past queries received by the Policy and Standards department on confidentiality-related issues;
- review a sample of fitness to practise cases (i.e. hearing outcomes) relating to confidentiality;
- review the standards and guidance on confidentiality produced by other regulators; and
- consider findings of the literature review on public and professional attitudes towards confidentiality of healthcare data commissioned by General Medical Council.

5. Proposed timeline

5.1 The Executive proposes the timeline below for the review. We have taken into account other planned work within the Policy and Standards department during 2016/17 in developing this plan.

Activity	Timescale
Paper on proposed review to ETC	3 March 2016
Review activities (as above)	March–June 2016
Drafting revisions to guidance and consultation document	July–August 2016
Draft guidance and consultation document to ETC	8 September 2016
Draft guidance and consultation document to Council	21/22 September 2016
Public consultation (15 weeks – exact dates TBC)	3 October 2016–13 January 2017

Consultation outcomes and revised guidance to ETC	March 2017
Consultation outcomes and revised guidance to Council	March 2017
Publication	June 2017

Information for registrants

Confidentiality – guidance for registrants

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About 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 and care 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 19. We also explain some of the terms and phrases we use throughout this document in the glossary on page 20.

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

About us

We are the Health and Care Professions Council. 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. 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'. This includes carers and relatives.

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 of professions, 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.

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 and care 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 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;
- 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 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.

- 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 relevant 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 provide care or services (so far as possible).
- 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 19.

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 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.

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. 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. We have not referred to any law by name to avoid any confusion and to make sure that 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 from being lost, damaged, accessed by someone without appropriate authority, or tampered with'.

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 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 does not happen again.

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.

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 permission to use the information or the law allows you to do so’.

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.

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 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 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 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 practitioner.

Sharing information is often part of good practice. Care is rarely provided by just one health and care practitioner, 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 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 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 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.

Where express consent is needed

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 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 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.hcpc-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 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 report 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 and care 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 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.

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 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 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 professional'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 ask for information from anyone, apart from the 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.

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. 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. These steps may 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.

Confidentiality and accountability

As an autonomous health and care 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:

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

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.

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 an officer of the court for something to happen.

Disclose

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

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.

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 a profession, representing members, producing curriculum frameworks, overseeing post-registration education and training, and running continuing professional development programmes.

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. 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 protects the public by making sure people keep to certain laws or requirements.

Service user

Anyone who uses or is affected by the services of a registrant. This may include carers and relatives.

Standards of conduct, performance and ethics

Standards of behaviour that we expect from health and care 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.

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