

Confidentiality

Throughout your life, information is recorded about you by different organisations. Within the NHS, doctors need to keep information about your illnesses and treatment so that if another doctor sees you they know what care you have received so far. This information is kept securely and access to it is carefully controlled. This factsheet covers the rules on confidentiality and in what circumstances it can be breached.



KEY POINTS

- You can talk to your doctor about who you do and do not want to be told information about your treatment.
- If you do not want your doctor to tell anyone your personal information, your doctor is under a legal obligation not to disclose this information except in exceptional circumstances.
- Doctors should engage with carers, and listen to their concerns. However, a carer does not have a right to be given personal information about the person they care for.

This factsheet provides information on the following -

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1. What is confidentiality and why is it important?

Confidentiality is a basic principle in the relationship between professionals and patients. The principle means that a doctor should not tell other people personal things about a patient unless it is absolutely necessary. Confidentiality is based on privacy and respect for an individual's choice in who finds out personal things about them. Sometimes this has to be weighed-up against 'public interest', meaning that in some circumstances it is for the benefit of the general public that information should be disclosed.

Good medical care requires patients to be frank to enable the doctor to make an accurate diagnosis and plan treatment. If patients could not trust clinicians to keep 'secrets', honesty would become less likely and this would undermine medical care.

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2. What are the rules on confidentiality?

There is no Act of Parliament that specifically covers confidentiality between health professionals and patients. However, your confidentiality is still protected by the courts,¹ and so each professional organisation has its own policy on confidentiality that must be kept to. For example, all staff working for the NHS must follow the [NHS Code of Practice on Confidentiality](#). Further guidance is given to individual professionals by their regulatory bodies. For instance, principles governing confidentiality for doctors can be found in [guidelines produced by the UK General Medical Council](#).²

In addition to telling professionals how to maintain confidentiality, these documents instruct them who can read information about you, what information they have access to, and under what circumstances information about you can be given to other people.

How can I find out an organisation's policy?

Confidentiality policies are in use in most health, social, government and voluntary organisations servicing people with mental health problems. A copy of the confidentiality policy should be available for any services you are receiving.

When does confidentiality arise?

The law of confidence applies to your personal information if the person who receives the information would be reasonably expected to know that you would expect that the information should be treated confidentially.³ This applies whenever you give personal information to a doctor, and can also apply in other everyday situations, such as giving information to an employer.

Can I choose who I want told about my health?

Before disclosing any information about yourself, the doctor or another professional, must ask for your consent. You may want a member of your family or a friend to know some information that the doctor has told you. Mental illness may affect your judgement at times and so it can be a good idea to tell the doctor in advance who you would like to be told if you become ill, and what information you would like them to be told.

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3. Can my personal information ever be disclosed without my consent?

There are some exceptional circumstances when a doctor can disclose information without your consent. These circumstances are where there is a risk of serious harm to you or to others or a risk of a serious crime being committed. An example of this would be if someone told their doctor that they were going to try to severely hurt themselves or other people. The doctor could decide to disclose this information to someone who worked closely with that person, or to the police.

If for some reason you are unable to give your consent to information being disclosed, a doctor may be able to disclose information if this is in your best interests.⁴ This might include if you are unconscious or particularly unwell.

In certain circumstances, your personal information can be given to a specified organisation if this is for the public good and/or in the interests of patients.⁵ Your personal information can also be disclosed if this is required by law.

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4. Confidentiality and professionals outside the NHS

Confidentiality rules may apply whenever you use a service and you need to disclose personal information about yourself. A service which deals with confidential information will have a confidentiality policy which should be made available to you on request. There should be strict rules about disclosure and you should be consulted before any disclosure is made or told if information is going to be disclosed about you without your consent.

As within the NHS, information is shared between staff. However, this should be done on a “need to know” basis and there should be guidelines as to how this is done. When information is shared outside an organisation, the organisations guidelines should be followed.

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5. What does the Data Protection Act do to protect my personal information?

The Data Protection Act 1998 sets out how anyone dealing with other people’s data should treat personal information that is kept on a computer

or in writing. In healthcare, your health records are considered personal data under the Data Protection Act. This means that the information in these records must be up-to-date, accurate and relevant. Your information should also be protected against unauthorised access.

The person who has control over the stored information is called the “data controller”, and the person whose data is stored is called the “data subject”. If you would like to find out what information is held about you, you can make a “subject access request”. There is normally a fee for making this request.

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6. What does the Human Rights Act do to protect my personal information?

The Human Rights Act 1998 protects your rights under the European Convention on Human Rights. No public organisations, such as the NHS, should infringe your human rights. Article 8 of the convention says that you have the right to respect for your “private and family life”. This means that a doctor may be breaching your human rights if they disclose your personal information, such as your medical records, without your consent.⁶

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7. Confidentiality and carers

You do not have to agree to your carer being given information regarding your treatment. If you tell your doctor that you do not want anyone to be given information about you then this should be respected. However, it can sometimes be very positive for your carers and loved ones to be involved in your treatment, and a lot of patients choose to allow their doctors to talk to members of their family. This can mean that, if you become unwell, there will be better links between your family and the doctors involved in your treatment and so it may be easier for your family to understand why you have become worse and give this information to your doctor.

Your carers and family members may try to contact your doctors without your consent. A doctor will not be able to discuss your treatment with your family without getting your consent, but the doctor will be able to listen to your carers and family to get their perspective on your illness, and this may shape the way they approach your treatment.

The National Service Framework for Mental Health (1999) sets out standards the Department of Health expects from its mental health services. It states that 'the service user's consent should always be explicitly sought before information (about medication, other treatment and care) is passed on to their carer' and that 'if the service user is incapacitated, information may be passed to the carer if it is in the service user's best interests'.⁷

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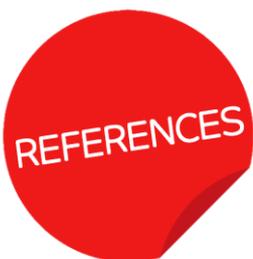
8. Confidentiality and complaints

A breach of confidentiality can be very upsetting. It can weaken the trust between a professional and yourself. If you think that there has been a breach of confidentiality it is important to determine if and why a disclosure was made. Firstly you should obtain a copy of the guidelines on confidentiality used by the organisation. You may wish to ask the person who breached your confidentiality under what grounds they did this. An advocate should be able to help you do this.

If you do not get any satisfactory explanation as to why your confidentiality was breached and you feel that relevant guidelines were not followed then you can make a complaint to the organisation in question. A copy of the complaints procedure should be available from the organisation or a member of staff. An advocate, perhaps from the Independent Complaints Advocacy Service (ICAS) may be able to help you make a complaint. Further information and contact details for ICAS can be found in our [factsheet on Complaining About the NHS or Social Services](#).⁸

You will also have the option of taking legal action against the NHS if you think that there has been a breach of confidence, breach of the Data Protection Act or breach of your human rights. You will need to get specialist legal advice before making a claim, and you could try contacting Community Legal Advice on 0845 345 4 345 to discuss funding options and to find a solicitor near you.

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¹ *Hunter v Mann* (1974) QB 767

² General Medical Council, http://www.gmc-uk.org/guidance/ethical_guidance/confidentiality.asp (Accessed 23rd March 2011)

³ *Attorney General v Guardian Newspapers Ltd* [1988]

⁴ General Medical Council, Confidentiality Guidance 2009, http://www.gmc-uk.org/static/documents/content/Confidentiality_0910.pdf (Accessed 23rd March 2011) at para 61

⁵ *Health and Social Care Act 2001*, s60. See Department of Health Guidance Notes, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/@dh/@en/documents/digitalasset/dh_4066384.pdf (Accessed 23rd March 2011)

⁶ *Z. v. Finland*, 9/1996/627/811, European Court of Human Rights, 25 February 1997

⁷ Department of Health, [National Service Framework for Mental Health](#) (1999) Page 75, footnote

⁸ <http://www.rethink.org/factsheets>

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