

DUTY OF CONFIDENTIALITY

This addendum is intended to support GPs in primary care to manage the interaction between the duty to share and the duty of confidentiality.

Sharing limited datasets for direct care

Most individuals understand and expect that relevant information will be shared within the direct care team to provide their care. 'Direct care' refers to activities that directly contribute to the diagnosis, care and treatment of an individual. The direct care team is made up of those health and social care professionals who provide direct care to the individual, and others, such as administrative staff, who directly support that care. You should share relevant information with those who provide or support direct care to an individual, unless the individual has objected. Access should be role based and fully auditable as per the MCR Audit Procedure.

The common law duty of confidentiality

The duty of confidentiality assumes that, in most direct care circumstances, it is reasonable to infer that the individual agrees to the sharing of relevant information, even though this has not been directly expressed.

The duty is met if all of the following are in place;

- a. You are accessing the information to provide or support the individual individual's direct care, or are satisfied that the person you are sharing the information with is accessing or receiving it for this purpose.
- b. Information is readily available to individuals, explaining how their information will be used and that they have the right to object. This can be provided in leaflets and posters, on websites, and face to face. It should be tailored to individuals' identified communication requirements as far as practicable.
- c. You have no reason to believe the individual has objected.
- d. You are satisfied that anyone you disclose personal information to understands that you are giving it to them in confidence, which they must respect.

For whole/full record sharing please see advice from the National Data Guardian below.

Sharing the full GP record

My Care Record also incorporates full GP record sharing using SystemOne, EMIS and InPS Vision. This may be between GPs and organisations such as, but not limited to the community teams, extended access providers, hospices, acute hospitals, mental health trusts and the ambulance service.

The National Data Guardian has recommended that where there are whole record sharing initiatives it is therefore essential to inform the public about how their data will be used and shared and individuals should be provided with an opportunity to object to such sharing. It may be wise to adopt an approach of asking for explicit consent to whole record sharing where this is a new initiative that individuals may not be aware of and where it is unlikely to align with individuals' reasonable expectations of how their health and care data is shared for direct care.

The full record is more likely to contain information which is not relevant to the current episode of care, therefore if you believe the individual would be surprised to learn you are disclosing or viewing their full record it is recommended, and also good practice, to discuss it with them. This is also in line with the current National Data Guardian and Information Commissioner recommendations for full record sharing.

This discussion could be as simple as “The health and care professional treating you will be able to see your full records, so you don’t need to worry about forgetting something important. They’re not interested in anything that isn’t related to your condition, but they might spot something relevant from your history. Health and care professionals are bound by their professional regulatory bodies’ code of practice and understand the importance of confidentiality and appropriate use of your records.

Exclusions

Circumstances where informing the individual is not possible or is inappropriate

There are limited circumstances where it may not be possible, or clinically appropriate, to discuss the disclosure or access with the individual. This should be documented on the record, as with any ‘best interests’ decision.

Some reasons why you may decide not to inform the individual might be:

- a. the disclosure is required by law
- b. you are satisfied that they have already been made aware by a suitable person
- c. the individual does not have capacity to make the decision. In such a case, you should follow the guidance on disclosures about individuals who lack capacity
- d. you have reason to believe that seeking consent would put you or others at risk of serious harm
- e. seeking consent would be likely to undermine the purpose of the disclosure, for example by prejudicing the prevention, detection or prosecution of a serious crime
- f. action must be taken quickly, for example in the detection or control of outbreaks of some communicable diseases where there is insufficient time to contact the individual
- g. for sharing records of whole cohorts, it is not feasible given the number or age of records, or the likely traceability of individuals (this would be noted in the research or project plan).
- h. you have already decided to disclose information in the public interest.

This list is not exhaustive, and you should use your clinical judgement as appropriate. Although individuals may already be aware that the whole record is shared, they may not have a detailed understanding of which organisations are involved. An example of this may be a new organisation which joins the shared care record programme. Health and care professional can support the individual’s right to be informed, and manage their reasonable expectations, by making individuals aware when a record may be accessed by the new organisation (for example, following a referral).

When an individual objects

If an individual objects to particular personal information being shared for their own care, you should not disclose the information unless it would be justified in the public interest, or is of overall benefit to an individual who lacks the capacity to make the decision. You should explain to the individual the potential consequences of a decision not to allow personal information to be shared with others who are providing their care. You should also consider with the individual whether any compromise can be reached. If, after discussion, an individual

who has capacity to make the decision still objects to the disclosure of personal information that you are convinced is essential to provide safe care, you should explain that you cannot refer them or otherwise arrange for their treatment without also disclosing or having access to that information.

Circumstances may arise in which an individual cannot be informed about the disclosure of personal information, for example in a medical emergency. In such cases, you should access the relevant information promptly to provide direct individual care. If the individual regains the capacity to understand, you should inform them how their personal information was disclosed or accessed if it was in a way they would not reasonably expect.

For further guidance, please refer to the General Medical Council ethical guidance on confidentiality.

www.gmc-uk.org/ethical-guidance/ethical-guidance-for-doctors/confidentiality/using-and-disclosing-patient-information-for-direct-care