

CONFIDENTIALITY GUIDELINES AND DISCLOSURE

Confidentiality is the central trust between a service user and the service provider, Manager and staff enabling an open and honest relationship between the service user and the service provider. However, information sharing is also central to provide a service user with a “seamless” integrated service involving other services, to best meet their needs and reduce the risk of harm to self and others.

Information needs to be shared between agencies about service users who are in contact with multiple agencies and those whose care is transferred from one agency to another. The service provider must find a balance between the service user’s right to confidentiality and the importance of information sharing. No service can offer absolute confidentiality. All service users must understand when information will be kept in confidence, when it will be shared with other services involved in their care and in what circumstances confidentiality will be breached. All drug treatment services must have a clear confidentiality policy, which is understood by both drug workers and service users. The policy should be presented and clearly explained to the service user, both verbally and in written form, before assessment for treatment begins. The policy should be explained on the service user’s first visit to the service and the service user’s understanding regularly reviewed. Service users should be explicitly advised of their rights with regard to confidentiality, including their right to access the information that is held on them.

The basics of confidentiality

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 is available for all services users.

There are some exceptional circumstances when a doctor can disclose information without the service users. These circumstances are where the health and safety of the service users or others could be at risk.

Confidentiality

How confidential is confidentiality?

All staff are required to maintain the confidentiality of information that they may come into contact with as part of their work with vulnerable adults. Each organization will adopt slightly different procedures on such matters and will provide a policy, which must be read by all staff. It is important that confidentiality be understood in terms of confidential material (sensitive personal information such as an individual’s personal circumstances, financial status or medical information) being used on a need to know basis only so as to reduce the risk of this information being reproduced to abuse the individual. In this way, maintaining confidentiality can be seen as part of a developing partnership and professional boundaries between staff and service users.

- Care should be taken to ensure that individuals cannot be identified through an informal discussion.
- Should a request for information be received from someone outside the organisation for which a member of staff works, s/he should be referred to the person in charge.
- Confidential documents should be clearly labelled 'confidential' and should indicate the name(s) of those entitled to access the information.
- When having confidential discussions or phone calls, the member of staff should ensure that s/he cannot be overheard.
- Operate on a need to know basis - only information that is needed to be known by others should be shared.

Service users may 'share secrets' with staff and under these circumstances it is advisable that the member of staff informs the service user that if the information s/he wishes to share discloses harm or abuse to him/herself or others then confidentiality cannot be maintained. If a member of staff suspects abuse, has concerns concerning an individual's behaviour or is worried that the individual may be 'at risk' then the member of staff must inform his/her line manager.

Within the context of professional ethics, observing the principle of confidentiality means keeping information given by or about an individual in the course of a professional relationship secure and secret from others. This confidentiality is seen as central to the maintenance of trust between professional and service-user. The obligation to maintain confidentiality does not normally end with the individual's death. Confidentiality is owed equally to mature and immature minors, and adults who lack the capacity to make decisions for themselves. It also applies to fellow professionals and students studying to enter one's profession. It applies to all forms of transmission; verbal, written, digital, manual or hardcopy records, videos and illustrations etc. -wherever they can be identified with a specific individual.

When does disclosure not constitute a breach of confidentiality?

Disclosure to the individual to whom confidentiality is owed.

The principle of confidentiality is not intended to justify withholding information from a person about himself or herself. For example, within the doctor-patient relationship, sharing information about the patient's health and treatment is held to be an essential part of good practice and will only constitute a breach of confidentiality if disclosure reveals previously unknown information about another identifiable person, such as a relative. In some circumstances the law may impose specific restrictions on the disclosure and use of certain types of information, and professionals are expected to be aware of these distinctions where they apply to their own professional practice.

Disclosure to others

Disclosure of information about an individual to others will constitute a breach of confidentiality only if that information was previously unknown to the recipient. Confidentiality applies to personal information. General information may be disclosed without breaching confidentiality. For example the a residential home states that where relatives are already aware of an individual's condition or diagnosis, an explanation of the

possible options for that service user does not breach confidentiality but revealing an individual's views of those choices would do so.

Disclosure with consent

The principle of confidentiality can be waived with the consent of that individual and in practice, an obligation to maintain confidentiality would often work against their interests if it could not be so waived. The consent given must be informed but the definition of what constitutes informed consent is ethically and legally complex. Correct application of the principle confidentiality to professional behaviour will therefore require a complimentary understanding of informed consent and the principles of confidentiality and informed consent can be usefully taught together. In some circumstances the law may impose higher standards of consent in relation to the disclosure and use of certain types of information, for example, consent relating human fertilisation and embryology.

Disclosure of information to other professionals

The BMA holds that the confidentiality owed to person within the doctor-patient relationship covers disclosure to other health professionals. Information should only be shared with health professionals who need access in order to fulfil their own duty of care to the patient. Data circulated for other purposes than the duty of care to the individual to whom that data relates should be done either with their consent or in an anonymous form

Breaching confidentiality

Circumstances in which confidentiality might be breached for ethically or legally justifiable reasons include:

- Cases in which the professional knows or suspects that an individual is acting illegally.
- Cases in which the professional knows or suspects that an individual is harming others*.
- Cases in which the professional knows or suspects that an individual might harm others* in future.
- Cases in which the professional knows or suspects that an individual is harming himself or herself.
- Cases in which the professional knows or suspects that an individual might harm himself or herself in future.
- Cases in which the professional knows or suspects that a minor is being exploited or abused by others*.
- Cases in which the professional knows or suspects that a competent adult is being exploited or abused by others*.

Others may here refer to:

- People with whom that individual has a personal relationship

- Members of the general public.
- Professionals with whom that individual has a service-provider/service-user relationship.

It will be useful to consider whether the status of the other person affected affects the outcome of deliberation. For example, if the person being harmed or at risk is a child, does this make a breach of confidentiality more or less justifiable than if a fellow professional is at risk?

Even more complex are issues where maintaining confidentiality means accepting continuing harm or the risk of harm to non-human interests such as animals, the environment or property.

There are also decisions to be made regarding procedure where a decision to breach confidentiality is made. Professional codes normally advise their members to try to get consent for disclosure first, but in some cases an indication that the professional is considering disclosure the information to others will subvert the reasons for making the disclosure.

These issues are contested and remain subject to constant revision within the law and professional codes of conduct. Even if clear guidelines exist, they may be challenged or shown to be inadequate in the light of future events. It is therefore important that students develop some facility with the issues and arguments, and are able to engage in ethical deliberation regarding the circumstances in which a breach of confidentiality might be justified, so that they can take personal responsibility for future decisions regarding their own conduct.