Confidentiality

Introduction

- Here you will find information on confidentiality. It covers national standards and guidance. You should also refer to local policies and procedures.Confidentiality of information must be maintained at all times, except:
    - where there is valid written consent by the individual or the individual's authorised representative
    - when necessarily imparted to a close carer in the individual's best interests where, due to the nature of the individual's impairment, it is not possible for consent to be gained. Also, where there is a wider ethical or legal duty to disclose information where required, by the order of a court
    - if information is requested by another professional authorised to receive that information, who also owes the individual a duty of care.

  Please **contact us** with any feedback on these pages.

Key points

- Principles of confidentiality are legally protected in the UK
- The Health & Care Professions Council (HCPC) and RCSLT provide guidance on protecting and managing confidentiality
- Speech and Language Therapists hold a duty of care to abide by these standards and guidance

Definitions

What is confidential information?

- Information that identifies an individual in any way
- Any other information held under an obligation of confidence

What is confidentiality?

- Maintaining security of information obtained from an individual. This includes non-health information, for example, name, address and details of financial or domestic circumstances

Principles around maintaining confidentiality

- Individuals have a right to expect that information given in confidence will be used only for the purpose for which it is given and will not be released to others without permission.
- Consent should be sought for sharing of information that is personal to an individual.

Standards

The Common Law Duty of Confidentiality in the UK, states:

- a duty of confidence arises when one person discloses information to another, eg patient to clinician, in circumstances where it is reasonable to expect the information will be held in confidence
- the duty of confidence stands true whether for a child, young person or adult
- that there are only three lawful routes to disclosing confidential information: 1)Individual's/legal guardian's consent, 2) Disclosure is in public interest, eg safeguarding, 3)Legal duty to do so, eg court order

HCPC (2023) Standards of Proficiency state that you must:

- adhere to the professional duty of confidentiality and understand when disclosure may be required
- understand the principles of information and data governance and be aware of the safe and effective use of health, social care and other relevant information
- recognise and respond in a timely manner to situations where it is necessary to share information to safeguard service users, carers and/or the wider public
- understand the need to ensure that confidentiality is maintained in all situations in which service users rely on additional communication support (such as interpreters or translators)
- recognise that the concepts of confidentiality and informed consent extend to all mediums, including illustrative clinical records such as photography, video and audio recordings and digital platforms.

Visit the **HCPC standards guidance** for information on adhering to regulation standards.

National guidance

The RCSLT recommends that SLTs:

- abide by all legislations, policies and other regulations
- maintain high standards around confidentiality and record keeping
- store information safely and securely; seeking the client's consent to share information in all circumstances (except when required to disclose by law, safeguarding or public safety)
- inform service users what information is being collected, recorded and used about them
- seek the permission of service users to share or disclose information to third parties
- with service users' permission, only share relevant information with other professionals in the best interests of the service users' management and treatment
- only disclose information where the person about whom the information is concerned has given permission, except when required to disclose by law or where there is public interest in disclosing the information, e.g. safeguarding or public safety.

The HCPC provides **specific confidentiality guidance for registrants**. It covers:

- What information is confidential?
- Keeping information safe
- Consent and confidentiality
- Disclosing information with consent
- Disclosing information without consent
- Disclosing information by law
- Disclosing information to regulators
- Confidentiality and accountability

NHS Digital Code of Practice on Confidential Information (2014) describes good practice for handling confidential information in health service or adult social care.

It covers:

- establishing the purpose of arrangements to handle confidential information
- standards for collecting, processing and managing confidential information
- sharing of confidential information
- disposal of confidential information

It includes links to Caldicott principles and useful flowcharts to support decision-making on this topic.

The British Medical Association (2016) **Principles for sharing patient electronic records** advises on how to manage confidentiality when using electronic patient record systems. Electronic record systems can be accessed by a number of health professionals from different organisations. SLTs are 'data controllers' and must decide who can access their Speech and Language electronic records. Patients must be fully informed and consent to their electronic record being shared. **There must also be opt out clauses for sharing all or parts of the record**.

When to share?

An individual's information may only be shared when:

- there is valid written consent by the individual or the individual's authorised representative and they fully understand what/with whom content will be shared
- it is in the person's best interest, if it is not possible to gain informed consent
- there is a wider ethical or legal duty to disclose information
- it is required by the order of a court
- information is requested by another professional authorised to receive that information, who also owes the individual a duty of care.

In the context of developing integrated care pathways and interagency working, there is an increasing need to share information on individuals. Services are encouraged to develop shared protocols around what, when and how information will be shared.

When consent to share information is not given the practitioner must confirm that every effort will be made to maintain confidentiality but also inform that there may be circumstances where it may need to be shared for their best interest.

In a situation where permission has not been sought or obtained, but disclosure of information about an individual by a professional is under consideration, the professional must ask the following questions of herself/himself:

- Was I categorically asked not to disclose?
- Will withholding information affect the wellbeing of the individual?
- Is the disclosure relevant?

If a decision is taken to disclose confidential information, the practitioner must be prepared to explain and justify their decision. The individual should be informed of the decision.

Breach of confidence

A breach of confidence is unethical, unprofessional and in some cases, unlawful.

However, it should be remembered that a breach of confidence cannot occur where prior permission to disclose has been sought and obtained from the individual or carer.

Confidentiality when obtaining support and in supervision

Confidential information from the individual can be discussed in supervision. If it is to be discussed with colleagues, permission must be obtained from the individual.

Support or opinions can be obtained from colleagues, providing the individual cannot be identified. Individuals should be told that you may wish to discuss their case with a colleague, but that any information disclosed is confidential to the department. A pre-appointment leaflet or charter could also explain this.

Notes should be clear but brief, if an individual gives details of their personal life and emotional state.

Providing anonymity is kept, separate notes may be made for supervision. These may include the subjective experiences of the SLT and are for the SLT's own learning objectives. They are therefore not the case notes of the individual, nor should they become case notes. Supervision notes should remain confidential between the supervisor and supervisee, unless there is a lawful reason for disclosure.

See our **supervision guidance** and **safeguarding guidance** for more information.

Professional development scenarios

Find out more about how you can use professional development scenarios to explore potential situations which compromise information governance. They can be used to aid reflection, guide your thoughts, prompt discussion with your colleagues, and form part of your CPD.

- **Confidentiality and court**
- **Confidentiality on shared devices**

Resources

Please note: the resources on this page are provided for informational purposes only. No endorsement is expressed or implied, unless otherwise stated. While we make every effort to ensure this page is up to date and relevant, we cannot take responsibility for pages maintained by external providers.

- General Medical Council (2017) **Confidentiality: Disclosing information for education and training purposes**.
- General Medical Council (2011) **Making and using visual and audio content in individuals**.
- **HCPC Confidentiality – Guidance for registrants**
- **HCPC Guidance on consent and confidentiality**

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The RCSLT develops guidance to promote good **clinical** and **professional** practice in line with HCPC standards. **Please read our statement on guidance** to understand how it is developed and how to use it.