



Confidentiality

'The code: Standards of conduct, performance and ethics for nurses and midwives' (2008) states:

- "You must respect people's right to confidentiality."
- "You must ensure people are informed about how and why information is shared by those who will be providing their care."
- "You must disclose information if you believe someone may be at risk of harm, in line with the law of the country in which you are practising."

Confidentiality

A duty of confidence arises when one person discloses information to another in circumstances where it is reasonable to expect that the information will be held in confidence. This duty of confidence is derived from:

- common law – the decisions of the Courts
- statute law which is passed by Parliament.

Confidentiality is a fundamental part of professional practice that protects human rights. This is identified in Article 8 (Right to respect for private and family life) of the European Convention of Human Rights which states:

1: Everyone has the right to respect for his private and family life, his home and his correspondence.

2: There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for

the protection of health or morals, or for the protection of the rights and freedoms of others.'

The common law of confidentiality reflects that people have a right to expect that information given to a nurse or midwife is only used for the purpose for which it was given and will not be disclosed without permission. This covers situations where information is disclosed directly to the nurse or midwife and also to information that the nurse or midwife obtains from others. One aspect of privacy is that individuals have the right to control access to their own personal health information.

It is not acceptable for nurses and midwives to:

- discuss matters related to the people in their care outside the clinical setting
- discuss a case with colleagues in public where they may be overheard
- leave records unattended where they may be read by unauthorised persons.

Legislation

All nurses and midwives need to be aware of the following pieces of legislation relating to confidentiality:

The Data Protection Act 1998

This Act governs the processing of information that identifies living individuals. Processing includes holding, obtaining, recording, using and disclosing of information and the Act applies to all forms of media, including paper and electronic.

The Human Fertilisation and Embryology Act 1990

Regulates the provision of new reproductive technology services and places a statutory ban upon the disclosure of information concerning gamete donors and people receiving treatment under the Act. Unauthorised disclosure of such information by healthcare professionals and others has been made a criminal offence.

The National Health Service Venereal Disease Regulations (SI 1974 No.29)

This states that health authorities should take all necessary steps to ensure that identifiable information relating to persons being treated for sexually transmitted diseases should not be disclosed.

The Mental Capacity Act (2005)

This provides a legal framework to empower and protect people who may lack capacity to make some decisions for themselves. The assessor of an “individual’s capacity to make a decision will usually be the person who is directly concerned with the individual at the time the decision needs to be made” this means that different health and social care workers will be involved in different capacity decisions at different times.

The Freedom of Information Act 2000 and Freedom of Information (Scotland) Act 2002

These Acts grant people rights of access to information that is not covered by the Data Protection Act 1998, e.g. information which does not contain a person’s identifiable details.

The Computer Misuse Act 1990

This Act secures computer programmes and data against unauthorised access or alteration. Authorised users have permission to use certain programmes and data. If the users go beyond what is permitted, this is a criminal offence.

Disclosure

Disclosure means the giving of information. Disclosure is only lawful and ethical if the individual has given consent to the information being passed on. Such consent must be freely and fully given. Consent to disclosure of confidential information may be:

- explicit
- implied
- required by law or
- capable of justification by reason of the public interest

Disclosure with consent

Explicit consent is obtained when the person in the care of a nurse or midwife agrees to disclosure having been informed of the reason for that disclosure and with whom the information may or will be shared. Explicit consent can be written or spoken. Implied consent is obtained when it is assumed that the person in the care of a nurse or midwife understands that their information may be shared within the healthcare team. Nurses and midwives should make the people in their care aware of this routine sharing of information, and clearly record any objections.

Disclosure without consent

The term 'public interest' describes the exceptional circumstances that justify overruling the right of an individual to confidentiality in order to serve a broader social concern. Under common law, staff are permitted to disclose personal information in order to prevent and support detection, investigation and punishment of serious crime and/or to prevent abuse or serious harm to others. Each case must be judged on its merits. Examples could include disclosing information in relation to crimes against the person e.g. rape, child abuse, murder, kidnapping, or as a result of injuries sustained from knife or gun shot wounds. These decisions are complex and must take account of both the public interest in ensuring confidentiality against the public interest in disclosure. Disclosures should be proportionate and limited to relevant details.

Nurses and midwives should be aware that it may be necessary to justify disclosures to the courts or to the Nursing & Midwifery Council and must keep a clear record of the decision making process and advice sought. Courts tend to require disclosure in the public interest where the information concerns misconduct, illegality and gross immorality.

Disclosure to third parties

This is where information is shared with other people and/or organisations not directly involved in a person's care. Nurses and midwives must ensure that the people in their care are aware that information about them may be disclosed to third parties involved in their care. People in the care of a nurse or midwife

generally have a right to object to the use and disclosure of confidential information. They need to be made aware of this right and understand its implications. Information that can identify individual people in the care of a nurse or midwife must not be used or disclosed for purposes other than healthcare without the individuals' explicit consent, some other legal basis, or where there is a wider public interest.

Information Sharing Protocols

These are documented rules and procedures for the disclosure and use of patient information between two or more organisations or agencies, in relation to security, confidentiality and data destruction. All organisations should have these in place and nurses and midwives should follow any established information sharing protocols.

Confidentiality after death

The duty of confidentiality does continue after death of an individual to whom that duty is owed.

Information disclosure to the police

In English law there is no obligation placed upon any citizen to answer questions put to them by the police. However, there are some exceptional situations in which disclosure is required by statute. These include:

the duty to report notifiable diseases in accordance with the Public Health Act 1984

- the duty to inform the Police, when asked, of the name and address of drivers who are allegedly guilty of an offence contrary to the Road Traffic Act 1998
- the duty not to withhold information relating to the commission of acts of terrorism contrary to the Terrorism Act 2000
- the duty to report relevant infectious diseases in accordance with the Public Health (Infectious Diseases) Regulations 1998.

Police access to medical records

The police have no automatic right to demand access to a person's medical records. Usually, before the police may examine a person's records they must obtain a warrant under the Police and Criminal Evidence Act 1984. Before a police constable can gain access to a hospital, for example, in order to search for information such as medical records or samples of human tissue, he or she must apply to a circuit judge for a warrant. The police have no duty to inform the person whose confidential information is sought, but must inform the person holding that information.

The Police and Criminal Evidence Act (1984)

This Act allows nurses and midwives to pass on information to the police if they believe that someone may be seriously harmed or death may occur if the police are not informed. Before any disclosure is made nurses and midwives should always discuss the matter fully with other professional colleagues and, if appropriate consult the NMC or their professional body or trade union. It is important that nurses and midwives are aware of their organisational policies and how to implement them. Wherever possible the issue of disclosure should be discussed with the individual concerned and consent sought. If disclosure takes place without the person's consent they should be told of the decision to disclose and a clear record of the discussion and decision should be made as stated above.

Special considerations to be taken into account when disclosure is being considered

In some circumstances it may not be appropriate to inform the person of the decision to disclose, for example, due to the threat of a violent response. The nurse or midwife may feel that, because of specific concerns, a supplementary record is required containing details of the disclosure. The Data Protection Act 1998 does allow for healthcare professionals to restrict access to information they hold on a person in their care, if that information is likely to cause serious harm to the individual or another person. A supplementary record should only be made in exceptional circumstances as it limits the access of the person in the care of the nurse or midwife to information held about them. All members of the health care team should be aware that there is a supplementary record and this

should not compromise the persons' confidentiality.

Nurse or midwife acting as a witness in a court case

If a nurse or midwife is summoned as a witness in a court case he/she must give evidence. There is no special rule to entitle the nurse or midwife to refuse to testify. If a nurse or midwife refuses to disclose any information in response to any question put to him/her, then a judge may find the nurse or midwife in contempt of court and may ultimately send him/her to prison.

Risk or breach of confidentiality

If a nurse or midwife identifies a risk or breach of confidentiality they must raise their concerns with someone in authority if they are unable to take affirmative action to correct the problem and record that they have done so. A risk or breach of confidentiality may be due to individual behaviour or as a result of organisational systems or procedures. The Code states "You must act without delay if you believe that you, a colleague or anyone else may be putting someone at risk". Nurses and midwives have a professional duty to take action to ensure the people in their care are protected and failure to take such action could amount to professional misconduct on their part.

This information was updated May 2012.

Further reading

- **[The code: Standards of conduct, performance and ethics for nurses and midwives \(2008\)](#)** [PDF]
- **[Record keeping: Guidance for nurses and midwives](#)** [PDF]

Inter-regulatory publications

This information is for sign posting purposes to assist the nurse or midwife working within the multidisciplinary team and should be read in conjunction with the information provided specifically for nurses and midwives.

- **[General Medical Council - Confidentiality](#)**
- **[General Dental Council - Patient Confidentiality](#)**

- **General Pharmaceutical Council Guidance - Patient Confidentiality**

Further information

- **NHS Confidentiality Code of Practice (Department of Health, November 2003)**
- **The Data Protection Act 1998**
- **The Public Health (Infectious Diseases) regulations 1988**
- **European Convention of Human Rights Act**
- **National Health Service Venereal Disease Regulations (SI 1974 No.29)**
- **Human Fertilisation and Embryology Act 1990**
- **The Computer Misuse Act 1990**
- **The Road Traffic Act 1998**
- **The Terrorism Act 2000**
- **The Freedom of Information Act 2000**
- **The Freedom of Information (Scotland) Act 2002**
- **Mental Capacity Act 2005**

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