



## Confidentiality Policy

### Policy

The Trust and its staff will respect and protect all confidential information concerning its Trainees, at all times. **All Trainees will be provided with the Trust's statement on confidentiality**, which outlines the obligations placed upon the Trust to safeguard confidential information, the circumstances whereby the Trust may disclose confidential information, the circumstances where express consent is required and the Trainee's right to object to any disclosure. **Trust staff are also provided with a copy of this statement.** Any failure to observe the principles outlined will lead to disciplinary action which, in more serious or repeated cases, **may lead to the employee's dismissal.**

### Procedure

It is likely that most Trainees of the Trust (through age, illness, impairment or disability for example) will have been involved in receiving some kind of healthcare treatment throughout their lives. As such they will probably be familiar with the requirements of the health service to protect the personal and often sensitive information that has been gathered as part of the treatment process.

The general duty to hold such information in confidence arises from:

- a) a **legal obligation** which is derived from specific Acts and case law;
- b) a requirement established within **professional codes of conduct** (which apply to many of the healthcare workers who may be part of the Trainee's *healthcare team*);
- c) a requirement for staff not to improperly divulge confidential information, which is incorporated into staff disciplinary procedures.

The same duties and obligations apply to the Trust in every respect, and all Trainees have the legitimate expectation that Trust staff will respect their privacy and act appropriately.

**A key consideration** is the direct link between an identifiable individual and the sensitive and personal information which is held about them.

Key identifiable information includes:

- Trainee's name, address, full post code, date of birth;
- Pictures, photographs, videos, audio-tapes or other images;
- NHS number and local patient identifiable codes;
- Anything else that may be used to identify a patient directly or indirectly. For example, rare diseases, drug treatments or statistical analyses which have very small numbers within a small population – making it easier for individuals to be identified.

It is generally accepted that information provided by Trainees to the Trust is provided in confidence and must be treated as such so long as it remains capable of identifying the individual it relates to. This is an important point, **as once information is effectively anonymised it is no longer confidential.** The protection of confidential information is an important component of the Trust's procedures and protocols, and includes the following measures:

- a) **Procedures** to ensure that all staff are at all times fully aware of their responsibilities regarding confidentiality;
- b) Recording Trainee information **accurately and consistently**;
- c) Keeping Trainee information **private**;
- d) Keeping Trainee information **physically secure**;
- e) Disclosing and using information with **appropriate care**.

### **Procedures to ensure that all staff are fully aware of their responsibilities regarding confidentiality**

The Trust ensures that staff are aware of confidentiality issues through the creation of policy/procedure documents such as this one, and its policy/procedure entitled “Employee Responsibilities”, induction training and the Trust’s disciplinary procedures.

### **Recording Trainee information accurately and consistently**

The Trust aims for **best practice** in keeping records of Trainees and the care delivered to them and will endeavour to maintain records that are factual, consistent, accurate, relevant and useful. **Trainee records will not include** unnecessary abbreviations or jargon, meaningless phrases, irrelevant speculation, subjective statements or irrelevant personal opinions.

### **Keeping Trainee information private**

The Trust requires staff **not to gossip**, and to take care when discussing cases in public places.

### **Keeping Trainee information physically secure**

The Trust **will take a number of measures** to ensure that confidential Trainee information is secure including:

- Not leaving portable computers, care case notes or files, unattended in cars, other Trainee’s houses or in easily accessible areas;
- Storing all files and portable equipment under lock and key when not actually being used;
- Keeping manual records secure by shutting/locking cabinets as required;
- Not leaving Trainee information on computer screens when the computer is unattended;
- Ensuring that the computer’s *screen saver* facility is applied and secure passwords are used.

### **Disclosing and using information with appropriate care**

The Trust will:

- Ensure that established information-sharing protocols are observed at all times;
- Identify enquirers so that information is only shared with the right people;
- Ensure that appropriate standards of protection are applied in respect of emails, faxes and surface mail;
- Share the minimum necessary to provide safe care or to satisfy other purposes. (see the Caldicott principles below).

### **Caldicott Principles**

- i) **Justify** the purpose;
- ii) Don’t use **Trainee identifiable** information unless it is absolutely necessary;
- iii) Use the **minimum necessary** patient identifiable information;
- iv) Access to Trainee identifiable information should be on a **strict need to know** basis;

- v) Everyone should be aware of their **responsibilities**;
- vi) Understand and **comply with the law**.

#### Disclosure of confidential information by the Trust

The Trust is expected, on occasion, to **share confidential Trainee information** between members of care teams and between different organisations, in order that the Trainee is able to receive, overall, the highest quality care. The information may be needed for care purposes involving the Trainee, (such as delivering the correct care, arranging for care or co-ordinating care) or for such matters as clinical governance or clinical audit. Trainees may object to the routine disclosure of information described above if they wish, although they will be advised that this may not be in their best interests, as Clinicians cannot usually treat patients safely, nor provide continuity of care, without having relevant information about a patient's condition and medical history.

In circumstances where Trainees have been informed of:

- a) the use and disclosure of their information associated with their care; and
- b) the choices that they have and the implications of choosing to limit how information may be used or shared;

**then explicit consent is not usually required** for information disclosures needed to provide that care. However any explicit objection to disclosure must be acted upon, and fully documented in the Trainee's file. It will be made clear to the Trainee that they are able to change their mind at a later date. The Trust is not normally associated with any activities which are not directly related to the provision of care to Trainees. However where confidential information is requested, but does not satisfy the tests of necessity and appropriateness that must govern the use of identifiable Trainee information, then it will, where possible, be anonymised to protect the Trainee. In all other circumstances efforts will be made to obtain and record consent from the Trainee unless there are statutory grounds for setting confidentiality aside or robust public interest or important safety/security issues exist.

#### The legal considerations in more detail

There are a range of statutory provisions **that limit or prohibit the use** and disclosure of information in specific circumstances and, similarly a range of statutory provisions that **require** information to be used or disclosed. Generally, there are three main areas of law which constrain the use and disclosure of confidential personal health information, and which relate to the conduct and performance of the Trust:

- Common Law of Confidentiality;
- Data Protection Act 1998;
- Human Rights Act 1998.

#### Common Law of Confidentiality

The common law has been built up from case law where practice has been established by individual judgements. **The key principle is that information confided should not be used or disclosed further**, except as originally understood by the confider, or with their subsequent permission. The Trust will therefore ensure that Trainees are properly informed of the use of their personal information, and will, where necessary, **seek explicit permission** to disclose in circumstances where consent has not been reasonably implied or assumed.

#### Data Protection Act 1998

This Act provides a framework that **governs the processing of information** that identifies personal data relating to living individuals. Processing includes holding, obtaining, recording, using and disclosing of information and the Act applies to all forms of media, including paper and images. In the context of confidentiality, the most important data principles, outlined in the Act refer to data and information being processed lawfully and fairly; personal data being processed for one or more lawful purposes and the protection of personal data against unauthorised or unlawful processing and against accidental loss, destruction or damage.

### **Human Rights Act 1998**

Article 8 of the Human Rights Act 1998 establishes a right to “respect for private and family life”. This underscores the duty to protect the privacy of individuals and preserve the confidentiality of their health records. Current understanding is that compliance with the Data Protection Act 1998 and the common law of confidentiality should satisfy Human Rights requirements.

#### **Note:**

**It has been assumed** that the principles which govern how confidential information should be stored, protected and disclosed in the NHS will apply, largely, in other significant areas of healthcare.

This model has been based therefore, on the Department of Health guidance on Confidentiality – NHS Code of Practice, dated 2003.