The practice of respect for patient confidentiality takes many factors into account and requires a sophisticated understanding of the issues at stake. In this module, we aimed to provide psychiatrists with the knowledge required to deal with different situations as they might arise.

**Ethical and legal principles**

- Psychiatrists should respect the following three key principles of medical confidentiality: individuals have a fundamental right to the privacy and confidentiality of their health information; individuals have a right to control access to and disclosure of their own health information by giving, withholding or withdrawing consent; for any non-consensual disclosure of confidential information, psychiatrists must take into account the necessity, proportionality and attendant risks of the disclosure.

**Consent and information-sharing**

- Patients, or where appropriate their legal representatives, must be informed of what information sharing is necessary for the patient’s individual healthcare. Provided they are informed in this way, explicit consent is not necessary; implied consent is sufficient. All other uses of patient information require the express consent of the patient or their legal representative.

- Psychiatrists must ensure that patients and/or their legal representatives are informed in a manner appropriate for the patient’s communication needs: what kinds of information are being recorded and retained, the purposes for which the information is being recorded and retained, what protections are in place to ensure non-disclosure of their information, what kinds of information sharing will usually occur, the choices available to them about how their information may be used and disclosed, about their rights to access and where necessary to correct the information held about them within healthcare records, about their rights to access and where necessary to correct the information held about them within healthcare records, about their rights to access and where necessary to correct the information held about them within healthcare records.

**Working in multidisciplinary teams and interagency working**

- The healthcare team may include temporary members for particular functions and psychiatrists must not disclose information to temporary members unless they are under a sufficient obligation of confidentiality for that level of disclosure.

- Multidisciplinary teams should agree strategies for any disclosure of confidential information beyond the team.

- Healthcare professionals may have different criteria and thresholds for the disclosure of confidential information, for example in relation to public safety. It is essential for each healthcare professional to familiarise him or herself with such differences and moderate disclosures accordingly.

- Where it is planned to involve staff from other agencies, this should first be discussed with the patient and/or their legal representative. The purpose of involving the other agency should be clarified along with the purpose of the contemplated information sharing.

- Where a patient or their legal representative refuses to consent to the involvement of other agencies, their refusal should be respected unless there are overriding interests (see below).

- Where other agencies request information about patients, psychiatrists should first seek the consent of the patient or their legal representative about such sharing, including the content of information to be disclosed.

**Other considerations**

- Where a psychiatrist has dual responsibilities it is important that they explain at the start of any consultation or assessment to the patient and/or their legal representative on whose behalf they are seeing the patient.
and the purpose of the consultation or assessment. It should also be made clear to the patient and/or their legal representative that the information given will not be treated as confidential.

- Some people are more vulnerable to the disclosure of their information because they appear to have a diminished mental capacity (e.g. older people, people with a learning disability, people with an acute psychotic episode whose capacity may be temporarily impaired). It is essential for psychiatrists to resist the assumption that standards can be less stringent for people in these groups; they should be assumed to have the mental capacity to decide about confidentiality unless assessment proves otherwise.

- Where a patient is incompetent, disclosure can be justified to protect the best interests of that patient. Whether disclosure is justified in the individual case depends on a careful weighing of the patient’s interests in having the confidentiality of his/her information maintained and the interests that are at risk without disclosure.

Disclosure

- In a number of particular circumstances, a doctor has a statutory obligation to disclose confidential information which overrides any duty of confidentiality. Failure to disclose the information to the relevant authorities may lead to legal action. In addition, there are statutory laws which afford various bodies the power to obtain disclosure of confidential information. These require a doctor to lawfully override any duty of confidentiality.

- When a legal obligation to disclose is clearly becoming relevant, this should be discussed with the patient and/or their legal representative as early as possible, unless such discussion would itself undermine the purpose of the disclosure.

- Before complying with any possible legal obligation to disclose, healthcare professionals must: satisfy themselves that the situation clearly falls into the category of cases for which disclosure is legally required; ensure that every argument that can be made against disclosure is presented to the authority receiving the disclosure. Any disclosure must be limited to what is strictly necessary.

- Apart from the few statutory exceptions, decisions to disclose patient-identifiable information are matters of finely balanced judgement. Such balancing needs to take into account: the various legal responsibilities at stake, including the duty of confidence to the individual; the public interest in the health service maintaining confidentiality; whether the harm that could result from disclosure (e.g. the possible harm to the relationship of trust or the likelihood of non-concordance regarding a programme of healthcare intervention in the future) is likely to be outweighed by the possible benefits. The potential benefits would need to be soundly grounded on the expectation that disclosure would have the desired effect (that is, a significant reduction in the risk of harm).

- When a decision has been reached that disclosure is justified, certain guidelines may be followed as to how the disclosure is carried out.

Further reading

Mental Health Act 1983 [website]
General Medical Council (2009) Guidance on good practice: Confidentiality [website]
Adults with Incapacity (Scotland) Act 2000 [website]
Data Protection Act 1998 [website]
Mental Capacity Act 2005 [website]
The Mental Health (Amendment) (Northern Ireland) Order 2004 [website]
Mental Health (Care and Treatment) (Scotland) Act 2003 [website]
Mental Health (Patients in the Community) Act 1995 [website]
Prevention of Terrorism (Temporary Provisions) Act 1989 [website]
Road Traffic Act 1988 [website]
The Abortion Regulations 1991 [website]
The Public Health (Infectious Diseases) Regulations 1988 [website]
The Reporting of Injuries, Diseases and Dangerous Occurrences (Amendment) Regulations 1989 [website]