

- Disclosing concerns about the health and safety of patients policy
June 2023

1 Purpose

- 1.1 Section 15(1)(e) of the Health Service Commissioner's Act 1993 gives the PHSO powers to disclose information to any person we consider relevant, if it is clear there is a likely threat to the health and safety of patients.
- 1.2 If, during our consideration of a health case, we discover any information that would indicate a likely threat to the health and safety of patients, we should consider whether disclosure of those concerns might be appropriate.
- 1.3 Once we have made the disclosure, the law says we must ensure both the person supplying us with the information, and the subject of that information are told we have made a disclosure, and who we have made it to.
- 1.4 Whilst the legislation gives us a legal basis to disclose information in certain circumstances, we must consider the data protection principles and requirements set out by the Data Protection Act 2018 and the UK General Data Protection Regulation when undertaking any such disclosure exercise.
- 1.5 This policy sets out how and when information can be disclosed and provides important information about the process to follow.

2 Policy Scope

- 2.1 This policy applies to information obtained in the course of health care related investigation where we have reliable evidence that leads to us having concerns about the actions or behaviours of an individual or organisation.
- 2.2 Confidentiality can be set aside in these circumstances where it is necessary to share appropriate information. The principle of data minimisation (only disclosing information that is necessary, adequate and relevant to achieve our purpose) should be followed.
- 2.3 This policy does not apply to cases investigated under our parliamentary legislation because the powers specifically fall under our health legislation, and therefore any consideration of whether to disclose information for these cases must be considered under our disclosing information about risk policy.

3 Principles

- 3.1 Before deciding to make a disclosure we must ensure we have sufficient evidence to conclude there is a likely threat to the health and safety of patients. We must also make sure any disclosure we make is proportionate in relation to what has happened or might happen.
- 3.2 If we do decide to make a disclosure then this should always be to a relevant person or organisation that has the powers and responsibility to handle the information provided and take action.
- 3.3 We should also only disclose the minimum amount of information needed in order to respond to the threat and should not provide details of any case we are considering that is linked to the disclosure, unless directly relevant.
- 3.4 We should disclose information at any point we consider it necessary. We do not need to wait until the end of a case but should ensure we take a fair and reasonable approach.
- 3.5 In some instances, the threat to patients will relate more to their health than to their safety. For example, in dentistry, serious mistakes may not be life threatening, but may affect the oral health of patients. In these cases, we can still share information under section 15.
- 3.6 We can decide to make disclosures to the police, but should only consider doing so in the most serious of cases. This is likely to be where the incident concerned and the potential risk to patients is likely to amount to a criminal offence.
- 3.7 The disclosure of concerns under section 15 is a process we follow when we consider it necessary. It is not a remedy for the complainant and there is no obligation on the organisation or person we have disclosed the information to, to tell us the outcome of our disclosure. Once we have made the disclosure, our involvement ceases. Therefore, there is no need to record the disclosure as a compliance item or create a compliance plan.

4 Disclosures concerning the actions of clinicians

- 4.1 It is likely that most of the disclosures we make under section 15 will concern the actions of clinicians. This has potentially serious implications for the individual concerned and therefore it is important that we are fair and consistent in deciding whether to make a disclosure.
- 4.2 Before making a disclosure we should consider whether our concerns could instead be dealt with through discussions with the employing or supervising NHS organisation involved in the complaint as part of our usual casework process. We should also consider that findings and recommendations made during an investigation will already be shared with the responsible organisation. If we partly or fully uphold a complaint about a doctor, then an anonymised version of the final report will also be shared with their appraiser.
- 4.3 There will be occasions when we decide information should be reported to a regulatory or other external organisation or to other individuals. For complaints about clinicians this is likely to be their regulatory organisation.
- 4.4 Disclosures to the General Medical Council, National Midwifery Council, General Dental Council and Health Care Professions Council should be made through our contact points.) Their details are held by our Lead Clinicians.

5 Disclosures concerning the actions of others

- 5.1 Section 15 allows us to release information to any persons and there may be a number of circumstances in which we could release information lawfully to other bodies or individuals (for example, to a public inquiry). We can also disclose information about more than one individual to more than one organisation at the same time.

5.2 If the caseworker is unsure about whether information can be disclosed under section 15 then they should escalate their concerns to a manager and the Legal Team before taking any action. In circumstances where a disclosure needs to be made urgently and a manager or the legal team is not available, the staff member can still make a disclosure. They must discuss the case with a manager as soon as possible though following the disclosure being made.

6 Determining when a disclosure may be appropriate

- 6.1 The decision to make a disclosure will need to be determined by a balanced judgment taken in light of the circumstances of the individual case. We should not be making disclosures just because we are making an adverse finding.
- 6.2 We should also consider whether there are any wider systemic issues that need to be looked at before making a disclosure. For example, we receive several complaints in relation to a cancer unit at a particular hospital that may indicate a wider issue. This can be done by speaking to Managers and Assistant Directors.

7 The process to be followed when making a disclosure

- 7.1 The caseworker should discuss the case with their Manager to decide whether a disclosure may be appropriate. They should then record this discussion in detail on Dynamics 365 and cross-reference the relevant evidence and advice (including clinical).
- 7.2 Where we are looking to disclose information about a clinician to their regulator, we should consider seeking clinical advice to establish the severity of the failings or concerns identified and whether action already taken to learn from the incident is sufficient. If a caseworker would like to seek advice on this, they should contact one of our lead clinicians.

- 7.3 The caseworker should review the case risk rating on Dynamics 365 and ensure that any mitigation plan is up to date. Whether the risk rating needs to be changed will depend on the individual circumstances of the case, however both the risk rating and any mitigation plan should be regularly reviewed.
- 7.4 Details of the case should be escalated via line management to an Assistant Director to decide if a disclosure should be made (and simultaneously copied to the Legal Team who should be invited to comment) in line with the [Delegation Scheme](#). The letters containing the information for disclosure should also be signed off at this level or above.
- 7.5 The caseworker should consider telling the subject of the disclosure that we are proposing to share information about them with a third party before doing so. There will be instances where this will not be appropriate, such as when a disclosure needs to be made urgently.
- 7.6 This approval should be clearly recorded on Dynamics 365. We should disclose the minimum amount of factual information needed to mitigate the risk to the minimum number of organisations. This includes limiting any case specific information we provide to what is necessary to explain the reasons for the disclosure. If a disclosure is made to a professional organisation (for example, GMC, GDC, NMC) then this should also be recorded on Dynamics 365.
- 7.7 We can make the disclosure by telephone or in writing. If we use email, we should ensure that the person we are disclosing information to will read it promptly (for example, by asking them to confirm receipt or alerting them by phone to the information that we are sending). We should also follow the requirements of the protective marking scheme (for example, ensuring that documents are sent securely through Egress).
- 7.8 If we have not already done so, we must ensure we meet our legal obligations by informing the person involved that we have made a disclosure and who we have made it to. We must then inform the person who provided us with the information that we have shared. If we have not already done so, we must ensure we meet our legal obligations by informing the person involved that we have made a disclosure and who we have made it to. We must then inform the person who provided us with the information that we have shared it.

- 7.9 The details of the disclosure, including the reasons why it was made, should be sent to the Improvement Team using the address ++Improvement to add to the Section 15 disclosure registry.
- 7.10 The exact sequence of events will be determined by the nature of the case. The key requirement is that any case which has the potential to result in disclosure under section 15 is identified and escalated at an early stage.

8 When to disclose cases and how

- 8.1 In investigation cases, we usually disclose the relevant information at the same time as we issue our final report by copying an anonymised final report to the regulatory organisation or other organisation/person. However, a disclosure of information can be made urgently if necessary before the investigation is completed.
- 8.2 In investigation cases where the person we are disclosing information about would not normally receive a copy of the final report (for example, if they were not listed as a ‘named person’) we should still send them a copy of the final report in order to meet the obligation to inform the subject of the information being disclosed.
- 8.3 There will be occasions where we decide not to investigate a case, or are still considering what action to take, but still want to disclose information. The same process applies, but we should be careful to ensure we only share information about the complaint that is necessary in order to make the disclosure.

9 Immediate risk to patients

- 9.1 There will be circumstances where there is an immediate risk to the health and safety of a patient which requires us to disclose information straight away.

- 9.2 In instances where an Assistant Director or above is not available, an Operations Manager, or Senior Solicitor, can, exceptionally, approve the disclosure. This approval will include agreeing the organisation(s) to which we are disclosing the information (for example, the police, mental health crisis team, social/support worker, GP, other emergency services and so forth).
- 9.2 It is unlikely that a staff member will have to act alone when considering or making disclosures but, if there is a serious and immediate threat to an individual and an Assistant Director, Operations Manager, Senior Solicitor cannot be contacted immediately, a staff member may make the disclosure without prior authorisation.
- 9.3 In any circumstance where an Assistant Director is unable to approve a disclosure before it is made, the staff member must notify them as soon as possible afterwards. They should record their discussion with the Assistant Director and relevant information about the disclosure on Dynamics 365.
- 9.4 If an immediate disclosure is approved, then we must inform the subject of the disclosure we have made as soon as practically possible to meet our legal obligations. The Director of Operations, Legal and Clinical should also be informed that a disclosure has been made.

12 Version control

Version	Date	Author	Reviewed by	Authorised by
0.1	20/03/2023	Alex Daybank	██████████	
0.2	28/04/2023	Alex Daybank	██████████	
1	01/06/2023	Alex Daybank Jackson	Angharad Jackson	Angharad Jackson
1.1	13/07/2023	Alex Daybank	Tony Dysart	