

Public Service

 **ombudsman**

Disclosing concerns about the health and safety of patients policy

V1.2 Aug 2026

1 Purpose

- 1.1 This policy sets out how and when information can be disclosed and provides important information about the process to follow.
- 1.2 To ensure compliance with:
Section 15(1)(e) of the Health Service Commissioner's Act 1993 provides us with the discretion to disclose information to any person or organisation we consider appropriate. If it is clear, there is a likely threat to the health, safety or wellbeing of patients.
- 1.3 If, during the consideration of a health case, we identify information that suggests a likely threat to the health, safety, or wellbeing of patients, we should consider whether a disclosure under Section 15 is appropriate.
- 1.4 Once a disclosure has been made, we must comply with our legal obligations by informing both the individual who provided the information and the individual who is the subject of the information that a disclosure has taken place and identifying the person or organisation to whom the information has been disclosed.
- 1.5 Whilst the legislation provides 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 UK General Data Protection Regulation when undertaking any such disclosure.

2 Policy Scope

- 2.1 This policy applies to information obtained during healthcare-related investigations where reliable evidence indicates concerns about the actions, conduct, or behaviour of an individual or organisation. In such cases, consideration should be given to whether a disclosure is necessary and appropriate
- 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 still 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 decide to make a disclosure, it should only be made to a relevant person or organisation with the appropriate powers, responsibilities, and authority to consider the information and take any necessary action.
- 3.3 We should also only disclose the minimum amount of information needed 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 may make a disclosure at any stage if we consider it necessary and justified. We do not need to wait until the conclusion of a case but must ensure that any disclosure is made in a fair, reasonable, and proportionate manner based on the information available at the time.
- 3.5 In some instances, the threat to the 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 the patients is likely to amount to a criminal offence.
- 3.7 The disclosure of concerns under Section 15 is a discretionary process that we may use where we consider it necessary and appropriate. It is not intended as a remedy for the complainant, and there is no obligation on the organisation or individual to whom the information is disclosed to provide us with details of any action taken or outcome achieved. Once the disclosure has been made, our involvement in the matter ceases. Consequently, there is no requirement to record the disclosure as a compliance item or to create a compliance plan.

4 Disclosures concerning the actions of clinicians

- 4.1 It is anticipated that most disclosures made under Section 15 will relate to the actions of clinicians. Given the potentially significant implications for the individuals concerned, it is essential that decisions to make a disclosure are fair, proportionate, and applied consistently

- 4.2 Before making a disclosure, consideration should be given to whether the concerns can be addressed through discussions with the employing or supervising NHS organisation as part of the normal casework process. Consideration should also be given to the fact that any findings and recommendations arising from an investigation will already be shared with the responsible organisation. In cases where a complaint about a doctor is partly or fully upheld, an anonymised version of the final report will also be provided to the doctor's appraiser.
- 4.3 There may be occasions where we determine that information should be disclosed to a regulatory body, other external organisation, or an individual. In cases involving clinicians, this will most commonly be the relevant professional regulator.
- 4.4 Disclosures to the General Medical Council (GMC), Nursing and Midwifery Council (NMC), General Dental Council (GDC), and Health and Care Professions Council (HCPC) should be made via the designated organisational contact points. Details of these contact points are maintained by the Lead Clinicians.

5 Disclosures concerning the actions of others

- 5.1 Section 15 permits the disclosure of information to any person where it is lawful and appropriate to do so. There may be a range of circumstances in which information can be disclosed to other organisations or individuals, for example to support a public inquiry. The provision also allows information relating to more than one individual to be disclosed to multiple organisations or recipients at the same time, where justified by the circumstances.
- 5.2 If a caseworker is unsure whether information can be disclosed under Section 15, they must seek advice from their manager and the Legal Team before taking any action. However, where an urgent disclosure is required and neither a manager nor the Legal Team is available, the staff member may proceed with the disclosure if they believe it is necessary and appropriate to do so. The disclosure must then be reviewed with a manager as soon as practicable after it has been 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 considering 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 for making a disclosure

- 7.1 The caseworker should discuss the case with their manager to determine whether a disclosure is appropriate. The discussion, including the rationale for the decision, should be fully documented in CMS, with references to all relevant evidence, advice received, and any clinical advice considered.
- 7.2 Where a disclosure concerning a clinician to their professional regulator is being considered, clinical advice should be sought where appropriate to assess the seriousness of the concerns identified and determine whether any learning, remediation, or corrective action already taken is sufficient. Caseworkers seeking such advice should consult one of the organisation's Lead Clinicians.
- 7.3 The caseworker should review the case risk rating on Dynamic 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 through line management to an Assistant Director for a decision on whether a disclosure should be made, in accordance with the Delegation Scheme. The Legal Team should be copied into the escalation and invited to provide advice. Any correspondence containing information for disclosure must be approved and signed off by an Assistant Director or above before being issued.
- 7.5 The caseworker should consider informing the subject of the proposed disclosure before sharing information with a third party. This helps to ensure openness and fairness in the process. However, there may be circumstances where prior notification is not appropriate, such as where an urgent disclosure is required.
- 7.6 This approval must be clearly documented in CMS. Any disclosure should be limited to the minimum factual information necessary to mitigate the identified risk and shared only with those organisations that need to receive it. Case-specific details should be restricted to what is required to explain the rationale for the disclosure. Where information is disclosed to a professional regulator or body, such as the GMC, GDC or NMC, the disclosure and the reasons for it must also be fully recorded in CMS.
- 7.7 Disclosures may be made either by telephone or in writing. Where email is used, reasonable steps should be taken to ensure that the recipient reviews the information promptly, for example by requesting confirmation of receipt or contacting them by telephone to advise that the disclosure has been sent. All disclosures must comply with the organisation's Protective Marking Scheme and information handling requirements, including the use of secure methods of transmission, such as Egress, where appropriate.

- 7.8 If this has not already been done, we must ensure that our legal obligations are met by informing the individual concerned that a disclosure has been made and identifying the organisation or person to whom the information has been disclosed, unless there is a lawful reason not to do so. We must also inform the individual who provided the information that a disclosure has been made. All actions taken, including the reasons for any decision not to notify an individual, should be clearly recorded on CMS.
- 7.9 The details of the disclosure, including the rationale for making it, must be submitted to the Improvement Team via ++Improvement for inclusion in the Section 15 Disclosure Register. The record should clearly set out the nature of the disclosure, the recipient, the information shared, and the reasons supporting the decision to disclose.
- 7.10 The precise sequence of events will depend on the circumstances of each case. However, the key requirement is that any case with the potential to result in a disclosure under Section 15 is identified, assessed, and escalated at the earliest opportunity to ensure appropriate consideration and timely decision-making.

8 When and how to disclose cases

- 8.1 In investigation cases, relevant information will normally be disclosed when the final report is issued, typically by providing the regulatory body or other appropriate organisation or individual with a copy of the anonymised final report. However, where there is an immediate risk, a disclosure may be made before the investigation has concluded if this is considered necessary and proportionate.
- 8.2 In investigation cases where the individual who is the subject of the disclosure would not ordinarily receive a copy of the final report, for example because they are not identified as a named person, they should nevertheless be provided with a copy of the final report where necessary to fulfil our obligation to inform them that information relating to them has been disclosed. Any such communication should be handled in accordance with legal, confidentiality, and data protection requirements.
- 8.3 There may be occasions where we decide not to investigate a case, or where a decision on the appropriate course of action is still being considered, but a disclosure is nevertheless deemed necessary. In such circumstances, the same approval and disclosure process applies. Care must be taken to ensure that only the information necessary to address the identified risk and support the purpose of the disclosure is shared.

9 Immediate risk to patients

- 9.1 There may be circumstances where there is an immediate risk to the health, safety, or wellbeing of a patient that requires information to be disclosed without delay.

- 9.2 In exceptional circumstances where an Assistant Director or above is unavailable, approval for a disclosure may be authorised by an Operations Manager or Senior Solicitor. Any such approval must include confirmation of the organisation(s) to which the information will be disclosed, considering the nature of the risk and the purpose of the disclosure. This may include, for example, the police, a mental health crisis team, social care or support services, a GP, or other emergency or safeguarding agencies. The rationale for the decision, the approver, and the recipients of the disclosure must be fully documented in CMS.
- 9.3 It is unlikely that a staff member will need to act alone when considering or making a disclosure. However, where there is a serious and immediate threat to the safety, health, or wellbeing of an individual, and it is not possible to contact an Assistant Director, Operations Manager, or Senior Solicitor without causing undue delay, a staff member may make a disclosure without prior authorisation.
- 9.4 Where a disclosure is made without prior approval from an Assistant Director, the staff member must notify an Assistant Director as soon as reasonably practicable afterwards. The circumstances that led to the disclosure, the reasons it was considered necessary, and the details of the information shared should be discussed with the Assistant Director and fully documented in CMS.
- 9.5 Where an urgent disclosure is approved, we must inform the subject of the disclosure as soon as reasonably practicable to meet our legal obligations. The Director of Operations, Legal and Clinical must also be notified promptly that a disclosure has been made.

Version control

Date	Version	Amends	Owner of amends	Authorised
March 2023	0.1	Drafted	Alex Daybank/Sarah Terry	
April 2023	0.2	Reviewed	Alex Daybank/Sarah Terry	
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